

GUIDELINES FOR SEEKING AMICUS SUPPORT OF THE STATE BAR OF TEXAS' APPELLATE SECTION

1. The Section's Amicus Committee

1.1 The Amicus Committee is composed of five members, each of whom should have significant advocacy experience before the Texas Supreme Court, and many of whom are either Board Certified in Civil Appellate Law or served as clerks for Justices of the Texas Supreme Court. Each year, the Chair of the Section appoints a new Amicus Committee member for a three year term.¹ The longest serving member of the Amicus Committee at the start of each term will Chair the committee for that term.

2. The Process for Board Approval of Section Amicus Briefs.

2.1 Section Amicus briefs must be authorized by the Appellate Section Council, according to this policy, and the State Bar of Texas, according to Section 8.01.10 of the State Bar Board Policy Manual. The State Bar prohibits a section from asserting an independent position on a pending case unless permission has been first obtained pursuant to that Manual.

2.2. The Council has delegated two important functions to the Amicus Committee:

2.2.1. The Amicus Committee reviews applications for amicus briefs and provides its recommendation to the Board on whether an application should be accepted. The Council considers, but is not bound by, the Amicus Committee's recommendation; and

2.2.2. If the application is accepted by the Council, the Amicus Committee selects counsel to draft the brief, submits approval through the State Bar, reviews the proposed brief, requests revisions, and determines whether the final version of the brief meets the Section's standards.

2.3. An application may only be submitted by a Section Member. The Section Member need not be an attorney of record in the case, but, if not, the requestor must state the nature of the relationship between the requestor and the parties to the litigation and must certify that the party on whose behalf the Section would intervene knows and consents to the participation.

¹ The first year of the Amicus Committee's existence, the Section Chair will appoint 3 members with staggered terms. One member will serve a 3 year term, one member will serve a 2 year term, one member will serve a 1 year term. The member serving the 3 year term will be chair and will serve in that role for 3 years.

2.4 A member of the Council or Amicus Committee shall abstain from participating in this process concerning any case in which the member or the member's firm has participated, either directly or indirectly, except as an applicant.

3. When Section Amicus Briefs May Be Filed.

3.1 The Section files amicus briefs sparingly and, unless requested by the Texas Supreme Court, only when a majority of the Council votes that the brief meets the standards in 3.2 and 3.3 and is of high professional quality.

3.2 The Section will submit amicus briefs only –

- in matters of importance to the State of Texas and to the civil appellate bar;
- if the Section's special knowledge, training, or experience would provide a significant contribution to the court's consideration of the legal issues;
- when the position to be taken falls within the purposes, express or implied, of the State Bar as provided in the State Bar Act; and
- if the filing of the brief on behalf of the Section in compliance with these guidelines is feasible, including timing and availability of counsel.

3.3 The Section will not submit an amicus brief –

- which purports to resolve or take a position with regard to factual disputes; or
- if doing so carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Section or of the State Bar.

3.3 A Section brief will be authorized only at an appellate level and generally only in the Texas Supreme Court.

3.4 A Section brief is usually filed only after the Texas Supreme Court has requested full briefing in a case.

3.5 Generally, the Section will not join in the amicus briefs of other organizations.

4. Timeline: Application through Filing the Brief

4.1 Approval happens in four major stages which may take up to three (3) months to complete. Sufficient time must be allotted for all four stages.

4.2 The typical timeline from submission of an application through filing of a Section brief is:

Stage one: Preliminary Approval & Selection of Counsel

- An application is submitted to and reviewed by Amicus Committee.
- The Amicus Committee submits its recommendation on whether to accept or decline the application to the Chair of the Council.
- The recommendation is forwarded to the Council for a vote.
- The Amicus Committee informs the applicant whether the application is accepted or declined.
- If the application is accepted, the Amicus Committee selects appropriate counsel to draft the brief.

Note: Neither the Amicus Committee's recommendation nor the Council's acceptance of an application guarantees that the final brief will be accepted for filing as a Section brief.

Stage two: Drafting First Draft of Brief

- The drafters submit the first draft of a proposed brief.
- The Amicus Committee reviews the first draft and sends a request for revisions to the drafters.
- The drafters submit a second draft of the proposed brief for submission to the State Bar.

Stage three: State Bar Approval

- The Amicus Committee submits request for approval to the State Bar.

Note: This approval may take 30 days or more.

Stage four: Final Approval

- If the State Bar permits the Section to assert its position in the case, the drafters and Amicus Committee will work to finalize the brief.
- The Amicus Committee presents the final brief to the Council, including whether acceptance for filing is recommended.

5. Submitting the Application

- 5.1 A link to the application form is available on the Section's website at tex-app.org.

5.2 The application should contain all of the information requested on the form. Some of the information is required by the State Bar of Texas. The Amicus Committee may reject an application for incompleteness.

5.3 The application should be submitted by email, as directed on the application form. The application should be submitted as a word document.

5.4 If the filing deadline mandates expedited review, this should be clearly stated in the cover email.

6. Requirements of the Amicus Brief

6.1 The brief must comply with all requirements of the Texas Rules of Appellate Procedure pertaining to amicus briefs.

6.2 The brief must contain any disclosure required by the State Bar of Texas.

6.3 The brief must attach a copy of these guidelines to the brief.

7. Filing of the Amicus Brief

7.1 After the brief is approved by the Council for filing, the Amicus Committee will notify the drafters that the brief may be finalized and filed.

7.2 The drafters must e-mail a file-stamped copy of the brief to the Amicus Committee so that the brief can be posted on the Section's website.

7.3 The Section pays no fees for the preparation or review of a Section amicus brief. The Section also will not reimburse the drafters for the costs of printing and filing the brief.

7.4 Any inquiries or comments as to the contents of the brief shall be directed to the Chair of the Amicus Committee.

7.5 The substance of the brief and the fact of its filing must be announced to the membership of the Appellate Section in the following quarter's Appellate Advocate.

8. Suspension of Rules

8.1 Any of these rules or standards may be suspended by affirmative vote of two-thirds (2/3) of the Council.

AMICUS APPLICATION FORM

To request the filing of an amicus brief, please complete this application form and send it to Lisa Bowlin Hobbs, Chair, Amicus Committee, at Lisa@KuhnHobbs.com.

1. **Entity submitting application.** List the entity submitting the application, with the name, telephone number and e-mail address of at least one contact person for each entity.
2. **Date on which brief must be filed.**
3. **Court in which brief is to be filed.** Please note that the Section typically files amicus briefs only in the Texas Supreme Court. If the case is not presently in the Texas Supreme Court, please explain why the Section should file at this level. If the brief is to support a petition for review, please explain why the Section should file now rather than wait until the petition is granted.
3. **Caption of case and last opinion rendered.** State the full case name and citation of the opinion in the last court to render an opinion in the case. Attach a copy of that opinion.
4. **Question presented.** Please state the question to be addressed by the court.
5. **Statement on why the Section should file brief.** Please submit a one to two page statement that sets out the following:
 - a. The position to be asserted.
 - b. A brief summary of the facts or procedural history of the case that is relevant to the position to be asserted.
 - c. A brief summary of how the position to be taken by the Section falls within the purposes of the State Bar.
 - d. A brief summary of how the position to be taken by the Section falls within the primary or special expertise, purpose, or concern of the section.
 - e. A brief summary of how a Section brief will make a significant contribution to the court's consideration of the issue or issues the court must address.
 - f. A list of any related cases pending in Texas.
6. **Other interested sections.** List any other sections that may have an interest in the position to be asserted and whether they have been contacted.

Please attach copies any relevant court opinions, briefing, and policies.