

## Winning on Appeal:

# Get a Little Help From Your *friends*

The number of amicus curiae briefs filed in appellate courts has exploded—filings have jumped 800 percent since the mid-1940s. Why? Because having an amicus on board increases the chance of winning an appeal. But what exactly is an amicus brief? Let's get down to basics—and I do mean basic. I was recently in a meeting where a roomful of lawyers could not even agree on how to pronounce “amicus curiae.” [Note: The correct pronunciation is \ə-mē'-kəs kyur'ē-t.\ Latin: friend of the court.]

Although amicus briefs may be obscure, they are effective. Why? First, because appellate real estate is rare and valuable. When you don't have the space to fully discuss the issues in your party brief, the amicus can give the court the background of an industry, the history of regulations, or economic and industry statistics. Second, an amicus can address ramifications of the court's decision. For example, the amicus can describe the parade of horrors that will follow adoption of a party's proposed rule. An amicus can also suggest ways to shape or limit the applicable legal rule to take into account its impact on others. Third, just having an amicus shows you

have popular support, or “friends” on your side, when you're involved in a fight on a political issue.

Where do you find such friends when you need them? Consider bar organizations, other companies in the industry, special interest or trade groups or parties in similar cases. Selling a potential amicus on submitting a brief will be easier if you fully explain how the decision may impact them. In-house lawyers should be eager to provide input on cases

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that may profoundly impact their companies. And surprisingly, your very best friend can be the government. When the issues in the case interest the United States or its agencies, an amicus brief from the solicitor general or the agency charged with enforcing the laws at issue is more influential than any other amicus brief.

A word of caution, however. Be sure that the friends you tap are your true friends. There's nothing you can do if an amicus decides to take a position adverse to you. It's best to be very selective when you solicit support. Similarly, once you have your friends lined up, make sure they will provide a fresh perspective. If the amicus has nothing new to offer, the submission will be ignored, or worse, will irritate the court. Generally, however, amici are welcomed by the court. As Justice Samuel Alito remarked in a case he decided when he was a Third Circuit judge: “An amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend.”



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