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New York State Bar Association[®]

October 2, 1990

Doris L. Sassower, Esq.
50 Main Street
White Plains, New York 10606

Dear Ms. Sassower:

Angelo T. Cometa has forwarded to me your request for an *amicus curiae* brief in support of the challenge to the Ninth District judicial nominations. Under the Association's rules for the filing of *amicus* briefs, adopted by our House of Delegates, the Association is limited to filing such briefs in state or federal appellate courts. Since this matter is not at the appellate level, we must decline to file an *amicus* brief.

In the event that this matter is appealed, you may wish to re-submit a request for an *amicus* brief. I am attaching a copy of the Association's *amicus* brief rules. I would note, however, that the Association's Executive Committee must authorize such filings, and the Executive Committee is not scheduled to meet until November 9, 1990. Given the expedited appellate process common to election law cases, I do not believe that there will be sufficient time for the Executive Committee to act upon the request.

Please feel free to contact me if you would like to discuss this or if I can be of further assistance.

Sincerely yours,

Kathleen R. Mulligan Baxter

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**RULES FOR THE FILING OF AMICUS CURIAE BRIEFS
ON BEHALF OF THE
NEW YORK STATE BAR ASSOCIATION**

**ADOPTED BY THE NYSBA HOUSE OF
DELEGATES ON JUNE 28, 1975**

A. POLICY

1. No Section or Committee shall file an *amicus curiae* brief. All *amicus curiae* briefs shall be filed in the name of the Association upon the approval of the Executive Committee and shall show as counsel, in addition to the person or persons actually preparing the brief, the President of the Association.
2. The costs of printing and filing an authorized *amicus curiae* brief shall be paid by the Association, but no fee shall be paid by it to any person for the preparation or review of such a brief.
3. Proposals to submit *amicus curiae* briefs shall not be publicized without the specific approval of the President or the Chairman of the House of Delegates.

B. APPROPRIATE CASES

1. *Amicus curiae* briefs shall be addressed to issues of law alone and not to questions of fact. They shall be filed only in the appellate courts of the New York State or Federal judicial system.
2. An *amicus curiae* brief shall be authorized only when the proposed brief may be expected to make a significant contribution to the determination of the legal issues involved.
3. Except in cases where the court has specifically requested the views of the Association, the basis for filing of an *amicus curiae* brief should be that the position proposed to be taken in the brief is:
 - (a) Consistent with previously stated policy of the Association; or
 - (b) Plainly one which would be supported by a large majority of the membership as a policy to be adopted by the Association; or
 - (c) Of peculiar importance to the Association or to lawyers generally.

C. APPLICATION TO THE EXECUTIVE COMMITTEE

1. Any Section or Committee of the Association, or any member of the Association, may apply to the Executive Committee, through the Executive Director of the Association, for approval of the filing of a proposed *amicus curiae* brief in the name of the Association. The Executive Director shall furnish copies of such application to the Executive Committee and to any Section or Committee appearing to have a particular interest in the subject matter, with a request that prompt and appropriate comment be made to the Executive Committee as to such application by any interested Section or Committee.

2. Unless the extraordinary procedures set forth in paragraph E shall be invoked, the application of an individual, Section or Committee shall be accompanied by:
- (a) A copy of the complete brief, in final form as proposed for filing;
 - (b) A concise statement of the facts of the controversy, the status of the litigation, and the applicant's reasons for believing the case to be one calling for the Association's taking of the position proposed;
 - (c) In the case of an application by a Section or Committee, a statement showing how and when the application was authorized by the particular body, including a discussion of any dissenting views;
 - (d) A full disclosure of any personal or professional interest in the particular litigation or in the establishment of the position proposed to be taken in the brief, as to any individual applicant or as to any member of the governing body of a Section or Committee making an application.

D. ACTION OF THE EXECUTIVE COMMITTEE

- 1. No *amicus curiae* brief shall be filed in the name of the Association without the prior, specific authorization of the Executive Committee.
- 2. If, in the opinion of the President of the Association, an application made to the Executive Committee stands no substantial chance of approval, the President may direct the Executive Director to canvass the Executive Committee by mail as to a recommendation that the application be denied. Unless three or more members of the Executive Committee shall respond by recommending that the application be considered at a meeting of the Executive Committee, the application shall be considered as disapproved by the Executive Committee.
- 3. When a meeting is called for under the provisions of the preceding paragraph, and in all cases other than those governed by the extraordinary procedures of paragraph E, an application for authorization of an *amicus curiae* brief shall be considered at a regular or special meeting of the Executive Committee held within a reasonable time after the circulation of the application to the Committee and the request for comment by an interested Section or Committee. If, in the judgment of the President, the meeting should be held before an interested Section or Committee can report formally on the application, the President may, at his option, either receive and convey to the Executive Committee any informal statement of the Chairman of such Section or Committee or invite the Section or Committee Chairman to appear, in person or by a representative, at the meeting of the Executive Committee and present a consensus of the views of such Section or Committee.
- 4. A majority vote of those present at a meeting of the Executive Committee shall be necessary for approval of an application for the filing of an *amicus curiae* brief. If the Executive Committee shall so approve an application in general or in principle, with the condition that additions or changes be made to the proposed brief submitted with the application, the President shall appoint a subcommittee of one or more members of the Executive Committee to carry out the instructions of the Executive Committee in this respect. Such subcommittee shall have authority to give or withhold final approval of the filing of the *amicus curiae* brief in the name of the Association, depending upon the compliance with the requirements of the Executive Committee for additions or changes.

E. EXTRAORDINARY PROCEDURES

1. If, in the opinion of the President of the Association, a complete and sufficient application under the requirements of paragraph C is obviously meritorious and an expedited decision is required, the President may direct the Executive Director to canvass the Executive Committee by telephone, after circulating the application and without awaiting the comments or reports of Sections or Committees, as to authorization of the proposed *amicus curiae* brief. An affirmative vote by a majority of the entire Executive Committee shall be required to authorize the filing of a brief by this procedure, PROVIDED HOWEVER: if three or more members of the Executive Committee shall respond by-requesting that the application be considered at a meeting, the application shall be referred to a regular or special meeting of the Executive Committee.
2. Under unusual and compelling circumstances, the President may cause the application of a Section or Committee of the Association for authorization of an *amicus curiae* brief to be brought on before a regular or special meeting of the Executive Committee without the submission of a proposed brief in final form. The application shall otherwise comply as nearly as practicable with the other requirements of paragraph C: the application shall be circulated in advance to the Executive Committee and reasonable efforts shall be made to obtain the comments of other interested Sections or Committees. The Section or Committee making the application shall present a draft or synopsis of its proposed *amicus curiae* brief at the meeting of the Executive Committee if a copy of the proposed brief in final form is not then available. A majority vote of the members of the Executive Committee present at the meeting shall be required for authorization of the filing of an *amicus curiae* brief under this procedure and, if the proposed brief in final form is not approved at the meeting, the President shall appoint a subcommittee of one or more members of the Executive Committee to review any brief thereafter presented under the terms of approval thereof in principle. Such subcommittee shall have authority to give or withhold approval of the filing of the *amicus curiae* brief in its final form, depending on compliance with the standards or any terms stated by the Executive Committee. Such subcommittee shall also be charged with requiring that any brief thereafter prepared shall be of high professional quality and shall contain a fair representation of any policy position of the Association.

F. MISCELLANEOUS

1. Any reference herein to authorization of the filing of an *amicus curiae* brief in the name of the Association shall include the execution and submission of appropriate requests or motion papers in the name of the Association for permission to file the same in any court.
2. These rules shall supersede the "Rules on Filing Amicus Curiae Briefs on Behalf of the Association" adopted by resolution of the House of Delegates on December 1, 1972, and shall take effect immediately. These rules shall be subject to amendment or revocation by any subsequent resolution of the House of Delegates provided that timely notice of the subject matter of discussion is given in advance of the meeting at which such resolution is adopted.