

AMICUS CURIAE BRIEFS: COMMITTEE PROCESS

as adopted by the board of directors, December 4, 1998; amended August 2005, November 2005, August 2009, and October 2013.

Date last reviewed and updated: August 2014

New Standing Committee

The LGA will create a new standing committee on amicus briefs. This committee, whose chair and members are to be appointed by the LGA president, shall consist of at least 6 members, including at least 2 of whom serve on the current board of directors. *(approved by board October 2013)*

Annual Budget

The amicus committee shall operate within the budget allocation for amicus briefs approved each year by the board of directors; see the annual budget for current amount. At the end of each fiscal year, the board of directors will consider rolling over any unspent portion of the amicus brief allocation to that budget category for the ensuing year.

Mission/Authority

By unanimous vote of the committee, coupled with the president's approval, the amicus committee can take on an amicus issue on behalf of LGA *without the approval of the board of directors*, if the resulting costs to LGA are within budget. By less-than-unanimous committee vote, *coupled with approval by a three-fourths (3/4) majority of the board of directors*, the committee may take on additional amicus causes within budget.

The amicus briefs committee is prohibited from assigning any paid work for writing any amicus brief to any firm that has one of its attorneys as a sitting member of the amicus brief committee. *(adopted August 2009).*

Initial Committee Tasks

Upon appointment, amicus committee members shall undertake the following:

- a. **Review criteria for accepting amicus issues.** The LGA's existing policy guidelines should be examined by the committee and proposed revisions, if any, presented to the board of directors for approval.
- b. **Create an informal description of the committee review process.** This description, once completed, will supplement the LGA's policy guidelines for accepting an amicus issue so that any attorney seeking amicus help can better understand what has to be submitted to whom, number of copies, expected turnaround time, and what he or she can offer to (a) minimize the costs to LGA and (b) help LGA meet filing deadlines.
- c. **Develop methods for early consideration of amicus intervention.** Many cases get too far without anyone's requesting LGA's help. Therefore, this committee is asked to develop and implement ways to increase the chance for early intervention. For example, the Virginia Supreme Court docket could be monitored; and information about the availability of amicus help could be disseminated through the *Bill of Particulars* and other outreach efforts.

AMICUS CURIAE BRIEFS: POLICY GUIDELINES FOR LGA PARTICIPATION

as adopted by the board of directors, April 1989; amended October 2002 and November 2, 2005.

Date last reviewed: August 2014 (no updates made)

The LGA board of director unanimously endorses in principle the LGA's participation as amicus curiae in certain circumstances when the litigation is generally significant to local government operations in Virginia.

Participation will be determined on a case-by-case basis, by applying a set of guidelines adopted by the board. These guidelines ensure that the LGA will "take into consideration the association's unique position as a fellowship of attorneys whose principal obligation is to the representation of their jurisdictions, and the limited resources available to LGA members."

The LGA will give primary consideration to cases involving the following factors:

1. The general extension or limitation of the powers of local governing bodies and school boards with respect to their administration of public programs and their regulatory powers, that are not solely related to the affected jurisdiction.
2. Cases involving the Tenth Amendment to the United States Constitution.
3. Cases involving land use and zoning principles of general applicability.
4. Cases of general applicability involving taxation.
5. Cases involving statutes or regulations where an erroneous interpretation would have a significant detrimental impact on Virginia local governments.

The following additional factors also will be considered:

1. The likely impact of the case upon the particular jurisdiction involved, and upon other jurisdictions.
2. Likely financial impact on the jurisdiction(s) involved, and their ability adequately to finance defense of the locality's position.
3. Significance of the case in the development of municipal law.
4. Whether the LGA may help win a case that might otherwise be lost, or limit damage that might otherwise occur, because the LGA has an alternative theory to that being advanced, or can make a point that the jurisdiction may be unwilling or unable to make.
5. Whether the LGA might be seen as an authoritative voice on matters because of the particular expertise of its membership.

Amicus Briefs: Guidelines for Participation (cont'd)

Factors that will militate against participation shall be:

1. Development of 'bad' facts or the development of a poor or inadequate trial record.
2. Lack of consensus on position among jurisdictions or litigants.
3. The existence of partisan disputes.
4. Disputes between localities.

Requests for Amicus Assistance

1. Jurisdictions seeking amicus assistance from the LGA should write to the LGA president and the amicus committee chair, by email or facsimile, describing the case in detail, and giving reasons why the LGA ought to intervene in accordance with the foregoing policies.
2. The LGA will ordinarily participate only in appeals beyond the trial court level. Request for assistance at trial will be considered, but the resources available to the LGA must necessarily limit such assistance to the extraordinary case.
3. When a significant legal issue or policy issue of general application is identified at the trial stage, and where an appeal by either side is likely, the LGA member should notify the LGA president and amicus committee chair of the case and issue involved, to permit monitoring of the case and timely participation upon appeal, even where LGA does not participate at the trial level.