

(1) falls within the purposes, expressed or implied, of the State Bar as provided in the State Bar Act;

(2) cannot be construed as violating any state or federal law or any applicable case law;

(3) does not carry the potential of deep philosophical or emotional division among a substantial segment of the membership of the State Bar;

(4) cannot be construed as conflicting with any existing State Bar policy; and

(5) in the case of State Bar sections, falls within the primary or special expertise, purpose, or concern of the section, and has been approved by the section council or board.

(B) The State Bar or any State Bar section may not file an amicus curiae brief in any court unless it is approved pursuant to this §8.02.

(C) Amicus curiae briefs may only be filed in matters involving substantive or procedural law on major issues of importance to the practice of law or the administration of justice.

(D) The State Bar may not file an amicus curiae brief in a case if any Voting Board Member represents any party in that case.

(E) No State Bar section may file an amicus curiae brief in a case if any member of the section's council represents any party in that case.

(F) Neither the State Bar nor any State Bar section may file an amicus curiae brief which purports to resolve or take a position with regard to factual disputes in a case.

8.02.03 Requests. Requests may only be submitted by an Officer, a Director, or a section of the State Bar, and must include:

(A) the name and contact information of the person or entity making the request;

(B) the name of the case in which the amicus curiae brief is proposed to be filed;

(C) the court in which the amicus curiae brief is proposed to be filed;

(D) the date by which the amicus curiae brief must be filed;

(E) a description of the facts of the case and the questions presented to the court;

(F) the issue or issues proposed to be addressed by the amicus curiae brief;

8.02. Amicus Curiae Briefs

8.02.01 Definitions

(A) The “Ad Hoc Submission Committee” consists of the President, the President-Elect, the Chair, the chair of the Board Legislative Policy Subcommittee, and the Executive Director.

(B) “Court means any state or federal court.

(C) References to the “Executive Director” includes any person to whom the Executive Director delegates any duty required of the Executive Director by this §8.02.

(D) “Position” means any position or positions proposed to be advocated in an amicus curiae brief.

(E) “Request” means a request for approval for the State Bar to file an amicus curiae brief in its own name, or a request for approval for a State Bar section to file an amicus curiae brief in the section’s name.

(F) “State Bar sections” includes State Bar divisions

(G) “Subcommittee” means the Board Legislative Policy Subcommittee.

8.02.02 Restrictions.

(A) No request may be approved unless the position:

(G) a statement of the position and in what way such position satisfies the restrictions provided in §8.02.02(A) above;

(H) a draft of the proposed amicus curiae brief, if available at the time of filing the request; and

(I) a disclosure of any personal or professional conflict of interest that any member of the Board or the section's council may have in the case.

8.02.04 Procedures for Approval.

(A) Procedure for Obtaining Approval of the Board.

(1) All requests must be received by the Executive Director no later than 30 business days prior to the next regular meeting of the Board. The Executive Director shall deliver the request to the Ad Hoc Submission Committee and to the members of the Subcommittee within 3 business days following receipt.

(2) If a request is received by the Executive Director less than 30 business days prior to the next regular meeting of the Board, a majority of the Ad Hoc Submission Committee may, in its discretion, waive the 30 business day requirement and establish a revised procedural timeline, provided:

(a) such majority determines that it was not reasonably possible for the request to have been received by the Executive Director no later than 30 business days prior to the next meeting of the Board, and

(b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.

(3) The Ad Hoc Submission Committee or the Subcommittee may direct the Executive Director to distribute the request to such State Bar sections as it deems prudent. If a request is distributed to any or all State Bar sections, the sections must be advised that any objections to the request are to be received by the Executive Director by a specific date and time set by the Ad Hoc Submission Committee or the Subcommittee, who may then submit a response to the objection to the Executive Director. Upon the receipt of any objection, the Executive Director will notify the person or entity making the request, who may then submit a response to the objection to the Executive Director. Upon the expiration of the date and time set by the Ad Hoc Submission Committee or the Subcommittee, the Executive Director will compile and distribute the objections and responses, if any, to the Ad Hoc Submission Committee and to the Subcommittee.

(4) Within 5 business days of receipt, the Executive Director will distribute the request to all members of the Board.

(5) The Subcommittee will convene in person or by teleconference to review and take action on the request no later than 20 business days prior to the next Board meeting. In considering the request, the Subcommittee may allow any interested person to appear before the Subcommittee in support of, or in opposition to the request, subject to reasonable limitations on available time.

(6) At the next meeting of the Board, the Subcommittee will deliver its recommendations for or against approval of the request to the Board for action.

(7) In the event the Board approves the request, it may delegate to the President or to the Executive Committee the authority to approve the retention of outside counsel should the President or the Executive Committee, as the case may be, deem such retention prudent, to oversee the review and, if necessary, the revision of the amicus curiae brief, and to assure that the brief is timely filed.

(B) Expedited Action by the Executive Committee.

(1) To be considered for expedited action by the Executive Committee,

(a) the request must be received by the Executive Director no later than 15 business days prior to the date of the next regular meeting of the Executive Committee, and

(b) the deadline for filing the amicus curiae brief is set for a date prior to the date of the next meeting of the Board; and

(c) a majority of the Ad Hoc Submission Committee determines that the request could not reasonably have been submitted to the Executive Director pursuant to 8.02.04(A) above.

(2) The Ad Hoc Submission Committee or the Subcommittee may direct the Executive Director to distribute the request to such State Bar sections as it deems prudent. If a request is distributed to any or all State Bar sections, the sections must be advised that any objections to the request are to be received by the Executive Director by a specific date and time set by the Ad Hoc Submission Committee or the Subcommittee. Upon receipt of any objection, the Executive Director will notify the person or entity making the request, who may then submit a response to the objection to the Executive Director. Upon the expiration of the date and time set by the Ad Hoc Submission Committee or the Subcommittee, the Executive Director will compile and distribute the

objections and responses, if any, to the Ad Hoc Submission Committee and to the Subcommittee.

(3) The Executive Director will deliver the request to the Ad Hoc Submission Committee, to the Subcommittee, and to all members of the Board within 3 business days of such receipt.

(4) If such a request is received by the Executive Director less than 15 business days prior to the next meeting of the Executive Committee, a majority of the Ad Hoc Submission Committee may, in its discretion, waive the 15 business day submission requirement and establish a revised procedural timeline, provided:

(a) such majority determines that it was not reasonably possible for the request to have been received by the Executive Director no later than 15 business days prior to the next meeting of the Executive Committee, and

(b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.

(5) The Subcommittee will convene in person or by teleconference to review and take action on the request no later than 10 business days prior to the next Executive Committee meeting. In considering the request, the Subcommittee may allow any interested person to appear before the Subcommittee in support of, or in opposition to the request, subject to reasonable limitations on available time.

(6) At the next meeting of the Executive Committee, the Subcommittee will deliver its recommendations for or against approval of the request to the Executive Committee for action

(7) If the Executive Committee approves the request, it may delegate to the President the authority to approve the retention of outside counsel if the President deems such retention prudent, to oversee the review and, if necessary, the revision of the amicus curiae brief, and to assure that the brief is timely filed.

(8) The President will report the action of the Executive Committee and any resulting activities to the Board at its next meeting for ratification.

(C) Emergency Action

(1) To be considered for emergency action:

(a) the request must be submitted by an Officer or Director;

(b) the request must be received by the Executive Director no later than 10 business days prior to the

deadline for filing the amicus curiae brief; and

(c) the deadline for filing the amicus curiae brief is set for a date prior to the date of the next regular meeting of the Executive Committee.

(2) If a request is received by the Executive Director less than 10 business days prior to the deadline for filing the amicus curiae brief, a majority of the Ad Hoc Submission Committee may waive the 10 business day requirement, provided:

(a) such majority determines that it was not reasonably possible for the request to be received by the Executive Director no later than 10 business days prior to the deadline for filing the amicus curiae brief, and

(b) such majority determines that sufficient time remains for the request to proceed for consideration pursuant to this section.

(3) The Executive Director will distribute the request to all members of the Board as soon as practicable after receipt.

(4) If a request meets the above conditions, the Ad Hoc Submission Committee will consider and take action on the request as soon as practicable. If the request is approved, the President may approve the retention of outside counsel if the President deems such retention prudent, will oversee the review and, if necessary, the revision and filing of the amicus curiae brief, and will assure that the brief is timely filed.

(5) The President will report the action of the Ad Hoc Submission Committee and any resulting activities to the Executive Committee at its next meeting for ratification and, on behalf of the Executive Committee, to the Board at its next meeting for ratification.

8.02.05 Section Statement.

(A) Any action taken by a section pursuant to this provision will be clearly identified as the position of the section and not that of the State Bar. A position statement of the section must provide the following disclaimer in capital letters at a conspicuous location within the document.

THIS AMICUS BRIEF IS BEING PRESENTED ONLY ON BEHALF OF THE (____) SECTION OF THE STATE BAR. THE SECTION'S POSITION SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE, OR THE GENERAL MEMBERSHIP OF THE STATE BAR. THE (____) SECTION IS A VOLUNTARY SECTION OF (____) MEMBERS COMPOSED OF LAWYERS PRACTICING IN A

SPECIFIED AREA OF LAW.

THIS AMICUS BRIEF IS SUBMITTED AS A RESULT OF A VOTE OF (___) TO (___) OF THE COUNCIL OF THE (____) SECTION, WHICH IS THE GOVERNING BODY OF THE SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THE SECTION HAS BEEN OBTAINED.

This disclaimer should state the appropriate votes recorded. For a position statement other than an amicus brief, the disclaimer should use an appropriate term in place of “amicus brief.”

(B) If the general membership of the section has approved the section’s position, paragraph 2 of the disclaimer may be omitted.

8.02.06 Other Requests. From time to time, the State Bar or a State Bar section may be requested to express support or opposition to any position, action or resolution taken or proposed to be taken by any entity outside of the State Bar. In that event, such request will be treated in a similar manner as a request for approval to file an amicus brief, and will be subject to the requirements, restrictions and procedures established in this §8.02.