

SAC Rules of Appellate Procedure

Recommended Changes to Mass. R. App. P. 17

Redlined Version

Rule 17: Brief of an Amicus Curiae

(a) **General.** A brief of an amicus curiae may be filed only (1) by leave of the appellate court or a single justice granted on motion, ~~or~~ (2) when solicited by the appellate court, ~~except that leave shall not be required when the brief is presented by the~~ or (3) if the Commonwealth or its officer or agency ~~is an amicus~~. When a motion for leave is required, the brief may be conditionally filed with the motion. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable.

(b) **Timing.** In all cases, an amicus curiae shall file its brief no later than 21 days before the date of oral argument for that case unless the appellate court or a single justice for cause shown shall grant leave for later filing. Any party may request leave from the appellate court or a single justice to file a response to a brief filed by an amicus curiae.

(c) **Cover, length, and content.** An amicus brief must comply with Rule 20. In addition to the requirements of Rule 20, the cover must identify the party or parties supported and ~~indicate state~~ whether the brief supports affirmance or reversal or neither. An amicus brief need not comply with all the requirements of Rule 16, but must include the following:

- (1) if the amicus curiae is a corporation, a disclosure statement like that required of parties by Supreme Judicial Court Rule 1:21;
- (2) a table of contents with page references, in accord with Rule 16(a)(3);
- (3) a table of authorities, in accord with Rule 16(a)(4);
- (4) a concise statement of the identity of the amicus curiae and its interest in the case;
- (5) ~~unless the brief is presented by the Commonwealth or its officer or agency,~~ a declaration by any amicus curiae, other than ~~the Commonwealth or its officer or agency,~~ that ~~indicates states~~ whether
 - (A) a party or a party's counsel authored the brief in whole or in part;
 - (B) a party or a party's counsel, ~~or any other person or entity, other than the amicus curiae, its members, or its counsel,~~ contributed money that was intended to fund preparing or submitting the brief, ~~(C) a person or entity—other than the~~

~~amicus curiae, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief~~ and, if so, identifying each such person or entity; and

(DC) the amicus curiae or its counsel represents or has represented one of the parties to the present appeal in another proceeding involving similar issues, or was a party or represented a party in a proceeding or legal transaction that is at issue in the present appeal, and, if so, identifying the proceeding or transaction, its relevance to the present appeal, and the parties involved;

(6) a summary of argument, in accord with Rule 16(a)(8), if the argument is more than 20 pages in length or more than 4,500 words if produced in a proportionally spaced font;

(7) an argument, which need not include a statement of the applicable standard of review;

(8) a signature block, in accord with Rule 16(a)(12);

(9) a certificate stating that the brief complies with the requirements of this rule and Rule 20 and specifying how compliance with the length limit of Rule 20(a)(3)(E) was ascertained, by stating either (A) the name, size, and number of characters per inch of the monospaced font used and the number of non-excluded pages, or (B) the name and size of the proportionally spaced font used, the number of non-excluded words, and the name and version of the word-processing program used; and

(10) a certificate of service, in accord with Rule 13(e).

A brief not complying with these rules (including a brief that does not contain a certification) may be struck from the files by the appellate court or a single justice.

(d) Filing. The same number of copies of the brief of an amicus curiae shall be filed with the clerk and served on each party as required by Rule 19(d).

(e) Oral argument. A motion of an amicus curiae to participate in the oral argument will be granted only for good cause.