

**RULE 37 | BRIEF FOR AN AMICUS CURIAE**

1. An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. An *amicus curiae* brief may be filed only by an attorney admitted to practice before this Court as provided in Rule 5.

2. An *amicus curiae* brief submitted in support of a petitioner or appellant before the Court's consideration of a petition for a writ of certiorari, jurisdictional statement, or petition for an extraordinary writ shall be filed within 30 days after the case is placed on the docket or a response is called for by the Court, whichever is later, and that time will not be extended. An *amicus curiae* brief in support of a motion of a plaintiff for leave to file a bill of complaint in an original action shall be filed within 60 days after the case is placed on the docket, and that time will not be extended. An *amicus curiae* brief in support of a respondent, an appellee, or a defendant shall be submitted within the time allowed for filing a brief in opposition or a motion to dismiss or affirm. An *amicus curiae* filing a brief under this subparagraph shall ensure that the counsel of record for all parties receive notice of its intention to file an *amicus curiae* brief at least 10 days prior to the due date for the *amicus curiae* brief, unless the *amicus curiae* brief is filed earlier than 10 days before the due date. Only one signatory to any *amicus curiae* brief filed jointly by more than one *amicus curiae* must timely notify the parties of its intent to file that brief. The *amicus curiae* brief shall indicate that counsel of record received timely notice of the intent to file the brief under this Rule, and its cover shall identify the party supported.

3. An *amicus curiae* brief in a case before the Court for oral argument or on exceptions to a report of a Special Master in an original action may be filed if it is submitted within 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the time allowed for filing the petitioner's or appellant's brief. Motions to extend the time for filing an *amicus curiae* brief will not be entertained. The 10-day notice requirement of paragraph 2 of this Rule does not apply to an *amicus curiae*



brief in a case before the Court for oral argument or on exceptions to a report of a Special Master. The cover of an amicus curiae brief shall identify the party supported or indicate whether it suggests affirmance or reversal. The Clerk will not file a reply brief for an *amicus curiae*, or a brief for an *amicus curiae* in support of, or in opposition to, a petition for rehearing.

4. An amicus curiae brief in connection with an application under Rule 22 must be filed as promptly as possible considering the nature of the relief sought and any asserted need for emergency action. In light of the time-sensitivity of such applications, the filing of these briefs is discouraged, and an amicus curiae brief should be filed only if it brings to the attention of the Court relevant matter not already presented by the parties that will be of considerable help to the Court. An original and two copies of any such brief should be prepared as required by Rule 33.2. An amicus curiae brief in connection with an application is limited to 25 pages in length, subject to the exclusions in Rule 33.1(d). The notice requirement of Rule 37.2 does not apply, but electronic transmission of the brief to the parties under Rule 29.3 must be accomplished at the time of filing.

5. A brief filed under this Rule shall be accompanied by proof of service as required by Rule 29. A brief filed under subparagraphs (2) or (3) of this Rule shall comply with the applicable provisions of Rule 33.1. Any brief under this Rule shall comply with the applicable provisions of Rule 24, except that it suffices to set out in the brief the interest of the amicus curiae, the summary of the argument, the argument, and the conclusion.

6. A brief filed under this Rule shall indicate whether counsel for a party authored the brief in whole or in part and whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the *amicus curiae*, its members, or its counsel, who made such a monetary contribution. The disclosure shall be made in the first footnote on the first page of text. This disclosure requirement does not apply to a brief presented on behalf of the United States by the Solicitor General; on behalf of any agency of the United States allowed by law to appear before this Court when submitted by the agency's authorized legal



representative; on behalf of a State, Commonwealth, Territory, or Possession when submitted by its Attorney General; or on behalf of an Indian Tribe, city, county, town, or similar entity when submitted by its authorized law officer.

### **Clerk's Comments**

The requirement to either obtain consent to file an amicus curiae brief or file a motion for leave to file the brief is removed from Rules 37.2 and 37.3. While the consent requirement may have served a useful gatekeeping function in the past, it no longer does so, and compliance with the rule imposes unnecessary burdens upon litigants and the Court. An amendment to Rule 37.3 also provides that the same procedures for amicus briefs in merits cases apply in connection with exceptions to a report of a Special Master in an original action. An amendment to Rule 37.4 sets forth requirements concerning amicus curiae briefs in connection with emergency applications. The new provision discourages these briefs, but provides guidance in the circumstances when they may be of use to the Court. A revision to Rule 37.6 also exempts Indian Tribes from the disclosure requirement applicable for amicus curiae briefs.

