



NEW JERSEY STATE BAR ASSOCIATION

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Heather Joy Baker, Esq.
Clerk of the Supreme Court
Comments on Proposed Rule Amendments re: Merits Briefing
Richard J. Hughes Justice Complex/P.O. Box 970
Trenton, New Jersey 08625-0970

Re: Proposed Rule Amendments Governing Briefing Practices
Before the Supreme Court

Dear Ms. Baker:

Thank you for the opportunity to review proposed amendments to the Rules of Court governing briefing practices for appeals before the Supreme Court. We appreciate the opportunity to provide comments on this important topic.

The New Jersey State Bar Association (NJSBA) has a particular interest in this proposal as it will affect the due dates of any Supreme Court *amicus curiae* submissions. The NJSBA often seeks to participate as *amicus curiae* in matters that will have an overarching impact on the practice of law or access to justice. Our members take the NJSBA's role seriously. Each case is carefully vetted before filing a motion for leave to participate. As the largest legal organization in the state, the NJSBA has attorneys in all practice areas, from all areas of the state, representing all sized firms and various diverse interests. Our Amicus Committee diligently reviews every brief filed in a case, weighing the arguments on all sides, before making a recommendation about potential NJSBA participation. In most matters where NJSBA participation is sought, the purpose is not to advocate in favor of one party, but instead, to advocate for an overarching policy or standard that can be applied to the parties in the case as the Court deems appropriate. The NJSBA views this as fulfilling its *amicus curiae* role as a "friend of the court" rather than as an ally or extension of any particular party.

It is from this vantage point that the NJSBA offers comments on the present proposal to (1) support the proposal to allow the parties to submit additional merits briefs in the Supreme Court following an Order granting certification or leave to appeal; (2) express concerns about the proposed timing of amicus submissions; (3) recommend the timing of amicus submissions be adjusted so that all amicus briefs are due at the same, definitive time, and all party reply briefs are due at some designated time after that; and (4) recommend the Court publicly provide information on the briefing schedule in each case where certification or a motion for leave to appeal is granted.

Merits Briefs: The NJSBA agrees with the proposal to allow the parties to submit additional merits briefs in the Supreme Court following an Order granting certification or leave to appeal. We agree this will allow the parties to focus on why Supreme Court review is needed in their petition/motion briefs and then focus on substantive arguments about how the Court should rule in merits briefs. It has been our members' experience that many litigants do not understand that, under the current rules, petition briefs are the only briefs they are permitted to file with the Supreme Court unless further leave is obtained. Of course, a party will still be free to rely on the Appellate Division brief if they choose, but this will provide an opportunity to refocus those arguments.

Amicus Submissions: With regard to the timing of *amicus curiae* briefs, we understand the importance of having reliable, definitive timeframes for *amicus* participation. The NJSBA suggests, however, that the proposed timing be adjusted slightly. We recommend that all *amicus* briefs be due 10 days after Respondent's brief, with all party reply briefs due at some designated time after. This alleviates *amici* from having to make a determination about which party they are most closely aligned with and eliminates the potential of objections to the selected timing of an *amicus* submission. It also places all *amici* on the same playing field, without some *amici* having additional time to file their briefs. Further, it allows *amici* to have the benefit of all arguments being made to the Court before they file their brief, which is noted above as an important part of the NJSBA's vetting process. Finally, it allows the parties to respond to all *amici* by one designated date, allowing for a more expeditious resolution of the matter.

Public Briefing Schedule: The NJSBA recommends that the Court publicly provide information on the briefing schedule in each case where certification or a motion for leave to appeal is granted, so *amici* have independent notice of when their briefs are due. While this proposal is modeled after the federal briefing requirements, in the U.S. Supreme Court, all of the briefing is public at the time it is filed. That is not the case at the state level. *Amici* often do not become aware of a case until the state Supreme Court decides to hear it and lists it on the Court's website. Further, *amici* do not have access to the official case information before their motion to participate is granted, so there is no way of knowing when a party files its brief unless the parties provide that information. This is not a reliable method of determining when a brief is due, as an *amicus* party is not always in contact and often does not have a relationship with the parties in a matter. The NJSBA, and presumably other *amicus curiae* parties, now relies on the Court's website posting to determine which matters the Court is considering, and when any *amicus* submissions are due. Continuing to have public access to the briefing schedule or important due dates will be critical to ensure *amici* have the ability to independently obtain information about applicable timing and are able to comply with appropriate deadlines.

Again, thank you for the opportunity to submit these comments. The NJSBA understands the importance of being able to resolve issues of public importance in an orderly and timely manner. We hope our comments are helpful in determining the best path to improving the Supreme Court's briefing process and ensuring all matters are adequately considered and decided.

Respectfully,



Christine A. Amalfe, Esq.
President

cc: Hon. Michael J. Blee, J.A.D., Acting Administrative Director of the Courts
Norberto A. Garcia, Esq., NJSBA President-Elect
Angela C. Scheck, NJSBA Executive Director