Amicus Briefs in Trial Courts: A Practical Overview

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Why Trial-Level Amicus Practice Exists

Amicus briefs are overwhelmingly associated with appellate practice, but trial courts—state and federal—possess inherent authority to consider them. A very small number of trial courts have rules expressly permitting them.

Trial courts routinely consider complex constitutional, statutory, regulatory, and industry-wide issues, and the parties' briefing may not fully capture broader implications. Well-crafted trial-level amicus briefs can supply legal, technical, or policy context that improves the quality of judicial decision-making.

Amici generally cannot—and generally should not—expand the evidentiary record, but can assist the trial court by offering legal analysis, industry expertise, or insight into the broader impact of a potential ruling.

A Lack of Uniform Rules

Unlike appellate courts, where detailed rules govern the timing, format, disclosure, and scope of amicus briefs, most trial courts provide little or no formal guidance.

Most federal district courts rely exclusively on inherent authority. Some districts, like the District of Columbia, have adopted local rules, but the vast majority have not. The consequence is a patchwork of informal, judge-by-judge expectations. Counsel seeking leave to file an amicus brief may encounter limited precedent, sparse case law, and uncertainty about timing, scope, and acceptable content.

In high-stakes or high-visibility matters, this vacuum creates inconsistent results. Some judges welcome amicus participation; others view it as unnecessary or burdensome. Parties often have strong views—sometimes strongly negative—about amicus participation. The absence of rules (or clear rules) creates issues for lawyers and organizations who wish to assist the court, including defense counsel managing complex commercial or regulatory cases.

Comparative Analysis

The District of Columbia's Local Civil Rule 7(o)

The U.S. District Court for the District of Columbia (D.D.C.) is perhaps the most-cited example of a court having a comprehensive trial-level amicus rule.

That court's Local Civil Rule 7(o) requires a motion for leave, mandates disclosure of interests, leaves timing issues and the possibility of oral argument by amicus to presiding judges, and incorporates Federal Rule of Appellate Procedure (FRAP) 29(a)(4). This local rule provides a predictable, functional framework preserving judicial discretion while providing clear expectations familiar to any appellate practitioner.

New York Commercial Division Rule 23

On July 7, 2025, the Commercial Division of the New York State Supreme Court adopted Rule 23 to govern amicus filings in sophisticated commercial cases.

The rule allows amicus participation when a non-party can assist the trial court on an issue beyond the parties' presentation. This rule signals a growing recognition that trial-level commercial litigation increasingly implicates issues of public importance, regulatory interpretation, and industry-wide economic effects.

A Proposed Federal Rule of Civil Procedure on Amicus Briefs

In 2021, several practitioners submitted a proposed Federal Rule of Civil Procedure (FRCP) amendment urging national uniformity. Not surprisingly, the proposal drew from FRAP 29 and the D.D.C.'s local rule and recommended a structured process for seeking consent or leave, uniform timing standards, limits on length, and requirements to articulate relevance and unique value.

Though not adopted, the submission provides a detailed blueprint for standardization and is increasingly cited in commentary.

Judge Rudofsky's Standing Amicus Invitation
in the Eastern District of Arkansas

Judge Lee Rudofsky issued a standing order applicable to every civil case on his docket, encouraging amicus briefs and guaranteeing junior attorneys 10 minutes of argument time if they serve as principal drafter.

His framework highlights two themes: (1) district courts benefit from subject-matter expertise; and (2) amicus practice can be a pipeline for training

newer lawyers. The order also underscores guardrails: amici should not supply adjudicatory facts, should attach the proposed brief to the motion for leave, and must present something distinct from the parties.

There are risks, however: argument by an amicus—even one supporting a party's position—can introduce unpredictability into the hearing.

Commentary from Case Law and Bar Publications

Courts tend to accept amicus briefs when they supply expertise a party lacks or address broader public or industry interests. Scholarship from the Boston Bar Association echoes this trend, illustrating the need for trial courts to adopt clear guidance to avoid uncertainty and to improve the quality of trial records for eventual appeals.

More specifically, an article by Drew Dulberg and Amanda Baird in the *Boston Bar Journal* (Vol. 68 #4, Oct. 31, 2024) is an excellent resource providing cases and additional authorities and should be available at the following link: https://bostonbar.org/journal/amicus-participation-in-trial-courts-navigating-uncharted-territory/.

Key Principles Drawn from Authorities and Practice

Across the sources, several consistent principles emerge:

Judicial discretion controls: Trial judges may accept, limit, or deny amicus participation.

Amici must add value: Courts disfavor repetitive submissions and prefer briefs offering legal analysis, policy context, or specialized expertise not provided by the litigants.

Avoid adjudicatory facts: Trial courts generally reject amicus attempts to introduce evidence.

Timeliness is essential: Late filings risk prejudice to the parties and are a common basis for denial.

Independence matters: Courts scrutinize amicus briefs ghostwritten or funded by parties.

Conciseness and focus improve success: Trial courts have limited time and little patience for redundant or overly long submissions.

Coordination reduces overlap: Where multiple amici may appear, coordinating topics helps avoid duplication.

Be Careful What You Wish For: Other Considerations, Particularly Surrounding Potential Oral Argument

Here are possible pitfalls when an attorney for an amicus participates in oral argument:

- an attorney for an amicus makes an admission at the lectern—an admission a party or the court tries to impute to (or at least use against, in a rhetorical sense) the party the amicus is supporting

- relatedly or similarly, the attorney for an amicus knows the answer to a question and therefore must answer it, and in doing so harms the party the amicus is supporting

- the attorney for an amicus has some discretion on how to answer a question, but does not realize that the answer may have a major impact on the party the amicus is supporting; typically this problem arises because the attorney for an amicus has not "lived with the case" and lacks the depth, familiarity, and involvement to appreciate the situation at the time the question is asked

- the attorney for an amicus is unable to answer questions that the asking judge thinks the attorney should know the answer to

In short, oral argument by an amicus may help—but it can also complicate a party's strategy if not carefully coordinated.

Practitioner Checklist

As defense counsel evaluating whether to solicit or file an amicus brief in a trial court, consider the following:

Assess the Court and Judge:

- Review local rules, standing orders, and judge-specific practices.
- Evaluate whether the judge has historically welcomed or resisted amicus filings.

Determine the Appropriate Timing:

- Target dispositive motions, preliminary injunctions, or other inflection points.
- Ensure sufficient time exists for parties to respond.

Identify the Amicus and Its Interest:

- Trade associations, industry groups, academics, and nonprofits are common amici.
- Articulate clearly: "Why this entity? Why now?"

Prepare a Motion for Leave that Satisfies Key Criteria:

- State the movant's interest.
- Demonstrate how the brief assists the court.
- Confirm that the brief provides unique, non-cumulative content.
- Attach the proposed brief.

Prepare a Focused, Useful Amicus Brief:

- Provide additional legal analysis or policy impact.
- Avoid introducing factual material outside the record.
- Keep the brief shorter than party filings.

Anticipate Objections:

- Parties may argue prejudice, delay, or redundancy.
- Address these concerns proactively in the motion.

Consider Downstream Effects:

- A trial-level amicus brief can help shape the record for appeal.
- It may also influence settlement discussions or judicial management.
- But always consider the adage, "Be careful what you wish for."

Conclusion

Trial-level amicus practice remains underdeveloped but increasingly important. As trial courts handle complex, high-stakes matters with industry-wide consequences, amici serve a valuable role in providing context and expertise.

For defense counsel, understanding how and when to use amicus briefing can strengthen the client's position, shape judicial reasoning, and frame issues that may later reach an appellate court.