

# Third Circuit Civil Appeals: Amicus Curiae Briefs

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A Practice Note explaining how to prepare and submit amicus curiae briefs (also known as “friend of the court” briefs) in civil appeals to the United States Court of Appeals for the Third Circuit from a federal district court’s order or judgment. This Note explains how to obtain permission to appear as an amicus and the content, formatting, service, and filing requirements for amicus briefs.

An amicus curiae brief provides a non-party the opportunity to address the US Court of Appeals for the Third Circuit about the issues presented in an appeal. An amicus brief often provides the court with a broader perspective than the parties’ briefs, which focus on the particular dispute at hand. For example, an amicus brief may:

- Provide additional context by explaining how an industry or policy operates beyond the specific interaction between the parties.
- Explain the likely consequences of deciding the appeal in a particular manner.
- Offer a different legal analysis from that offered by the parties’ briefs.
- Address policy issues arising from the parties’ dispute.

This Note explains how to prepare and submit *amicus curiae* briefs in civil appeals to the Third Circuit from a federal district court order or judgment.

For more on amicus briefing in federal court, see Practice Note, Amicus Briefs: What Are They and When Should a Company File One? ([W-001-6339](#)) and Expert Q&A on Best Practices for Amicus Briefing ([W-002-8700](#)).

## OBTAINING PERMISSION TO FILE AN AMICUS BRIEF

The US, a federal agency, a federal officer, or a state may file an amicus brief as of right (FRAP 29(a)(2)). Every other potential amicus must obtain permission to file an amicus brief by either:

- Receiving the consent of all parties to the appeal. However, the parties to the appeal cannot consent to an amicus filing a brief on panel rehearing or rehearing en banc. Instead, the potential amicus must file a motion and obtain the court’s permission. (FRAP 29(b)(2).)
- Making a motion (and submitting the proposed amicus brief) explaining:
  - the movant’s interest in the appeal;
  - why an amicus brief is desirable; and
  - why the contents of the proposed amicus brief are relevant to the appeal.

(FRAP 29(a)(2), (3).)

A copy of the proposed amicus brief must accompany a motion to appear as an amicus (FRAP 29(a)(3)).

## TIME TO APPEAR AS AN AMICUS

A potential amicus must file its brief and any motion for permission to appear as amicus no later than seven days after either:

- The party the amicus supports files its principal brief.
- The appellant files its principal brief, for a potential amicus that does not support a specific party.

(FRAP 29(a)(6).) For more on when the parties’ briefs are due, see Practice Note, Third Circuit Civil Appeals: Appellant’s Brief and Appendix: Briefing Schedules ([W-011-2754](#)).

If a potential amicus supports a petition for panel rehearing or rehearing *en banc* or supports neither party, the potential amicus must serve and file its brief and accompanying motion no later than seven days after a party files the petition. If the potential amicus opposes the petition, the amicus must file its brief and motion by the time set by the court for the response to the petition. (FRAP 29(b)(5).) If the court grants rehearing and orders the parties to file new briefs, the amicus must file its brief within 28 days after the date of the order granting rehearing (3d Cir. L.A.R. 29.1(a)). Any party may file a response to the amicus brief within 21 days after the amicus serves its brief (3d Cir. L.A.R. 29.1(a)).

If a potential amicus moves for permission to appear in the appeal, any of the parties to the appeal may oppose the motion. However, the parties should not dispute in their motion papers the merits of the arguments contained in the proposed amicus brief. Instead, counsel should focus their motion papers on why the court should or should not grant the potential amicus permission to participate in the appeal. The parties should address the merits of the arguments in their briefs, if the court grants the motion.

If the court grants a motion to file an amicus brief after the opposing party files its last brief, the court may let the opposing party file a supplemental brief responding to the arguments contained in the amicus brief (FRAP 29(a)(6)).

## CONTENTS OF AN AMICUS BRIEF

An amicus brief must contain:

- A cover (see Cover).
- A corporate disclosure statement and statement of financial interest (see Disclosure Statement).
- A table of contents (see Table of Contents).
- A table of authorities (see Table of Authorities).
- A statement of identification (see Statement of Identification).
- An argument (see Argument).
- A signature (see Signature).
- A certificate of compliance (see Certificate of Compliance).
- An electronic document certificate (see Electronic Document Certificate).
- A certificate of bar admission (see Certificate of Bar Admission).
- Proof of service (see Certificate of Service).

(FRAP 25(d), 26.1, 29(a)(4), (5), 32(a)(2), (d), and (g); 3d Cir. L.A.R. 28.3(c); 3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 32.2.)

Counsel also often include a summary of the argument after the statement of identification (see Summary of the Argument), and a conclusion (see Conclusion).

## COVER

The cover page must list:

- The court of appeals docket number centered at the top of the page.
- The name of the court (United States Court of Appeals for the Third Circuit).
- The title or caption of the case, including the parties to the appeal and their appellate designations (for example, Plaintiff-Appellant).
- The nature of the proceeding and the name of the court below (for example, On Appeal from the United States District Court for the District of New Jersey).
- The title of the brief, which must indicate the name of the *amicus curiae*, the party it supports, and whether the amicus supports affirmance or reversal.
- The name, office address, and telephone number of counsel for the amicus.

(FRAP 28(d), 29(a)(4), 32(a)(2).)

Except for filings by unrepresented parties, paper copies of the amicus brief must have a green cover (FRAP 32(a)(2)). If the amicus uses a transparent cover, the underlying cover sheet must be green (3d Cir. L.A.R. 32.2(b)).

## DISCLOSURE STATEMENT

An amicus brief filed by a non-governmental corporation must include a disclosure statement. The corporate disclosure statement must:

- Appear immediately after the cover and before the table of contents.
- Identify any parent corporation and every publicly owned corporation that owns 10% or more of the amicus' stock.

(FRAP 26.1(a) and (b), 28(a)(1), 29(a)(4)(A); 3d Cir. L.A.R. 26.1.1; see Practice Note, Third Circuit Civil Appeals: Post-Initiation Filings and Mediation: Corporate Disclosure Statement and Statement of Financial Interest ([W-010-8497](#))).

Counsel must use the Corporate Disclosure and Statement of Financial Interest form on the court's website.

The amicus brief must include the disclosure statement even if the amicus previously submitted one to the court. Counsel must immediately supplement the statement if any of the relevant information changes. (FRAP 26.1(b).)

For more information about drafting, formatting, and updating the corporate disclosure statement, see Practice Note, Third Circuit Civil Appeals: Post-Initiation Filings and Mediation: Corporate Disclosure Statement and Statement of Financial Interest ([W-010-8497](#)).

## TABLE OF CONTENTS

The amicus brief must include a table of contents indicating the page on which each section of the brief begins. The table must also include specific page references to each heading or subheading for each issue argued. (FRAP 29(a)(4)(B).)

## TABLE OF AUTHORITIES

The amicus brief must include a table of authorities listing the cases, statutes, and other authorities cited in the brief along with references to the page where the amicus cited each authority. Cases must appear in the table in alphabetical order. (FRAP 29(a)(4)(C).)

Some attorneys use *passim* when an authority appears on several pages of the brief to avoid providing a lengthy list of pages. For example, counsel may use *passim* if an authority appears on five or more pages.

## STATEMENT OF IDENTIFICATION

The statement of identification must concisely state the *amicus curiae's*:

- Identity.
- Interest in the case.
- Source of authority to file the amicus brief (consent of the parties, a court order, or a rule).

(FRAP 29(a)(4)(D).)

Unless the amicus is a government officer or entity that may appear as of right under FRAP 29(a), the amicus brief also must state whether:

- A party's counsel authored the brief in whole or in part.
- A party or a party's counsel contributed money intended to fund the preparation or submission of the brief.
- A person other than the *amicus curiae*, its members, or its counsel, contributed money intended to fund the preparation or submission of the brief and, if so, the identity of these contributors.

(FRAP 29(a)(4)(E).)

### SUMMARY OF THE ARGUMENT

An amicus brief may include a summary of the argument after the statement of identification (FRAP 29(a)(4)(F)). If included, the summary should provide a brief narrative overview of the amicus' argument. It should not merely restate the headings in the argument section. For example, counsel may provide a single paragraph synopsis summarizing each point in the argument section.

### ARGUMENT

An amicus must set out in full the argument for the result it supports (FRAP 29(a)(4)(F)). The argument section must include:

- The amicus' contentions and the legal reasons supporting them.
- Citations to the legal authorities and record materials on which the amicus relies.

(FRAP 28(a)(8).)

Although not required, an amicus may identify the applicable standard of review in the argument section, if the amicus disagrees with the parties' description of the standard of review (FRAP 29(a)(4)(F)).

The amicus brief should not simply repeat the same arguments that the parties raise in their principal briefs. To avoid any unnecessary repetition or restatement, an amicus must attempt to determine the arguments that the parties intend to raise (3d Cir. L.A.R. 29.1(a)). Often, the most effective amicus briefs emphasize a narrow point of fact or law particularly tied to the interest of the amicus in the case. As non-parties, amici ordinarily discuss broader concerns with the decision on appeal and its potential impact on future cases. (See Practice Note, Amicus Briefs: What Are They and When Should a Company File One? ([W-001-6339](#)) and Expert Q&A on Best Practices for Amicus Briefing ([W-002-8700](#))).

The amicus brief should present the legal argument in a narrative form with proper headings. Counsel should organize the argument in a concise and logical way free of irrelevant information. Counsel often divide the argument section into points, with each point addressing one of the amicus' main arguments. Each point may contain sub-points with separate descriptive headings.

Counsel must support every statement in the brief concerning matters in the record, including factual assertions, with a citation to the record (FRAP 28(a)(6), 28(e)).

Counsel must identify the proper reporter or source when citing legal authorities:

- **Published federal decisions.** For citations to federal opinions reported in the United States Reports, Federal Reporter, Federal Supplement, or Federal Rules Decisions, counsel must cite to those reporters. Counsel may cite to the Supreme Court Reporter, Lawyer's Edition, or United States Law Week, in that order, for United States Supreme Court decisions that have not yet been published in the United States Reports.
- **Unpublished federal decisions.** For citations to federal opinions not formally reported in one of the above-listed reporters, counsel must identify the court, docket number, the full date of decision, and a citation to a publicly available electronic database, such as Westlaw.
- **State court decisions.** For citations to state court decisions, counsel should include the West Reporter citation whenever possible and identify the state court.

(3d Cir. L.A.R. 28.3(a).)

Counsel may include hyperlinks to all cited decisions if counsel also includes the standard citation to the reporter (3d Cir. L.A.R. 28.3(a)). If the amicus cites a federal judicial opinion, order, judgment, or other written disposition not available in a publicly accessible electronic database, counsel must file and serve a copy of that opinion, order, judgment, or disposition with the brief (FRAP 32.1(b)).

If disposition of the appeal "requires the study" of statutes, rules, regulations, or other legal authorities (for example, because the appeals turns on a question of statutory interpretation), an amicus must set out the relevant parts of these authorities in one of the following:

- The amicus brief itself.
- An addendum at the end of the brief.
- A separate volume provided to the court.

(FRAP 28(f).)

Counsel typically quote the relevant portions of a statute, regulation, rule, or other authority in the amicus brief itself. If the relevant portion is lengthy or if an authority is not easily accessible (for example, a local law not published online), counsel may include a copy of it in an addendum at the end of a brief.

### CONCLUSION

Although not required, counsel typically include a short conclusion in the amicus brief, stating the outcome the amicus supports.

### SIGNATURE

The amicus brief must include a signature from one of the attorneys representing the amicus (FRAP 32(d); 3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 46.4). For electronically filed documents, the filing attorney's case management/electronic case filing (CM/ECF) system log-in and password constitute the required signature for all purposes. A manual signature is unnecessary (3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 46.4; 3d Cir. L.A.R. 113.9(a)). The filing attorney must type "s/[ATTORNEY'S NAME]" on the signature line to signify that the document is signed. The Third Circuit also allows counsel to apply

an electronic signature, but the use of an “s/” is the more common method of signing documents. (3d Cir. L.A.R. 28.4; 3d Cir. L.A.R. 113.9(b).)

Counsel also must include a signature block directly below the signature line, including the filing attorney’s:

- Name.
- State bar number.
- Business address.
- Telephone number.

(3d Cir. L.A.R. 28.4.)

If a brief is submitted jointly on behalf of two or more separately represented parties, the filing attorney must include a separate signature line and block for each attorney. If so, counsel must electronically file the document in any of the following ways:

- Submitting a scanned image with all necessary signatures.
- Submitting a statement representing the consent of the non-filing signatories.
- Identifying the parties whose signatures are required and submitting a notice of endorsement by the other parties within three business days of filing.
- In any other manner approved by the Court.

(3d Cir. L.A.R. 113.9(c).)

#### **CERTIFICATE OF COMPLIANCE**

An amicus brief must contain a certificate by the amicus’ attorney stating that the brief complies with the type-volume limitations (FRAP 29(a)(4)(G), 32(g)(1); and see Length or Type-Volume). When preparing the certificate, counsel may rely on the word or line count provided by the word processing software used when drafting the brief (FRAP 32(g)(1)). The certificate must state either the number of:

- Words in the brief.
- Lines of monospaced type in the brief.

(FRAP 29(a)(4)(G), 32(g)(1); and see Font.)

Counsel may use Form 6 in the Appendix of Forms to the FRAP (FRAP 32(g)(2)).

#### **ELECTRONIC DOCUMENT CERTIFICATE**

Counsel must certify that:

- The text of the electronic brief is identical to the text in the paper copies.
- A virus detection program was run on the electronic brief and no virus was detected. Counsel must identify the version of the virus detection program.

The court may impose sanctions if a filing contains a computer virus or worm (3d Cir. L.A.R. 31.1(c)).

#### **CERTIFICATE OF BAR ADMISSION**

The amicus brief must include a certification that at least one of the attorneys whose names appear on the brief is a member of the

Third Circuit bar or has filed an application for admission to the Third Circuit (3d Cir. L.A.R. 28.3(d)).

#### **CERTIFICATE OF SERVICE**

Counsel must include a certificate of service in the amicus brief, even if all parties receive service via CM/ECF (FRAP 25(d); 3d Cir. L.A.R. 113.4(c)). The Notice of Docket Activity (NDA) generated by CM/ECF constitutes service of the brief on all counsel registered to use Third Circuit CM/ECF (3d Cir. L.A.R. 113.3(a)).

The certificate must state that:

- Counsel for the parties are registered to use Third Circuit CM/ECF and receive service by the NDA.
- If one or more parties are exempt from using CM/ECF, that the amicus will effect service by:
  - personal delivery;
  - first-class mail; or
  - third-party commercial carrier for delivery within three days.

(FRAP 25(c)(1) and (d); 3d Cir. L.A.R. 113.4(b); 3d Cir. L.A.R. 113.4(c).)

#### **FORMATTING THE AMICUS BRIEF**

An amicus brief must comply with formatting requirements regarding:

- Page size, line spacing, and margins (see Page Size, Line Spacing, and Margins).
- Font (see Font).
- Length or type-volume (see Length or Type-Volume).
- File format for electronic briefs (see File Format).
- Paper copies of briefs (see Paper Copies).

#### **PAGE SIZE, LINE SPACING, AND MARGINS**

Counsel must prepare the amicus brief using 8.5 by 11 inch pages (FRAP 32(a)(4)).

Brief pages must have margins of at least:

- One inch on the left and right sides of the page.
- Three-quarters of an inch on the top and bottom of each page.

(FRAP 32(a)(4); 3d Cir. L.A.R. 32.1(b).)

Except for page numbers, the amicus brief may not include any text in the margins (FRAP 32(a)(4)).

The text of the amicus brief must be double-spaced. However, a brief may use single-spacing for:

- Headings.
- Footnotes.
- Quotations more than two lines long (which should be indented on both sides).

(FRAP 32(a)(4).)

#### **FONT**

Briefs must use black type (FRAP 32(a)(1)(A)). The amicus brief must use a plain, roman style font. However, counsel may occasionally use

italics or boldface for emphasis. Case names must be italicized or underlined. (FRAP 32(a)(6).)

The amicus brief may be written in either a proportionally spaced font (for example, Times New Roman) or a monospaced font (for example, Courier) (FRAP 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs).

The required font size depends on whether the amicus uses:

- **A proportionally spaced font.** An amicus brief written in a proportionally spaced font must use at least a 14-point font size. This font must include serifs (for example, Times New Roman). However, headings and captions may appear in sans-serif type (that is, a font without serifs, like Arial or Helvetica).
- **A monospaced font.** An amicus brief printed in a monospaced font may not contain more than 10.5 characters per inch. This roughly translates to 12-point Courier font.

(FRAP 32(a)(5); Third Circuit Font and Page Length Requirements for Filing Briefs.)

#### LENGTH OR TYPE-VOLUME

An amicus brief may not exceed 15 pages without the court's prior approval, unless the brief either:

- Contains no more than 6,500 words.
- Uses a monospaced font and contains no more than 650 lines of text.

(FRAP 29(a)(5).)

If the Court grants a party permission to file an oversized brief, this does not affect the length of an amicus brief (FRAP 29(a)(5)).

An amicus brief submitted on rehearing may not exceed 2,600 words (FRAP 29(b)(4)).

Counsel may rely on the word or line count provided by the word processing software used to draft the brief (FRAP 32(g)(1)). An amicus brief must contain a certificate by the amicus' attorney stating that the brief complies with these "type-volume" limitations (FRAP 29(a)(4)(G) and 32(g)(1); 3d Cir. L.A.R. 31.1(c); and see Certificate of Compliance).

In determining the word or line count of a brief, counsel must include the headings, text, footnotes, and quotations. Counsel may exclude:

- The cover page.
- The corporate disclosure statement and statement of financial interest.
- The table of contents.
- The table of authorities.
- The statement of identification.
- The signature block.
- Any addendum containing statutes, rules, or regulations.
- The certificates of counsel.
- The certificate of service.

(FRAP 32(f); 3d Cir. L.A.R. 29.1(b).)

#### File Format

When serving and filing a brief using CM/ECF, the amicus must prepare its brief in PDF format. Counsel should create the PDF document by converting a word processing document, not by scanning. (3d Cir. L.A.R. 31.1(b) and committee comments.) Converting the brief from the word processing software file directly to PDF produces the smallest document and the clearest image.

#### PAPER COPIES

Paper copies of the amicus brief must include a green cover of durable quality (FRAP 32(a)(2); see Cover). Briefs must be printed single-sided (FRAP 32(a)(1)(A)). The print quality must be at least as good as that of a laser printer (FRAP 32(a)(1)(B)).

Counsel must bind paper copies of the amicus brief along the left margin, in a way that:

- Is secure.
- Does not obscure the text.
- Permits the brief to lie reasonably flat when open.

(FRAP 32(a)(3).)

Counsel may use velo or spiral binding, but may not use backbones or spines. Any metal fasteners or staples must have smooth edges and be covered. (3d Cir. L.A.R. 32.1(a).)

#### FILING AND SERVING AN AMICUS BRIEF

Counsel must use CM/ECF to serve and file the amicus brief (3d Cir. L.A.R. 31.1(b)(1)). Counsel also must serve one paper copy of the amicus brief on any party exempt from CM/ECF and any pro se party, unless opposing counsel has consented to electronic service (FRAP 25(b); 3d Cir. L.A.R. 31.1(a); 3d Cir. L.A.R. 31.1(d)). Acceptable methods of paper service include:

- Personal delivery.
- First-class mail.
- Third-party commercial carrier for delivery within three (3) days.

(FRAP 25(c)(1).)

On the same day the amicus electronically files its brief, the amicus must send one originally signed brief and six paper copies to the Third Circuit clerk by either:

- First-class mail.
- Third-party commercial carrier for delivery within three days.

(FRAP 25(a)(2)(B); 3d Cir. L.A.R. 25.1(a); 3d Cir. L.A.R. 31.1(a); 3d Cir. L.A.R. 31.1(b)(3); see Standing Order: Reduced Number of Copies of Brief Required (Apr. 29, 2013).)

The paper copies must be identical to the electronic copies except that they must have a green cover (FRAP 32(a)(2); 3d Cir. L.A.R. 31.1(c)). The brief is considered filed on the date counsel files the electronic version via CM/ECF, provided that the paper copies are mailed to the clerk on the same day (3d Cir. L.A.R. 31.1(b)(3)).

In appeals from the District Court for the District of the Virgin Islands, counsel must file one additional paper copy of the brief with the clerk

of the district court in the location from which the appeal is taken (St. Thomas or St. Croix) (3d Cir. L.A.R. 31.1(a)).

The Court may order additional paper copies to be filed if the court orders hearing or rehearing *en banc* (3d Cir. L.A.R. 31.1(a)).

### ORAL ARGUMENT

An *amicus curiae* may only participate in oral argument with the court's permission (FRAP 29(a)(8)). This most commonly occurs when the federal government appears as an amicus.

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