

IDAHO TRIAL LAWYERS ASSOCIATION FOUNDATION, INC.
AMICUS COMMITTEE AMENDED GUIDELINES
(Amended May 11, 2010)

STATEMENT OF PURPOSE

It is the purpose of the ITLA Foundation, Inc. as Amicus Curiae to provide independent and scholarly assistance to Idaho's courts through friend-of-the-court briefing and argument on issues of public interest. The ITLA Foundation, Inc. Amicus Committee will select issues that further the rule of law, retain access to the justice system, preserve the constitutional right to trial by jury, and generally promote the common good.

The intent of the ITLA Foundation, Inc. Amicus Program is to advance citizenship, equality and diversity, and promote conflict resolution, relief to the disadvantaged and underprivileged (including by reason of youth, age, ill health, disability and hardship), to seek elimination of prejudice and discrimination, and to defend human and civil rights under the law.

A substantial percentage of the time and resources of the ITLA Foundation, Inc. Amicus Program shall not be committed to any case directly advocating legislative changes.

I. GOVERNING STANDARDS FOR DISPOSITION OF A REQUEST FOR AN APPEARANCE OF ITLA FOUNDATION, INC. AS AMICUS CURIAE.

In passing upon an amicus request or determining whether to seek appearance in a case in which there has been no request, the ITLA Foundation, Inc. Amicus Committee shall consider each of the following criteria:

1. Whether the legal issue involved is of substantial interest to the trial bar and/or Idaho's citizenry;
2. Whether the legal issue involves a novel or previously unresolved question, the disposition of which is likely to have broad range effects beyond the particular case;
3. Whether the legal issue involved affects fundamental rights of individuals of a constitutional dimension;
4. Whether upon reviewing the briefs of the parties before the court, or briefs of other amicus curiae, additional briefing would be of benefit to the court;
5. Whether ITLA Foundation, Inc. Amicus Committee's involvement is likely to further legal scholarship;

6. Whether there exists sufficient time to request amicus status and properly prepare a brief;
7. Whether sufficient resources are available, given the Amicus Committee's case load, to participate without impairing the Committee's work;
8. Whether it is likely a request by the ITLA Foundation, Inc.'s Amicus Committee would meet the criteria of the Idaho Appellate Rules; and
9. ITLA Foundation Inc.'s Amicus Committee primarily seeks amicus curiae status before the Idaho Appellate Courts. An amicus request in a case at either the trial court or Court of Appeals level, state or federal, will only be granted where exceptional circumstances exist that require, in light of the foregoing criteria, consideration at such level.

An invitation from an appellate court for an amicus brief will be honored unless there exist exceptional circumstances for declining such invitation.

In passing upon an amicus request, the ITLA Foundation, Inc. Amicus Committee shall not take into consideration whether or not the applicant seeking amicus curiae intervention, or the applicant's lawyer/law firm, has made a financial contribution to the ITLA Foundation, Inc. or is an ITLA member.

II. PROCEDURE FOR REQUESTING APPEARANCE OF ITLA FOUNDATION, INC. AMICUS PROGRAM AS AMICUS CURIAE.

"Amicus requests" shall be submitted in accordance with the following guidelines:

1. All requests from litigants shall be directed to ITLA Foundation, Inc. Amicus Committee, Attention: Amicus Coordinator, ITLA Foundation, Inc., 1517 West Hays Street, Boise, Idaho, 83702.
2. Absent exceptional circumstances, no amicus request will be granted at the trial court level.
3. The requesting party initiates the amicus request by letter, accompanied by (a) a short and concise memorandum setting forth the specific legal issue or issues which the requestor believes should be addressed; (b) a brief survey of the significant cases touching upon the issue(s), and copies thereof; and c) a brief statement explaining why the ITLA Foundation, Inc. Amicus Committee should grant the amicus request, with specific reference to the criteria set forth in these Amended Guidelines. If the amicus request is made at the trial court level, the brief statement should address what exceptional circumstances exist that require consideration. The party making the exceptional circumstances request

shall also include the following: (a) copies of all briefs filed to date, (b) the briefing schedule of the appellate court and probable date of oral argument, and, ©) upon request, those portions of the court record below minimally necessary for a full understanding of the proceeding.

4. It is the policy of the ITLA Foundation, Inc. that the Amicus Program and Committee remain an independent body and not consult with litigants who request amicus curiae intervention with regard to what the Committee's substantive position ought to be in any amicus brief filed on its behalf. This policy is based upon the belief that such procedure will best serve the interests of the ITLA Foundation, Inc. in furthering a credible and independent Amicus Program that will focus on values and principles of general application which transcend the particular case. Under subparagraph 3 above, a requesting party has an opportunity to set forth the issues sought to be addressed in the memorandum accompanying the amicus request. However, the ITLA Foundation, Inc. Amicus Committee will independently assess what issues are of importance to the trial bar and/or Idaho's citizenry without further input from the requesting party. In the memorandum discussing the issues sought to be addressed, the requesting party may also comment upon why a particular issue or theory was not argued or asserted before the court.
5. The requesting party shall furnish any additional materials or information requested by the ITLA Foundation, Inc. Amicus Committee.
6. Any request invoking the "exceptional circumstances" exception shall include a concise statement why the circumstances are exceptional.

III. ITLA FOUNDATION, INC. AMICUS COMMITTEE COMPOSITION AND OPERATION.

The day-to-day operation of the ITLA Foundation, Inc. Amicus Program shall be carried out by the Amicus Committee.

The Amicus Committee shall consist of the following members: the Amicus Committee Chair, the President-elect of the Idaho Trial Lawyers Association, five (5) at-large members of the ITLA Foundation, Inc., and the Amicus Coordinator, which may be a paid position. Each member shall be a voting member. Five (5) votes shall constitute a quorum for any Amicus Committee action, except as otherwise specified in these Amended Guidelines. If a sufficient number of votes are not reasonably available to constitute a quorum, the amicus request may be handled in accordance with Guideline IV.4 hereof.

IV. INTERNAL OPERATING PROCEDURES FOR THE ITLA FOUNDATION, INC. AMICUS COMMITTEE.

A. Administration of Amicus Committee:

The Amicus Committee may adopt standard operating procedures (SOPs) for implementation of the ITLA Foundation, Inc. Amicus Committee Amended Guidelines.

The Amicus Coordinator has responsibility for administering the Amicus Program, consistent with the Amended Guidelines, any SOPs, and the approval of the Amicus Committee Chair.

B. Disposition of Amicus Requests:

The ITLA Foundation, Inc. Amicus Committee shall determine amicus requests in the following manner:

1. The Amicus Coordinator shall screen an amicus request to determine if the request is procedurally complete. If the request does not meet the procedural requirements set forth in Section II of these Amended Guidelines, the Coordinator shall so inform the applicant.
2. In cases before the Idaho Supreme Court, or such other cases where "exceptional circumstances" have been found to exist as required by these Amended Guidelines, if it is determined that the amicus request is complete, the Coordinator shall circulate to designated Committee members the requesting party's memorandum, along with a short Screening Memorandum prepared by the Coordinator analyzing the request and making a recommendation as to disposition of the request. (The Amicus Committee shall adopt an SOP establishing a process for making exceptional circumstances determinations required under these Amended Guidelines, which shall include a summary means of disposition of such requests with appropriate review by the Amicus Committee.) With respect to amicus curiae requests, the Committee is authorized to develop a summary procedure for disposition of such requests by the Chair, Coordinator and one (1) Committee Member selected by the Chair.
3. As soon as practicable after issuance of a Screening Memorandum, the Amicus Committee shall implement a determination disposition of the request. Any vote to seek amicus curiae status shall include a determination of what general point of view should be taken by the ITLA Foundation, Inc., if amicus status is granted by the court. All decisions shall be determined by majority vote.

4. Should the Amicus Committee Chair determine that insufficient time exists to process an amicus request under the customary Screening Memorandum process, the amicus request procedures set forth above will be inapplicable, and the Amicus Committee Chair and one (1) Committee Member selected by the Chair shall determine disposition of the request under such circumstances.
5. If the ITLA Foundation, Inc. Amicus Committee determines to grant the request, the Amicus Coordinator will timely apply to the appropriate court for leave to file an amicus brief.
6. Any amicus brief shall be signed by two designated Amicus Committee Members.
7. Where appropriate, the Amicus Committee may enlist the comments and expertise of non-committee members in considering amicus requests or preparation of briefs.
8. Where the ITLA Foundation, Inc. Amicus Committee denies an amicus request, it shall communicate in writing its decision to the requesting party and explain, generally, the Amicus Committee's decision.
9. The Amicus Committee shall report to the ITLA Foundation, Inc. Board of Directors in a manner and with such frequency as is directed by the Board..

(ITLA Foundation, Inc. Amicus Committee Guidelines —
Effective July 1, 2007 – Amended May 11, 2010)