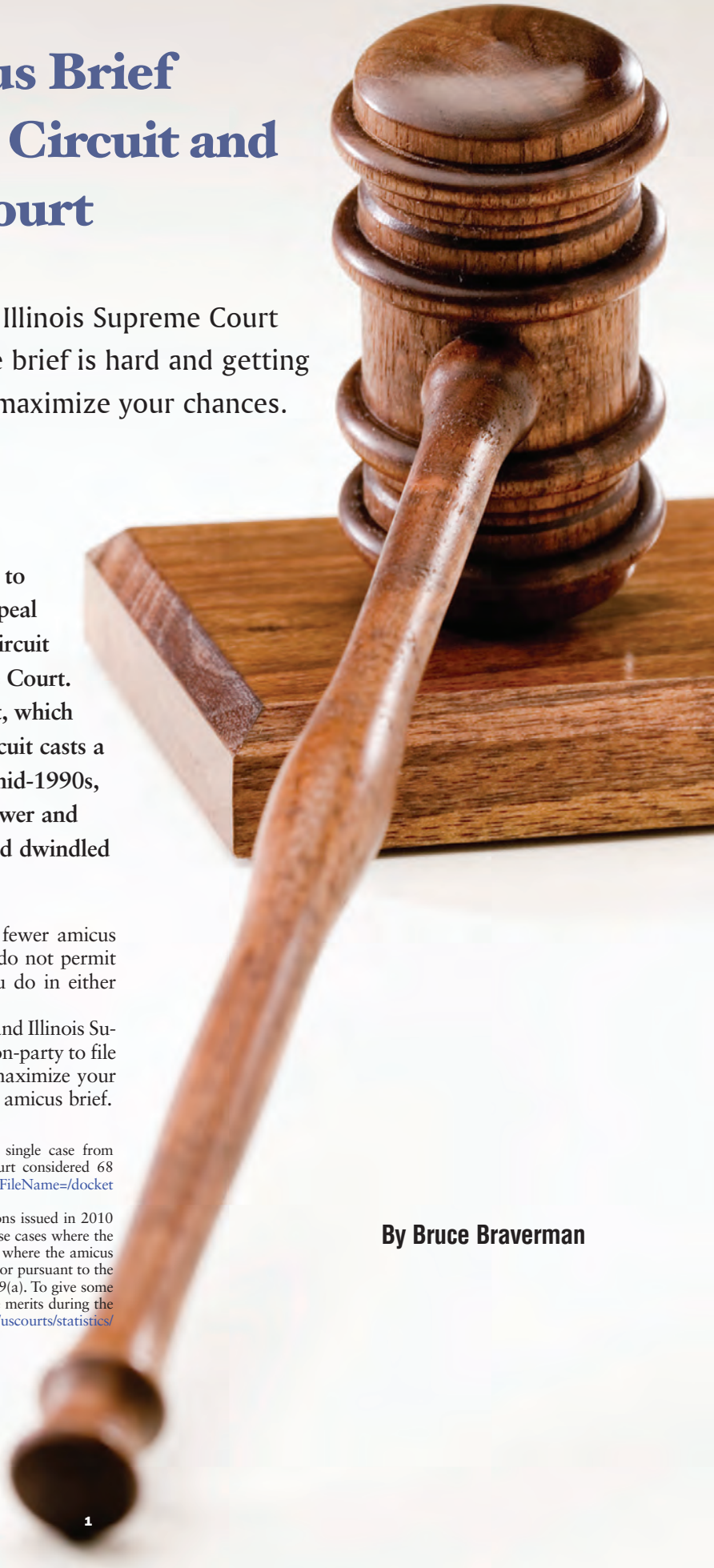
Getting Your Amicus Brief Before the Seventh Circuit and Illinois Supreme Court

Convincing the seventh circuit or the Illinois Supreme Court to grant leave to file an amicus curiae brief is hard and getting harder. This article discusses how to maximize your chances.



Imagine that a trade association asks you to represent it as an amicus curiae in an appeal pending before either the U.S. Seventh Circuit Court of Appeals or the Illinois Supreme Court. In contrast to the United States Supreme Court, which routinely allows amicus filings,[1] the seventh circuit casts a cold eye on proposed amicus briefs: since the mid-1990s, it has granted leave to file an amicus brief in fewer and fewer decided cases – by 2010, that number had dwindled to six.[2]

The Illinois Supreme Court likewise has accepted fewer amicus briefs of late and, unlike the seventh circuit, its rules do not permit amicus briefs to be filed by consent. So what do you do in either forum to ensure that your client's views will be heard?

This article addresses the criteria the seventh circuit and Illinois Supreme Court apply to determine whether to permit a non-party to file an amicus brief. It then suggests approaches to help maximize your chances that the court will agree to accept your client's amicus brief.

1. The Supreme Court rarely rejects proposed amicus briefs. In a single case from 2010 – *Bilski v. Kappos*, 130 S. Ct. 3218 (2010) – the Supreme Court considered 68 separate amicus briefs. *See* http://www.supremecourt.gov/Search.aspx?FileName=/docketfiles/08-964.htm.

2. This figure is based on a Westlaw search of Seventh Circuit opinions issued in 2010 in which the words "amicus" or "amici" appear, and it includes only those cases where the court granted an amicus leave to file its brief, as opposed to those cases where the amicus was permitted to file based on the consent of the parties, court invitation, or pursuant to the governmental-entities exception of Federal Rule of Appellate Procedure 29(a). To give some perspective to the "six-case" figure, the Seventh Circuit terminated on the merits during the court's 2009-2010 fiscal year 1,510 cases. *See* http://www.uscourts.gov/uscourts/statistics/Judicialbusiness/2010/JudicialBusinesspdfversion.pdf

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By Bruce Braverman

How the courts determine whether to grant leave to file

The seventh circuit and the Illinois Supreme Court have broad discretion in deciding whether to allow a non-party to file an amicus brief. The seventh circuit need only determine that the proposed brief is "desirable,"[3] and the Illinois Supreme Court need only find that the brief "will assist the court."[4] Under these malleable standards, both courts at one time granted motions for leave to file amicus briefs routinely and without much scrutiny. That was then.

The seventh circuit's "fish-eyed" scrutiny. Beginning in the mid-1990s, the seventh circuit considerably restricted the ability of potential amici to be heard by that court.[5] Based on then-Chief Judge Posner's belief that "the vast majority of" the amicus briefs he had read "have not assisted the judges,"[6] he concluded: "it would be good to scrutinize these motions in a more careful, indeed a fish-eyed, fashion."[7]

As a result, in order for a proposed amicus to establish that its submission is "desirable" and worthy of "judicial grace,"[8] the amicus must offer something new, that is, something not found in the parties' briefs. "[The overriding criterion is] [w]hether the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties' briefs."[9]

The court noted that this criterion would more likely be satisfied where a party is "inadequately represented," or where the proposed amicus is directly involved in another case "that may be materially affected" by a decision in the appeal, or "*in which the amicus has a unique perspective or specific information that can assist the court beyond what the parties can provide.*"[10]

The Illinois Supreme Court – increased scrutiny, fewer signposts. The Illinois Supreme Court also has become increasingly reluctant to permit non-parties to file amicus briefs. While the court accepted amicus briefs in 25 or more of the cases decided in four of the five years from 2002 to 2006, it granted leave for amici to file briefs in fewer than 20 of the cases it decided in 2007, 2008, and 2010, respectively.[11]

Although the Illinois Supreme Court has not spelled out how it determines when an amicus will "assist the court," its increasing reluctance to accept amicus briefs may well also stem from its desire to reduce its considerable burden.

The narrow channel. A would-be amicus must navigate between two seemingly conflicting principles. On the one hand, appeals are circumscribed by the issues raised and decided below,[12] so an amicus generally may not argue an issue that was not previously presented.[13] On the other hand, the court typically will not view recycled arguments already made by the parties as either "desirable" or of "assistance."

So the amicus must chart a course that will keep its brief within the channel of the circumscribed issues on appeal while taking a tack the parties themselves have not. Navigating through this channel depends not only on a careful analysis of the factual and legal landscape already constructed in the court below, but also on the unique perspective the amicus brings to the issues on appeal.

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Approaches to presenting a fresh perspective

The fresh approach or "unique perspective" required can best be derived from the unique attributes of the amicus itself. An amicus typically advocates either on behalf of a group sharing common interests or with respect to a particular issue.[14] An amicus need not align itself with either side in a case – it may simply be attempting to ensure that its particular interests will not be adversely affected by the appellate court's ruling.[15]

What makes these organizations unique is their intense focus on their particular group or issue, their deep knowledge of both the history and concerns of that group/issue, and their broader vision of how the litigation could affect their constituency. That unique perspective allows an amicus to illuminate for the court a more panoramic factual context, a ruling's potential impact on the amicus's constituency or the public, potential conflicts with public policy, or a different angle on one or more of the arguments in play.

Flesh out the broader factual context. Your client's unique and deep institutional knowledge may enable you to paint a detailed picture of the broader factual context in which the case fits. Appellate courts purport to focus on legal – not factual – issues. Yet facts matter, not only because the appellate judges may be unfamiliar with the particular industry or practice at issue, but because judges – as people – are naturally interested in the story behind the law. To the extent an amicus can bring the broader story and its underlying equities to life, that adds a new factual layer to the case.

That new layer may be an in-depth discussion of the practice at issue, how it developed, how the industry/group

3. Fed. R. App. P. 29(b).
4. Ill. Sup. Ct. R. 345(a).
5. *Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003); *Nat'l Org. for Women v. Scheidler*, 223 F.3d 615, 616-17 (7th Cir. 2000) ("NOW"); *Ryan v. Commodity Futures Trading Comm'n*, 125 F.3d 1062, 1063 (7th Cir. 1997).
6. *Ryan*, 125 F.3d at 1063.
7. *Id.*
8. *NOW*, 223 F.3d at 616.
9. *Voices for Choices*, 339 F.3d at 545.
10. *Id.* (emphasis added); *see also Sierra Club, Inc. v. Environmental Protection Agency,* 358 F.3d 516, 518 (7th Cir. 2004) (Easterbrook, J.).
11. These figures are based on a Westlaw search of Illinois Supreme Court cases in which the words "amicus" or "amici" appeared.
12. *Karas v. Strevell,* 227 Ill.2d 440, 450, 884 N.E.2d 122, 129 (2008); *Burger v. Lutheran Gen. Hosp.,* 198 Ill.2d 21, 62, 759 N.E.2d 533, 557 (2001); *People v. P.H.,* 145 Ill.2d 209, 234, 582 N.E.2d 700, 711 (1991).
13. An amicus supporting an appellee has greater leeway in what arguments it may make because appellate courts typically may affirm a ruling on any ground supported by the record, even ones not relied on by the trial court. *E.g.*, *Srail v. Village of Lisle*, 588 F.3d 940, 943 (7th Cir. 2009); *City of Chicago v. Holland*, 206 Ill.2d 480, 492, 795 N.E.2d 240, 247-48 (Ill. 2003).
14. An amicus may be an entity which is facing or could soon face in litigation the same issue as the party it seeks to support.
15. Perhaps the most powerful and effective recent example of such an amicus brief is the Supreme Court brief filed in *Grutter v. Bollinger* by 29 former military officers and civilian leaders. *Grutter v. Bollinger*, Nos. 02-241, 02-516, 2003 WL 1787554, Brief of Amici Lt. Gen. Julius W. Becton, Jr., et al. (U.S. Feb. 21, 2003). *Grutter* involved the legality of the University of Michigan's law school's use of race as a factor in its admissions process. The amicus brief asserted that race-conscious recruiting and admission standards in colleges and universities were "essential to the military's ability to fulfill its principal mission to provide national security" (*id.* at *5), and then spent all but a few pages of that 30-page brief backing up that assertion. *Id.* at *5-27.

has relied on that practice, or how the practice benefits the public. To illustrate, where a plaintiff claimed that a "pre-screened offer of credit" was merely a sham and offered no real credit to the cardholder, the amici provided a detailed explanation of how those pre-screened offers of credit work, the regulatory scheme which condones and circumscribes the offers, and how those credit offers help consumers who otherwise would be shut out of the credit market.[16] The broader context helped legitimize the challenged practices.

Summarizing the *historical* development of the conduct at issue may also bolster the conduct's legitimacy. An amicus supporting a financial institution accused of mortgage-servicing misconduct reviewed the history of the Home Owners Loan Act, the regulatory structure that evolved from it, and the subsequent rise of the secondary mortgage industry and mortgage securitizations to establish the bona fides of the defendant's mortgage-servicing business model.[17] And an association of railroads provided a concise history of the federal government's increasingly comprehensive regulation of railroads to set up its argument that a local railroad-crossing blocking ordinance was pre-empted by the Federal Railroad Safety Act.[18]

Coordinate with counsel for the party for whose position your amicus brief will be advocating; your brief should complement – not duplicate – that party's arguments.

An amicus may want to show why – on a practical level – the issue on appeal matters to the pertinent industry. In arguing for a longer limitations period for indemnity claims, an association of surety bond companies laid out for the court the gradual chain of events which follows when a construction contractor hits a financial roadblock and begins defaulting on its subcontracts.[19] This gradual accretion of claims under the performance bond requires sureties to conduct numerous and evolving investigations to determine whom to sue and for what.[20] Based on these real world practicalities, the amicus argued that the proposed shorter limitations periods would force sureties to prematurely sue indemnitors "before [the respective sureties'] ultimate losses and expenses are known...."[21]

Explain the likely impact of a particular ruling on the pertinent industry/group. An amicus may also attract the court's interest by explaining the adverse impact a particular ruling could have on the industry or group the amicus represents.

A transportation association devoted the bulk of its argument to explaining why the district court's "sweeping language" would require "all" public-transit-related entities to "make extensive and costly changes" to their retirement plans – including paying far more in retirement benefits and incurring heavy "[a]dministrative burdens and costs."[22]

Similarly, amici representing major corporations and industry associations estimated the cost to American businesses from a ruling finding a cash-balance retirement plan inherently age discriminatory as being "well over $100 billion,"[23] which "additional liability would also drive numerous companies into bankruptcy, including many non-profit organizations...."[24]

And, in arguing for reversal of a ruling that voided a $50 million trust indenture issued to a tribal corporation, an association of bond analysts asserted: "From the perspective of a bond purchaser, this case presents a nightmare that Kafka might have rejected as the product of an overactive imagination...."[25]

To forestall a skeptical reaction from the court to a "parade of horrible consequences" argument, an amicus may wish to highlight that its members are the ones the ruling will directly affect *and* offer objective facts to support its prediction of harm.

Illuminate the potential impact on the public. Burdening a single industry or group is one thing – harming the general public quite another. Courts nominally apply the law to an individual claimant's specific circumstances, yet no judge is eager to issue a ruling that harms a significant portion of the public. Credibly establishing the likelihood of that public harm may enable an amicus to catch the conscience of the court.

Credibility for a public-harm argument is built most often on a solid "likely harm to the industry/group" foundation. The public transportation amicus referenced above argued that the anticipated increase in retirement costs to the public transit systems from the district court's ruling coupled with the "current economic issues" and "budgetary constraints" facing those systems would result in "increased fares and potential impacts on the levels and quality of service, at a time when household budgets are already stretched thin."[26]

The amicus in the cash-balance retirement plan case warned that the district court's ruling would require "almost any employer" to "freeze" its cash balance plan and stop providing benefits, cause over eight million participants to lose all further benefits, force companies to reduce other employee compensation, and bankrupt many businesses.[27]

Where the anticipated harm is indirect, amici may construct a domino–effect, public harm argument. The surety

16. *Perry v. First Nat'l Bank*, No. 05-3867, 2006 WL 815262, Brief of Amici American Bankers Ass'n, et al., at *2-5, (7th Cir. March 10, 2006).

17. *In re Ocwen Fed. Bank FSB Mortgage, Servicing Litig.*, No. 06-3132, 2006 WL 3625214, Brief of Amicus Mortgage Bankers Ass'n (7th Cir. Nov. 20, 2006).

18. *Village of Mundelein v. Wisconsin Cent. R.R.*, No. 103543, 2007 WL 5087262, Brief of Amicus Ass'n of Am. Railroads, at *8-12 (Ill. Mar. 20, 2007).

19. *Travelers Cas. & Sur. Co. v. Bowman*, No. 103759, 2007 WL 6081659, Brief of Amicus Sur. & Fid. Ass'n of Am. (Ill. June 18, 2007).

20. *Id.* at *15-18.

21. *Id.* at *17; *see also Kolbe v. Med. Coll. of Wis., Inc.*, No. 10-2284, 2010 WL 5808725, Brief of Amicus Wisconsin Ass'n of Health Underwriters, at *2 (7th Cir. Aug. 27, 2010) (underwriter association argued that recovery of overpayments was critical to the health insurance industry, because the industry had "established a system of prompt payment whereby overpayments are subsequently adjusted following an investigation into coverage").

22. *Herzog Transit Servs., Inc. v. U.S. R.R. Ret. Bd.*, No. 09-3945, 2010 WL 1424202, Brief of Amicus Am. Public Transp. Ass'n, at *8-9 (7th Cir. Mar. 22, 2010).

23. *Cooper v. IBM Personal Pension Planner*, No. 05-3588, 2005 WL 3738661, Brief of Amici Am. Benefits Council, et al., at *3 (7th Cir. Nov. 4, 2005).

24. *Id.* at 21. See also Kankakee County Bd. of Review v. Property Tax Appeal Bd., No. 102318, 2006 WL 5537028, Brief of Amici Central Ill. Public Serv. Co., et al., at *15-16 (Ill. Nov. 6, 2006) (arguing that the ruling "would likely affect" not only each amicus, but "every public utility and regulated entity" in Illinois, and, potentially, "any person or entity that owns property").

25. *Wells Fargo Bank, N.A. v. Lake of the Torches Econ. Dev. Corp.*, No. 10-2069, 2010 WL 4622046, Brief of Amicus National Fed. of Municipal Analysts, at *3 (7th Cir. July 14, 2010).

26. *Herzog* Amicus Br. at *9-

27. *Cooper* Amici Br. at *19-22. Of course, amici may also argue that the harm to the public is direct. *E.g., Messner v. Northshore Univ. Healthsystem*, No 10-2514, 2010 WL 6019688, Brief of Amici Consumer Fed. of Am., Inc., *et ano*, at *2-9 (7th Cir. Aug. 9, 2010).

association amicus argued that requiring sureties to file indemnity claims within two years of the filing of the first suit on a performance bond would unleash a waterfall of cascading harm: the shorter limitations period would cause sureties to file their claims before knowing their ultimate obligations, which would lead to increased net losses on surety bonds, which would cause sureties to tighten their bond requirements, which would result in fewer contractors qualifying for bonds, which would reduce competition on public projects, and which ultimately would saddle the public with increased construction costs on public projects.[28]

Focus on the policies underlying the law. The amicus may also offer a fresh or more expansive look at the public policy arguments. A group of manufacturing associations connected its "policy" and "harm" arguments in arguing that a change of brand constitutes "good cause" to justify termination of a franchise.[29]

The amici first argued that the purpose of state "good cause" termination requirements – ensuring that a franchisor not take unfair advantage of a franchisee's efforts to develop goodwill toward the franchisor's brand – is not violated where a franchise purchaser substitutes a different brand and trademark, because any goodwill developed applies only to the old brand.[30] The amici then changed tack, arguing that reading the "good cause" requirement to preclude termination in a brand-substitution case would prevent an industry undergoing consolidation from being able to respond to changing market conditions.[31]

The American Association of Retired Persons similarly tied its policy arguments to the interests of its constituency. The association argued that it was necessary to apply the collateral source rule to payments made under Medicare to ensure that (a) the rule's deterrent purpose is achieved, given that personal injury awards for older victims "are usually low," and (b) Medicare recipients – who, by definition, are over 65 – are treated the same as victims who have private health insurance, given that a Medicare recipient's recovery is subject to a set-off by the government.[32]

Conversely, an amicus may want to tie its policy argument to a different group or more abstract policy. In arguing that settling parties should be included in apportioning fault under Illinois' equitable apportionment of fault statute, a group of large corporations and business associations sought to align itself with the overarching policy of "fairness of the civil justice system" rather than focus solely on the unfairness to the deep-pocketed entities they represented.[33] A "protect-the-system" policy argument is also apropos where the result the amicus supports appears contrary to the statute's overarching policy.[34]

Offer a unique approach to an issue. Harm and policy aside, an amicus may convince a court to accept its brief simply by offering a unique slant on one of the issues on appeal.

On rare occasions, an amicus may make an entirely new argument. A utilities association in an insurance policy declaratory judgment suit thus argued that "the proper scope of coverage rule is dramatically impacted by a [policy] provision that both parties to the appeal fail to discuss."[35]

More typically, amici seek to stand out by offering a different or more expansive take on an issue which the parties also are addressing. A car manufacturer amicus that sought to reverse an Illinois Appellate Court ruling that applied a California consumer protection statute to an Illinois resident's claim in a purported multi-state class action chose to ignore Illinois' choice of law principles and to argue instead that the ruling violated "fundamental, constitutional principles of federalism [ ] embodied in the Commerce Clause, the Due Process Clause, and the Full Faith and Credit Clause."[36]

Media groups challenging a dismissal of an appeal of a defamation case on mootness grounds homed in on the critical importance of fee-shifting provisions to effectuate the purposes of an anti-SLAPP statute.[37] And amici representing investment companies and large private employers, respectively, argued in an ERISA case challenging the types of mutual funds offered in a defined contribution plan that plaintiffs were improperly focusing "exclusively on the character of the chosen investments, not on the process that led to their selection as options."[38]

An amicus may request the court to read a statute more broadly (or narrowly) than either party proposes.[39] To bolster its credibility, the amicus may want to include a less extreme, back-up position.

A lawyers' society did this in arguing that the Fair Housing Act precluded a condominium association from applying a rule which prohibited residents from placing objects in the hallway to bar mezuzahs attached to the residents' doorframes.[40] The amicus first argued that the Act "must be read broadly" to apply "to current homeowners," not just purchasers.[41] The amicus then hedged its bets: "even under a narrow interpretation of the" Act which focuses only on sales, the association's conduct was illegal because it discouraged Jewish families from buy-

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28. *Travelers* Amicus Brief at *17-18. *See also Kankakee* Amici Brief at *17-18 (arguing that higher taxes on pipelines – which natural gas companies cannot avoid due to the pipelines' inherent lack of mobility – will lead to less investment in new pipelines, a consequent decrease in consumer access to natural gas, and a resulting increase in the cost of natural gas).

29. *FMS, Inc. v. Volvo Constr. Equip. N. Am., Inc.*, Nos. 07-1896, 07-2016, 2007 WL 2085618, Brief of Amici Nat'l Ass'n of Mfrs., et al., at pp. 9-10 (7th Cir. July 3, 2007).

30. *Id.*

31. *Id.* at p. 10; *see also In re River Road Hotel Partners, LLC,* No. 10-3597, 10-3598, Dkt. No. 28, Brief of Amicus Loan Syndications and Trading Ass'n, at pp. 16-24 (7th Cir. Feb. 28, 2011) (corporate lender industry group emphasized Bankruptcy Code's core purpose of protecting secured creditor's property interests in arguing against interpretation of cramdown provision that would permit sale of property without "credit bidding").

32. *Wills v. Foster,* No. 104538, 2007 WL 6081723, Brief of Amicus Am. Ass'n of Retired Persons, at *12-17 (Ill. Dec. 5, 2007).

33. *Ready v. United Goedecke Servs., Inc.,* No. 103474, 2007 WL 6822740, Brief of Amici Ill. Chamber of Commerce, et al., at *7, 11-12 (Ill. Mar. 27, 2007).

34. *See, e.g., Marshall Jt. Sch. Dist. No. 2 v. CD*, Nos. 09-1319, 09-2499, 2009 WL 318473, Brief of Amici Nat'l Sch. Bds. Ass'n, *et ano* (7th Cir. Sept. 11, 2009) (arguing that withdrawing a previously-covered student's special educational services for gym class did not violate the Individuals with Disabilities Act, the *amici* contended that the withdrawal was consistent with certain "fundamental principles" derived from the Act: avoiding the over-identification of children as needing special education; mainstreaming students identified as needing special education in the least restrictive environment; periodically re-evaluating a student's need for special education; and affirming the critical role educators play in each arena).

35. *Plastics Eng'g Co. v. Liberty Mut. Ins. Co.*, Nos. 01-4397, 07-1041, 2007 WL 2857776, Brief of Amicus Wisconsin Utils. Ass'n, at p. 4 (7th Cir. Mar. 22, 2007).

36. *Barbara's Sales Inc. v. Intel Corp.*, No. 103287, 2007 WL 5085594, Brief of Amicus Daimler Chrysler Corp., at *6 (Ill. Jan. 25, 2007).

37. *Wright Dev. Group, LLC v. Walsh,* No. 109463, 2010 WL 5853954, Brief of Amici Citizen Media Law Project, et al., *3-9 (Ill. Mar. 16, 2010). An anti-SLAPP statute is designed to combat "strategic lawsuits against public participation" or "SLAPP" suits.

38. *Loomis v. Exelon Corp.*, Nos. 09-4081, 10-1755, 2009 WL 6928168, Amicus Brief of Investment Company Institute, *et ano*, at *19 (7th Cir. Aug. 27, 2010).

39. *See, e.g., Barton v. Zimmer, Inc.*, No. 10-2212, Dkt. No. 13, Brief of Amici AARP, *et ano*, at pp. 3-7 (7th Cir. Aug. 17, 2010); *Indiana Prot. & Advocacy Servs. v. Indiana Family & Soc. Servs. Admin.*, No. 08-3183, 2008 WL 5583621, Brief of Amici Nat'l Disability Rights Network, Inc., et al. (7th Cir. Nov. 13, 2008); *Reyes v. Remington Hybrid Seed Co.,* No. 05-1628, 2005 WL 3736260, Brief of Amici United Farm Workers of Am., et al., at *11-15 (7th Cir. May 19, 2005).

40. *Bloch v. Frischholz,* No. 06-3376, 2007 WL 3389339, Brief of Amicus Decalogue Society of Lawyers (7th Cir. Oct. 25, 2007).

41. *Id.* at *6-13.

ing in the building.[42]

As with the other approaches, a unique perspective on an argument gains traction if the amicus can link that perspective to the circle of interests it seeks to support.

Additional considerations

Standing out as a non-party voice worth being heard requires analyzing not only what the parties have said in the briefs below, but the distinctive knowledge and perspective your client can offer. To do this, you must

- work closely with your client to tease out its unique knowledge and perspective and to align your arguments with your client's goals; and
- coordinate with counsel for the party for whose position your amicus brief will be advocating; your amicus brief should complement – not duplicate – that party's arguments.

In choosing which issues to address, pick those that have the broadest impact on your client's interests and goals. Leave for the parties the lesser lights as well as any procedural issues, and give the issue(s) you address a fresh perspective, different spin, or deeper analysis.

It bears repeating: do not merely repeat the arguments of the party your amicus is supporting. The "policy" of the seventh circuit (and likely the Illinois Supreme Court) is "never to grant permission to file an amicus curiae brief that essentially merely duplicates the brief of one of the parties...."[43]

As for tone, strive for the air of an independently minded, albeit passionately interested, friend, not a contentious combatant beholden to one side.

Do read carefully and adhere closely to the court's local rules as well as Federal Rule of Appellate Procedure 29 or Illinois Supreme Court Rule 345.[44] The seventh circuit is especially scrupulous about both the timing and format of the brief.[45] Filing your brief and motion for leave to file even one day late may mean that all of your hard work will be for naught.

Finally, keep it short. As Judge Posner dryly admonished: "Clarity, simplicity, and brevity are underrated qualities in legal advocacy."[46] Especially in amicus briefs in the seventh circuit and the Illinois Supreme Court, less truly is more likely to earn a "yes." ■

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42. *Id.* at *13-15.

43. *NOW*, 223 F.3d at 617.

44. Because these rules continue to evolve, it is important to check the most recent version of the applicable rules. Since December 1, 2010, for example, non-governmental amici in the federal Courts of Appeal must disclose whether "a party's counsel authored the [amicus] brief in whole or in part," whether a party or party's counsel "contributed money" towards the preparation or submission of the amicus brief, and whether anyone other than the amicus, its members or its counsel contributed money to fund the brief's preparation or submission and, if so, the identity of each such person. Fed. R. App. P. 29(c)(5).

45. The strictness applies with even greater force to amicus briefs filed in support of petitions for rehearing. Since August 2009, an amicus must file its proposed brief in support of a rehearing petition on the "same schedule" as the petitioners (as opposed to seven days after the filing of the petition). *Fry v. Exelon Corp. Cash Balance Pension Plan*, 576 F.3d 723, 725 (7th Cir. 2009).

46. *Illinois Bell Tel. Co. v. Box*, 548 F.3d 607, 609 (7th Cir. 2008).