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How to leverage amicus curiae briefs in your cases

(AND HOW TO RETURN THE FAVOR AS AMICUS FOR OTHERS)

The Beatles famously observed that we get by “with a little help from [our] friends.” (The Beatles, Sgt. Pepper’s Lonely Hearts Club Band (1967) “With a Little Help from My Friends.”) So too, with appellate lawyers handling important issues of widespread significance in state and federal courts: In those instances, getting by with a win may require a little help from a “friend of the court” brief by amicus curiae.

Good amicus briefs significantly increase your odds of success: They allow other good lawyers to advocate for the outcome you seek, effectively enlarge the page-space available to advocate for a ruling in favor of your client, and create opportunities to inject winning arguments and information into the case that you might have omitted. And in cases involving important issues of widespread significance, soliciting amicus support is the responsible thing to do. By definition, those cases will affect a large number of people, and soliciting amicus ensures other stakeholders will have an opportunity to be heard on the issues.

So, lend me your ears as this three-part article explores the keys to good amicus briefs. Part 1 provides some basics on amicus briefs in state and federal appellate courts. Part 2 provides some suggestions for soliciting good amicus briefs. Finally, because good friends give as much as they receive, Part 3 provides suggestions for those who serve as amicus.

Amicus brief basics

Black’s Law Dictionary defines “amicus curiae” as “[s]omeone who is not a party to a lawsuit but who petitions the court ... to file a brief in the action because that person has a strong interest in the subject matter.” (Black’s Law Dict. (12th ed. 2024).)

Although regarded as “friends of the court,” amicus are often friends of a particular party. Thus, in a tort action against a pharmaceutical-drug manufacturer, other drug manufacturers might file amicus briefs supporting the defendant, while consumer-protection organizations might file amicus briefs supporting the plaintiff. (E.g., *T.H. v. Novartis Pharmaceuticals Corp.* (2017) 4 Cal.5th 145.)

California and federal appellate courts both allow interested parties to file amicus briefs. (Cal. Rules of Court, rule 8.200(c)(1); *id.*, rule 8.520(f)(1); Fed. Rules App. Proc. 29(a)(2).) But the rules regarding amicus briefs in California and federal appellate courts differ in three key respects.

First, they differ in the timing of amicus briefs.

In California appellate courts, amicus briefs are filed *after* the parties complete the merits briefing (i.e., after the appellant or petitioner has filed their reply brief). In the California Court of Appeal, amicus briefs are due 14 days after the appellant’s reply brief. (Cal. Rules of Court, rule 8.200(c)(1).) In the California Supreme Court, amicus briefs are due 30 days after the petitioner’s reply brief on the merits. (*Id.*, rule 8.520(f)(2).)

In federal appellate courts, amicus briefs are filed *during* the merits briefing. Amicus supporting the appellant must file their amicus brief seven days after the appellant’s opening brief, and amicus supporting the appellee must file their amicus brief seven days after the appellee brief. (Fed. Rules App. Proc. 29(a)(6).)

Second, California and federal rules differ in how amicus obtain approval to file a brief.

In California appellate courts, amicus must submit an application to file an amicus brief along with the brief. (Cal.

Rules of Court, rule 8.200(c)(1)-(4); *id.*, rule 8.520(f)(1)-(5).) Typically, the application is combined with the brief itself. (*Id.*, rule 8.200(c)(4); *id.*, rule 8.520(f)(5).)

In federal appellate courts, amicus may file an amicus brief either by obtaining consent of the parties, or by filing a motion for leave to file an amicus brief. (Fed. Rules App. Proc. 29(a)(2)-(3).) The motion must include a copy of the proposed brief. (*Id.*, rule 29(a)(3).)

Third, California and federal rules differ in how parties respond to amicus briefs.

In California appellate courts, parties may file briefs responding to an amicus brief. (Cal. Rules of Court, rule 8.200(c)(6); *id.*, rule 8.520(f)(7).) While in theory a party could file a separate brief in response to each amicus brief, I recommend (and the rules permit) a single, consolidated response to all hostile amicus briefs. (E.g., *id.*, rule 8.520(f)(7).) Notably, the California Rules of Court do *not* prohibit a party from responding to a brief filed by a supportive amicus. Thus, in theory, a plaintiff could respond to a brief filed by an amicus supporting the plaintiff.

In federal appellate courts, the parties do not have the luxury of separate briefs to respond to amicus. Instead, because amicus briefs are filed during the merits briefing (Fed. Rules App. Proc. 29(a)(6)), parties must respond to any arguments from hostile amicus in their merits briefs (i.e., the appellant must respond to hostile amicus in their reply brief, and the appellee must respond to hostile amicus in their appellee brief).

How to best use amicus as a plaintiff

For lawyers handling important issues of widespread significance on appeal, the question is not *whether* you

should solicit amicus support when handling a case involving important issues of widespread significance, but how best to find and leverage amicus in those instances. Below are my top three tips to that end.

Recruit amicus early

Soliciting a good amicus brief starts with identifying willing and able amicus curiae.

Organizations dedicated to consumer rights are a natural choice, and among those, Consumer Attorneys of California (“CAOC”) should be your first stop. CAOC’s volunteer-based Amicus Committee, which is “comprised of some of the top appellate attorneys in the Plaintiff’s bar,” provides amicus briefs upon request in select cases. (California Attorneys of California, *Amicus Curia Committee* (2025) <https://www.caoc.org/?pg=Amicus> [as of Dec. 1, 2025].) Anyone seeking amicus support from CAOC can submit a request for amicus support by filling out a form available on CAOC’s website.

Other consumer-oriented organizations are also available to provide amicus support. For example, the American Association of Justice (“AAJ”), CAOC’s national counterpart, occasionally files amicus briefs in significant cases that have national ramifications. And Public Justice and Public Citizen – two national, pro-consumer, public-interest law firms – also provide amicus support in major consumer cases pending in federal appellate courts and state courts of last resort.

The problem with the traditional consumer-oriented organizations is limited bandwidth: These organizations receive a high volume of requests for amicus support but have limited resources. Thus, you may need to think beyond the traditional consumer-oriented organizations when seeking amicus support.

To that end, you should also consider organizations whose work in a particular area may be impacted by your case. For example, Consumer Watchdog is a reliable support of consumers in cases involving unlawful or deceptive business practices. (E.g., *Loeffler v. Target Corp.*

(2013) 58 Cal.4th 1081.) And the American Association of Retired Persons (“AARP”) frequently provides amicus support in cases affecting senior citizens, including everything from elder abuse to unfair business practices involving life insurance. (E.g., *Nevarrez v. San Marino Skilled Nursing & Wellness Centre, LLC* (2013) 221 Cal.App.4th 102; *Farley v. Lincoln Benefit Life Co.* (9th Cir. 2025) 150 F.4th 1197.) Similarly, in a case involving sex abuse or criminal activity, organizations dedicated to victims’ rights may also be eager to provide amicus support. (E.g., *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204 [amicus brief on behalf of the National Crime Victim Bar Association in support of the plaintiff/appellant].) One way to identify potential amicus of this nature is to review published appellate decisions in the substantive area and note the organizations that frequently appear as amicus in those cases. The results might be surprising. For example, anyone who researches life-insurance cases in California may notice that the California Association for Nursing Home Reform reliably appears as amicus in support of consumers in those cases. (E.g., *McHugh v. Protective Life Ins. Co.* (2021) 12 Cal.5th 213; *Small v. Allianz Life Ins. Co. of N. Am.* (2024) 122 F.4th 1182.)

Government agencies may also offer a potential source of institutional amicus support. An amicus brief from a government agency may be the most compelling amicus support a party could ever hope to obtain. (*McHugh, supra*, 12 Cal.5th at p. 245 [“courts should certainly consider the interpretations of an agency advanced in litigation”].) But amicus support from a government agency is also the most difficult amicus support to obtain. Yet it does happen. (E.g., *Hohenshelt v. Superior Court* (2025) 18 Cal.5th 310 [amicus brief of California attorney general in support of plaintiff/petitioner]; *Loeffler, supra*, 58 Cal.4th 1081 [same].) So, plaintiffs’ attorneys should strongly consider contacting a governmental agency (e.g., the insurance commissioner in a case involving insurance, or the attorney general in a case involving a consumer-protection statute) to explore whether

they would provide amicus support in your case. A word of caution here: You should take steps to ensure the governmental agency is likely to see the case in a light favorable to your client before you ask it to get involved; otherwise, notifying them about your case may inspire them to support your *opponent*. (E.g., *Loeffler, supra*, 58 Cal.4th 1081 [California State Board of Equalization as amicus curiae in support of defendant/respondent].)

Finally, remember that amicus need not be an entity; *any person* with an interest in the outcome can submit an amicus brief. Thus, a plaintiff (or plaintiff’s lawyer) facing the same issue in their own case can submit an amicus brief in yours. (E.g., *Rashidi v. Moser* (2014) 60 Cal.4th 718 [amicus brief of Michael J. Barger in support of the plaintiff/appellant]; *Loeffler, supra*, 58 Cal.4th 1081 [amicus brief of Carmen Herr, Heidi Spurgin, Mark Hegarty, and Joseph Thompson in support of plaintiff/appellant].) And having submitted several such amicus briefs myself, I can assure you that lawyers dealing with the same issues in their own cases – and whose clients thus have a direct stake in the outcome of your case – may be the most insightful and eager amicus you ever encounter.

While individual lawyers and law firms handling similar cases may be some of your best amicus allies, the difficult part is connecting with them in the first place. For example, although I had been dealing with the same settlement-offset issue in *Rashidi, supra*, in my own practice for years, I did not discover Mr. Rashidi’s pending appeal on the same issue until shortly before oral argument in the Court of Appeal, by which time it was too late to submit an amicus brief. (Fortunately, it was not too late to affect the outcome at the Supreme Court.) Thus, if you are representing a plaintiff in an important issue of widespread significance, alert your colleagues to your pending case through as many channels as possible, including social media, trial-lawyer-association email list serves, and your firm’s webpage. Doing so will help you connect with other plaintiffs’ lawyers facing the same issue.

But regardless of which amicus you target, the most important piece of advice is to start recruiting amicus *early*. Most of the institutional amici have several layers of review amicus requests must clear before they are approved. And given most organizations' limited resources, the less time available to prepare the brief, the harder it will be to obtain their approval. In addition, many institutional amici that might be willing to support your cause will not have any attorneys available to write the brief, and finding a good volunteer brief-writer may take time. And, of course, if your first choice for amicus support is unable or unwilling to help, you will need time to explore backup options. Thus, it is imperative that you start recruiting willing amicus as early in the appellate process as possible. This is especially crucial in federal court, where amicus briefs are due a week after yours.

Coordinate with amicus to avoid overlap

Once you have identified willing-and-able amicus, the next step is to coordinate with them on the content of their amicus brief. The key takeaway here is to avoid overlap; amicus briefs that merely restate the plaintiffs' briefs are useless. Here are a few ways to avoid overlap between your merits briefs and amicus briefs.

First, encourage your amicus to explore information that, although technically outside the record, might nonetheless be relevant to the court's analysis of the issues. The golden rule of appellate practice – if it is not in the record, it does not exist – is most malleable when it comes to amicus briefs. Indeed, courts often listen when amicus present statistical information and other data that may not be in the record of the particular case, but which may be relevant to the matters at hand. (E.g., *People v. Contreras* (2018) 4 Cal.5th 349, 362 [relying on studies presented by amicus “showing that incarceration accelerates the aging process and results in life expectancies substantially shorter than estimates for the general population” in holding that lengthy sentences for nonhomicide offenses may violate the

Eighth Amendment].) Thus, you should encourage your amicus to present statistics or data that are not in the record, but which are hugely significant to the policy question at issue.

Second, encourage your amicus to focus on the practical implications of a ruling for or against the plaintiff in the case. Institutional amici that are dedicated to work in a particular area (e.g., AARP in a life-insurance case, or the National Crime Victims Association in a case involving a violent crime) can often speak intelligently – and authoritatively – to the real-world implications of the legal issues at play. An institutional amicus can help the court understand the on-the-ground problems the defendant's rule would present for others in the plaintiff's position. (E.g., *Taking Offense v. State of California* (Cal., Nov. 6, 2025, No. S270535) 2025 WL 3097904, *22 [“As the California Assisted Living Association articulates, in the health care setting, when an employee tasked with caring for a resident refuses to use that resident's name or pronouns, ‘it communicates to residents that they do not belong, that their dignity is of no value, and that they are individuals who are undeserving of help’”].)

Third, encourage your amicus to present new arguments you may not have had the time or space to raise in your merits briefs. Another golden rule of appellate practice – an argument not raised by the parties is not fair game (*Nellie Gail Ranch Owners Assn. v. McMullin* (2016) 4 Cal.App.5th 982, 997) – proves pliable when the new argument was raised by amicus and the opposing party had an opportunity to respond. (E.g., *Saurman v. Peter's Landing Property Owner, LLC* (2024) 103 Cal.App.5th 1148, 1166–1167 [entertaining argument that standing “is a procedural issue of state law rather than case-or-controversy issue under federal law” that was “raised by amicus for the first time on appeal”].) Indeed, “appellate courts are most likely to consider an issue involving undisputed facts for the first time on appeal where the issue involves important questions of public policy or public concern” (*Duran v. Obesity Research*

Institute, LLC (2016) 1 Cal.App.5th 635, 646), which are precisely the type of cases where amicus briefs are most needed. While the most genuine application of this approach is for amicus to develop the novel argument themselves (as in *Saurman*), the fact remains that an amicus brief may be your last opportunity to get a new argument before the court that you failed to raise in your briefs.

Remember it's not all about you

My final piece of advice for effectively leveraging amicus support in your appellate cases is, paradoxically, to recognize that it's not all about “leveraging” amicus as support for *your* cause.

While most amicus will expressly support one side or another, that does not mean their interests or perspectives are totally coterminous with the party they purport to support. Your amicus may urge the court to adopt a different rule than the one for which you advocate, perhaps to address policy concerns with a broader rule. My advice is to take these nuances in stride, and remember amicus is not there to advocate for your client; they are there to advocate for a broader constituency that may have slightly different interests than your particular client. Trying to stifle amici's voice when they intend to advocate for their constituency's interests risks alienating the amicus whose support may prove outcome determinative in your case.

Instead, to the extent amicus intends to urge the court to adopt a different rule than the one you suggest in your brief, try to encourage amicus to frame their rule in a way that still results in a favorable outcome for your client. Not only will this afford amicus the dignity and respect they deserve, but it will actually enhance your odds of success by giving the court different ways to resolve the case in your client's favor.

How to best serve as amicus

While much of this article has focused on leveraging amicus support for your cases, no piece on amicus briefs would be complete without some tips on how to best serve as amicus yourself. Why might you serve as amicus?

For one, as I alluded to above, at some point you will likely encounter a situation in which a critical issue in one or more of your cases is on appeal in another case. If so, appearing as amicus in that other case may make all the difference in yours.

For another, karma counts. After all, the hardest part of leveraging amicus support is finding lawyers willing and able to write a good brief (typically for free). And I've found that my willingness to provide amicus support for others – either on behalf of my own clients, or on behalf of organizations like AAJ, Public Justice, CAOC, or the Nebraska Association of Trial Attorneys – has given me good karma when I've needed amicus support from others. Put simply, in amicus and life, you get what you give.

Here, then, are three tips for fulfilling your duty as amicus.

My first tip is familiar: Avoid overlap with the party's merits brief. Again, an amicus brief that merely restates the merits brief of the party it supports is a waste of time. Find ways to introduce something new, whether that's something outside the record (e.g., data, scholarship, or statistics), real-world policy considerations, or a new legal argument.

My last two tips are specific applications of the last one: Look for issues the plaintiff has not addressed (or *cannot* address), and don't be afraid to present arguments that vary from (or even *contradict*) the plaintiff's position.

CAOC's amicus brief in *Simple Avo Paradise Ranch, LLC v. Southern California Edison Co.* (2024) 102 Cal.App.5th 281, provides a useful example of the need for amicus to address an issue the plaintiff has not addressed (and *cannot* address).

Simple Avo arose out of the Thomas Fire, one of the many wildfires started by Edison, an investor-owned utility. As the frequent target of lawsuits for utility-caused wildfires, Edison resents the published appellate decisions holding that, in light of their quasi-governmental nature and powers of eminent domain, investor-owned utilities can be held liable for inverse condemnation (which imposes

strict liability when private property is damaged for public good). After unsuccessfully demurring to the inverse-condemnation claim in the mass-tort case arising out of the Thomas Fire, Edison singled out a plaintiff (Simple Avo, an avocado farm), and struck a deal: The parties would enter into a stipulated judgment to pay Simple Avo a significant (but undisclosed) sum to settle its claims, but without prejudice to Edison's right to appeal the denial of its demurrer as to the inverse-condemnation claim. Under the terms of the stipulated judgment, Simple Avo would receive additional money if the Court of Appeal affirmed that ruling on one condition: Simple Avo could not contest whether the stipulated judgment was appealable.

CAOC submitted an amicus brief arguing that Edison is not only subject to inverse-condemnation liability, but that the Court of Appeal lacked jurisdiction over the appeal because the stipulated judgment was not an appealable judgment. The jurisdictional issue was significant to CAOC because, if Edison's stipulated judgment sufficed to create an appealable judgment, it would give defendants in mass-tort cases a veritable blank check to appeal every interlocutory order as a matter of right (rather than having to seek discretionary review by way of a writ petition). After Simple Avo refused to address appealability in its respondent's brief, the court took the rare step of allowing CAOC to provide oral argument as amicus. Although the Court of Appeal found itself bound by Supreme Court authority to hear the appeal (and it ultimately affirmed the denial of Edison's demurrer to the inverse-condemnation claim), it endorsed CAOC's position, and urged the Supreme Court to narrow the rules around stipulated judgments. (*Simple Avo*, *supra*, 102 Cal.App.5th at pp. 295-298.)

Although it proved to be a moot point in that case, *Simple Avo* illustrates that sometimes amicus are the only ones who can advocate for consumer interests in a particular case.

CAOC's amicus brief in *Saurman*,

supra, 103 Cal.App.5th 1148, illustrates that sometimes being a good amicus for a plaintiff means contradicting the plaintiff's position.

Saurman arose when a disabled woman stumbled over a barrier at a restaurant and suffered fatal injuries. Because the barrier was not ADA-compliant, the decedent's family sued the restaurant, seeking an injunction directing the restaurant to remove the barrier. Citing the U.S. Supreme Court's decision in *City of Los Angeles v. Lyons* (1983) 461 U.S. 95, and its progeny, the restaurant argued that a person lacks standing to seek an injunction unless it is likely to encounter the challenged conduct in the future. And because the decedent was (obviously) unlikely to encounter the barrier in the future, and because her family were not disabled, the restaurant argued that none of them had standing to seek an injunction to remove the barrier. The trial court agreed, and sanctioned the plaintiffs' attorneys \$90,000 for bringing the case.

The plaintiffs appealed the rulings. In their appellate briefs, the plaintiffs argued that "*federal common law, and not California law, determines ... standing for ADA claims.*" (Capitalization omitted, italics added.) CAOC submitted an amicus brief arguing the *exact opposite* – that California law, not federal law, governs standing for ADA claims brought in California state court. This distinction proved crucial: While virtually every federal court to consider the issue held that the U.S. Supreme Court's decision in *Lyons* prevented the heirs of a deceased person from seeking an injunction to remove a barrier in violation of the ADA, CAOC's amicus brief explained that *Lyons* was a byproduct of Article III to the U.S. Constitution, and that Article III's standing requirements do not apply to state courts. And CAOC explained that, unlike *Lyons* and its progeny, California law (sensibly) permits anyone who has been adversely affected by an unlawful practice to enjoin it so long as it is likely to cause harm to others.

The Court of Appeal took the rare step of inviting CAOC to present oral

argument, and ultimately adopted CAOC's position that, contrary to the plaintiff's position, California state law, not federal law, determines standing for ADA claims. (*Saurman, supra*, 103 Cal.App.5th at p. 1155 ["It appears that a successor in interest does not have standing in a federal court to bring an ADA claim for injunctive relief. [Citation omitted.] But whether or not a plaintiff has standing to commence an ADA claim in a California state court is determined by state law rather than federal law"].)

Saurman illustrates that sometimes

the best thing amicus can do for the plaintiff in a particular case – let alone consumers generally – is to have the courage to contradict the plaintiff.

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