

## Insurance Institute of Kentucky (“IIK”)

### Memorandum

To: Those Interested in Submitting an Application for an Amicus Curiae Brief

From: IIK Standing Committee on Amicus Curiae Briefs

Subject: Memorandum Discussing IIK Policies and Procedures for Filing IIK Amicus Curiae Briefs

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This memorandum discusses the IIK policies and procedures for filing an IIK amicus curiae brief. It also discusses the preparation of an IIK amicus brief, from submission of an application to the filing of the brief, and offers suggestions that should be considered when drafting the application and the proposed brief.

The information in this memorandum is organized as follows:

1. The IIK Standing Committee on Amicus Curiae Briefs
2. The Process for Board Approval of IIK Amicus Curiae Briefs
3. When IIK Amicus Briefs May Be Filed
4. Timeline: From Application through Filing the Brief
5. Printing and Filing the IIK Amicus Brief
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### **1. The IIK Standing Committee on Amicus Curiae Briefs.**

The IIK Standing Committee on Amicus Curiae Briefs (“Standing Committee”) was established as a standing committee in 2011.

The Standing Committee is composed of five members. The IIK Chairperson appoints each Standing Committee member for a three year term and, from among those members, appoints the chair of the Standing Committee for a one year term.

### **2. The Process for Board Approval of IIK Amicus Curiae Briefs.**

All proposed IIK amicus briefs must be reviewed and authorized by the Standing Committee.

The Standing Committee has important functions:

The Standing Committee reviews applications for amicus briefs and provides its recommendation to the Board on whether an application should be accepted. The Board considers, but is not bound by, the Standing Committee’s recommendation; and

If the application is accepted by the Board, the Standing Committee reviews the proposed brief, requests revisions, and determines whether the final version of the brief meets IIK standards.

If the application is accepted by the Board, the Standing Committee coordinates the preparation of the proposed amicus brief with the drafters.

Once the Standing Committee approves the draft brief, it may be filed.

### **3. When IIK Amicus Briefs May Be Filed.**

IIK files amicus briefs sparingly and only when a brief (a) constitutes a significant contribution to the Court’s consideration of the legal issues affecting the insurance industry, and (b) is of high professional quality.

An IIK amicus brief will be authorized only at an appellate level and generally only in the highest court in which the issue is likely to be finally determined.

Although IIK amicus briefs are usually filed after a court has agreed to hear the case on the merits, filing at the petition or other appellate stage may be desirable if expression of the IIK’s position may be an important factor in the court’s determination of whether the case warrants appellate review. Filing at such stage, however, does not commit the IIK to filing at the merits stage.

### **4. Timeline: Application through Filing of the Brief.**

IIK amicus briefs are public communications to the courts, the press, the public and the IIK members. Every effort should be made, therefore, to ensure that there is sufficient time for

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thorough consideration of an application and proposed brief by the Standing Committee and the Board. Accordingly, as soon as an entity begins to consider whether an amicus brief should be filed in a matter, it should complete an Application Form which can be found on IIK’s webpage at [www.iiky.org](http://www.iiky.org) and email it to the Standing Committee at [amicus@iiky.org](mailto:amicus@iiky.org).

Six weeks is the standard time needed from submission of an application through filing an IIK amicus brief.

- Step one:
  - Application is submitted to [amicus@iiky.org](mailto:amicus@iiky.org) and reviewed by the Standing Committee.
  - The Standing Committee recommends whether Board should accept or decline the application.
  - The Board should vote on whether to accept or decline the application. A majority is all that is needed to accept the application. Members may allow another person within their respective companies to serve as a proxy with regards to the vote. Additionally, if a member so chooses, it may allow another member of IIK to serve as a proxy with regards to the vote.
  - The Standing Committee informs the entity requesting the brief whether the application is accepted or declined by the Board.
  - If the application is accepted, the Standing Committee will select the counsel responsible for drafting the brief.
- Step two:
  - Drafters submit a draft of proposed brief and the Standing Committee reviews it and sends requests for revisions to the drafters, if any.
- Step three:
  - The Standing Committee asks the drafters to have the brief printed and filed with the court.

Step two can be completed as many times as necessary.

Sufficient time must be allotted for the Standing Committee to review each draft, schedule conference calls to discuss the draft and send its comments to the drafters, and for the drafters to revise the drafts.

### **5. Printing and Filing the IIK Amicus Brief.**

After the brief is approved by the Standing Committee, the Standing Committee Chair will notify the drafters that the brief may be printed and filed.

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The drafters are responsible for compliance with all court rules, including, where required, obtaining consent of the court or the parties, or submission of a motion for leave of the court to file an amicus brief.

The drafters are responsible for contracting with a printer, and for having the brief printed, filed and served as required under the relevant court’s rules.

After the brief is printed, the drafters must send a scanned version to the IIK at [amicus@iiky.org](mailto:amicus@iiky.org) so that the brief may be posted on the website, if warranted.

### **6. Tips for Drafting the IIK Amicus Brief.**

An IIK amicus brief strives to be, truly, a “friend of the court” brief and to be seen by the court as a resource in its consideration of the issues presented. It is generally not appropriate to include discussion of party positions, legal argument that a party/advocate should be expected to present, or case-specific factual issues unless they are directly relevant to the discussion of the issue. The IIK amicus brief should be drafted in a respectful tone.

An IIK amicus brief is very different from the typical appellate brief in both content and tone. It is essential, therefore, that time be allocated for the Standing Committee’s review of drafts, and that the drafters be available to prepare revisions within tight time frames.

Accuracy is critical in every aspect of an IIK amicus brief. It is essential that an opinion be cited for no more than what can be found in the plain language of the opinion. For example, if a court discussed a case in a footnote, the brief should not say that the court “relied on” the case; rather it should state that the court “noted” the case.

For any case cited in an IIK amicus brief, the court must be able to check the cited case, have no disagreement as to the IIK description of the case and, perhaps, have no hesitation in using the IIK’s description in the court’s opinion.

In quoting from an opinion, pieces of the opinion should not be rearranged to make a statement that is not in the opinion.

If a commentary says that research “indicates,” that is the word that must be used.

Bottom line: IIK amicus briefs may be posted on the IIK website and/or quoted in the press. Accordingly, its accuracy must be beyond dispute.

### **7. Contact Information.**

For additional questions or information regarding the Application Form or the Amicus Brief Policy and Procedures, please email [amicus@iiky.org](mailto:amicus@iiky.org).