

NCLM POLICY REGARDING *AMICUS CURIAE* PARTICIPATION

As a part of its judicial advocacy program, the League will file *amicus curiae* briefs in a limited number of strategic cases before the appellate courts in accordance with the following policy.

CRITERIA FOR *AMICUS* PARTICIPATION

1. MAGNITUDE OF THE CASE. The program is intended to present and support the municipal viewpoint in the most significant cases on appeal in the North Carolina courts¹. The principal consideration for the filing of an *amicus* brief is whether the case has substantial statewide implications for municipalities, with emphasis on the substance and import of the issues presented, whether the issues impact core municipal principles, and whether the issues have significant operational, policy, or legal implications that are best raised by an *amicus* rather than a party in interest.
2. VENUE. The League primarily reserves its participation for cases before the North Carolina Supreme Court. The League will consider filing *amicus* briefs in the North Carolina Court of Appeals only in those cases determined to be of the highest import or strategic value.
3. TIME AND RESOURCES. The League must weigh whether there is sufficient time and staff availability to prepare an *amicus* brief with in-house resources. If not, consideration will be given to the availability of funds to pay for the preparation of a League brief by a qualified firm (see *Use of Outside Counsel and Fees*) or the availability of qualified counsel willing to prepare the brief on a *pro bono* basis.
4. OTHER CONSIDERATIONS. Other factors to be considered are the likelihood that League participation would have an impact on the outcome of the case; whether there are overarching political or strategic concerns with participating in the case; and whether the issues are narrow and/or specialized enough that referral to another statewide association specializing in such issues is more appropriate. In all instances, the best interests of the cities, towns, and villages of North Carolina, and of the League, will be the final basis of decision as to participation in the case.

SUBMISSION OF REQUEST

Amicus participation should be requested by counsel for the member municipality.² Counsel must submit the request form and sufficient supplemental material and analysis to help inform the General Counsel's recommendation on participation. To preserve the core integrity of its *amicus* program in the eyes of the courts, the League does not file briefs with arguments that are purely duplicative of those in a party's brief or that rely solely on public policy arguments. Accordingly, requesting counsel should demonstrate that the arguments in the League's *amicus* brief would be predominantly legal in nature--with policy arguments of a supplemental nature--and that the arguments would be sufficiently distinguishable from those of the party supported.

¹ Some illustrative cases include *City of Asheville v. State of North Carolina* (challenge to involuntary legislative transfer of city-owned water system); *Homebuilders Assoc. v. City of Charlotte* (authority to impose user fees; broad construction of municipal authority); *King v. Town of Chapel Hill* (broad interpretation of municipal police power); *Maready v. City of Winston-Salem* (authority for economic development incentives); *Moore v. Knightdale Board of Elections* (challenge to resign to run statute).

² The League may, in its discretion, accept requests originating from a non-member (e.g. a county, a consortium of employers, a local government organization, a state agency) if the case is of direct significance to the municipal membership. Such cases are subject to the criteria and procedures specified in this policy but may be given a lower priority than direct member requests.

TIMING AND ADVANCE NOTICE

The rules of appellate procedure impose strict deadlines for the submission of an *amicus* brief, and it is imperative that the League receive notice of cases for which an *amicus* request may be forthcoming as early as possible in the process. Attorneys should make diligent efforts to begin discussions with the League's General Counsel or staff, preferably during the course of the litigation stage.

DECISION ON AMICUS PARTICIPATION

The League's General Counsel, in consultation with staff, will review the case and prepare a recommendation to be forwarded to the League's Executive Committee for an expedited review.³ After consideration of the recommendation and the criteria set forth in this policy, the Executive Committee may grant or deny the request, or may make participation contingent upon certain conditions, such as docketing of the case for review in a particular court or the securing of outside counsel. Decisions of the Executive Committee are final and will be timely reported to the full Board of Directors.

USE OF OUTSIDE COUNSEL AND FEES

If the League is not in a position to write the *amicus* brief with its limited in-house resources, the General Counsel may recommend the use of outside counsel. Where outside counsel is deemed necessary, *amicus* participation may be conditioned upon the requesting entity's payment of some or all of the associated costs. The General Counsel is authorized to manage any amounts budgeted by the League for outside *amicus* counsel and, provided that sufficient funds have been budgeted and remain available for this purpose, may determine a reasonable cost-share arrangement between the League and the requesting entity. In all cases in which outside counsel prepares the brief, the General Counsel and staff will advise on the scope of the desired contents and thoroughly review and edit the final product before filing.

FEDERAL CASES

Due to staff and financial limitations, the League does not have an *amicus* program active in the federal courts (i.e. a program wherein the League initiates its own filings). The requesting party will be encouraged to contact national organizations with federal *amicus* programs, such as the International Municipal Lawyers' Association (IMLA), the State and Local Legal Center (SLLC), or the National League of Cities (NLC). In cases of the highest import, the Executive Committee may authorize the League to sign on to the brief of another organization or to a brief that has been prepared by outside counsel at no expense to the League.

REFERRAL TO TECHNICAL ASSISTANCE PROGRAM

Subject to staff capacity, the League reserves the right to offer legal technical assistance to help prepare and position appropriate cases for success on appeal, in lieu of formal *amicus* participation.

Approved by the NCLM Board of Directors
May 3, 2018
