

MEMO# 36014

February 6, 2025

ICI Draft Comment Letter on Federal Rule of Appellate Procedure 29 (Brief of an Amicus Curiae); Comments Due to ICI by February 12

[36014]February 06, 2025TO:SEC Rules CommitteeRE:ICI Draft Comment Letter on Federal Rule of Appellate Procedure 29 (Brief of an Amicus Curiae); Comments Due to ICI by February 12

In August 2024, the Committee on Rules of Practice and Procedure of the Judicial Conference of the United States proposed amendments to Federal Rule of Appellate Procedure 29, which would alter the procedures (including disclosure requirements) for filing amicus curiae ("friend of the court") briefs.^[1] The goal of the amendments is to promote the integrity of court processes and rules by enhancing required disclosures about an amicus curiae and making other procedural changes.^[2]

ICI occasionally files amicus briefs in litigation affecting the fund industry and investors generally. Several of the proposed amendments are, in our view, unobjectionable, relating to matters such as length, content, and form of filings. However, the proposed amendments also would:

- "Disfavor" an amicus brief that either does not "bring...to the court's attention relevant matter not already mentioned by the parties" or is "redundant with another amicus brief."
- Eliminate the ability of litigants to consent to amicus filings and require amici to obtain court permission to file briefs.
- Require an amicus brief to disclose whether a party, its counsel, or any combination thereof, has contributed or pledged to contribute 25% or more of the total revenue of the amicus for its prior fiscal year.

In our draft comment letter (linked below), we object to these three proposed amendments. Collectively, these changes would create new and unjustified obstacles for amici curiae to file briefs. Further, the proposal would compel speech in briefs, potentially chilling First Amendment speech and associational rights. Ultimately, these changes could lead to fewer amicus briefs and less informed judicial decisions.

Please provide any comments to me (matt.thornton@ici.org) by Wednesday, February 12 (COB). We intend to submit our letter on February 14; comments are due by February 17.

Matthew Thornton
Associate General Counsel

Notes

[1] *Preliminary Draft, Proposed Amendments to the Federal Rules of Appellate and Bankruptcy Procedure, and the Federal Rules of Evidence*, Prepared by the Committee on Rules of Practice and Procedure Judicial Conference of the United States, August 2024 ("Preliminary Draft"), available at <https://www.uscourts.gov/file/78921/download>.

[2] "In October 2019, after learning of a bill introduced in Congress that would institute a registration and disclosure system for amici curiae like the one that applies to lobbyists, the Advisory Committee [on Appellate Rules] appointed a subcommittee to address amicus disclosures." Preliminary Draft at 11.

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