



## **Massachusetts Municipal Lawyers Association**

*“Dedicated to Effective Local Government Through the Advancement of Municipal Law”*

### **MMLA Policy on Amicus Curiae Briefs**

The Massachusetts Municipal Lawyers Association (“MMLA”) receives many requests to participate in drafting and filing an amicus brief. The MMLA recognizes that amicus briefs can be a powerful tool in advancing and advocating for municipal interests, and that amicus briefs are an important method for alerting the courts to broadly held municipal principles and priorities in appropriate cases. MMLA members are encouraged to submit requests for amicus briefs.

When a request for an amicus brief is received by MMLA, the request shall be submitted to the MMLA Amicus Committee for review and recommendation to the MMLA Executive Board. After receipt of the Amicus Committee’s recommendation, the MMLA Executive Board may authorize the preparation and filing of an amicus brief. In accordance with the MMLA Bylaws, a majority vote of the members of the Executive Board present and voting, excluding those serving ex officio, shall be required to authorize the filing of any amicus brief on behalf of MMLA.

The criteria which the MMLA Amicus Committee and MMLA Executive Board consider in deciding whether to file such a brief include the following which are illustrative and not necessarily applicable to all requests. They are numbered only for reference and not by order of priority:

1. Is the case at an appropriate appellate level?
2. How many amicus briefs has the Association filed recently, with the thought being that the Association wants the courts to look at our briefs with an eye toward quality and not quantity of amicus brief filings?
3. Does the case reflect an issue of concern to a substantial number of municipalities?
4. Does the case present legal issues likely to arise in other communities or does it present issues that are more fact intensive in nature, with particular facts which are determinative to the outcome?
5. Is the issue or case one of significant importance or impact on municipalities?
6. Has the municipality itself filed a brief?
7. Does the municipality want the MMLA to file an amicus brief?

8. Is the position of the municipality requesting the amicus brief consistent with the position which the MMLA Executive Board believes a substantial majority of municipalities would adopt?
9. Does the language or logic of the brief on behalf of the municipality fully and adequately address how the decision might affect other municipalities? Would MMLA's brief be merely a "me too" brief in that it would essentially reiterate and support what the municipality's brief says?
10. How likely is it that the issue will reoccur?
11. Has the issue been resolved in prior decisions/
12. Has the request for an amicus been made by a member in good standing of the MMLA?
13. Have organizations supporting the opposing interests filed or are they likely to file an amicus brief on behalf of the opposing interests?
14. Have organizations supporting the municipality filed or are they likely to file an amicus brief on behalf of the municipality?
15. Is there enough time and human resources available (remember the authors of the brief are uncompensated) to write a brief which the MMLA can be proud to file?
16. Do other unique factors not addressed above favor or oppose the filing of an amicus brief in the case presented?

In considering whether to file an amicus brief, the Amicus Committee and Executive Board should not be deterred from filing an amicus brief in a matter that concerns controversial issues of public policy, which may include moral, economic, social and political factors, if the legal issue presented satisfies the other criteria of this policy. Although the foundation of any consideration to file an amicus brief should be the legal issues presented, consideration may be given to these and/or other unique factors not addressed in this policy which favor or oppose the filing of an amicus brief in the case presented. If appropriate, the existence of these and/or other unique factors may be addressed in a footnote in the amicus brief.

17. Any member, including any Executive Board member and the Executive Director, may request and advocate for the filing of an amicus brief. Members (including Executive Board members and the Executive Director) may be present at an Executive Board meeting to make a presentation and answer questions by members of the Executive Board in connection with an amicus request. However, members (including Executive Board members and the Executive Director) may not participate in or be present during the actual deliberations by the Amicus Committee or the Executive Board concerning the merits of, or consideration of, or voting upon, whether to file an amicus if that person, or that person's law firm or employer, represents, or is affiliated with, one of the parties in the case. The Executive Board will vote to conclude the presentation and question and answer period and excuse the member from the room prior to deliberating about and voting on the member's amicus request.

18. Any amicus brief filed by the MMLA in response to a request by an Executive Board member or the Executive Director shall include a Statement of Interest that contains an appropriate disclosure, including, as applicable, of the Executive Board Member's or Executive Director's relationship to the case and the extent of his or her participation/lack of participation in the MMLA's decision-making with regard to the filing of the brief. See, e.g., [Aspinwall v. Phillip Morris Cos.](#), 442 Mass. 381, 385 n.8 (2004) ("A full and honest disclosure of the interest of amici is crucial to the fairness and integrity of the appellate process. Briefs of amicus curiae are intended to represent the views of non-parties; they are not intended as vehicles for parties or their counsel to make additional arguments beyond those that fit within the page constraints of their briefs."); [Champa v. Weston Pub. Schools](#), 473 Mass. 86, 87 n.2 (2015) ("ill-advised" for a partner in law firm that was counsel for one party to file a separate amicus brief).

*Adopted by CSTCA Executive Committee: February 7, 2008.*

*First Amendment Adopted by MMLA Executive Board: \_\_\_\_\_, 2013.*

*Second Amendment Adopted by MMLA Executive Board: April 11, 2019.*

*Third Amendment Adopted by MMLA Executive Board: December 10, 2020.*