



*State of New York
Court of Appeals*

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NOTICE TO THE BAR
REQUEST FOR PUBLIC COMMENT
RULES OF PRACTICE – AMICUS CURIAE

March 15, 2024

The Court is considering amending its Rules of Practice relating to amicus curiae relief. The Court invites comment from the Bar and all other interested parties on such changes. Comments may be sent by e-mail before April 15, 2024 to: COAPublicComment@nycourts.gov

Timing of Amicus Curiae Requests- Rule 500.23(a)

Rule 500.23(a) provides that any nonparty other than the Attorney General seeking to file an amicus brief on an appeal, certified question or motion for leave to appeal must obtain permission by motion. The Court will retain this Rule but, as detailed below, is evaluating specific provisions relating to the timing of motions seeking amicus curiae relief.

Rule 500.23(a)(1)(iii) provides:

Amicus curiae relief on normal course appeals and normal course certified questions. The motion shall be noticed for a return date no later than the Court session preceding the session in which argument or submission of the appeal or certified question is scheduled.

Proposed Change: The motion shall be served no later than 15 days after the filing date set for appellant's reply brief.

Rule 500.23(a)(2) provides:

Amicus curiae relief on appeals and certified questions selected for review by the alternative procedure. The motion must be noticed for a return date no later than the filing date set for respondent's submission.

Proposed Change: The motion shall be served no later than 15 days after the filing date set for respondent's submission.

Rule 500.23(a)(3) provides:

Amicus curiae relief on motions for leave to appeal in civil cases must be noticed for a return date as soon as practicable after the return date of the motion for permission to appeal to which it relates.

Proposed Change: The motion must be served within 7 days after the return date of the motion for permission to appeal to which it relates.

Timing of Amicus Filings by Attorney General

The Court is also considering amending the corresponding timing provisions relating to amicus curiae filings by the Attorney General.

Rules 500.12, 500.11 and 500.23(b)(1) provide:

The Attorney General may file as amicus curiae without a motion no later than the filing date set for respondent's brief on appeals and certified questions and on or before the return date of a motion for permission to appeal.

Proposed Changes:

The Attorney General may file as amicus curiae without a motion no later than 15 days after the filing date set for appellant's reply brief on normal course appeals and certified questions; no later than 15 days after the filing date set for respondent's submission on appeals and certified questions selected for alternative review; and no later than 7 days after the return date of a motion for permission to appeal.

New Provision – Recusal or Disqualification

Other jurisdictions have adopted rules relating to the denial of amicus curiae requests where the filing of an amicus curiae brief would cause a judge assigned to the matter to recuse (*see e.g.* Local Rules of US Ct of Appeals, 2d Cir rule 29.1[a]; Local Rules of US Ct of Appeals, 4th Cir rule 29[a]; *see also* FRAP, rule 29[2]). The Court is considering adding a provision to its Rules that states: "Amicus curiae relief will be denied where acceptance of the amicus curiae submission may cause the recusal or disqualification of one or more Judges of the Court."