

To: Supreme Court Advisory Committee

From: Appellate Rules Subcommittee

Re: Amendment to TRAP 11

Date: July 20, 2017

By letter dated July 5, 2017, the Texas Supreme Court referred the following matter to our subcommittee:

Texas Rule of Appellate Procedure 11. In the attached memorandum, the State Bar Court Rules Committee proposes amendments to Rule of Appellate Procedure 11.

The State Bar Court Rules Committee has proposed the following amendment to TRAP 11:

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) either be in the form of a letter or comply with the briefing rules for responding parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; and
- (d) certify that copies have been served on all parties.

The State Bar Court Rules Committee has proposed the amendment because:

The existing rule states that amicus briefs must comply with the briefing rules for the parties, which requires the amicus to include, at a minimum, a table of contents and authorities, a summary of the argument, and an argument section, as is required for an appellee's brief pursuant to TRAP 38.2. Many times, amicus briefs include additional sections, such as a statement of the issues and a statement of facts consistent with the requirements for an appellant's brief pursuant to TRAP 38.1. The current practice, however, is that many amici submit letters rather than briefs. The proposed changes make clear that (1) an amicus can submit a letter in lieu of a brief; and (2) when submitting a brief, the amicus need only comply with the requirements for responding parties' briefs.

Discussion:

The Appellate Rules Subcommittee discussed the proposed change by conference call on July 20, 2017. By a vote of 5-1, the subcommittee determined that the change, explicitly permitting submission of a letter amicus brief, would be helpful. By a vote of 6-0, the committee recommended that, if adopted, the amendment should be revised to ensure that amicus submissions, whether in letter or brief form, comply with the length limits applicable to the parties.

One member of the subcommittee, Evan Young, “advocates the additional requirement that letter briefs must be no longer than 1000 (or perhaps even 750) words, or three pages for parties not bound by word limits. In that member's view, amicus submissions longer than that should comply with ordinary briefing requirements, including line spacing and font size, which should simultaneously encourage shorter filings and make longer filings easier for the court to read.”

Appellate Rules Subcommittee proposed modification of Court Rules Committee proposal:

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) either be in the form of a letter or comply with the briefing rules for responding parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; ~~and~~
- (d) certify that copies have been served on all parties; ~~and~~;
- (e) certify compliance with the length limits of Rule 9.4(i) applicable to a responding party at that stage of the proceeding.

February 14, 2017

Via Email

Chief Justice Nathan L. Hecht
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711
nathan.hecht@txcourts.gov

Justice Jeffrey S. Boyd
Supreme Court of Texas
PO Box 12248
Austin, Texas 78711
jeff.boyd@txcourts.gov

Dear Chief Justice Hecht and Justice Boyd:

On behalf of the State Bar of Texas Court Rules Committee, I am pleased to submit the attached proposal for amendments to Rule 11 of the Texas Rules of Appellate Procedure. Please do not hesitate to contact me if you have any questions or concerns about the proposal.

Respectfully submitted,



Kennon L. Wooten
Chair, State Bar Court Rules Committee

Encl.

CC (via email):

Martha Newton, Rules Attorney, Supreme Court of Texas – martha.newton@txcourts.gov
Giana Ortiz, Vice-Chair, State Bar Court Rules Committee – gortiz@ortizlawtx.com

STATE BAR OF TEXAS COURT RULES COMMITTEE

PROPOSED AMENDMENT TO RULE OF APPELLATE PROCEDURE 11

I. Exact language of existing Rule: TRAP 11

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) comply with the briefing rules for parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; and
- (d) certify that copies have been served on all parties.

II. Proposed changes to existing rule:

An appellate clerk may receive, but not file, an amicus curiae brief. But the court for good cause may refuse to consider the brief and order that it be returned. An amicus curiae brief must:

- (a) **either be in the form of a letter or** comply with the briefing rules for **responding** parties;
- (b) identify the person or entity on whose behalf the brief is tendered;
- (c) disclose the source of any fee paid or to be paid for preparing the brief; and
- (d) certify that copies have been served on all parties.

III. Brief statement of reasons for requested change and advantages to be served by proposed new rule:

The existing rule states that amicus briefs must comply with the briefing rules for the parties, which requires the amicus to include, at a minimum, a table of contents and authorities, a summary of the argument, and an argument section, as is required for an appellee's brief pursuant to TRAP 38.2. Many times, amicus briefs include additional sections, such as a statement of the issues and a statement of facts consistent with the requirements for an appellant's brief pursuant to TRAP 38.1. The current practice, however, is that many amici submit letters rather than briefs. The proposed changes make clear that (1) an amicus can submit a letter in lieu of a brief; and (2) when submitting a brief, the amicus need only comply with the requirements for responding parties' briefs.