

NDRN POLICY FOR REVIEWING *AMICUS* REQUESTS

Adopted by the NDRN Board of Directors March 27, 2019

As the membership organization of the P&A and CAP network, NDRN is frequently asked to sign onto or file amicus briefs in support of a party. The following policy and procedures are adopted to govern when NDRN will file a brief as an amicus.

A. Amicus Requests

- 1) When NDRN is requested to *sign onto* an amicus brief, the Board delegates initial review of the request to its Legal Committee. The Legal Committee is composed of the members of the Legal Strategies Subcommittee of the Technical Assistance Work Group.
- 2) The organization making the request must provide the Legal Committee with the following written information:
 - a) the issues on appeal;
 - b) a statement outlining the facts of the case;
 - c) a brief discussion of the case=s procedural history (including which court the brief will be filed in);
 - d) the arguments that the brief will make;
 - e) why the case is important to people with disabilities;
 - f) the name and number of a contact person;
 - g) whether the amicus brief will be a coalitional effort and if so, what other organizations are being approached to sign onto the brief; and
 - h) what organizations may oppose the arguments being made in the brief.

The organization must also provide a hard copy of the decision being appealed and any briefs already filed. In some instances, the organization may also be asked to make a brief presentation during the regularly scheduled Legal Committee conference call.

3) When NDRN is requested to *draft* a brief or *find* a pro bono attorney to draft the brief on behalf of NDRN as lead amicus, the organization making the request must provide the information outlined above, except that, instead of (A)(2)(d), the organization must outline the arguments that it would like NDRN to make in the brief.

4) The Legal Committee must have adequate time to review the request to participate as *amicus*. When NDRN is asked to write a brief or find a pro bono attorney to write the brief, NDRN will require more time to review the request than when it is being asked to sign onto a brief authored by another organization.

- a) In the case where NDRN is asked to *sign onto* a brief written by another organization, a minimum of a 30 days notice prior to the brief being due is requested.
- b) In the case where NDRN is asked to *draft* a brief, a minimum of a 60 day notice prior to the brief being due is requested.

B. Initial Legal Committee Consideration of Amicus Requests

- 1) The Legal Committee shall consider the following factors when deciding whether to review a draft of an amicus brief for sign-on purposes:
 - a) Whether the issue is compatible with the NDRN mission statement.
 - b) Whether the issue has precedential value and affects clients served by Protection and Advocacy Systems or Client Assistance Programs?
 - c) Whether the filing of the brief has an impact on the decision the court will reach and/or may enhance the likelihood of winning.
 - d) Whether the filing of the brief would provide a perspective or information that is not already in the main appellate brief.
 - e) Whether the Legal Committee has sufficient resources to review the request.
 - f) Whether the Legal Committee members, or their designees, have subject matter expertise in the area we are being asked to support.
 - g) Whether the brief to be filed in the Supreme Court of the United States, the Circuit Courts of Appeal or the highest court in a state.
 - h) Is the brief an amicus brief in support of a cert petition to the US Supreme Court? If so, NDRN should not review the brief *unless* the case has a direct and substantial impact on P&A work.
- 2) The committee will give special consideration to and will normally recommend participation in cases at the District Court level where interpretation of a P&A statute or regulation is at issue or being challenged.
- 3) The Committee will consider the role of the local P&A in the case. Special consideration will be given to cases brought by the P&A or where the P&A is a party. If the case is not brought by the P&A, the local P&A will be given an opportunity to comment on NDRN participation. In cases in a circuit court of appeals, and where time permits, the Committee will notify all P&As in the circuit.
- 4) Upon completion of its review, the Committee will make a recommendation to the President of the NDRN Board whether or not NDRN should participate in the case as an amicus, and if so under what terms. The President may seek input from the Executive Committee as appropriate, and, if not a lawyer, may seek advice from qualified counsel. The President shall make the final determination regarding participation.

C. Legal Committee Procedure for Review of Amicus Brief

- 1) If the Board President determines that the brief is one in which NDRN will participate as *amicus*, the Legal Committee Chair shall assign at least two Legal Committee members to review the brief.
- 2) Legal Committee reviewers must have adequate time to review the brief and provide comments concerning the substance of the brief. If a brief is being filed with the U.S. Supreme Court and/or is drafted by a pro bono lawyer on behalf of NDRN as the primary amicus, NDRN reviewers must receive a draft of the brief at least ten (10) days before production of the brief is completed. For all other briefs, a minimum of five (5) days prior to the brief being due is requested. If the drafters are not going to be able to meet the five-day requirement, NDRN' Amici Coordinator will:
 - a. Try to obtain an outline, talking points, or whatever draft is available at that time so that reviewers have sufficient time to make substantive comments before the filing deadline.
 - b. Contact the individual reviewers to see if they can review the brief in an expedited time period. If they cannot, NDRN will NOT sign onto the amicus brief.
- 3) NDRN Staff will send each reviewer the brief and the information contained in (A)(1) above. The reviewer will be responsible for completing the form that the Committee has adopted for making *amicus* recommendations and returning it to NDRN staff.
- 4) Reviewers may NOT recommend that NDRN sign onto/file an amicus brief unless the following two minimal requirements are met:
 - a. The brief should accurately portray the state of the law.
 - b. The brief should use people-first language.
- 5) Reviewers should consider the following factors in determining whether they recommend that NDRN should sign onto/file a brief:
 - a. Whether the logic and argument in the brief is coherent;
 - b. Whether the writer demonstrates a basic level of legal professionalism (grammar, blue book, etc.); and,
 - c. Whether the brief adds anything new to the argument being made by the parties.
- 6) Even if the three factors in (C)(5)(b) above are not met, reviewers should consider whether it is important for NDRN to sign onto the brief for coalitional purposes.
- 7) If reviewers recommend against signing onto/filing the brief and the Board President concurs, NDRN staff will inform the requestor in writing that NDRN has decided not to sign onto the amicus brief and no further action shall be taken.
- 8) If Legal Committee members disagree as to whether NDRN should sign onto/file an amicus brief, the Legal Committee Chair shall assign a third reviewer to make a recommendation. The recommendation of a majority of the reviewers will be given to the NDRN President.