

**AMICUS CURIAE BRIEF POLICY**

The Kansas Association of Defense Counsel (“KADC”) recognizes the value of amicus curiae briefs in appropriate cases. KADC has created an Amicus Curiae Committee (the “Committee”) to assist in considering amicus curiae participation. The guidelines in this Policy set forth the principles KADC follows in considering amicus curiae participation, the procedures for requesting amicus curiae participation, and the internal procedures for acting on a request for amicus curiae participation. As used throughout, submission of materials or written communications may be satisfied via electronic means. Likewise, votes and communications of the KADC Board of Directors (“Board”) or Committee may be satisfied via telephone, videoconference, or electronic means.

**A. AMICUS CURIAE PRINCIPLES**

1. Independence. Maintaining independence best serves the interest of KADC and its members in furthering a credible and independent amicus curiae program that advances the mission and purpose of KADC. Accordingly, KADC will remain independent of the parties to an appeal, including the person or entity requesting amicus curiae participation (“Requestor”).
2. Issue of Substantial Interest to KADC. An amicus curiae request will be considered only at the appellate level, barring exceptional circumstances. Before KADC will participate as amicus curiae, the case must concern one or more issues of substantial interest to KADC. A case may concern an issue of substantial interest to KADC if the case is pending in a Kansas appellate court, the Tenth Circuit Court of Appeals, the United States Supreme Court or in a federal district court certifying a question of Kansas state law and such case concerns:
  - (a) a matter of interest to the defense bar or defense practice;
  - (b) the independence or integrity of the judiciary or the bar; or
  - (c) the effectiveness or accessibility of the legal system.
3. Matter of Interest to the Defense Bar or Defense Practice. A matter of interest to the defense bar as set forth in Section A.2(a), above, may include, but is not limited to, personal injury, property damage, tort liability or remedy, class action, commercial litigation, civil procedure, judicial administration, professional responsibility, insurance or workers compensation. Attempts at substantial alteration of existing principles of law by statute or judicial action and, particularly, constitutional questions in these areas are of greater interest. Factual situations which are, by their nature, *sui generis* are of lesser interest.

4. Necessity of Amicus Curiae Brief. To participate in amicus curiae briefing, the case must present an opportunity for KADC to make meaningful and original arguments that could result in a contribution to jurisprudence. The Committee will consider the necessity of an amicus curiae brief by considering, *inter alia*, whether any brief already filed with the court provides the court with an accurate and thorough analysis of the particular issue of interest to KADC. KADC will generally decline to participate as amicus curiae where the issue of interest to KADC is already fully developed by any such brief.
5. Brief Standards. The Committee will ensure that any amicus curiae brief filed on behalf KADC is of high quality. The Committee may decline to recommend participation as amicus curiae or may decline to file a completed amicus curiae brief in any situation where lack of time or other considerations may compromise or has compromised the quality of the brief or where the points raised in such brief are not consistent with the mission and purpose of KADC.
6. Request from Appellate Court. KADC will honor an appellate court's request for an amicus brief, barring exceptional circumstances.

## **B. PROCEDURES FOR REQUESTING AMICUS CURIAE PARTICIPATION**

1. Submitting Request Form and Underlying Dispositive Ruling. The Requestor will complete in its entirety the KADC Amicus Curiae Request Form ("Request Form") and submit it, along with the underlying dispositive ruling subject to review, to: (1) the Chair of the Committee ("Chair"); and (2) the KADC Executive Director.
2. Submitting Additional Required Materials. In addition to submitting the Request Form and the underlying dispositive ruling, the Requestor will submit, as they become available, copies of the Docketing Statement, all appellate briefs filed in the case, and other information as may be requested by the Committee.
3. Necessity of Docketing Statement. The Committee will not make a recommendation to the Board until such time after it reviews the Docketing Statement.
4. Requestor's Compliance with Procedures. A request for amicus curiae brief will not be considered if the Requestor fails to substantially comply with the above-stated procedures for requesting amicus curiae participation.

## C. COMMITTEE AND BOARD PROCEDURES

1. Committee Action on Request. A request for amicus curiae participation will be acted upon at the earliest feasible date by a quorum of the Committee. The Chair, or his or her designee, will notify all members of the Committee of the request and provide each with the Request Form, dispositive ruling and, if available, copies of the Docketing Statement and all appellate briefs to consider what recommendation will be made to the Board. The Committee will confer to reach consensus by majority vote as to whether the request for amicus curiae participation should be granted or declined and, if the consensus is to grant the request, the suggested position KADC should take.
2. Content of Committee Recommendation. Upon obtaining a consensus supported by a majority of the Committee, the Chair will submit a written recommendation to the Board. The recommendation will include:
  - a. A succinct analysis of the issues raised by the case;
  - b. A recommendation as to whether the request for amicus curiae participation should be granted or declined; and
  - c. If the Committee's recommendation is to grant the request,
    - i. the recommended position KADC should take;
    - ii. suggestion of one or more KADC members who would be an appropriate author for the brief, if known to the Committee; and
    - iii. disclosure of the number of amicus briefs submitted by KADC in the fiscal year in which the brief would be filed.
3. Authority to Decide on Request. Upon review of the Committee's recommendation, the Board will decide, by majority vote, whether KADC will participate as amicus curiae. The Board will advise the Chair of the results of the vote and of the Board's sentiment regarding the recommended position KADC should take and an appropriate author for the brief. The Chair will then promptly notify the Requestor of the decision and, if the request is granted, will arrange for a KADC member to author the brief.
4. Emergency Procedure. Where a case appears to concern one or more issues of substantial interest to KADC but the timing of the request is such that submission to and consideration by the full Board is not feasible, the Committee or the Board may recommend that the President of KADC ("President") act upon an amicus curiae request solely for the purpose of granting permission to file an Application to File Amicus Brief ("Application") with the appropriate court. In such circumstances, the President will consult

with the other members of the KADC Executive Committee, if possible, to determine whether such emergency action is necessary or warranted. In the event that the President determines that emergency action under this section is warranted, he or she will promptly inform the Board of the action taken and of the substance of the request so that the Board can consider appropriate action under Section C.3 of this policy. No request for participation will be granted if either the Board or the Committee concludes that a quality brief cannot be prepared in the amount of time available, or if timing of the request would otherwise render impossible or impractical compliance with Kansas Supreme Court Rule 6.06 and amendments thereto.

5. Preparing and Approving the Application and Brief. When preparing the Application and subsequent brief, the author shall collaborate with the Committee to insure that the arguments made in each are consistent with the stated position of KADC and will not compromise the interests of KADC and its members. The author shall circulate a final copy of each to the Chair and the President, or their designee(s), in sufficient time to allow for meaningful review and approval before filing.
6. Signing and Filing the Application and Brief. The Application and brief each will reflect the author's signature and his or her law firm or company signature block but will reflect that the filing is on behalf of KADC (i.e., "Attorney for Amicus Curiae Kansas Association of Defense Counsel").
7. Compensation to Author. For any amicus curiae brief filed on behalf of KADC, KADC will pay to the law firm of the amicus curiae brief's author a flat fee of \$1,000, inclusive of all attorney and support fees, photocopying, binding or other costs or expenses the author or his or her law firm or company may have incurred. The Committee has discretion as to whether to pay for a brief prepared on behalf of KADC, but not filed, whether because of the quality of the brief or other reasons.



### AMICUS CURIAE BRIEF REQUEST FORM

The Kansas Association of Defense Counsel's Amicus Curiae Committee and its Board of Directors evaluate potential amicus curiae participation on appellate matters involving issues of substantial interest to KADC. If you would like KADC to consider preparing and filing an amicus brief, please complete this Request Form in its entirety, including submitting a copy of the underlying dispositive ruling subject to review and, if available, the Docketing Statement and appellate briefs.

**Amicus Participation Requested By:**

Name \_\_\_\_\_

Law Firm/Organization \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP Code \_\_\_\_\_

Telephone \_\_\_\_\_ Email \_\_\_\_\_

Requestor's relationship to or involvement with the appellate matter, including disclosure of any personal or professional interest or conflict of interest:

**Appellate Case Information:**

Case Caption/Case No.: \_\_\_\_\_

Appellate Court where case is pending: \_\_\_\_\_

District Court where case originated: \_\_\_\_\_

Counsel for Appellant(s): \_\_\_\_\_

Counsel for Appellee(s): \_\_\_\_\_

Briefing deadlines and oral argument date, if known:

Brief recitation of the facts of the case:

**Requested KADC Participation:**

Issue(s) on appeal and specific issue(s) that the requestor asks KADC to address:

Brief statement of the principles of law to be supported, together with an explanation of the reasons this case is appropriate for KADC participation:

Identify any potentially dispositive issues that the appellate court could decide before reaching the issue of substantial interest to KADC:

Identify all KADC Amicus Curiae Committee members or Board members with whom the requestor has communicated regarding this case, if any:

Additional information:

(Optional): Recommend a KADC member who may be appropriate to author the brief:

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(Name) (Law Firm)

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(Phone Number) (Email)

**Submit with this completed Request Form the underlying dispositive ruling subject to review and, if available, copies of the Docketing Statement and appellate briefs filed in the case.** If the Docketing Statement and appellate briefs are not yet available, the requestor shall provide them when they become available. Other materials shall be provided to the Committee if requested.

**Submit to: (1) the KADC Amicus Curiae Committee Chair; and (2) the KADC Executive Director.** Submission may be satisfied via electronic means. The email address for the Committee Chair, Eric Turner, is [eturner@foulston.com](mailto:eturner@foulston.com). The email address for the KADC Executive Director, Brad Parker, is [brad@kadc.org](mailto:brad@kadc.org).