

SUPREME COURT OF ARIZONA
No. R-07-00__

**SUA SPONTE PETITION PURSUANT TO
RULE 28, RULES OF THE SUPREME COURT**

Requested by:

Supreme Court of Arizona
Staff Attorneys' Office

Date:

December 14, 2007

Rule Numbers:

Rule 31.25, Arizona Rules of Criminal Procedure

Subject:

The proposal, as set forth in Attachment A, would amend Rule 31.25(b), Ariz. R. Crim. P., to differentiate between an amicus curiae brief filed in support of a petition for review or a response thereto *before* review is granted, and an amicus curiae brief filed *after* review is granted in any case. The rule, consistent with the 2007 amendments to Rule 16(b), Ariz. R. Civ. App. P, imposes filing and page limitations in each situation. Before review is granted, a brief must be filed 21 days after the response to the petition for review is filed and must not exceed 12 pages. After review is granted, a brief must be filed no later than 10 days after the due date imposed by the Court at the time of granting review for supplemental briefing by the parties and must also comply with the page limitation set for the parties' supplemental briefs.

ATTACHMENT A

ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 31.25. Amicus Curiae

a. **Filing and Form of Brief; Participation in Oral Argument.** [No change in text.]

b. **Time and Length Limits Applicable to Amicus Curiae Briefs in the Supreme Court.** Parties desiring to file an amicus curiae brief shall file such briefs as provided by this rule, except that an amicus curiae brief relating to a special action petition shall be filed as expeditiously as possible after the special action petition is filed, as provided for in Rule 7(g), Rules of Procedure for Special Actions.

(1) Briefs filed prior to a decision by the Court to grant review. Unless otherwise ordered by the Supreme Court, an amicus brief in support of a petition for review or a response to a petition for review accompanied by written consent of all parties, or a motion for leave to file an amicus brief, shall be filed no later than 21 days after the filing of the response to the petition for review. Such briefs shall comply with Rule 6(c) and shall not exceed 12 pages, whether done in proportionately spaced or monospaced typeface, exclusive of any appendix.

(2) Briefs filed after the Court has granted review. After the Court has granted review, and unless otherwise ordered, an amicus brief accompanied by written consent of all parties or a motion for leave to file an amicus brief, shall be filed no later than 10 days after the date ordered by the Court at the time review was granted for filing supplemental briefing by the parties in the particular case. ~~40 days after the Court's order granting review. The brief shall be lodged with the motion, if any.~~ Such briefs shall comply with Rule 6(c) and shall not exceed the page limitation imposed for the parties' supplemental briefs.

(3) Responses to amicus curiae briefs. A party wishing to respond to ~~the an~~ amicus brief shall file the response within 20 days of service of a brief filed with consent, or within 20 days of the Court's order granting a motion for leave to file an amicus brief. The response shall comply with the page and formatting requirements imposed on the particular amicus brief to which it relates.

(4) Late-filed briefs and responses. Leave for filing a late amicus or response brief shall be granted only for good cause shown.

Comment to the 1998 Amendments

Although the 1998 amendments to Rule 15 permit amicus briefs to be filed without leave of court with consent of all parties, amicus curiae should keep in mind the purpose of an amicus brief. As the name implies, an amicus curiae brief should assist

the Court, not advocate a particular litigant's case. Ideally, it should not duplicate the briefs of the parties, nor merely extend the length of a litigant's brief. Rather, it should provide a broader, more abstract presentation of law that is not narrowly tied to the facts of the case. It should provide background and context for the Court's decision. Amicus briefs should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case, or when the amicus can provide information, perspective, or argument that can help the Court beyond the help that the lawyers for the parties have provided.

Additionally, an amicus brief should clearly identify the group or organization sponsoring the brief and the interests of the sponsoring entity in the outcome of the appeal. It should also identify every person or entity, other than the amicus curiae, its members, or its counsel, who made a monetary contribution to the preparation or submission of the brief. Counsel for a party should not be permitted to write the amicus brief in whole or in part.