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AWARENESS, PREVENTION & INNOVATION IN THE AGE OF COVID-19



Nicole Howell (Facilitator)
Executive Director
Empowered Aging

Welcome & Introductions



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Mark your calendars for the **third Thursday of every month** through July 2022!

Each session is scheduled from **12 to 1 PM** PST.



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Sil Vossler

Founder and Principal
Vossler Law Firm

Amicus, What?





What is an Amicus Curiae?

Sil Vossler

The Vossler Law Firm

sil@thevosslerlawfirm.com

510-324-5225



Background - What is Case Law

- **Case Law is Law** that is created by judges decisions, rather than statutes or regulations.
- **Courts Interpret and Apply Statutes** to the facts of cases that appear in front of them. A court of appeals' reasoning and rulings are binding on all future cases in lower courts.
- **All Future Cases** with the same or similar facts will decided by applying the senior court's reasoning.



How Do We, As Non-Parties, Affect Case Law?

- **We can File Amicus Briefs.**
- **Amicus Curiae** literally translates to “friend of the court.” An Amicus Curiae is a non-party to a case who assists a court by offering information, expertise, or insight that bears on important issues presented by a case.
- **The Court has Discretion** over how much weight to give the brief.





Jim Treggiari
Executive Director
Legal Assistance for Seniors

Amicus, What?





IS AN AMICUS CURIAE RIGHT FOR YOUR AGENCY?

James Treggiari

Legal Assistance for Seniors

Jtreggiari@lashicap.org

510-832-3040 x 302



OVERVIEW

- When to consider filing an amicus curiae
- What to consider when evaluating
- How to write and submit
- Following up (legislation, other changes to policy)



WHEN TO CONSIDER FILING AN AMICUS CURIAE BRIEF IN A CASE

- Asked by one of the parties when a case is on appeal.
- They will give you the context of the case and issues that are being considered.
- They will let you know why they think it is important for your agency to weigh in on the issue. Only consider filing a brief if your agency is really an expert in the field and have a unique perspective that might not otherwise be represented in the case.
- Remember, the point is assisting a court by offering information, expertise, or insight that has a bearing on the issues in the case that they might not otherwise get.



IS IT RIGHT FOR MY AGENCY

- **Are we the experts?** Remember, you will need to show the judge that your opinion is worth considering.
- **What are the consequences for our clients if either side wins?** You are making the argument that the decision the judge is going to make has a specific outcome for your clients that is worth considering.
- **You are taking a position on behalf of your clients as an agency,** you may want to run it by your board in case of any unintended consequences.
- **You may wish to have an attorney look over the case and your intended position.** You want to know that you are taking a position that is in lines with the mission and values of the agency.



WHAT TO CONSIDER

- **What is the law that is being appealed.** Just because it involves your population, does not mean the question being asked on appeal will be helped by your opinion.
- **Do you want to be involved in the case?** Be aware of the parties involved. You are taking a public position, are we comfortable with the position being put forth?
- **Are there other agencies that might be better positioned to do the advocacy?**
- **Courts vary in their allowance for amicus curiae filing, so understand if it is worth your time.** One survey found that courts find a large percentage of amicus curiae filings to be unpersuasive, so use sparingly.
- **Are we really the experts** here with an insight into how this will impact clients that the judge may not be considering.



HOW TO WRITE AND SUBMIT

- Generally, effective briefs are concise, speak directly to an issue and be factual in nature. You are not the party in the case.
- You want to make sure you explain your expertise, the impact it will have on your clients. Generally, you do not want to get into the legal arguments unless you are qualified to do so.
- You may want an attorney on your board or outside pro bono to review if you are unsure of the position you are taking.
- The court is considering the authority and soundness of the argument, stick to provable data within your knowledge, do not speculate, as you can lose credibility.



EXAMPLE AMICUS CURIAE

- A financial elder abuse case is making its way through the California Court system. In the case, the superior court ruled in favor of the elder and awarded attorney fees. The Court of Appeals reversed. Now the attorney is appealing to the State Supreme Court, asking them to review and reverse.
- The attorney asked LAS to submit an amicus curiae in support of the motion to review and reverse, highlighting the chilling effect in older adults being able to pursue financial elder abuse claims if the current ruling stands. It is also argued that the ruling goes against the intent of the legislature when they created the law.
- LAS is an expert in elder abuse and has handled thousands of these cases over the past 45 years. We could also speak to how damaging the ruling would be for older adults.



FOLLOWING UP

- The attorney will keep you up to date on any decisions made by the court.
- If the decision is not favorable, explore other options like bringing forward new legislation to modify or expand the law that you are concerned about. It may be a launching point for advocacy.
- Stay in touch with the attorney to see if there are other opportunities to submit other briefs.
- Typically, LAS submits one every year or two.



CONCLUSION

- Amicus Curiae briefs can be a valuable tool to help advocate for the rights of your clients.
- Make sure you understand the case and what you are being asked to advocate for and that your agency is able to submit a brief that will be considered by the judge. It's a lot of work if the judge isn't going to even read it!
- This is one of many ways to create changes in the law and policies, consider the other tools available in deciding how to proceed.





Leza Coleman

Executive Director
California Long-Term Care
Ombudsman Association

Amicus, What?



Advocacy:

The act or process of supporting, pleading for, or recommending a cause or proposal.

SELF ADVOCACY

I CAN
SPEAK UP
FOR
MYSELF

INDIVIDUAL ADVOCACY

I SPEAK UP
ON BEHALF
OF
ANOTHER

SYSTEMIC ADVOCACY*

WE SPEAK ON BEHALF OF
THOSE WHO CAN'T SPEAK
FOR THEMSELVES





Too often, the courts are not informed by those most impacted, the advocates, the consumers, and the providers, those with vital expertise and relevant perspectives. That absence results in missed opportunities to create the best outcomes for our clients!



Where are the older adult and the adult with disabilities advocates?



Contact Information



Sil Vossler

Vossler Law Firm

sil.vossler@gmail.com



Jim Treggiari

Legal Assistance for Seniors

jtreggiari@lashicap.org



Leza Coleman

CLTCOA

lcoleman@cltcoa.org



Q&A DISCUSSION



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THANK YOU!

