

SUPREME COURT OF ILLINOIS

WEDNESDAY, JANUARY 11, 2006

THE FOLLOWING ANNOUNCEMENT IS MADE:

CIVIL DOCKET

No. 100925 - Donna M. Kinkel, etc., appellee, v. Cingular Wireless, LLC, appellant.

Motion by Chamber of Commerce of the United States for leave to file a brief as amicus curiae *instanter* in support of appellant. Motion denied. See Order attached.

SUPREME COURT OF ILLINOIS

CALL OF THE DOCKET, WEDNESDAY, JANUARY 11, 2006

No. 101316 - In re: Peter Deforest Winthrop. Disciplinary Commission.

Oral argument by Warren Lupel for respondent and by Susan Frederick Rhoes for Administrator. Submitted. Agenda 6.

No. 101317 - In re: Joseph A. Martinez-Fraticelli. Disciplinary Commission.

Oral argument by Steven R. Splitt for Administrator and by Jack Toporek for petitioner. Submitted. Agenda 7.

No. 99457 - Ryan Murray et al., appellants, v. Chicago Youth Center, etc., et al., appellees. Appeal, Appellate Court, First District.

Oral argument by Michael T. Reagan for appellants and by William Morgan and Esther Joy Schwartz for appellees. Submitted. Agenda 8.

No. 100261 - Mary L. DeSmet, etc., appellant, v. County of Rock Island, Illinois, et al., etc., appellees. Appeal, Appellate Court, Third District.

Oral argument by Michael W. Rathsack for appellant and by Robert J. Noe and John P. Fleming for appellees. Submitted. Agenda 9.

No. 100372 - Detroy Marshall, Jr., etc., appellee, v. Burger King Corporation et al., appellants. Appeal, Appellate Court, Second District.

Oral argument by Karen L. Kendall for appellants and by William T. Cacciatore for appellee. Submitted. Agenda 10.

No. 100925

IN THE
SUPREME COURT OF ILLINOIS

DONNA M. KINKEL, etc.,)	Appeal, Appellate Court
)	Fifth District
Plaintiff-Appellee)	No. 5-03-0774
)	
v.)	
)	Circuit Court of Madison County
)	02 L 1087
CINGULAR WIRELESS, L.L.C.,)	Hon. Phillip J. Kardis
)	Judge Presiding
Defendant-Appellant.)	

ORDER

This matter is before the court on the third motion of the Chamber of Commerce of the United States (the Chamber) for leave to file a brief *amicus curiae* in support of the appellant, Cingular Wireless, L.L.C. For the reasons that follow, that motion is denied.

The Chamber's original *amicus* motion was submitted in connection with Cingular's petition for leave to appeal. Because our rules do not authorize *amicus* briefs in support of petitions for leave to appeal, and in accordance with the established policy of this court, the Chamber's motion was denied without prejudice to its right to seek leave to file an *amicus* brief in the event leave to appeal were granted.

Our court subsequently granted Cingular's petition for leave to appeal. Following that action, and in accordance with our previous order, the Chamber filed a new motion for leave to file an *amicus* brief. The Chamber's new motion was filed December 7, 2005, one day after amendments

to Supreme Court Rule 345 took effect. Under Rule 345, as amended, a motion for leave to file an *amicus* brief must now state the interest of the applicant and explain how the *amicus* brief will assist the court. The Chamber's motion did not comply with that requirement and was therefore denied. Because of the recency of the rule change, however, the denial was without prejudice so that the Chamber would have the opportunity to comply with the amended version of the rule. The Chamber availed itself of that opportunity and has now submitted its third and final motion for leave to file an *amicus* brief.

By definition, an *amicus curiae* is a friend of the court, not of the parties. Pursuant to Rule 345, the decision to permit the filing of an *amicus* brief is discretionary. It is a matter of judicial grace. Leave must therefore be obtained before such a brief may be filed.

In deciding whether to allow an *amicus* brief, the court must consider whether the brief will provide it with ideas, arguments, or insights helpful to resolution of the case that were not addressed by the litigants themselves. See *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d 542, 545 (7th Cir. 2003) (chambers opinion by Posner, J.). That is why Rule 345 was recently amended to specifically require that movants explain how their briefs will assist the court.¹

Briefs which essentially restate arguments advanced by the litigants are of no benefit to the court or the adversarial process. To the contrary, they are a burden on the court's time and on the resources of the litigants who must review and respond to them. In some cases, they may represent an improper attempt to inject interest group politics into the appeals process. Other times, parties

¹Although the amendment to Rule 345 is new, the requirement that movants demonstrate that their brief will enhance the court's ability to understand and resolve the case and not merely duplicate the views of the parties has long been recognized. See *Froehler v. North American Life Insurance Co.*, 374 Ill. 17 (1940).

may enlist supposed “*amicus curiae*” as a means of circumventing page limitations in their own briefs. *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d at 544; *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062, 1063 (7th Cir. 1997)(chambers opinion by Posner, J.).

Guided by such concerns, the United States Court of Appeals for the Seventh Circuit has held that it will normally grant permission to file an *amicus* brief only (1) when a party is not competently represented or not represented at all, or (2) when the would-be *amicus* has a direct interest in another case, and the case in which he seeks permission to file an *amicus curiae* brief may, by operation of *stare decisis* or *res judicata*, materially affect that interest; or (3) when the *amicus* has a unique perspective, or information, that can assist the court beyond the help that the lawyers for parties are able to provide. *National Organization for Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000). Although these criteria are not binding on our court, we consider them a useful guide in assessing the propriety of *amicus* briefs submitted to us under Rule 345, as amended.

In the matter now before us, the Chamber describes itself as “the world’s largest business federation.” According to its motion, representing “the interests of its members in important matters before the courts, Congress and the Executive Branch” is one of its central functions. The Chamber argues that the appellate court decision under review would “wreak havoc” for its members and that it therefore “has a strong interest in having its view on the validity of [the arbitration provisions at issue in the case] considered by this Court.” The Chamber further advises that it “strongly disagrees with the appellate court’s underlying assumptions and ultimate conclusions about *** arbitration, and submits that its experience in these matters will assist the Court in this appeal.”

We do not doubt the sincerity of the Chamber’s representations, the depth of its feelings about the issues raised by this case, or the potential repercussions for its members. We note,

however, that Cingular Wireless, whose position the Chamber supports, is represented on this appeal by two very large and very well-respected law firms. They have filed a thorough and well researched brief on their client's behalf. All of the key points advanced by the Chamber are addressed in Cingular's brief. Virtually all of the case citations in the Chamber's brief are also contained in the brief filed by Cingular.

Taken as a whole, the Chamber's brief provides no significant insights into the merits of the case beyond those offered by able counsel for Cingular Wireless. It fills no analytical gaps. It gives no tangible examples of how the appellate court's decision affects companies or consumers in ways we could not have gleaned from Cingular's presentation. In the end, it tells us nothing more about the case except how the Chamber believes it should be resolved. That is not a sufficient basis to warrant its participation in this case. As Judge Posner aptly observed, "[t]he fact that powerful public officials or business or labor organizations support or oppose an appeal is a datum that is irrelevant to judicial decision making, except in a few cases, of which this is not one, in which the position of a nonparty has legal significance." *Voices for Choices v. Illinois Bell Telephone Co.*, 339 F.3d at 545.

For the foregoing reason, the motion of the Chamber for leave to file an *amicus* brief is denied.

Order entered by the court.

Thomas, C.J., took no part.

