

**Practical & Ethical Considerations for
Counsel for Parties & Counsel for Amici
Practicing Before the Illinois Supreme
Court and the U.S. Supreme Court**

ILLINOIS COUNCIL OF SCHOOL ATTORNEYS
SEMINAR
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IAN COOPER, STAN EISENHAMMER, & PAM
SIMAGA

TUETH KEENEY COOPER MOHAN JACKSTADT PC
ICOOPER@TUETHKEENEY.COM

HODGES, LOZZI, EISENHAMMER, RODICK & KOHN LLP
SEISENHAMMER@HLERK.COM
PSIMAGA@HLERK.COM

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Agenda

- The legal and ethical distinctions between counsel for parties and counsel for amici
- The relationship between the parties and amici and their respective counsel
- Amicus briefs
- The competence rule as applied to practice before the Illinois Supreme Court and the United States Supreme Court

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Introduction

- **Ian Cooper**
 - Argued *Beggs v. Bd. of Educ. of Murphysboro Cmty Unit Sch. Dist. No. 186* before the Illinois Supreme Court
 - Argued *Peile v. Skelgas, Inc.* before the Illinois Supreme Court
 - Filed amicus in *Vance v. Ball State University* before the United States Supreme Court on behalf of American Council of Education
- **Stan Eisenhammer**
 - Argued *Manuel v. City of Joliet* before the United States Supreme Court
 - Filed amicus brief in *Beggs* before the Illinois Supreme Court on behalf of IASB/IASA
- **Pam Simaga**
 - Assisted with *Manuel v. City of Joliet* before the United States Supreme Court

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Beggs v. Board of Education of Murphysboro Community Unit School District No. 186

- **Facts**
 - School board dismissed teacher after she was late for work and failed to timely submit lesson plans.
 - Teacher appealed dismissal to ISBE hearing officer.
 - ✦ Hearing officer recommended reinstatement.
 - Board of Education rejected recommendation and dismissed teacher.
 - Teacher appealed the Board's decision in court.

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Beggs v. Board of Education of Murphysboro Community Unit School District No. 186

- **Procedural Posture**
 - Illinois appellate court overruled the Board's decision to dismiss.
 - Board appealed the decision to the Illinois Supreme Court.
 - ✦ Oral argument was September 21, 2016
 - ✦ Waiting for decision

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Manuel v. City of Joliet

- Joliet police stopped Elijah Manuel for failing to signal. Police searched and arrested Manuel alleging that he had ecstasy on him. Field tests of the pills indicated the pills were not a controlled substance, but he was arrested and held anyways.
- On the basis of these allegations in the police report, Manuel appeared before a judge and was held for seven weeks pending trial.
- Manuel was released after state police lab report showed the substance was not a controlled substance.

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Manuel v. City of Joliet

- Manuel filed suit in federal court, pro se, more than 2 years after his arrest but less than 2 years after his release.
- District Court appointed Stan to represent Manuel.
- Joliet filed a motion to dismiss on the basis of the limitations period.
- Case was heard in front of United States Supreme Court on October 5, 2016.
 - Waiting for a decision

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Manuel v. City of Joliet

- 7th Circuit (minority): Federal Section 1983 malicious prosecution claim only available through Due Process Clause.
 - No federal claim available if there is a state law remedy.
 - Illinois has a state law claim for malicious prosecution with a one year statute of limitations
- Majority of circuits: Federal Section 1983 malicious prosecution claim through Fourth Amendment
 - Generally, the claim accrues at the time of release

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Legal and Ethical Distinctions Between Counsel for Parties and Counsel for Amici

- **Counsel for parties**
 - Ethical Obligations and Considerations
 - Case-Specific Representations
 - Oral Argument

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Legal and Ethical Distinctions Between Counsel for Parties and Counsel for Amici

- **Counsel for Amici**
 - Identifying interests
 - Group representation
 - Policy versus fact/case specific
 - Briefs only
 - Exception—Solicitor General in U.S. Supreme Court

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Relationship Between the Parties and Amici and Their Respective Counsel

- Consultative concerns
- Handling divergent views with regard to analysis, strategy, emphasis
 - ✦ *Christian Legal Society v. Martinez*
 - *Vance v. Ball State University*
- SCOTUS requirement

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Amicus Briefs

- Illinois Supreme Court
 - Supreme Court Rule 345. Briefs Amicus Curiae
 - “(a) Leave or Request of Court Necessary. A brief *amicus curiae* may be filed only by leave of the court or of a judge thereof, or at the request of the court. A motion for leave must be accompanied by the proposed brief and shall state the interest of the applicant and explain how an *amicus* brief will assist the court.
 - (b) Forms; Conditions; Time. A brief of an *amicus curiae* shall follow the form prescribed for the brief of an appellee, shall identify the amicus as such on the cover of the brief, and shall conform to any conditions imposed by the court. Unless the court or a judge thereof specifies otherwise, it shall be filed on or before the due date of the initial brief of the party whose position it supports. The color of the cover shall be the same as that of the party’s brief whose position it supports.
 - (c) Oral Argument. *Amicus curiae* will not be allowed to argue orally.

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Amicus Briefs

- **Illinois Supreme Court**
 - Supreme Court Rule 345
 - ✦ Leave of court required
 - ✦ Grounds include lack of competence of counsel for the principal party
 - ✦ Direct interest in another case
 - ✦ Unique perspective or information
 - ✦ No “interest group politics”
 - *Kinkel v. Cingular Wireless LLC*: Can file amicus brief when:
 - ✦ A party is not competently represented;
 - ✦ the amicus has a direct interest in another case which will be affected by the decision; or
 - ✦ the amicus has a unique perspective or information that can assist the court beyond the help the lawyers for parties are able to provide

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Amicus Briefs

- **United States Supreme Court**
 - Supreme Court Rule 37. Brief for an *Amicus Curiae*
 - ✦ Rule 37.1 “An *amicus curiae* brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An *amicus curiae* brief that does not serve this purpose burdens the Court, and its filing is not favored. An *amicus curiae* brief may be filed only by an attorney admitted to practice before this Court as provided in Rule 5.”

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The Competence Rule as Applied to Practice Before the Illinois Supreme Court and the United States Supreme Court

- **Defining competence**
 - Appellate experience
 - Knowledge of the case
 - Membership in “the club”
 - ✦ e.g.- [Gregg Garre](#) and [Jeff Fisher](#)
 - Good versus better
- **Association with other counsel**
- **Ethical issues for appointed counsel Rule 6.2(a)**

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The Competence Rule as Applied to Practice Before the Illinois Supreme Court and the United States Supreme Court

- **Rule 6.2 Accepting Appointments**

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

 - (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
 - (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
 - (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.

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Questions?

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