

**Practical and Ethical Considerations
for Parties and Counsel For Amici
Practicing Before the US Supreme Court
and the Illinois Supreme Court**

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I. The legal and ethical distinctions between counsel for parties and counsel for amici

A. Counsel for parties

1. Ethical obligations and considerations (e.g., competence, limited representation, diligence, communication, zealous representation, confidentiality and privilege, etc.)
2. Case-specific representation
3. Oral argument

B. Counsel for amici

1. Identifying interests (the principal party, an interest group, or both)
2. Group representation
3. Policy versus fact/case specific
4. Briefs only

5. Exception- Solicitor General in U.S. Supreme Court

- a. SCOTUS may invite Solicitor General to weigh in on petition for certiorari.
- b. SCOTUS agrees with the SG's input on whether to grant certiorari in overwhelming majority of cases.
- c. SG may also file a brief in support of either side at the merits stage.
- d. If SG files a brief at the merits stage, SG, and only the SG can join in a divided argument

II. The relationship between the parties and amici and their respective counsel

- A. Consultative concerns (e.g., Sup. Ct. R. 37.6)
- B. Handling divergent views with regard to analysis, strategy, emphasis
- C. U.S. Sup. Ct. R. 37: After 2007, amici are required to disclose "whether such counsel or a party made a monetary contribution intended to fund the preparation or submission of the brief, and shall identify every person other than the amicus curiae, its members, or its counsel, who made such a monetary contribution."

III. Amicus briefs

- A. Illinois Supreme Court:
 - 1. 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")
 - 2. Guidance for Rule 345 in *Kinkel v. Cingular Wireless LLC*, 223 Ill. 2d 1 (2006): Can file an amicus when:
 - a. a party is not competently represented;
 - b. the amicus has a direct interest in another case which will be affected by the decision; or
 - c. the amicus has a unique perspective or information that can assist the court beyond the help the lawyers for parties are able to provide.
- B. United State Supreme Court: Supreme Court Rule 37 (matters not already brought to the attention of the Court)

IV. The competence rule as applied to practice before the Illinois Supreme Court and the United States Supreme Court

- A. Defining competence (e.g., appellate experience, knowledge of the case, membership in “the club,” good versus better, etc.)
- B. Association with other counsel
- C. Ethical issues for appointed counsel Rule 6.2(a)