

**STEPHEN E. SACHS**

PROFESSOR OF LAW

DUKE UNIVERSITY SCHOOL OF LAW

210 SCIENCE DRIVE

BOX 90360 + DURHAM, NC 27708-0360

TEL 919-613-8542

SACHS@LAW.DUKE.EDU

BY ELECTRONIC MAIL

November 14, 2017

The Hon. Michael A. Chagares, Chair  
Prof. Gregory E. Maggs, Reporter  
Advisory Committee on Appellate Rules

**RE: Rule 29(a)(2), Letters of Blanket Consent**

Dear Judge Chagares and Prof. Maggs:

Under Rule 29(a)(2), a private person needs the parties' consent or leave of court before filing an amicus brief in a court of appeals. I propose that the Rule be amended to allow the parties to file letters of blanket consent. This procedure is already used in the Supreme Court, where it saves parties the time and trouble of approving many separate requests by amici. It could do the same in the courts of appeals.

Supreme Court Rule 37.3(a) states in part as follows:

3. (a) An *amicus curiae* brief in a case before the Court for oral argument may be filed if it reflects that written consent of all parties has been provided, or if the Court grants leave to file under subparagraph 3(b) of this Rule. \* \* \* A petitioner or respondent may submit to the Clerk a letter granting blanket consent to *amicus curiae* briefs, stating that the party consents to the filing of *amicus curiae* briefs in support of either or of neither party. The Clerk will note all notices of blanket consent on the docket.

The courts of appeals see fewer amici per case than does the Supreme Court, and I am not aware of any that has adopted a blanket-consent procedure by local rule. But making the option available would still save the parties some time—especially the United States, which often consents to amicus briefs no matter who is filing them. A party preferring to review the amici one-by-one simply need not submit any letter.

The Hon. Michael A. Chagares  
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I propose that Rule 29 be amended to follow Supreme Court Rule 37.3(a). (The language below includes other amendments recently transmitted to the Supreme Court; new material is in **bold**.)

**Rule 29. Brief of an Amicus Curiae**

**(a) During Initial Consideration of a Case on the Merits.**

\* \* \*

(2) **When Permitted.** The United States or its officer or agency or a state may file an amicus ~~curiae~~ brief without the consent of the parties or leave of court. Any other amicus curiae may file a brief only by leave of court or if the brief states that all parties have consented to its filing, but a court of appeals may prohibit the filing of or may strike an amicus brief that would result in a judge's disqualification. **A party may submit to the circuit clerk a letter granting blanket consent to amicus briefs, stating that the party consents to the filing of amicus briefs in support of either or of neither party. The clerk will note all notices of blanket consent on the docket.**

There is no need to amend Rule 29(b)(2)'s provisions on amicus briefs as to rehearing; at that stage, all private amici must obtain leave of court.

I hope this is helpful. Please don't hesitate to contact me if there's more information I can provide, and thank you for your time and attention.

Respectfully,



STEPHEN E. SACHS

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