

AMICUS CURIAE

If the FSM wishes to present the court with its views on an appeal it may file an amicus curiae brief as permitted by Rule 29 of the FSM Rules of Appellate Procedure. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 520, 522 (App. 1996).

The FSM government does not need leave of court to file an amicus brief. Senda v. Creditors of Mid-Pacific Constr. Co., 7 FSM R. 664, 668 (App. 1996).

Absent compelling reasons to the contrary, form must ever subserve substance. A thing is what it is regardless of what someone chooses to call it. Viewed in this light, a letter that stated an unequivocal legal opinion based on certain facts and cited points and authorities to support that opinion is the functional equivalent of an amicus curiae brief. McIlrath v. Amaraich, 11 FSM R. 502, 505-06 (App. 2003).

Because the petition for a writ of mandamus is moot and the underlying case has been dismissed, the court will leave to another time the general question of whether the trial court has jurisdiction to order a non-party to file an amicus brief. McIlrath v. Amaraich, 11 FSM R. 502, 508 (App. 2003).

If not requested to by the court, a non-party may participate in an appeal as an amicus curiae by either written consent of all parties or leave of court unless the non-party seeking to be an amicus curiae is a state or is the FSM or an officer or agency thereof. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

A state does not need either the parties' written consent or leave of court to file an amicus curiae brief. It can file one as a matter of right. It could even participate in oral argument as an amicus curiae when its motion to participate in oral argument is granted, but such a motion will be granted only for extraordinary reasons. Kitti Mun. Gov't v. Pohnpei, 11 FSM R. 622, 627 (App. 2003).

It is not unusual for amicus curiae to appear at the appellate level. The FSM Rules of Appellate Procedure specifically provide for amicus curiae participation. FSM v. Sipos, 12 FSM R. 385, 386 (Chk. 2004).

Unlike the appellate rules, neither the civil nor criminal procedure rules provide for an amicus curiae's appearance, although the court has in the past invited amicus curiae briefs in civil cases. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

Amicus curiae literally means friend of the court. An amicus is someone who is not a party to the lawsuit but who petitions the court or who is asked by the court to file a brief in the matter because that person has a strong interest in the subject matter. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

An amicus curiae gives the court information on some matter of law in respect to which the court is doubtful or calls the court's attention to a legal matter which has escaped or might escape the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When an amicus curiae undertakes to inform the court, he or she should act in good faith,

make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae is a neutral provider of information or legal insight or has a partisan interest. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

When a criminal contempt prosecution of an attorney regarding his relationship with his client is a matter of first impression in the Federated States of Micronesia and the court concludes that an amicus curiae's insight may benefit it in understanding the legal issues, a petition to appear as an amicus curiae will be granted. This appearance is limited to briefing legal issues. FSM v. Sipos, 12 FSM R. 385, 387 (Chk. 2004).

"Amicus curiae" literally means friend of the court. An amicus curiae is someone who is not a party to the lawsuit. An amicus curiae either petitions the court, or is asked by the court, to file a brief in the matter because the amicus has a strong interest in the subject matter that is pending before the court. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

An amicus curiae is expected to give the court information on some matter of law which the court may be doubtful upon, or calls the court's attention to a legal matter which has escaped, or might escape, the court's consideration. An amicus curiae's principal or usual function is to aid the court on questions of law. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

When an amicus curiae undertakes to inform the court, he or she should act in good faith, make full disclosure on the point, and suppress nothing with the intent to deceive the court. This is true whether the amicus curiae acts as a neutral provider of information or legal insight, or has a partisan interest in the outcome of the litigation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The Appellate Procedure Rules specifically provide for amicus curiae participation. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 364 (App. 2007).

The amicus curiae's role in appeals is limited to addressing only those issues that the parties have raised. It would be inappropriate for an appellate court to consider any arguments or evidence that were not previously presented to and ruled upon by the trial court. Accordingly, a particular document that was not previously considered by the trial court and the references to it in an amicus curiae brief will be stricken from the record. The other arguments presented by the amicus curiae in its brief will be considered. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 365 (App. 2007).

An amicus curiae's motion to participate in oral argument will be granted only for extraordinary reasons, and in the absence of the presentation of any reason why an amicus curiae should be heard at oral argument, its request to participate in the oral argument will be denied. M/V Kyowa Violet v. People of Rull ex rel. Ruepong, 15 FSM R. 355, 366 (App. 2007).