

ACFLS : AN INFLUENTIAL “FAMILY” FRIEND OF THE APPELLATE COURTS

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Co-chair ACFLS Amicus Committee

ACFLS’s amicus work is one of the most powerful ways that our organization and members contribute to the development of family law in California. While our amicus briefs on impact cases (see sidebar) are the most visible, ACFLS acts as a friend-of-the-court in other ways, including publication and depublication requests, and letters in support of California Supreme Court review.

Appellate justices and staff attorneys have to be generalists. Few were family law practitioners. AFCLS plays an important role in educating appellate courts about the evolution of California family law and the impact of possible holdings on family courts and the families they serve. The appellate courts show that they value ACFLS’s participation by almost always granting our publication requests, and by occasionally requesting amicus briefing on significant pending cases, as they did in *Elkins v. Sup. Court*.

ACFLS is not constrained in the same ways that counsel for the parties are. When ACFLS appears as amicus, we do so as a neutral voice, not an advocate for a litigant. We are free to discuss the issues from multiple angles without worrying if an approach is good for a client litigant. ACFLS has argued for family law fairness, for policies promoting the welfare of children in custody cases, and has weighed in on same-sex parentage, adoption and marriage - the central civil rights issue of our era.

Steve Temko, CFLS, CALS, AAML and I co-chair the committee. Each of us is dual-certified by the Board of Legal Specialization in family law and appellate law. We have a strong committee of ACFLS members who work actively with us almost every week. ACFLS members interested in joining the committee should contact President Jill Barr.

The Amicus committee depends upon members and others to alert us about pending appeals on important family law issues, significant petitions for review to the California Supreme Court, and recent unpublished family law decisions by the intermediate appellate courts. If you are aware of an appellate case that might be a good candidate for an amicus brief or letter, please email me at lescfls@me.com and Steve at estemko@aol.com. Please note that the time frames for amicus action are very brief, so we appreciate early alerts. The committee prefers to read the court documents only, and prefers not to receive “lobbying” from counsel or parties about these matters. Committee members often recuse themselves where they have represented the litigants in the matter before us.

The committee sometimes works with other *amici* including but not limited to the two California AAML chapters, the Los Angeles County Bar Family Law Section, and the California Domestic Violence Appellate Project.

This year ACFLS has been particularly successfully in seeking publication of important unpublished family law cases, including *Marriage of Metzger*, *Marriage of Winternitz*, *Altafulla v. Ervin*, *Marriage of Honer*, *Marriage of Siegel*, and *Marriage of Brandes*. Only published opinions are citable authority in California (Cal. Rules of Court, rule 8.1105), so we are on the lookout for important decisions that meet the publication criteria of Cal. Rules of Court, rule 8.1105.

The amicus committee meets via email to review and discuss amicus requests. Ideally, requests for amicus briefs and letters supporting or opposing Supreme Court review should come to us when the opening brief, writ petition, or petition for review) and the respondent’s brief or answer are available for us to consider. We appreciate receiving any replies as soon as they are filed. We circulate these to the entire committee for discussion. Usually one committee member will volunteer to take a closer look and report to the committee as a whole.

There is only a 20-day window between the issuance of an unpublished appellate decision and the deadline for requesting publication.

We sometimes get asked at the last minute to join in seeking publication of a case. Usually it simply is not possible to do so.

The amicus committee reviews and votes upon amicus requests, and then makes recommendations to the President and the Executive Committee. The Executive Committee then makes a recommendation to the Board of Directors. Since the Board only meets every few months, it often is necessary to poll the Board by email for approval. With approval, the matter returns to the committee for drafting and editing of a brief or letter.

Working on ACFLS's amicus projects is one of the most rewarding parts of my career and the source of many memories. I particularly remember going to observe oral argument in *Marriage of Buzzanca*. I was sitting in the audience as an observer (neither prepared nor dressed for an appearance). I had asked my husband to drive as I had been up late the night before working on some deadline or other. A television crew was filming the proceedings for a network news magazine. One of the justices asked a question of the appellate lawyer representing the minor child. He responded, "I think Ms. Shear is a better person to address that," and suddenly I was doing oral argument, on camera. I must have said something sensible because my remarks at oral argument got cited in the opinion. When the matter was submitted, a member of the television crew turned the camera on me and asked me to state and spell my name. The adrenaline had been used up, and I was unable to spell my own name.

FAMILY PRIDE: ACFLS' AMICUS BRIEFS

In re Marriage of Buzzanca (1998) 61 Cal.App.4th 1410
In re Marriage of Kelso (1998) 67 Cal.App.4th 374
Lammers v. Superior Court (2000) 83 Cal.App.4th 1309
In re Marriage of Harris (2001) 92 Cal.App.4th 499 and
In re Marriage of Harris (2004) 34 Cal.4th 210
Montenegro v. Diaz (2001) 26 Cal.4th 249
In re Marriage of Scheppers (2001) 86 Cal.App.4th 646
In re Marriage of LaMusga (2005) 32 Cal.4th 1072
K.M. v. E.G. (2005) 37 Cal.4th 13
Elisa B. v. Superior Court (2005) 37 Cal.4th 108
Kristine H. v. Lisa R. (2005) 37 Cal.4th 156
Elkins v. Superior Court (2007) 41 Cal.4th 1337
Strauss v. Horton (2009) 46 Cal.4th 364
In re Marriage of Margulis (2011) 198 Cal.App.4th 277
Rand v. Board of Psychology (2012) 206 Cal.App.4th 565
Hollingsworth v. Perry (2013) 133 S.Ct. 2652
In re Marriage of Valli (2014) 58 Cal.4th 1396