



1 Many of the members of the Seattle Chapter of the NLG are criminal defense lawyers  
2 and immigration lawyers who have particular concerns for the rights of incarcerated people.  
3 Historically, members of the NLG have been involved in litigation arising from conditions in  
4 prisons, from litigation over what took place in Attica in 1971 to conditions in various  
5 immigration detention facilities currently.

6 **B. *Issues of Concern to Amicus Curiae***

7 1. What duty does the State have to protect the physical safety and welfare of  
8 people who are incarcerated in our prisons?

9 2. What historical experience has been with the failure of the government to care  
10 for the physical safety and welfare of prisoners during times of emergency?

11 Amicus curiae has reviewed the existing legal briefing in this case and believes that its  
12 perspective on these topics will assist the Court in resolving the issues raised already.

13 **C. *Argument***

14 Although the Superior Court Civil Rules do not contain provisions addressing the  
15 filing of amicus curiae briefs in trial court proceedings, trial courts have inherent authority to  
16 grant leave to file an amicus brief. *See Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136  
17 (D.D.C. 2008) (“District courts have inherent authority to appoint or deny amici which is  
18 derived from Rule 29 of the Federal Rules of Appellate Procedure.”) (internal quotes  
19 omitted). *See also Stuart v. Huff*, 706 F.3d 345, 355 (4th Cir. 2013) (noting that non-parties  
20 have the option to file amicus briefs in district court proceedings and that such amici “often  
21 make useful contributions to litigation”).

22 By analogy, a superior court considering a request for amicus briefing should make  
23 reference to RAP 10.6, which provides in part:

24 (a) When Allowed by Motion. The appellate court may on motion grant  
25 permission to file an amicus curiae brief only if all parties consent, or if the  
26 filing of the brief would assist the appellate court. An amicus curiae brief may  
27 be filed only by an attorney authorized to practice law in this state, or by a  
28 member in good standing of the Bar of another state in association with an  
attorney authorized to practice law in this state.

(b) Motion. A motion to file an amicus curiae brief must include a  
statement of (1) applicant’s interest and the person or group applicant  
represents, (2) applicant’s familiarity with the issues involved in the review  
and with the scope of the argument presented or to be presented by the parties,

1 (3) specific issues to which the amicus curiae brief will be directed, and (4)  
2 applicant's reason for believing that additional argument is necessary on these  
specific issues. The brief of amicus curiae may be filed with the motion.

3 Under this rule, the Court should grant the Seattle Chapter of the National Lawyer's  
4 Guild's request to file a memorandum of an amicus curiae as the proposed memorandum will  
5 assist the Court in deciding the instant case.

6 **D. CONCLUSION**

7 For the foregoing reasons, the Court should grant the motion of the Seattle Chapter of  
8 the National Lawyer's Guild to file a memorandum of an amicus curiae.

9 DATED this 25<sup>h</sup> day of March 2020.

10 Respectfully submitted,

11  
12 s/ Neil M. Fox  
13 WSBA NO. 15277  
14 Attorney for Seattle Chapter  
of the National Lawyers Guild

1 *CERTIFICATE OF SERVICE*

2 I certify that on the date below, I caused the MOTION TO FILE AMICUS CURIAE  
3 MEMORANDUM to be served on counsel for the plaintiffs and counsel for the respondents  
4 by having my staff email copies to:

4 BLAKE I KREMER Blake@kremerlaw.com  
5 DENA ALO-COLBECK alocolbecklaw@gmail.com  
6 TIMOTHY J. FEULNER Tim.Feulner@atg.wa.gov

6 I certify or declare under penalty of perjury under the laws of the State of Washington  
7 that the foregoing is true and correct.

8 Dated this 25<sup>th</sup> day of March 2020, at Seattle, WA.

9 s/ Neil M. Fox  
10 \_\_\_\_\_  
11 WSBA No. 15277

