



Maryland Municipal League
The Association of Maryland's Cities and Towns

MARYLAND MUNICIPAL LEAGUE Litigation Participation Policy

Proposed Amendments

**NEW MATERIAL IS SHOWN IN RED CAPITAL LETTERS.
Deleted material is shown within [[red brackets]].**

A. Statement of Purpose

The Maryland Municipal League deems it to be consistent with its purpose of serving as a representative organization of its member municipalities to advocate its views in those matters of litigation or other proceedings where the interests of the State's municipalities may be substantially affected. The purpose of this policy is to establish procedures and criteria to govern the League's participation in such matters. **THIS POLICY GENERALLY CONTEMPLATES THE LEAGUE'S PARTICIPATION IN LEGAL PROCEEDINGS AS AN AMICUS CURIAE, OR 'FRIEND OF THE COURT,' AND NOT AS A DIRECT PARTY TO LITIGATION. CONSEQUENTLY, THIS POLICY IS NOT INTENDED TO GOVERN MATTERS THAT MAY ARISE IN WHICH THE LEAGUE ITSELF IS A PARTY.**

B. Scope of League's Participation

Where desirable and appropriate **AND PERMISSIBLE UNDER THE PROCEDURAL RULES OF THE TRIBUNAL,** the League may participate **AS AN AMICUS CURIAE** in matters of litigation in **[[the trial or appellate courts]] THE MARYLAND COURT OF APPEALS AND FEDERAL APPELLATE COURTS WITH JURISDICTION OVER MARYLAND,** as well as in administrative proceedings **THAT** are adjudicatory in nature. **LEAGUE PARTICIPATION IN SUCH MATTERS SHOULD BE LIMITED TO CASES WHERE POTENTIAL JUDICIAL OR QUASI-JUDICIAL DECISIONS ARE ANTICIPATED TO AFFECT MARYLAND MUNICIPALITIES ON MATTERS OF SIGNIFICANCE TO MARYLAND MUNICIPAL GOVERNMENT. GENERALLY, THE LEAGUE WILL PARTICIPATE AS AN AMICUS CURIAE IN TRIAL COURT PROCEEDINGS OR BEFORE THE MARYLAND COURT OF SPECIAL APPEALS ONLY IF A** **[[However, a]]** compelling reason or extraordinary circumstances **[[must be]] ARE** presented to warrant the League's participation in any proceeding at other than an appellate **OR ADMINISTRATIVE** level.

C. Interest to be Represented

In any matter of litigation or other proceeding in which the League determines to participate **AS AN AMICUS CURIAE**, the participation in the proceedings shall advance the interests and arguments of the League and shall not constitute the legal representation of any municipality **OR ANY OTHER PARTY** which may be involved in the proceeding.

D. Determination of League's Participation

1. IN A CASE WHERE A MARYLAND LOCAL GOVERNMENT OR OTHER ENTITY REPRESENTING LOCAL GOVERNMENTS OR HAVING INTERESTS ALIGNED WITH THOSE OF THE LEAGUE REQUESTS THAT THE LEAGUE PARTICIPATE ONLY BY JOINING AS A SIGNATORY TO A FRIEND OF THE COURT BRIEF THAT ANOTHER LOCAL GOVERNMENT OR ENTITY HAS DRAFTED (OR WHERE THE LEAGUE REQUESTS TO JOIN AS A SIGNATORY), AND WHERE LITTLE OR NO EXPENSE WILL BE BORNE BY THE LEAGUE IN SO DOING, THE LEAGUE MAY DO SO IF A MAJORITY OF THE BOARD EXECUTIVE COMMITTEE APPROVES THE ACTION. THE BOARD EXECUTIVE COMMITTEE MAY SEEK THE INPUT OF LEAGUE STAFF AND OF COUNSEL OR OTHER ADVISORS ON A VOLUNTARY OR MINIMAL COST BASIS, IN WEIGHING WHETHER A PARTICULAR PROCEEDING OR BRIEF IS APPROPRIATE FOR THE LEAGUE TO JOIN UNDER THIS PROVISION. AS PART OF THIS PROCESS, THE BOARD EXECUTIVE COMMITTEE MAY, BUT IS NOT REQUIRED TO, RECOMMEND EDITS TO A BRIEF DRAFTED BY ANOTHER LOCAL GOVERNMENT OR ENTITY AS A CONDITION OF THE LEAGUE'S PARTICIPATION AS A SIGNATORY. IF TIME AND CIRCUMSTANCES ALLOW, THE EXECUTIVE COMMITTEE MAY, BUT IS NOT REQUIRED TO, SEEK THE INPUT OF THE ENTIRE BOARD OF DIRECTORS IN MAKING THE DETERMINATION OF WHETHER TO JOIN AN AMICUS CURIAE BRIEF AS A SIGNATORY.

2. IN OTHER CASES IN WHICH THE LEAGUE MUST INDEPENDENTLY EVALUATE A CASE AND DRAFT ITS OWN AMICUS CURIAE BRIEF, ~~[[T]]~~The League may participate **AS AN AMICUS CURIAE** in a matter of litigation or other proceeding only upon the affirmative two-thirds vote of those members of the Board of Directors present and voting. A determination to participate in a matter of litigation or other proceeding may be made by the Board upon the request of a member municipality or upon the Board's own initiative.

E. Requests from Member Municipalities

ANY MEMBER MUNICIPALITY MAY REQUEST THAT THE LEAGUE CONSIDER JOINING AS A SIGNATORY TO AN AMICUS CURIAE BRIEF UNDER SECTION D.1. ABOVE, WITHOUT ANY COST. FOR ANY REQUEST BY A MEMBER MUNICIPALITY FOR THE LEAGUE TO PARTICIPATE AS AN AMICUS CURIAE OTHER THAN AS DESCRIBED IN SECTION D.1. ABOVE, ~~[[A]]~~ A check in the amount of five hundred dollars (\$500.00) must accompany any request for the League's participation **AS AN AMICUS CURIAE IN A PROCEEDING, AS A DOWNPAYMENT TOWARD THE COST OF EMPANELING ATTORNEYS UNDER SECTION G. OF THIS POLICY.** ~~[[and the]]~~ THE LEAGUE SHALL BILL THE REQUESTING MUNICIPALITY FOR ANY BALANCE DUE after completion of the review process as hereinafter set forth. IN SUCH INSTANCES IT SHALL BE THE SOLE RESPONSIBILITY OF THE REQUESTING MUNICIPALITY TO COVER THE COSTS,

INCLUDING REASONABLE LEGAL FEES AND OTHER EXPENSES, INCURRED BY THE LEAGUE PURSUANT TO THE PROCESSES SET FORTH IN THIS POLICY. LEAGUE STAFF SHALL MAKE GOOD FAITH EFFORTS TO NOTIFY THE REQUESTING MUNICIPALITY OF THIS RESPONSIBILITY AT THE START OF THE PROCESS AND TO EXPLAIN THE COSTS THAT COULD BE INCURRED, BUT REGARDLESS OF WHETHER LEAGUE STAFF NOTIFIES THE REQUESTING MUNICIPALITY, IT SHALL BE THE REQUESTING MUNICIPALITY'S RESPONSIBILITY TO COVER ALL SUCH COSTS IF IT CHOOSES TO PROCEED. THE EXECUTIVE COMMITTEE SHALL MAKE A DEERMINATION WHETHER TO APPROVE A REQUEST FROM A MEMBER MUNICIPALITY FOR FURTHER CONSIDERATION UNDER SECTION G. BELOW.

F. Request upon Initiative of the League

The Board of Directors, upon the affirmative vote of **[[the]]** A majority of the members present and voting **[[,]]** may initiate a request for the League to participate **AS AN AMICUS CURIAE UNDER SECTION D.2. ABOVE** in a matter of litigation or other proceeding. **IN CONSIDERING WHETHER TO MAKE SUCH A REQUEST, THE BOARD SHOULD WEIGH THE FACTORS REFLECTED IN SECTIONS A., B., AND C. ABOVE. SUCH A REQUEST SHALL TRIGGER THE PROCESS SET FORTH IN SECTIONS G., H., AND I. BELOW, AND SHALL BE THE COMMENCEMENT OF THAT PROCESS RATHER THAN CONSIDERED A FINAL DECISION TO PARTICIPATE IN A PROCEEDING AS AN AMICUS CURIAE. ANY FINAL DECISION IS GOVERNED BY SECTION H.4. BELOW.** A request initiated by the Board shall be considered and acted upon in the same manner as a request initiated by a member municipality, **OTHER THAN THE DOWNPAYMENT REQUIREMENT.**

G. Review of Request and Recommendation to Board

1. Upon approval of the Executive Committee **OF A REQUEST BY A MEMBER MUNICIPALITY, OR UPON APPROVAL OF THE BOARD AS SET FORTH IN SECTION F.,** a request for the League to participate **PURSUANT TO SECTION D.2. ABOVE** in a matter of litigation or other proceeding shall be reviewed by a panel of not less than two nor more than three attorneys selected by the Executive Director of the League in consultation with the President of the League. The selection of attorneys may be made from a list of interested prospective panel members maintained from time to time by the Maryland Municipal Attorneys Association. **THE EXECUTIVE DIRECTOR OF THE LEAGUE IN CONSULTATION WITH THE PRESIDENT OF THE LEAGUE SHALL APPOINT ONE OF THE PANEL ATTORNEYS AS CHAIRPERSON OF THE PANEL. THIS PROCEDURE APPLIES ONLY TO REQUESTS MADE PURSUANT TO SECTION D.2. ABOVE. IT DOES NOT APPLY TO REQUESTS FALLING UNDER SECTION D.1. ABOVE.**

2. **Members** of the review panel **[[shall]]** **MAY** be compensated **[[from the legal fund]]** for their time and expenses incurred in reviewing the request for the League's participation. The total amount to be paid to the **ENTIRE** panel of reviewing attorneys shall not exceed two thousand five hundred dollars (\$2,500.00) without prior approval of the Board of Directors. The **[[League shall pay all costs of the review panel in excess of any review fee for which a member municipality is responsible and the]]** League shall pay all costs associated with requests initiated by the Board of **Directors** **FROM THE LEGAL FUND ESTABLISHED FOR THAT PURPOSE.**

3. During the conduct of its review of the request for the League's participation, the review panel shall afford representatives of the municipality or the League, as the case may be, an opportunity

to make an oral presentation as to why the League's participation is necessary or desirable. **THE PROCEDURES EMPLOYED BY THE PANEL, INCLUDING TIME LIMITS, DEADLINES, AND LOCATIONS FOR ORAL PRESENTATIONS, SHALL BE FAIR AND REASONABLE BUT SHALL ALSO REFLECT THE NEED FOR EFFICIENCY AND EXPEDIENCY IN MAKING A DETERMINATION IF FILING DEADLINES IN THE PROCEEDING ARE APPROACHING. SUBJECT TO THESE PRINCIPLES, THE PANEL SHALL HAVE DISCRETION IN SETTING THE PROCEDURES FOR ITS REVIEW PROCESS, BUT THE PANEL SHALL PROVIDE REASONABLE ADVANCE NOTICE TO STAKEHOLDERS OF THE PROCEDURES IT ADOPTS FOR PRESENTATIONS. IF HELPFUL, THE PANEL MAY AUTHORIZE PRESENTATIONS OR DELIBERATIONS VIA VIDEO-CONFERENCING OR TELEPHONE SYSTEMS. STAKEHOLDERS INCLUDE A REQUESTING MUNICIPALITY, LEAGUE STAFF, AND THE BOARD OF DIRECTORS.**

4. After conducting its review, the review panel shall provide the Board of Directors with a written report which:

- a. Analyzes and evaluates the request for participation in accordance with each of the litigation case selection criteria set forth **[[below]] IN THIS POLICY**;
- b. Address**ES** the desirability of the League's participation as requested; and
- c. Where the request is for the League's participation at lower than a**[[n]] FEDERAL** appellate level **OR LOWER THAN THE MARYLAND COURT OF APPEALS AT THE STATE LEVEL**, **ADDRESSES** whether any extraordinary **SPECIAL** circumstances or compelling reasons are presented for the League's participation.

H. Board Action

1. A request for the League's participation **PURSUANT TO SECTION D.2. ABOVE** shall be considered by the Board of Directors following receipt of the report and recommendations of the panel of reviewing attorneys.
2. During the Board's consideration of the request:
 - a. The Chair of the review panel shall present the report and recommendations of the panel to the Board;
 - b. A requesting municipality may make an oral presentation of its request to the Board, notwithstanding that the review panel may have recommended that the request for participation be denied; and
 - c. Representatives of the requesting municipality, other than any member of the Board from that municipality, may **[[not]]** be present during the Board's deliberations on the request.
3. In determining whether the League should participate **PURSUANT TO SECTION D.2. ABOVE** in a **[[particular]]** matter of litigation or other proceeding affecting the interests of

municipalities in this State, the Board of Directors shall ~~[[give consideration to the following litigation case selection criteria]]~~ **GIVE CONSIDERATION TO THE FOLLOWING FACTORS:**

- a. **WHETHER** ~~[[One]]~~ **ONE** or more legal issues raised in the litigation or proceeding ~~[[should be]]~~ **IS** of potential significance to a substantial number of municipalities in the State.
- b. **WHETHER** ~~[[The]]~~ **THE** factual record ~~[[must]]~~ raises ~~[[the]]~~ legal issues to be argued by the League and support**S** the outcome that the League desires.
- c. **WHETHER** ~~[[The]]~~ **THE** litigation or proceeding ~~[[must be]]~~ **IS** in a posture in which the court would likely be required to decide the legal issues which would be argued by the League.
- d. **WHETHER** ~~[[The]]~~ **THE** disposition of the litigation or administrative proceeding at its current level would serve as a persuasive precedent in similar future litigation or proceedings before the courts or other adjudicative bodies having jurisdiction in the State.
- e. **WHETHER** ~~[[The]]~~ **THE** legal issues to be argued by the League can~~[[not]]~~ **BE** readily and easily, or more appropriately, ~~[[be]]~~ resolved by legislation.
- f. **WHETHER** ~~[[The]]~~ **THE** legal issues to be argued by the League ~~[[should]]~~ represent positions upon which the League has ~~[[not]]~~ negotiated or supported compromise legislation.
- g. **WHETHER** ~~[[There]]~~ **THERE** ~~[[must be]]~~ **IS** either a reasonable likelihood of success on the legal issues to be argued by the League; **WHETHER** the issues need to be resolved, regardless of the outcome, to provide clear guidance to municipalities of the State; or **WHETHER** a judicial or administrative decision is desirable to serve as a justification for remedial legislation from the General Assembly.
- h. **WHETHER** ~~[[Other]]~~ **OTHER** factors applicable to the particular litigation or administrative proceeding exist which the Board deems appropriate to justify the League's participation.

4. A request for the League's participation **PURSUANT TO SECTION D.2. ABOVE** shall not be approved, except upon the affirmative vote of two-thirds of the members of the Board of Directors present and voting. Action of the Board approving the League's participation shall define, to the extent practicable, the scope of the League's participation, the issues or legal arguments to be advanced by the League, and any monetary limitations upon the amount to be expended in furtherance of the League's participation.

I. Selection of Legal Representative

The Executive Director of the League shall select **APPROPRIATE** legal counsel to represent the League **AT A REASONABLE AND AUTHORIZED PRICE TO** advance the League's interests

and legal arguments in those matters of litigation or other proceedings where the Board of Directors has authorized the League's participation **PURSUANT TO SECTIONS D.2. AND H.4. ABOVE.** The retention of counsel shall **COMPLY WITH THE LIMITATIONS OF THE LEAGUE BUDGET AND SHALL** be made within any monetary restraints imposed by the action of the Board and shall be made only after receipt and approval by the Executive Director of cost estimates for legal services from potential legal representatives.

J. Legal Participation Fund

1.The League shall annually **[[appropriate]] PROVIDE IN ITS APPROVED BUDGET** not less than ten thousand dollars (\$10,000) for advocacy **AS AMICUS CURIAE** in court actions **AND OTHER ADMINISTRATIVE PROCEEDINGS.**

2.**ANY [[C]]**Counsel retained to **[[take action]] ACT** on behalf of the League may not expend resources, **INCLUDING FOR LEGAL FEES AND FOR OTHER EXPENSES,** on behalf of the League that exceed approved cost estimates without prior authorization by the Executive Director. Any costs exceeding annually authorized funding levels must be first approved by the Board of Directors.

K. PARTICIPATION OF A MUNICIPALITY IN A AMICUS CURIAE BRIEF FILED BY THE LEAGUE

IN A CASE WHERE A LEAGUE MEMBER MUNICIPALITY WISHES TO PARTICIPATE AS A SIGNATORY TO AN AMICUS CURIAE BRIEF PREPARED PURSUANT TO SECTION D.2. ABOVE, A MAJORITY OF THE BOARD EXECUTIVE COMMITTEE MAY APPROVE SUCH ACTION AND MAY CONDITION THE APPROVAL UPON PAYMENT BY THE MUNICIPALITY OF A REASONABLE FEE TO BE DETERMINED BY THE EXECUTIVE COMMITTEE IN CONSULTATION WITH LEAGUE STAFF.

Adopted by the Board of Directors, January 25, 1986

Amended , January 31, 2009

AMENDED , APRIL XX, 2019

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