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SLDF Procedures

This documents procedures for the Subcontractors Legal Defense Fund to consider ASA involvement in a lawsuit as *amicus curiae*, whether or not actual funding by the SLDF is required.

1. Any case must be promptly brought to the attention of the **staff liaison** and/or the **chair of the Task Force**. The staff liaison will submit cases to the attention of **ASA counsel**.
2. ASA counsel will promptly **gather any information** necessary to determine what issues are presented by the case that are of interest to subcontractors, and whether there is any certainty that those issues will be decided by the reviewing court. In normal circumstances, the party requesting ASA involvement, or whose position ASA would most likely support, should provide copies of such documents as are needed at no cost to ASA.
3. ASA counsel should present the relevant information to the Task Force in the form of an "**SLDF Memorandum**." The memorandum must explain whether issues of interest to subcontractors were properly preserved for appeal, and whether a decision on those issues will likely be necessary to a final decision in the case. The SLDF Memorandum should have two sections: the first presenting the facts and issues in the case, and the second discussing the factors for SLDF involvement that the Task Force is required to consider, including any of counsel's impressions or recommendations. ASA's Board of Directors requires the Task Force on the SLDF to consider the following factors:
 - (a) The issues are of specific interest to construction subcontractors and suppliers.
 - (b) The issues are focused and clearly presented.
 - (c) There is a consensus among ASA members on the issues.
 - (d) ASA could have a meaningful impact in the judicial proceedings.
 - (e) The proceeding is likely to result in setting favorable judicial precedent (or avoiding the setting of unfavorable judicial precedent) primarily in appellate level court proceedings or other format in which the results are reported.
 - (f) The issues or forums are of high visibility from a public relations standpoint.
 - (g) Whether a party seeking ASA's intervention has agreed to indemnify ASA for its expenses incurred should the case be settled prior to a final decision in the proceeding.

Under normal circumstances, this memorandum should be submitted to the ASA within five (5) business days following the receipt of all necessary information from the applicant.

4. The staff liaison must promptly **circulate ASA counsel's SLDF Memorandum** to the members of the Task Force, and to ASA's general counsel who is a non-voting member of the Task Force. However, if the matter is a request for ASA participation in a case at the trial court level, then the SLDF Memorandum may only be submitted to the Task Force chair for consideration. The Task Force chair has authority, delegated by the Task Force, to reject requests for ASA participation at the trial level without consideration by the full Task Force (see minutes of 2004.04.02 Task Force meeting). This step should be completed within one (1) business day of receipt of memorandum.

5. ASA counsel must¹ then **prepare a Request for Proposals and Request for Comments (RFP-RFC)**, addressed to all ASA member attorneys (and chapter attorneys who may not be dues-paying members) in the state where the case will be decided, with a firm deadline for submission of fee proposals to provide legal services to ASA for participation in the case. The staff liaison should check with the executive directors of any chapters located in the appropriate state to be certain that all chapter or member attorneys are included (and to update the Attorneys' Council roster as necessary). The circulation of an RFP-RFC to all chapter and member attorneys in the state is required by ASA's Board of Directors, which resolved, on 9/15/2002, "to amend the procedures of the Subcontractors Legal Defense Fund as follows: Invite chapter and member attorneys in the state in which the case occurred, as well as other attorneys as appropriate, to present written comments or recommendations on the case to the Task Force on the Subcontractors Legal Defense Fund, when time allows, prior to its discussion and decision on action in the case."

Other details for the RFP:

- The RFP should include a redacted copy of the first part of the SLDF Memorandum describing the facts and issues from the case. The second part of the SLDF Memorandum, however, containing ASA counsel's impressions and recommendations for the Task Force, should be deleted.
- The RFP should also include a copy of the latest version of the *Terms and Conditions for ASA Amicus Counsel* as adopted by the Task Force and must state that the *Terms and Conditions* are required to be signed as a condition to ASA's acceptance of any fee proposal.

¹ The Task Force chair may direct ASA counsel to delay efforts beyond preparation of the initial memorandum pending discussion by the Task Force as appropriate.

The **staff liaison will circulate the RFP/RFC on behalf of ASA counsel**. Fee proposals should be promptly forwarded to the ASA staff liaison and the Task Force as they are received.

6. ASA counsel must **complete a form “Participation Agreement” for signature by the party whose position ASA’s brief will support**. This follows from the requirement that the Task Force consider “(g) Whether a party seeking ASA’s intervention has agreed to indemnify ASA for its expenses incurred should the case be settled prior to a final decision in the proceeding.” ASA counsel must transmit the agreement to counsel for the appropriate party and request signatures as indicated on the form. ASA counsel will report to the Task Force whether or not a signed Participation Agreement has been received by the time of the Task Force decision.

7. **Staff must schedule, with the Task Force chair, a time for a conference call²** for the Task Force to take the following actions:

(a) Approve the minutes of the last conference call or meeting;

(b) Decide whether ASA should participate in the case.

NOTE: If the Task Force decides in favor of ASA participation, then **ASA’s Executive Committee has three working days to veto the decision**. If the Task Force decides against ASA participation, that decision is final without review by the Executive Committee.

(c) If involvement in the case is recommended and funding is required, then concurrently recommend a fee proposal to accept.

NOTE: ASA’s Executive Committee also has three working days after the Task Force’s action to veto any decision to accept a fee proposal.

8. Should the Task Force decide in favor of ASA participation in the case, **Executive Committee review is required**. The staff liaison must immediately prepare draft minutes describing the action taken by the Task Force and forward that draft to the chief advocacy officer of ASA, who is the Task Force’s staff liaison to ASA’s Executive Committee.

9. Although the Executive Committee has three working days, it can act more quickly to approve a Task Force recommendation when time is a factor.

10. Once the Executive Committee has acted, the **staff liaison must transmit information about the decision to the ASA counsel** who will communicate with any attorneys who submitted fee proposals. If a fee proposal was accepted, that attorney should be informed, in writing, that the fee proposal was accepted subject to agreement to the *Terms and Conditions for ASA Amicus Counsel* and

² The Task Force chair may direct the staff liaison to request votes by email rather than schedule a conference call in appropriate cases.

subject to any other terms that were required by the Task Force. ASA counsel must **return a signed copy of the *Terms and Conditions*** before proceeding.

11. When documents are submitted by the *amicus* counsel as provided in the *Terms and Conditions*, **ASA counsel should act expeditiously to provide review and comments**. ASA counsel serves as the last check for quality control and for consistency with ASA's other positions and policies, so ASA counsel must not be reluctant to provide detailed, mandatory instructions to ASA's *amicus* counsel when that is appropriate. ASA counsel should coordinate any questions with ASA's chief advocacy officer, the staff liaison and/or the general counsel or the chair of the Task Force, as appropriate.

12. The staff liaison, in consultation with ASA counsel as needed, is responsible for **reviewing and approving invoices** from ASA *amicus* counsel in light of any fee cap that may have been agreed and ASA's financial policy. Staff must complete a check request and attach a copy of the invoice to the check request, for approval by the chief advocacy officer. Staff should retain file copies of check requests to ensure fee caps are observed.