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14 **UNITED STATES BANKRUPTCY COURT**
15 **EASTERN DISTRICT OF CALIFORNIA**
16 **SACRAMENTO DIVISION**

17 In re:) Case No. 12-32118
18 CITY OF STOCKTON, CALIFORNIA,) D.C. No. OHS-15
19 Debtor.) Chapter 9
20)
21) **FRANKLIN'S OBJECTION TO**
22) **AMICUS SUBMISSIONS OF THE**
23) **PEACE OFFICERS RESEARCH**
24) **ASSOCIATION OF CALIFORNIA**
25) **AND THE INTERNATIONAL**
26) **ASSOCIATION OF FIRE FIGHTERS**
27)
28) Continued Confirmation Hearing
Date: October 1, 2014
Time: 10:00 a.m.
Dept: C, Courtroom 35
Judge: Hon. Christopher M. Klein

1 Franklin High Yield Tax-Free Income Fund and Franklin California High Yield Municipal
2 Fund hereby object to (a) the *Motion To File Amicus Curiae Brief In Support Of Confirmation Of*
3 *The City Of Stockton's First Amended Plan Of Adjustment* [DN 1680] filed by the Peace Officers
4 Research Association Of California ("PORAC") on August 19, 2014; and (b) the *Application For*
5 *Submission And Consideration Of An Amicus Curiae Brief* [DN 1677], filed by the International
6 Association Of Fire Fighters (the "IAFF") on August 18, 2014.

7 8 PRELIMINARY STATEMENT

9 Both PORAC and IAFF move for permission to submit amicus briefs in support of the City's
10 Plan. Those proposed submissions are neither helpful nor appropriate. PORAC's brief is untimely
11 and relies on inadmissible hearsay and other information not part of the record of the confirmation
12 hearing. The proponents of the Plan did not, and in many circumstances would not have been able
13 to, obtain admission of that information during the confirmation hearing, and it is not appropriate for
14 it to be submitted now in the guise of an amicus submission. IAFF's brief merely regurgitates the
15 trial brief submissions of the City and other proponents of the Plan, with no independent thought,
16 analysis, or contribution.

17 18 OBJECTION

19 "There is no inherent right to file an amicus curiae brief with the Court." *Long v. Coast*
20 *Resorts, Inc.*, 49 F. Supp. 2d 1177, 1178 (D. Nev. 1999). Instead, it is a matter left to the court's
21 discretion whether to allow a non-party to do so. *Id.*; see, e.g., *NOW, Inc. v. Scheidler*, 223
22 F.3d 615, 616 (7th Cir. 2000) ("Whether to permit a nonparty to submit a brief, as amicus curiae, is,
23 with immaterial exceptions, a matter of judicial grace.") (collecting cases). A court should accept an
24 amicus brief only if it is procedurally sound and actually adds something useful to the court's
25 consideration of the issues and arguments presented by the parties. See *Ysleta Del Sur Pueblo v. El*
26 *Paso Cnty. Water Improvement Dist. No. 1*, 222 F.3d 208, 209 (5th Cir. 2000) (per curiam) (denying
27 motion for leave to file amicus brief as untimely and unhelpful). An amicus brief is not supposed to
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1 be a partisan exercise; it meant to assist the trier of fact in understanding the law, not merely to
2 support one party or another to the litigation. *See, e.g., Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th
3 Cir. 1997) (“The term ‘amicus curiae’ means friend of the court, not friend of a party.”) (citation
4 omitted); *New England Patriots Football Club, Inc. v. Univ. of Colo.*, 592 F.2d 1196, 1198 n.3 (1st
5 Cir. 1979) (an amicus is one who “for the assistance of the court gives information of some matter of
6 law in regard to which the court is doubtful or mistaken”) (citation omitted).

7 Courts therefore do “not grant rote permission to file such a brief.” *Voices for Choices v. Ill.*
8 *Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003). Instead, a skeptical eye is necessary to preserve
9 judicial economy, prevent gamesmanship with briefing limits, avoid unnecessary litigation costs, and
10 protect litigation from interest group politics. *See id.; NOW*, 223 F.3d at 616-17; *Ryan*, 125 F.3d
11 at 1064 (“In an era of heavy judicial caseloads and public impatience with the delays and expense of
12 litigation, we judges should be assiduous to bar the gates to amicus curiae briefs that fail to present
13 convincing reasons why the parties’ briefs do not give us all the help we need for deciding the
14 appeal.”). Finally, amicus briefs must be timely and useful to justify consideration. *Long*, 49 F.
15 Supp. 2d at 1178.

16 Here, both proposed submissions fail to meet these fundamental requirements and therefore
17 should be excluded.

18 **A. PORAC’S Brief Is Procedurally Defective And Relies On Facts Not In The Record.**

19 1. PORAC’s Untimely Filing Warrants Denial Of The PORAC Motion.

20 Trial courts confronted with requests for permission to file an amicus brief frequently refer to
21 the guidelines found in Rule 29 of the Federal Rules of Appellate Procedure or similar protocols.
22 *See Abu-Jamal v. Horn*, No. 99-5089, 2000 U.S. Dist. LEXIS 11013, at *7-8 (E.D. Pa.
23 Aug. 7, 2000). Consideration of those guidelines are appropriate here.

24 Under Rule 29, an entity that desires to submit an amicus brief must file a motion for
25 permission, with the proposed brief, “no later than 7 days after the principal brief of the party being
26 supported is filed.” Fed. R. App. P. 29(e). PORAC did not do so.

1 The City filed its *Supplemental Brief In Support Of Confirmation Of The First Amended Plan*
2 *Of Adjustment, As Modified (August 8, 2014)* [DN 1657], on August 11, 2014. Because that brief is
3 the “principal brief of the party being supported” by PORAC, PORAC was required to file its
4 motion and submit its brief on or before August 18, 2014 – no later than seven days after the City’s
5 filing. PORAC, however, did not file its motion and brief until August 19, 2014, and those
6 submissions therefore are untimely.

7 Because “[t]he concerns of necessity and timeliness which undergird the rule appear no less
8 important in the district court than in the court of appeals,” *Abu-Jamal*, 2000 U.S. Dist. LEXIS
9 at *18, PORAC’s failure to comply with Rule 29 results in the PORAC brief being defective.

10 2. PORAC Relies Heavily On Facts Not Included In The Confirmation Hearing Record.

11 In addition to being untimely, the PORAC brief relies heavily on sources and information not
12 in the record of the confirmation hearing. To make matters worse, the vast majority of “source
13 information” cited by PORAC would have been inadmissible had any plan proponent attempted to
14 submit it as evidence at trial.

15 Amici may not raise matters outside of the record. *See, e.g., Pfennig v. Household Credit*
16 *Servs., Inc.*, 295 F.3d 522, 529 n.2 (6th Cir. 2002) (refusing to consider “the particular factual issues
17 the amici raise regarding the actual workings of the [credit card] industry” in part because they “are
18 not in the record”), *rev’d on other grounds, Household Credit Servs., Inc., v. Pfennig*, 541 U.S. 232
19 (2004); *NGV Gaming, Ltd. v. Upstream Point Molate, LLC*, 355 F. Supp. 2d 1061, 1068 (N.D.
20 Cal. 2005) (noting that amicus curiae “is restricted to suggestions relative to matters apparent on the
21 record or to matters of practice”) (citation omitted).

22 PORAC’s brief not only raises factual issues outside of the confirmation hearing record, it
23 does so by citing inadmissible hearsay. In particular, PORAC’s discourse on the “practicalities” of
24 police recruitment and retention in California is replete with citations to sources not in the record,
25 most of which are inadmissible under the Federal Rules of Evidence. For example, the two
26 subsections of PORAC’s brief discussing the cities of San Diego and San Jose rely almost
27 exclusively on the contents of news articles, PORAC Brief at 6-8, all of which are inadmissible. *See*
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1 *Jamul Action Comm. v. Stevens*, No. 2:13-CV-01920-KJM-KJN, 2014 U.S. Dist. LEXIS 107582,
2 at *21-22 (E.D. Cal. Aug. 4, 2014) (denying amici’s request for judicial notice of news articles
3 because the articles were inadmissible hearsay). PORAC cannot insert unreliable extraneous
4 information into the record via an amicus brief, and its motion for permission to do so should be
5 denied.

6 **B. IAFF’s Brief Merely Repeats What Is Already Before The Court.**

7 IAFF, on the other hand, does not provide any new information to the Court. Instead, it
8 merely repackages arguments already before the Court in the various briefs submitted by proponents
9 of the City’s Plan. This is inappropriate.

10 “[A]n amicus brief is supplemental. . . . It should treat only matter not adequately addressed
11 by a party.” Fed. R. App. P. 29(d) Adv. Comm. Notes to 1998 Amend; *see Voices for Choices*, 339
12 F.3d at 545 (“it is very rare for [a proposed] amicus curiae brief to do more than repeat in somewhat
13 different language the arguments in the brief of the party whom the amicus is supporting”). Thus,
14 courts presented with an amicus petition consider whether a party is inadequately represented,
15 whether the amicus petitioner “has a direct interest in another case” that may be “materially
16 affect[ed]” by the outcome of the case, and whether the amicus has “a unique perspective, or
17 information, that can assist the court,” *NOW*, 223 F.3d at 617, although a unique perspective alone is
18 not sufficient to warrant consideration of a redundant brief. *See In re Halo Wireless, Inc.*, 684
19 F.3d 581, 596 (5th Cir. 2012) (denying amicus petition because “[w]hile the [amicus] may have a
20 ‘unique perspective’ . . . its brief in fact contains no information or arguments that the Appellees did
21 not already provide to the Court.”); *Ryan*, 125 F.3d at 1064 (“We are not helped by an amicus
22 curiae’s expression of a ‘strongly held view’ about the weight of the evidence, but by being pointed
23 to considerations germane to our decision of the appeal that the parties for one reason or another
24 have not brought to our attention.”) (citation omitted).

25 IAFF’s brief is chock full of references to other briefs but notably void of any original
26 contribution. In fact, the second sentence of the IAFF’s argument admits that the point it attempts to
27 make “has been made overwhelmingly clear in the briefs filed in support of the Plan by the City and
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1 the employee and retiree groups.” IAFF Brief at 2 n.1. IAFF then confirms its lack of unique
2 perspective at least four more times:

- 3 • “As is explained in greater detail in the briefs filed by the City, CalPERS, and
4 the various employee groups, the Plan meets those conditions.” IAFF Brief at 3
5 (emphasis added).
- 6 • “The City’s brief clearly sets forth the practical decisions the City made that
7 led to its proposal of the Plan, and why the Plan must be confirmed in order for the
8 City to even be able to provide governmental services.” IAFF Brief at 4 (emphasis
9 added).
- 10 • “CalPERS’s Constitutional brief shows that the legislative history makes it
11 clear that Congress intended for a state’s laws to continue to control during municipal
12 bankruptcy.” IAFF Brief at 5 n.4 (emphasis added).
- 13 • “In fact, CalPERS’s brief demonstrates that the California Legislature
14 considered Section 20487 to be such a prerequisite.” IAFF Brief at 7-8 (emphasis
15 added).

16 While IAFF recognizes that the issues addressed in its brief already have been exhaustively
17 covered by other briefs, it attempts to add its own voice to the chorus. This “does not tell us
18 anything we don’t know already. It adds nothing.” *Ryan*, 125 F.3d at 1064; *see also Abu-*
19 *Jamal*, 2000 U.S. Dist. LEXIS at *14 n.7 (no amicus brief where “highly qualified counsel have
20 addressed the principal factual and legal issues which amici groups seek to address”).

21 Moreover, IAFF does not and cannot claim any special interest in this case. *See Strasser v.*
22 *Doorley*, 432 F.2d 567, 569 (1st Cir. 1970) (“[A] district court lacking joint consent of the parties
23 should go slow in accepting . . . an amicus brief unless, as a party, although short of a right to
24 intervene, the amicus has a special interest that justifies his having a say.”). IAFF asserts that
25 protecting public employee pensions “is an extremely important issue for fire fighters” and that “the
26 IAFF has a substantial interest in ensuring that the Chapter 9 municipal bankruptcy process is not
27 used as a method for circumventing California’s strong pension protections.” IAFF Brief at 2.
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1 These “interests” do not distinguish IAFF from any other organization with public employee
2 members, let alone any public employee with a pension. *See Abu-Jamal*, 2000 U.S. Dist. LEXIS
3 at *16 (denying amici petitions and recognizing the vast number of possible amici in a case of
4 “world-wide interest”). Nor does IAFF claim that it is a party in a separate but related matter that
5 would be affected by the outcome of these proceedings. Accordingly, there is no valid reason for the
6 Court to consider IAFF’s submission.

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8 **CONCLUSION**

9 For the reasons set forth herein, the Court should deny the requests of IAFF and PORAC for
10 permission to submit amicus briefs.

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12 Dated: September 15, 2014

JONES DAY

13
14 By: /s/ James O. Johnston

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