

STATE OF MINNESOTA
IN SUPREME COURT

A22-0468

State of Minnesota,

Respondent,

v.

**REQUEST OF TONY WEBSTER
FOR LEAVE TO PARTICIPATE
AS AMICUS CURIAE**

Kristi Dannette McNeilly,

Appellant.

Pursuant to Minn. R. Civ. App. P. 129.01, Tony Webster respectfully requests leave of this Court to file an amicus brief.

I. APPLICANT SEEKS TO ADVOCATE FOR THE PUBLIC INTEREST

Mr. Webster is a journalist who on occasion works with attorneys to enforce his rights under public records and media shield laws. He seeks to participate as amicus curiae in this matter to advocate for the public interest. In this case, police searched a licensed attorney's computer and client files for evidence, exposing attorney-client privileged material to the adverse eyes of the state through a search warrant. The public has an exceptionally strong interest in maintaining the attorney-client privilege, a right which is gravely threatened when law enforcement can freely pilfer through an attorney's client files.

Mr. Webster will bring “citations to relevant precedent, arguments, and policy considerations not included in the primary briefs.” *St. Paul Fire & Marine Ins. Co. v. API, Inc.*, 738 N.W.2d 401, 411 (Minn. App. 2007).

II. APPLICANT SUPPORTS POSITION OF APPELLANT

Mr. Webster supports the position of Appellant, in that the warrant leading to the search of Appellant’s attorney-client privileged documents is invalid, and thus the search should be suppressed.

III. APPLICANT SUPPORTS REVERSAL OF THE COURT OF APPEALS

Mr. Webster’s amicus brief will suggest reversal of the Court of Appeals on the question presented.

IV. REASONS WHY A BRIEF OF AN AMICUS CURIAE IS DESIRABLE

When the government searches the files of a licensed attorney—files which are protected by the attorney-client privilege and work product doctrine—it is anything but routine. In the case of a criminal defense attorney, like Appellant, those files could contain privileged client communications, information in which a defendant may be entitled to Fifth Amendment protection, an attorney’s notes which could jeopardize a client’s interests or freedom, and legal strategy work product. Once this information is seen by and known to the government, it cannot be unseen or become unknown.

The harms are obvious when the target of the search is a criminal defense attorney; even more obvious when the governmental powers

participating in the search and its outcome are the very police departments and prosecutors directly adverse to the interests of that lawyer's clients. The government's knowledge of privileged material thus risks forever clouding prosecutions of that attorney's clients.

But such a situation is also harmful to other legal consumers, who may entrust their attorneys with information which may be highly desirable to the government, including with respect to controversial business dealings, regulatory compliance, national security matters, whistleblower actions, tax disputes, marital and child custody disputes, campaign finance and political activities, and more.

The threat of government searches of attorney–client privileged files is also clearly harmful to journalists, who entrust their attorneys to assist them in protecting their sources and First Amendment rights. In Mr. Webster's experience as a journalist, he has covered governmental activity in the courts and law enforcement, and in 2017, he was awarded the Minnesota Society of Professional Journalists' Peter S. Popovich Award for his First Amendment advocacy. Mr. Webster has had at varying times confidential source relationships with police officers, prosecutors, defense attorneys, and judges, in some cases enlisting the assistance of an attorney to resist government demands, or when responding to government demands, to separate out material which is and is not protected by media privileges.

If the government can search an attorney's office and all their attorney-client privileged client files as they did in the case underlying this appeal, privilege may cease to adequately exist, the requisite openness and trust between attorney and client may fracture, and thus the very role of attorneys in this state and our society may be called into question. Thus, Mr. Webster's brief will express the importance of protecting legal consumers' rights and bring additional practical considerations to the Court's attention.

V. CONCLUSION

Mr. Webster respectfully requests that the Court grant his request to appear as amicus curiae in this case.

Date: March 27, 2023

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CERTIFICATE OF DOCUMENT LENGTH

I certify that this document conforms to the requirements set forth at Minn. Civ. App. P. 129.01(c), in that it does not exceed 1,500 words, exclusive of the caption, signature block, and any addendum.

This document was prepared using Microsoft Word 2019 with a 13-point proportional font, Century Schoolbook, and consists of 657 words including headings, footnotes, and quotations.

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