



U.S. Department of Justice
Executive Office for Immigration Review

Office of the Chief Immigration Judge

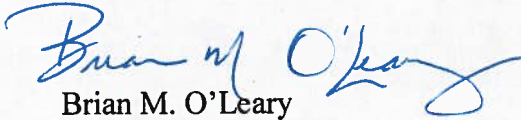
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To: All Immigration Judges
From: The Office of the Chief Immigration Judge
Subject: Friend of the Court Guidance

The attached memorandum was prepared by the Office of Legal Access Programs in conjunction with the Office of the Chief Immigration Judge. It provides suggestions and limitations on the proper use of a Friend of the Court.

I am confident that you will find it useful. If you have any questions, please contact your Assistant Chief Immigration Judge.


Brian M. O'Leary
Chief Immigration Judge

**The Friend of the Court Model for
Unaccompanied Minors in Immigration Proceedings**

September 10, 2014

Introduction

The demands placed on the courts are increasing due to the unprecedented numbers of unaccompanied minors being placed in immigration proceedings. As a result there is a growing need for support systems the courts can use to effectively and efficiently manage the cases of unaccompanied minors. The Friend of Court model is one such system. Existing guidance for adjudicating immigration cases does not directly address the Friend of the Court model. However, guidance regarding unaccompanied minors in immigration court proceedings does stress that special attention is warranted in such cases “[g]iven the particular vulnerability of minor respondents.” OPPM 08-01.

The Friend of the Court model is currently being used in several Immigration Courts that maintain separate juvenile dockets. Both Immigration Judges and legal services providers have reported that the Friend of the Court model has been a valuable tool in effectively and efficiently managing juvenile hearings. The tasks performed by a particular Friend of the Court will depend on the needs of the court and the ability and willingness of legal service providers to appear in this role. This memorandum discusses the definition, scope, and application of the Friend of the Court model in immigration proceedings involving unaccompanied minors.¹

I. Definition of the Friend of the Court and Its Use in Immigration Proceedings

A “Friend of the Court” (or “amicus curiae”) is defined as an individual or organization that interposes in a judicial proceeding to assist the court. 4 Am. Jur. 2d, Amicus Curiae, § 1, p. 109. A person appearing as Friend of the Court is not a party or privy in an action. *Village of North Atlanta v. Cook*, 133 S.E.2d 585, 589 (Ga. 1963). Instead, he or she is “a bystander whose mission is to aid the court, to act only for the personal benefit of the court.” *Burger v. Burger*, 298 S.W.2d 119, 120 (Tex. 1957) (internal quotation marks omitted); *see also Booth v. State*, 499 S.W.2d 129 (Tex. Crim. App. 1973) (stating that the role of Friend of the Court “is to aid the court and it cannot be subverted to use of the litigant in the case”).

The right to be heard and the extent of the Friend of the Court’s participation in proceedings “is entirely within the court’s discretion.” *In re Estate of Ohlhauser*, 101 N.W.2d 827, 829 (S.D. 1960); *see also State ex rel. Baxley v. Johnson*, 300 So. 2d 106 (Ala. 1974) (noting that

¹ This memorandum does not cover the role of a representative. It is assumed that the Friend of the Court role described herein is occurring for an unrepresented minor.

a Friend of the Court has no legal standing in court). The Friend of the Court may, with the permission of the court, act as the court's advisor, call attention to law or facts that may have escaped consideration, and provide requested information to the court. *See Kline v. Weaver*, 348 S.W.2d 379 (Tex. Civ. App. 1961); *Skolnick v. State*, 388 N.E.2d 1156 (Ind. App. 1979); *Keenan v. Board of Chosen Freeholders of Essex County*, 255 A.2d 786 (N.J. App. Div. 1969). However, given the Friend of the Court's advisory role, he or she "can file no pleadings or motions of any kind," "can reserve no exception to any ruling of the court, and of course cannot prosecute an appeal." *In re Perry*, 148 N.E. 163, 165 (Ind. App. 1925); *see also* Professional Ethics Committee for the State Bar of Tex., Opinion No. 628 (May 2013) (stating that an attorney who, *inter alia*, provides legal advice to the minor regarding his or her case oversteps the Friend of the Court role and instead creates an attorney-client relationship with the child). Thus, the Friend of the Court serves in a non-representational role, the scope of which is determined by the court in its discretion.

While the regulations do not address appearances by Friends of the Court in Immigration Court, under 8 C.F.R. § 1240.1(a)(1)(iv), an immigration judge shall have the authority "[t]o take any other action consistent with applicable law and regulations as may be appropriate." Further, the regulations also explicitly allow for the appearance of amicus curiae before the Board of Immigration Appeals. *See* 8 C.F.R. §1292.1(d) ("The Board may grant permission to appear, on a case-by-case basis, as amicus curiae, to an attorney or to an organization represented by an attorney, if the public interest will be served thereby."); *see also Matter of DeJong*, 16 I&N Dec. 739 (BIA 1979) ("An amicus curiae serves this purpose by making suggestions to the Board, by providing supplemental assistance to existing parties and by insuring a complete presentation of difficult issues so that the Board may reach a proper decision.").

II. Friend of the Court Practices

As established above, it is for the court, in its discretion, to determine the scope of the Friend of the Court. Given, however, that the Friend of the Court is, fundamentally, an aid to the court and not an advocate, the following considerations should be kept in mind:

- **The Friend of the Court does not represent a respondent.** The Friend of the Court is without authority to accept or concede service, admit factual allegations, enter pleadings, request a removal order, seek relief (including voluntary departure), or exercise or waive rights on behalf of the respondent. Individuals appearing as Friend of the Court should be mindful of their role as an independent advisor and aid to the court. The Immigration Judge should make the role of the Friend of the Court as an independent advisor to the Court clear and put such a statement on the record.

- **All parties should take care to clarify the role of the Friend of the Court to the respondent, the custodian (if applicable), and for the record.** In a May 2013 Opinion, the Professional Ethics Committee for the State Bar of Texas concluded that, under Texas ethics rules, an attorney who intends to appear as Friend of the Court in fact creates an attorney-client relationship by implication “if the lawyer knows a person reasonably expects him to provide legal services but does nothing to correct that misapprehension.” Opinion No. 628 (May 2013). Thus, if a lawyer does not intend to create an attorney-client relationship, but instead intends to appear in a non-representational role as Friend of the Court, “the lawyer must clearly define to the minor the role the lawyer intends to perform and such role cannot involve participating in the proceeding in any manner that would reasonably lead the minor to believe that the lawyer was representing the minor.” *Id.*

Particularly given the vulnerabilities of children, the Immigration Judge should clearly explain to the respondent and his or her adult custodian, if applicable, that the Friend of the Court is not the respondent’s attorney and is only there to assist the court at that day’s hearing. The Immigration Judge should clarify on the record that the respondent is unrepresented and that the Friend of the Court is appearing only in a limited capacity.

- **Courts remain encouraged to facilitate pro bono representation.** While the Friend of the Court has a useful role to play in assisting the court and enhancing a respondent’s comprehension of proceedings, the Friend of the Court is not a substitute for a legal representative. Immigration Judges and court administrators remain encouraged to facilitate pro bono representation, which “benefits both the respondent and the court, providing respondents with welcome legal assistance and the judge with efficiencies that can only be realized when the respondent is represented.” OPJM 08-01.

III. Role Served by the Friend of the Court

The following examples are ways in which a Friend of the Court may assist the court and increase respondents’ comprehension of proceedings:

- **Gather and convey basic information regarding the status of such respondents’ cases, without compromising any issues regarding removability.** The Friend of the Court aids the court by bringing to its attention information relevant to the status of the respondent’s case. *For example:*
 - **Information regarding the child’s reunification status.** In detained cases, the Immigration Judge may require information regarding a child’s possible reunification with family members or others to best determine the next steps in

the case, including whether and for how long a continuance is warranted. The Friend of the Court can provide the court with information regarding the party with whom the child is seeking reunification and how long the process is expected to take.

- **Information regarding efforts to secure representation.** The Friend of the Court may provide the court with updates regarding the status of pro bono placement of the respondent's case. This information may also aid the court in determining whether and for how long a continuance may be warranted.
 - **Other basic information.** The Friend of the Court may also assess and communicate to the court special needs that the respondent may have with respect to his or her proceedings. For example, the Friend of the Court may learn and bring to the court's attention the fact that the respondent is not conversant in the language of interpretation but instead requires interpretation in a different dialect. Alternatively, the Friend of the Court may alert the court to particularly sensitive issues that are better discussed in a sidebar conference or closed hearing. The Friend of the Court may suggest other child-friendly ways to adapt the court proceedings in ways that may help a particular child.
- **Help the respondent navigate courtroom procedures.** *For example:*
 - **Assist with basic mechanics of the docket.** A Friend of the Court can help the court identify the respondent in the courtroom, guide the respondent around the courtroom, sit at counsel's table with the respondent, assist the respondent in receiving paperwork, and assist the respondent in identifying documents that the Immigration Judge requests. Although the Immigration Judge remains responsible for explaining courtroom procedures and the child's rights in immigration proceedings, the Friend of the Court can reinforce this information, answer the child's questions, or alert the Immigration Judge if the Friend of the Court learns that the minor does not understand what is being said.
 - **Explain courtroom procedures to the respondent.** While the Immigration Judge may explain the role of different actors in Immigration Court, the Friend of the Court may answer any questions and reinforce the Judge's explanation. The Friend of the Court can explain the roles of the various actors in the courtroom, explain how to work with an interpreter, and remind the respondent to speak loudly and clearly to the Immigration Judge.

- **Assist the respondent in reviewing and filling out forms.** *For example:*
 - **Change of Address form and Motion for Change of Venue.** The Friend of the Court may assist the respondent in filling out the Change of Address form and Motion for Change of Venue for submission to the court.
- **Facilitate the respondent's attendance at hearings.** *For example:*
 - **Explain the requirement to return to court.** The Friend of the Court may further explain to the child the need to return to court for all future hearings, as well as further explain the potential consequences for failing to appear. He or she may also request that the Immigration Judge reinforce the importance of appearing at future hearings.
 - **Provide logistical support with regard to future hearings.** Where appropriate, the Friend of the Court may also explain to the respondent and to his or her adult custodian the options for public transportation to the court and the requirements for entering the court building, meet the child at the courtroom entrance, and provide reminders to the child about his or her upcoming hearing and what documents to bring to the hearing. The Friend of the Court may also provide information to the child and/or his or her custodian regarding how to obtain documents that the court has requested.
- **Serve as a liaison for such respondents.** A Friend of the Court can help to connect child respondents to available community resources, including referring respondents and their custodians to pro bono legal and social service providers (including, for example, organizations that provide assistance with school enrollment). This is particularly the case where the child and the community service provider do not speak the same language; the Friend of the Court may serve as a linguistic and logistical bridge between the child and the community organization or pro bono representative. The Friend of the Court may also serve as a liaison between the child and government agencies. For example, the Friend of the Court may assist the child in obtaining information from U.S. Citizenship and Immigration Services (USCIS) regarding asylum and adjustment of status procedures.

The Friend of the Court practices listed above are not exhaustive. Judges and court staff are encouraged to suggest additional guidance as necessary.

IV. Conclusion

The Friend of the Court model has been shown to be a useful tool for courts in adjudicating the cases of unaccompanied minors. The Friend of the Court, serving as an aide to the court and within parameters set in the court's discretion, can facilitate greater efficiency in the adjudication of cases and enhance the unaccompanied minors' comprehension of proceedings. While there are boundaries to the Friend of the Court model, including the fact that the Friend of the Court is not a substitute for representation, Immigration Judges are encouraged to consider allowing for Friend of the Court appearances.