



DM 22-06

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Effective: Immediately

## FRIEND OF THE COURT

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**PURPOSE:** Provide updated guidance on utilizing the Friend of the Court model in removal proceedings before the immigration courts; rescind and cancel Policy Memorandum 20-05.

**OWNER:** David L. Neal, Director 

**AUTHORITY:** 8 C.F.R. § 1003.0(b)

**CANCELLATION:** Policy Memorandum 20-05

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### I. Introduction

The Executive Office for Immigration Review (EOIR) supports systems and tools that assist the immigration courts with effective and efficient case management. The Friend of the Court model is a valuable tool, assisting pro se respondents in navigating the complex immigration court system, and thereby creating greater efficiency and fairness by helping respondents to better understand court proceedings. Immigration courts have already used the Friend of the Court model successfully to assist with dockets involving unaccompanied children and family groups.<sup>1</sup>

Given the benefits that this model provides the immigration courts and those who appear before them, the agency welcomes and encourages the participation of Friends of the Court in all types of immigration court proceedings involving unrepresented respondents. Accordingly, Immigration Judges and court staff are urged to accommodate and facilitate Friends of the Court within the scope described by this memorandum and in accordance with applicable law and other agency guidance. This Director's Memorandum (DM) cancels and replaces Policy Memorandum (PM) 20-05, *Legal Advocacy by Non-Representatives in Immigration Court* (Nov. 21, 2019), in order to provide updated guidance on the Friend of the Court model.<sup>2</sup>

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<sup>1</sup> See Memorandum from Brian O'Leary, Chief Immigration Judge, *The Friend of the Court Model for Unaccompanied Minors in Immigration Proceedings* (Sept. 10, 2014) (O'Leary Memorandum). This memorandum stressed the special attention warranted in unaccompanied children's cases, given the particular vulnerability of child respondents.

<sup>2</sup> PM 20-05 rescinded the O'Leary Memorandum previously referenced. Although this memo rescinds PM 20-05, it does not reinstate the O'Leary Memorandum. Rather, this DM provides guidance consistent with the O'Leary Memorandum and applies to all unrepresented respondents.

## II. Definition of the Friend of the Court

A Friend of the Court is defined as an individual or organization that participates in an immigration court proceeding in order to facilitate the flow of information in the courtroom. The role of a Friend of the Court is to increase pro se respondents' understanding of the proceedings, as well as their rights and obligations, to the greatest extent possible. *See generally* 4 Am. Jur. 2d, Amicus Curiae, § 1. A Friend of the Court, however, is neither a party nor a representative of a party in the proceeding. *See generally* 4 Am. Jur. 2d, Amicus Curiae, § 5.

As described more fully below, the Friend of the Court may call attention to law or facts that may be helpful to the court and is permitted to provide information to the Immigration Judge.<sup>3</sup> However, because the Friend of the Court is not a representative of a party in proceedings, the Friend of the Court cannot submit any filings in a case, including but not limited to, applications, appeals, pleadings, or motions.<sup>4</sup>

## III. Facilitating Friends of the Court

Assistant Chief Immigration Judges (ACIJs) and Court Administrators should encourage and advance court practices that facilitate the assistance of Friends of the Court. Relatedly, the Chief Immigration Judge should designate a Regional Deputy Chief Immigration Judge who will be responsible for coordinating the immigration courts' practices with respect to Friends of the Court.

ACIJs should also consult with EOIR's Legal Access Programs (LAP) to strengthen the agency's legal access efforts and better coordinate the agency's support of the Friend of the Court model. ACIJs are also encouraged to consult with one another, individually or collectively, to share best practices, lessons learned, and insights into facilitating this participation. Further, the Office of the Chief Immigration Judge (OCIJ) should periodically compile the best practices, lessons learned, and insights on facilitating this participation, and transmit that information to EOIR's LAP, which may benefit from the on-the-ground experiences of Immigration Judges and court personnel.

## IV. Role Served by the Friend of the Court

While the immigration court has discretion to determine the scope of assistance provided by a Friend of the Court, the following examples are ways in which a Friend of the Court can appropriately assist the court and increase the respondent's comprehension of and participation in their own proceedings.

- A. **Help with courtroom mechanics.** Examples of how a Friend of the Court can assist the immigration court include:

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<sup>3</sup> *See Skolnick v. State*, 388 N.E.2d 1156 (Ind. App. 1979); *Keenan v. Bd. of Chosen Freeholders*, 255 A.2d 786 (N.J. Super. Ct. App. Div. 1969); *Kline v. Weaver*, 348 S.W.2d 379 (Tex. Civ. App. 1961).

<sup>4</sup> Nothing in the memo is intended to restrict a *pro se* respondent from filing a document with which a Friend of the Court has assisted them, where the Friend of the Court is acting as an associate of a non-profit organization who self-identifies and discloses their assistance on the *pro se* filing. *See Nw. Immigrant Rts. Project v. Sessions*, 17-cv-00716 (W.D. Wash. July, 27, 2017)

1. Provide courtroom orientation. A Friend of the Court can help the court identify the respondent in the courtroom, guide the respondent around the courtroom, sit with the respondent during proceedings, assist the respondent in receiving paperwork, and assist the respondent in identifying documents requested by the Immigration Judge.
2. Facilitate communication. Although the Immigration Judge remains responsible for explaining courtroom procedures and the respondent's rights in immigration proceedings, the Friend of the Court can reinforce this information, seek clarification from the Immigration Judge at the respondent's request, or alert the Immigration Judge if the Friend of the Court learns or believes that the respondent does not understand.
3. Help explain courtroom functions and procedures in the courtroom. The Friend of the Court can explain the roles of various actors in the courtroom, including the interpreter and Government counsel.

**B. Communicate helpful information pertinent to the respondent's case.** The Friend of the Court aids the court by bringing attention to information relevant to the status of the respondent's case without compromising the integrity of the adjudication. Some illustrations of how a Friend of the Court can help in this regard:

1. Information regarding a child's reunification or an adult's release plan. In detained cases, the Immigration Judge may need information regarding a child's possible reunification with family members or others. This information can assist the Immigration Judge to determine what steps to take in the case (e.g., 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. Similarly, the Immigration Judge may need information regarding a detained adult's possible release plan and intentions after release from detention to determine next steps in the case.
2. Information regarding efforts to secure representation. The Friend of the Court can update the court regarding the status of any pro bono placement for the respondent's case. This information can also aid the court in making decisions about when the case can fairly proceed.
3. Information regarding communication. The Friend of the Court can communicate to the court any special needs that the respondent may have with respect to the proceedings. For example, the Friend of the Court can inform the court when the judge might consider another language or dialect for interpretation to ensure or enhance the respondent's understanding of the proceedings.

**C. Communicate information regarding competency.** The Friend of the Court can also bring any mental health concerns to the court's attention, or alert the court to

particularly sensitive or discrete issues related to that specific respondent.<sup>5</sup> In addition, the Friend of the Court might suggest safeguards and/or other effective ways to adapt the proceeding in ways that may help a respondent with special circumstances, such as a child, an individual with special needs, or a member of a vulnerable group.

**D. Provide basic assistance with certain forms.** For example:

1. Change of Address Form. The Friend of the Court can assist the respondent in filling out the Change of Address form (Form EOIR-33/IC). The responsibility of filing the form with the immigration court rests on the respondent, but the Friend of the Court can help ensure that the form is filled out completely and is properly submitted to the court and the Department of Homeland Security in a timely manner.
2. Other Forms. As appropriate, based on form instructions and applicable law and regulation, and consistent with such rules related to preparer attestations, the Friend of the Court could assist respondents with preparation of certain other forms pertinent to immigration proceedings.

**E. Facilitate attendance at hearings.** Some examples of how a Friend of the Court can assist the immigration court include:

1. Reinforce the Immigration Judge's order or statement regarding future hearings. The Friend of the Court can help the respondent's understanding of the Immigration Judge's order or statement regarding the need to return to court for future hearings and can reinforce the Immigration Judge's advisals regarding the potential consequences for failing to appear. The Friend of the Court could also seek clarification from the Immigration Judge at the request of the respondent, or alert the Immigration Judge if the Friend of the Court learns or believes that the respondent does not understand. The Friend of the Court also might request that the Immigration Judge restate or reinforce the importance of the respondent's appearing at future hearings.

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<sup>5</sup> Regardless of the presence of a Friend of the Court, if the Immigration Judge determines there are indicia of incompetency, the Immigration Judge must conduct a further inquiry to determine whether the respondent is competent for purposes of immigration proceedings and shall evaluate and apply appropriate safeguards if the respondent lacks sufficient competency to proceed. *See Matter of M-A-M-*, 25 I&N Dec. 474, 481-84 (BIA 2011) (stating that Immigration Judges may accept evidence related to a respondent's mental health or competency from third parties); *see also Franco-Gonzales v. Holder*, CV 10-02211, Partial Judgment and Permanent Injunction (C.D. Cal. Apr. 23, 2013); *Franco-Gonzales v. Holder*, CV 10-02211, Order Further Implementing This Court's Permanent Injunction (C.D. Cal. Oct. 29, 2014) (requiring safeguards and protections for detained unrepresented class members in California, Arizona or Washington, who have been identified either pursuant to a bona fide doubt finding by an Immigration Judge or by the Department of Homeland Security as having a serious mental disorder or condition that may render them incompetent to represent themselves); EOIR's Chief Immigration Judge policy dated April 22, 2013, entitled "Nationwide Policy to Provide Enhanced Procedural Protections to Unrepresented Detained Aliens with Serious Mental Disorders or Conditions" ("Nationwide Policy").

2. Provide logistical support with regard to future hearings. Where appropriate, the Friend of the Court can explain to the respondent (or the respondent's custodian or adult caregiver, where applicable) the options for transportation to the court and the requirements for entering the court building. The Friend of the Court could provide reminders to the respondent about their upcoming hearing and what documents to bring. The Friend of the Court could also provide general information to the respondent regarding how to obtain documents that the court has requested.

**F. Serve as a liaison.** Where appropriate, a Friend of the Court can help connect the respondent with available community resources, including referral to pro bono legal and social service providers. The Friend of the Court can also serve as a liaison between the respondent and Government agencies (e.g., assisting the respondent in obtaining general information regarding asylum and adjustment of status procedures before the U.S. Citizenship and Immigration Services).

## **V. Immigration Court Flexibilities**

**A. Courtroom Practices.** Immigration Judges are strongly encouraged to be flexible, particularly in the scheduling of hearings in which a Friend of the Court may wish to participate. Where practicable and appropriate, Immigration Judges should give Friends of the Court priority scheduling at master calendar hearings when requested, as well as consider creating a "friend of the court docket" for a particular time of the week or month to accommodate and foster the participation of Friends of the Court.

**B. Participation by Remote Technology.** Immigration Judges should be flexible when a Friend of the Court seeks to participate via remote technology, such as by telephone or through video teleconference. As respondents are often detained in locations that are not readily accessible, remote technology facilitated by the immigration court can be an important means for a Friend of the Court to communicate with the respondent. Where EOIR video teleconferencing is available in conjunction with a scheduled hearing and the request to use the equipment is reasonable, courts should allow the use of EOIR video teleconferencing equipment to communicate with the respondents, as long as the use of video teleconferencing by Friends of the Court does not disrupt essential court operations.

## **VI. Friend of the Court Considerations**

The following practices are essential to the successful application and utilization of the Friend of the Court model.

### **A. Clarity on the Friend of the Court's Role.**

1. Explanation to the respondent. The Immigration Judge should clearly explain to the respondent (or the respondent's custodian or adult caregiver, where applicable) that the Friend of the Court is an independent advisor to the court, not

the respondent's attorney, and that the Friend of the Court is there to provide information to the court at that day's hearing. The Immigration Judge should ensure that the record is clear that the respondent is not represented and that the Friend of the Court is participating in the hearing in this limited capacity. The Immigration Judge should take particular care when explaining the Friend of the Court's role and the party's representation status to children, adults of limited competence, and other vulnerable groups. To the extent possible, the Immigration Judge should establish for the record that the respondent understands that the Friend of the Court is not her or his attorney.

2. Special considerations for representatives. Attorneys who are present as Friends of the Court should note the ethical obligations that may apply to implied attorney-client relationships and take steps to avoid such an implication. *See* Professional Ethics Committee for the State Bar of Texas, Op. No. 628 (May 2013) (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."). This ethical obligation underscores the importance of expressly articulating on the record and making clear for the respondent the role and limitations of a Friend of the Court.

**B. Representation.** The Friend of the Court is without authority to accept or concede service, admit factual allegations, enter pleadings, request a removal order or relief from removal, or seek or waive appeal on behalf of the respondent.<sup>6</sup>

**C. 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 intended to be a substitute for a legal representative. Immigration Judges and Court Administrators are still encouraged to allow time for respondents to obtain counsel and to facilitate pro bono representation. *See* DM 22-01, *Encouraging and Facilitating Pro Bono Legal Services* (October 22, 2021).

## VII. Conclusion

The Friend of the Court model is a useful tool for immigration courts. This model is all the more beneficial in cases involving unaccompanied children, adults with competency issues, and other particularly vulnerable groups. Serving as an aide to the court, the Friend of the Court can facilitate greater efficiency in the adjudication of cases and enhance the respondent's understanding of their proceedings. While there are clear boundaries to the Friend of the Court model, Immigration Judges should encourage participation of Friends of the Court in the hearings before them when no legal representation is present.

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<sup>6</sup> Only an individual who has entered an appearance on the respondent's behalf on the appropriate designated form may perform these functions. A Friend of the Court, by definition, has not entered an appearance on the respondent's behalf, and, thus, lacks such authority. *See* 8 C.F.R. § 1292.4(a).

The examples used in this memorandum are by no means exhaustive, but are intended to provide a clear indication of the value of a Friend of the Court to both immigration courts and respondents, and to provide best practices that can be applied when the Friend of the Court model is applied.

This DM is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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