



## **Ethical Considerations for Texas Attorneys Appearing as Friend of Court for a Minor in Removal Proceedings**

Attorneys have been historically allowed to appear as *amicus curie* or “friend of the court” (Friend of Court) in removal proceedings to assist immigration courts effectively and efficiently manage the cases of unaccompanied minors.<sup>1</sup> However, attorneys are limited in that role by OPPM 20-05 issued by EOIR on November 21, 2019.<sup>2</sup> In that memo, *Legal Advocacy by Non-Representatives in Immigration Court*, EOIR reiterates that *amicus curie* are not an exception to the rule that individuals who have not been recognized by the court as a legal representative through the filing of the form EOIR-28 cannot engage in legal advocacy.<sup>3</sup> OPPM 20-05 explicitly supersedes the prior memorandum authorizing Friend of Court for unaccompanied children.<sup>4</sup> A Friend of Court is an aid to the court – **not** an advocate. The scope of this non-representational role is determined by the immigration court in its discretion.<sup>5</sup>

Attorneys should be aware of certain actions that are specifically limited in OPPM 20-05. The memo prohibits the filing of pleadings, motions, exceptions to any ruling, or appeal by “friend of the court.” It also explicitly prohibits a Friend of Court 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.”<sup>6</sup> The memo also states, “[m]oreover, ‘[t]he named parties should always remain in control, with the *amicus* merely responding to the issues presented by the parties.’ . . . ‘An *amicus* cannot initiate, create, extend, or enlarge issues.’ . . . Consistent with this limited role, an *amicus* may not introduce an issue into a case or seek relief that is not raised or requested by the parties.”<sup>7</sup>

The memo also notes that certain actions that were previously outlined in the 2014 memo are still authorized by anyone to do at the request of the respondent. Those actions include “assisting a respondent in filling out forms, providing transportation options for a respondent, explaining logistical procedures to a respondent, sitting with a respondent, serving as a community liaison for a respondent.”<sup>7</sup> Additionally, the memo finds that certain actions in court are also authorized by anyone of respondent’s choosing such as “providing specific factual information regarding a respondent to the court-e.g. whether a minor has been reunified with his or her parents and, is, thus, no longer a UAC or whether the respondent speaks a particular language.”<sup>8</sup>

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<sup>1</sup> Executive Office for Immigration Review Memorandum, [Friend of the Court Guidance](#), Brian M. O’Leary, September 10, 2014.

<sup>2</sup> Executive Office for Immigration Review, Memorandum 20-05, [Legal Advocacy by Non-Representatives in Immigration Court](#), November 21, 2019.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at p. 3-4.

<sup>5</sup> *Id.* at 1-2; *See* 8 C.F.R. § 1240.0(a)(1)(iv).

<sup>6</sup> *Id.* at p. 4

<sup>7</sup> *Id.* at FN 8

<sup>8</sup> *Id.* Advocates who are providing limited pro se assistance to UC should consult your agencies’ policies and practices regarding pro se assistance and familiarize yourself with the litigation and settlement agreement in Northwest Immigrant Rights Project (NWIRP) and *Cheng v. Sessions III, et al.*, 2:17-cv-716 (W.D. Wash.). More



Texas attorneys should also be aware of the May 2013 Ethics Opinion No. 628 (“Opinion”) issued by the Professional Ethics Committee for the State Bar of Texas (“Committee”). The Opinion discusses whether a Texas attorney may appear as “friend of the court” for a minor in immigration proceedings without acting as a lawyer for the minor.<sup>9</sup>

The Committee determined that “[i]f a lawyer provides advice to a minor appearing before an immigration court and provides legal and factual argument to the court on behalf of the minor, the lawyer must ensure that the minor clearly understands the nature of their relationship and the role of the lawyer.”<sup>10</sup> The Committee also concluded that an attorney-client relationship is created by implication “if the lawyer knows a person reasonably expects him to provide legal services but does nothing to correct that misapprehension.”<sup>11</sup> Therefore, attorneys appearing as “friend of the court” must consider and be mindful of whether the minor, who may not understand English, “might reasonably assume that the lawyer was providing legal services” given the nature of the immigration court proceedings.<sup>12</sup>

Below are best practices and tips for attorneys who appear as “friend of the court” in their practice:

- **DO clarify your role as Friend of Court to the respondent, the minor’s sponsor (if applicable), and for the record.** If you do not intend to create an attorney-client relationship, you *must* clearly define the role you intend to perform to the minor, and do not participate in the proceedings “in any manner that would reasonably lead the minor to believe” you are representing him.<sup>13</sup>
- **DO help the respondent navigate courtroom procedures.** This may include assisting with basic mechanics of the docket such as assisting the court identify the respondent, guiding the respondent around the courtroom, assisting the respondent in identifying documents that the immigration judge requests, reinforce information provided by the Immigration Judge, alert the court if you learn that the child does not understand what is being said, or answer the child’s non-legal questions. For example, answer questions the child may have about the change of address form or about proper courtroom attire. You can also provide information about community resources, including pro bono legal and social services.
- **DO gather and convey basic information about the respondent’s reunification status if the child is detained.**

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information about the case and settlement can be found here: <https://www.nwirp.org/nwirp-reaches-settlement-with-doj-to-continue-to-provide-assistance-to-unrepresented-individuals-in-deportation-proceedings/>

<sup>9</sup> State Bar of Texas Professional Ethics Committee, [Opinion No. 628](#), May 2013.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 3; Opinion No. 628 at 2-3.



- DO gather and convey respondent's or legal service provider's efforts to secure legal representation without compromising any issues regarding removability.
- DO communicate to the court any special needs or particularly sensitive issues that may need to be addressed in a sidebar or special hearing.
- DO communicate to the court any technical issues that may arise during a VTC hearing including when the audio or video equipment is not working, or audio or video feeds are bleeding in from another hearing.
- **DON'T represent the respondent.** The Friend of Court does not have the authority to accept or concede service, exercise or waive the respondent's rights, admit factual allegations, enter pleadings, request a removal order, or declare relief.<sup>14</sup>
- DO assist the respondent in filling out Change of Address forms and Pro Se Motions for Change of Venue.
- **DO explain the requirement to return to court to the respondent and provide logistical support for future hearings.** If you do explain the requirement to return, also explain the potential consequences of failing to appear at future hearings.
- DO request additional guidance from the immigration judges and court staff as necessary.

The Committee also specified that although attorneys acting as Friend of Court are permitted to limit the scope of representation, the limitation does not "remove the lawyer's obligation to provide competent and diligent representation."<sup>15</sup> Further, the limitations of the representation must be communicated to the respondent and the respondent must give an informed consent to the limitation.<sup>16</sup> For further examples, please see our Friend of Court talking points available as part of our Toolkit for Advocating for UC in VTC and "Rocket Docket" proceedings.

This practice advisory does not constitute legal advice and is for the purpose of highlighting key ethical considerations in Texas when appearing as Friend of Court. For case specific technical advice, please reach out to us via our website, [www.cilacademy.org/technicaladvice](http://www.cilacademy.org/technicaladvice) or the [State Bar of Texas Ethics Hotline for Lawyers](#), 1-800-532-3947.

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<sup>14</sup> EOIR OPPM 20-05.

<sup>15</sup> Opinion No. 628 at 3.

<sup>16</sup> *Id.*