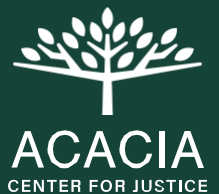


# **You've Got a Friend in Me: Enhancing Pro Bono Placement Through Friend of the Court Practice**

**ABA CILA & COI Pro Bono Symposium**

September 15, 2023



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# Discussion Roadmap

**Scope  
and Purpose  
of FOTC**

**Implementation  
of FOTC**

**Common Uses  
of FOTC**

**Benefits of  
Incorporating  
FOTC into Pro  
Bono  
Programs**

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# Scope and Purpose of FOTC

# Guidance on Friend of the Court



- **O’Leary Memorandum** (September 2014) – permits FOTC in immigration proceedings involving unaccompanied children
- **McHenry Memorandum** (November 2019) – expands to adult proceedings, but emphasizes limitations of FOTC capacity
- **Neal Memorandum** (May 2022) – expands scope of FOTC services, encourages FOTC appearances, and urges court staff to accommodate its use

# Definition of Friend of the Court



- An **individual or organization** that participates in an immigration court proceeding in order to **facilitate the flow of information in the courtroom.**
- **To increase pro se respondents' understanding of the proceedings,** as well as their rights and obligations, to the greatest extent possible.
- **May call attention to law or facts** that may be helpful to the court and is permitted to **provide information to the Immigration Judge.**

# Limitations on Friend of the Court



- FOTC is neither a party nor a representative of a party in proceedings
- **Cannot submit any filings in a case**, including but not limited to, applications, appeals, pleadings, or motions.
- **FOTC 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.
- Not intended to be a substitute for a legal representative.

# EOIR Facilitation of Friend 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.**
  - **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.**
- **IJs are strongly encouraged to be flexible**
  - **Scheduling of hearings – *give FOTC priority***
  - **Consider creating a “friend of the court docket”**
  - **Allow FOTC participation via remote technology**



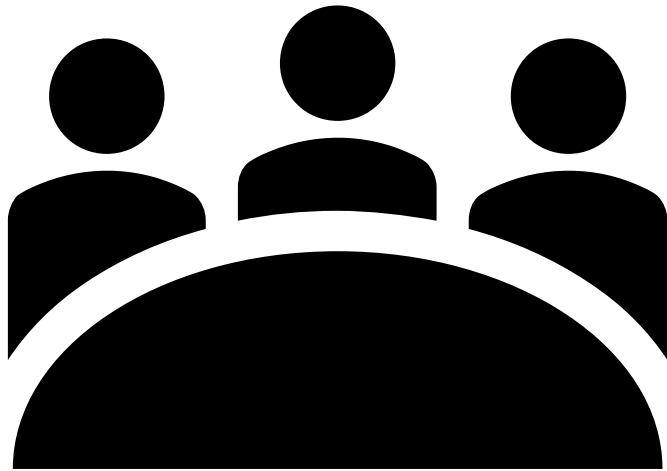
# Role of Friend of the Court

- **Help with courtroom mechanics**
- **Communicate helpful information pertinent to the respondent's case**
- **Communicate information regarding competency**
- **Serve as liaison**





# Clarity on Friend of the Court's Role



- **Immigration Judge should:**
  - Establish for the record that the respondent understands that the Friend of the Court is not her or his attorney
  - Clearly explain to the respondent (or the respondent's custodian or adult caregiver, where applicable) that the FOTC is an independent advisor to the court and is there to provide information to the court at that day's hearing.
- **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.
  - Expressly articulate the role and limitations of a Friend of the Court on the record and make clear for respondent.

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# EOIR's FAQs on Limited Appearance Requirements (July 2023)

- Limited Appearance (E-60/61) Rule does not affect the ability of a person to appear as a “Friend of the Court,” or, amicus curiae, in immigration proceedings because amicus curiae appear as an aid to the court and not as a practitioner. *See EOIR Director’s Memorandum 22-06, Friend of the Court, May 5, 2022.*
- If a practitioner appears in immigration court as a “Friend of the Court,” and subsequently provides document assistance to the pro se respondent in the same matter a Form EOIR-60 or EOIR-61 is required.

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# Hypothetical #1: Limitations on FOTC

You are present in Immigration Court when you receive a message from a colleague about Ms. Ming, an individual they met during an Information Session as a part of Immigration Court Helpdesk (ICH) services. Ms. Ming called your organization because she has a Master Calendar Hearing and will be delayed getting to court because of a health emergency.

You agree to appear as Friend of the Court to notify the IJ that Ms. Ming is unable to attend the hearing that morning but that they have an Individual Information Session scheduled with you next week. The IJ agrees to a continuance and sets a new date for the next master hearing. The IJ calls you up to accept the new hearing date notice and asks you to give Ms. Ming a copy at your meeting next week.

Are you able to accept service of the new hearing notice on behalf of Ms. Ming?

- A. Yes, you can serve Ms. Ming with the notice at your next meeting.
- B. No, since you are appearing as a FOTC, you are not able to accept or concede service.
- C. I am not sure because the IJ is directing me to accept service.

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# Implementation of FOTC

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# Initial Outreach Methods and Building Stakeholder Relationships

- Request an initial Stakeholder Meeting to discuss FOTC services, set expectations
- Have a senior staff member attend master calendar hearing settings and at the end of the setting approach each judge about FOTC services
- Regularly “check-in” with the judges either through regular stakeholder meetings or by quarterly attending master calendar hearing settings
- **MAKE FRIENDS WITH THE CLERKS!**

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# Working With Non-Interested Immigration Judges and Navigating Pushback

- Questions to ask yourself
  - Where does the disinterest come from?
  - Have the mutual benefits of FOTC been fully conveyed to the court?
  - Will the individual benefit from my assistance?
  - Do I need to elevate the issue?

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# Staffing Models for FOTC

Note: Not a hard and fast rule, just general guidelines

## On the Record

- Best practice is to have attorneys conveying legal information
- Non-attorneys can easily convey “life” information (health concerns, events impacting timely attendance, change of address etc.)
- Complicated scenarios regarding pro bono matches/assignments/issues are best conveyed by attorneys, but can be conveyed by non-attorneys

## Assistance completing paperwork

- Assistance with EOIR-33s and motions for change of venue is easily handled by non-attorneys (also does not require and EOIR-61/60)
- Mere translation of other relief-based forms (such as an I-589 or a EOIR-42B) can be completed by a non-attorney but they should not be answering questions about how to complete the form
- Drafting letters regarding possible pro bono matches can easily be done by non-attorneys

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## Hypothetical #2: Staffing Models

You are a new non-profit that is relying on referring the majority of your intakes to attorneys in the community that do not have experience in the practice of immigration law. Your grants limit you to one attorney and one legal assistant. There is a backlog of cases that need to be referred, but many of those cases are currently scheduled for upcoming master calendar hearings and you do not have time to pull together referral materials for all the cases before their hearings.

What do you do?

- A. Enter on all the cases to request an initial continuance for attorney preparation and then coordinate Motions to Substitute and Withdraw Counsel
- B. Tell the clients they need to explain the situation to the judge to get a continuance.
- C. Attend the master calendar hearings as FOTC, appearing on the record to explain that the cases are matched to pro bono attorneys.



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# Written Communication by FOTC

- Should always make it clear that it is FOTC and not attorney of record
- To the extent possible, address letters to individual and make it expressly clear that they have permission to share with the court
- Examples of communication:
  - Letter confirming intake/consult appointment
  - Letter confirming waitlist placement for pro bono match
  - Letter confirming match to pro bono

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# Common Uses of FOTC

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- Acacia's network of Orientation providers under EOIR's Legal Access Programs:
  - Legal Orientation Program (LOP)
  - Immigration Court Helpdesk (ICH)
  - Legal Orientation Program for Custodians (LOPC)
  - Family Group Legal Orientation Program (FGLOP)



# Common Uses of FOTC

- Assist respondents to understand the process
- Assist with Change of Venue
- Request Appropriate interpreter
- Obtaining continuances
- Explain collateral relief, identify important documentation
- Flag medical or safety concerns
- Third Party Notifications (TPNs) for respondents who suffer from serious mental illness



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## Hypothetical #3: FOTC Services

You are working in the pro bono room as part of the Legal Orientation Program for Custodians (LOPC) team at your local Court. You received a call from Camila, a sponsor of an unaccompanied child asking for an intake. During the intake, you enter the file number into the automated case system and discover that the child, Sam, is scheduled for a master calendar hearing tomorrow! Camila informs you that Sam is now residing out of state after requiring medical treatment stemming from a work injury. Camila also explains that Sam was injured due to dangerous work conditions stemming from exploitation at his place of work.

### **What type of Friend of the Court services would Sam benefit from?**

1. Assist with Change of Venue
2. Flagging Medical or Safety Concerns
3. Request Appropriate Interpreter
4. Explain collateral relief
5. Identify important documentation

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# Benefits of Incorporating FOTC into Pro Bono Programs

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- Ability to refer “cleaner” cases to attorneys not familiar with the practice of immigration law
- Better stakeholder relationship with EOIR
- More efficient use of staff resources

# Questions & Answers





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# Resources

- EOIR DM 22-06 Friend of the Court
- Sample FOTC Request for Certified Deaf Interpreter
- Pro Se Motion to Continue Template
- Continuance Support Letter (case matched) Template
- Continuance Support Letter (case not matched) Template
- Frequently Asked Questions (FAQs) on Limited Appearance Requirements (EOIR-60/61)

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# Thank you!

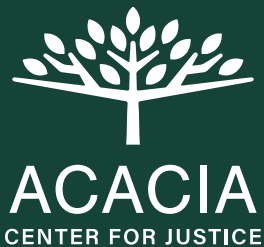
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Please feel free to reach out  
with any questions.





Thank You  
for attending!

# ABA CILA & COI PRO BONO SYMPOSIUM

Thursday, September 14 &  
Friday, September 15, 2023



Please complete our survey to provide feedback on the training: [Day 1](#) and [Day 2](#)



Learn more about [CILA](#) & [COI](#)! We hope to connect with you soon.



# Get Involved with CILA

Reach out to us at  
[probono@abacila.org](mailto:probono@abacila.org) to connect and  
with any questions!



CILA's platform, *Pro Bono Matters for Children Facing Deportation* features organizations' current pro bono opportunities for immigrant children's cases

CILA's [webpage for pro bono coordinators](#) and managers that features creative pro bono models: the page includes tips and resources for pro bono programs

Sign up for a CILA newsletter: [Monthly](#) newsletter for advocates & [Quarterly](#) newsletter for pro bono attorneys

[Join](#) CILA's quarterly working group focused on pro bono coordination for immigration nonprofit staff

View and share CILA's [resources](#) with pro bono attorneys

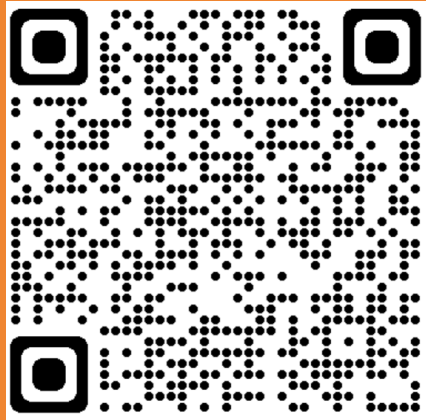
Reach out to CILA for technical assistance

Ask our team case-specific questions about [legal](#) or [social services](#) issues



AMERICAN BAR ASSOCIATION

Commission on Immigration



# Pro Bono Projects

[Sign up here](#)

## Virtual Legal Clinics

- Afghan Re-Parole Clinic
  - Help Afghans apply for Re-Parole
  - Remote & hybrid opportunities

## Mentor Others

- Experienced immigration attorneys provide mentorship to new volunteers in immigration cases (e.g., bond, asylum)
- Remote & in-person opportunities

## Support for LSPs

- Assist legal service providers (LSPs) meet new and growing needs by increasing capacity with modifiable Toolkits, ready-to-go training, and tailored support

## Language Assistance

- Help clients communicate with their attorneys and prepare their cases
- Remote & in-person opportunities

## Direct Representation

- Connect volunteers to IJP & ProBAR for cases for detained and non-detained adults (asylum, bond, USCIS matters) or CILA to represent immigrant youth
- Remote & in-person opportunities

## Limited Scope

- Federal Free Legal Answers
  - Answer questions for individuals who otherwise may lack access to an attorney
  - Remote opportunity
- Pro Se+ for Afghan Parolees seeking asylum
  - Help Afghan Parolees put together and file their asylum cases and prepare for their asylum interviews
  - Remote & in-person opportunities
- Afghan Pro Se Asylum Module Series
  - Assist pro se asylum applicants in an 8-part clinic series that teaches applicants about the law and process of asylum while providing assistance and guidance in their asylum case preparation
  - Remote & in-person opportunities