

## **President's Guidance: McKenzie Friends**

**14<sup>th</sup> April 2008**

In the light of the growth of litigants in person in all levels of family court, the President issues this guidance, which supersedes that of 13<sup>th</sup> May 2005. [2005] Fam Law 405, and is to be regarded as a reminder that the attendance of a McKenzie friend will often be of advantage to the court in ensuring the litigant in person receives a fair hearing.

- A litigant who is not legally represented has the right to have reasonable assistance from a layperson, sometimes called a McKenzie Friend (“MF”). This is the case even where the proceedings relate to a child and are being heard in private.
- A litigant in person wishing to have the help of a MF should be allowed such help unless the judge is satisfied that fairness and the interests of justice do not so require. The presumption in favour of permitting a MF is a strong one.
- A litigant in person intending to make a request for the assistance of a MF should be encouraged to make the application as soon as possible indicating who the MF will be.
- It will be most helpful to the litigant in person and to the court if the particular MF is in a position to advise the litigant in person throughout the proceedings.
- A favourable decision by the court, allowing the assistance of a MF, should be regarded as final and not as something which another party can ask the court to revisit later, save on the ground of misconduct by the MF or on the ground that the MF’s continuing presence will impede the efficient administration of justice.
- When considering any request for the assistance of a MF, the Human Rights Act 1998 Sch 1 Part 1 Article 6 is engaged; the court should consider the matter judicially, allowing the litigant reasonable opportunity to develop the argument in favour of the request.
- The litigant in person should not be required to justify his desire to have a MF; in the event of objection, it is for the objecting party to rebut the presumption in favour of allowing the MF to attend.
- Factors which should not outweigh the presumption in favour of allowing the assistance of a MF include
  - the fact that proceedings are confidential and that the court papers contain sensitive information relating to the family’s affairs
  - the fact that the litigant in person appears to be capable of conducting the case without the assistance of a MF
  - the fact that the litigant in person is unrepresented through choice
  - the fact that the objecting party is not represented
  - the fact that the hearing is a directions hearing or case management hearing
  - the fact that a proposed MF belongs to an organisation that promotes a particular cause
- The proposed MF should not be excluded from the courtroom or chambers while the application for assistance is made, and the MF should ordinarily be allowed to assist the litigant in person to make the application.

- The proposed MF should produce a short curriculum vitae or other statement setting out relevant experience and confirming that he/she has no interest in the case and understands the role of a MF and the duty of confidentiality.
- If a court decides in the exercise of its discretion to refuse to allow a MF to assist the litigant in person, the reasons for the decision should be explained carefully and fully to both the litigant in person and the would-be MF.
- The litigant may appeal that refusal, but the MF has no standing to do so.
- The court may refuse to allow a MF to act or continue to act in that capacity where the judge forms the view that the assistance the MF has given, or may give, impedes the efficient administration of justice. However, the court should also consider whether a firm and unequivocal warning to the litigant and/or MF might suffice in the first instance.
- Where permission has been given for a litigant in person to receive assistance from a MF in care proceedings, the court should consider the attendance of the MF at any Advocates' Meetings directed by the court, and, with regard to cases commenced after 1.4.08, consider directions in accordance with paragraph 13.2 of the Practice Direction. Guide to Case Management in Public Law Proceedings.
- The litigant in person is permitted to communicate any information, including filed evidence, relating to the proceedings to the MF for the purpose of obtaining advice or assistance in relation to the proceedings.
- Legal representatives should ensure that documents are served on the litigant in person in good time to seek assistance regarding their content from the MF in advance of any hearing or advocates' meeting.

#### What a McKenzie Friend May Do

- Provide moral support for the litigant
- Take notes
- Help with case papers
- Quietly give advice on:
  - points of law or procedure;
  - issues that the litigant may wish to raise in court;
  - questions the litigant may wish to ask witnesses.

#### What a McKenzie Friend May Not Do

- A MF has no right to act on behalf of a litigant in person. It is the right of the litigant who wishes to do so to have the assistance of a MF.
- A MF is not entitled to address the court, nor examine any witnesses. A MF who does so becomes an advocate and requires the grant of a right of audience.
- A MF may not act as the agent of the litigant in relation to the proceedings nor manage the litigant's case outside court, for example, by signing court documents.

#### Rights of Audience

- Sections 27 & 28 of the Courts and Legal Services Act 1990 govern exhaustively rights of audience and the right to conduct litigation. They provide the court with a discretionary power to grant lay individuals such rights.
- A court may grant an unqualified person a right of audience in exceptional circumstances and after careful consideration. If the litigant in person wishes the MF to be granted a right of audience or the right to conduct the litigation, an application must be made at the start of the hearing.

#### Personal Support Unit & Citizens' Advice Bureau

- Litigants in person should also be aware of the services provided by local Personal Support Units and Citizens' Advice Bureaux. The PSU at the Royal Courts of Justice in London can be contacted on 020 7947 7701, by email at [cbps@bello.co.uk](mailto:cbps@bello.co.uk) or at the enquiry desk. The CAB at the Royal Courts of Justice in London can be contacted on 020 7947 6564 or at the enquiry desk.