

**WRITTEN QUESTION TO H.M. ATTORNEY GENERAL
BY DEPUTY M.R. HIGGINS OF ST. HELIER
ANSWER TO BE TABLED ON TUESDAY 8th SEPTEMBER 2015**

Question

Will H.M. Attorney General explain to members in detail the role of an Amicus Curiae in Jersey Court proceedings together with full details of his powers, his duties to the parties concerned and the procedures he must follow to ensure there is an equality of treatment?

Answer

The Court may request the Acting Bâtonnier (or in a civil matter, the Attorney General) to appoint an advocate as an Amicus Curiae in cases where it considers it necessary for the administration of justice. For example, although the legal aid scheme ensures that in many criminal cases a defendant has representation, if for any reason a defendant is unrepresented, the Court sometimes appoints an Amicus Curiae. Although it is much more infrequent, an Amicus Curiae may also be appointed in civil cases if, for example, there is an important point of law or principle to be determined, or where it is considered necessary to deal with issues expeditiously and fairly.

The duty of an Amicus Curiae is to the Court, not to the party which s/he may be assisting. The Amicus Curiae is not responsible for formulating a party's arguments and is not expected or required to provide the party with legal advice. As the Amicus Curiae is not representing the party in the same way that an advocate would represent his or her client, s/he will not be able to control the submissions that are made before the Court by the assisted party.

However, the Amicus Curiae will convey the submissions that the party wishes to make or clarify such submissions in a way that is of most benefit to the Court. The Amicus Curiae may also be called upon by the Court to deal with any points of law that may arise and may be required to provide advice on the procedural aspects of the case should assistance be required by the assisted party.

If the Amicus Curiae is only asked to address the Court on legal issues and not to assist a particular party, then again the Amicus Curiae owes his/her duty to the Court and must address the Court on any issue on which the Court wishes to be assisted. The Attorney General as *partie publique* may (in effect) fulfil the role of Amicus Curiae in certain civil and charity cases.

As to "equality of treatment", if an applicant is unrepresented at Court proceedings, an Amicus Curiae does not fulfil the role that an advocate would fulfil had the party chosen to appoint his or her own lawyer. But, the appointment of an Amicus Curiae provides a safeguard to ensure that arguments are properly considered, and the submissions that the assisted party wishes to put to the Court are presented in a manner that is most helpful to the Court and most advantageous to the party.