

SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1 and 5 of the Louisiana Constitution of 1974, and the inherent power of this Court, and in consideration of the mandates of the Louisiana Children's Code and the 2003 amendments to the federal Child Abuse Prevention and Treatment Act (CAPTA),

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

Part J, Rule XXXIII of the Rules of the Supreme Court of Louisiana be and is hereby amended to enact a Part III to read as follows:

PART J. SPECIAL RULES FOR CASES INVOLVING THE PROTECTION OF CHILDREN

RULE XXXIII. SPECIAL RULES FOR CHILD ABUSE AND NEGLECT CASES

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PART III. ATTORNEY QUALIFICATION AND STANDARDS

SUBPART I. Qualification

Section 1. Purpose

This rule provides an administrative procedure to ensure appointment of qualified counsel to children in child abuse and neglect proceedings.

Section 2. Applicability

The provisions of this rule apply to all counsel appointed on or after July 1, 2005 to represent children in Child Abuse and Neglect Cases, as defined in Rule XXXIII, Part I, Section 2.

Section 3. Qualifications of Appointed Counsel

- A. Prior to appointment as counsel for children in child abuse and neglect proceedings, an attorney shall have the following qualifications:
- (1) The attorney shall be licensed to practice law in the State of Louisiana and in good standing with the Louisiana State Bar Association; and
 - (2) Effective July 1, 2005, the attorney shall have completed within the last two years a minimum of eight hours of training or education relevant to child abuse and neglect cases, and/or shall have sufficient knowledge to satisfy the court of the attorney's qualifications.

Evidence of qualifications may include proof of attendance at relevant continuing education programs or documentation of qualifications signed by a judge.

- (3) Effective January 1, 2006 and thereafter, the attorney shall complete a minimum of six hours of approved continuing legal education each calendar year, and shall submit to the Supreme Court documentation of compliance no later than January 31 of the following calendar year.

The requisite education shall include relevant law and jurisprudence, child development, child abuse and neglect, and the roles, responsibilities and duties of independent counsel for children, including the Standards for Representation of Children.

- B. Attorneys shall submit evidence of their qualifications to the Louisiana Supreme Court, Division of Children and Families, and a list of attorneys qualified for appointment shall be maintained and published by the Court.
- C. Appointment of counsel for children in child abuse and neglect cases shall be made from the list of qualified attorneys, except when the court appoints an attorney otherwise qualified but not yet on the list. In that case, the court shall document the qualifications of the attorney and instruct the attorney to file the documentation with the Supreme Court.

SUBPART II. Child Attorney Standards

Standard 1. Continuing right to counsel

Each child has a right to independent counsel at every stage of Child in Need of Care proceedings, which right begins at the continued custody hearing and continues through subsequent Certification for Adoption proceedings, including any relevant writs or appeals.

An attorney serving as counsel for a child in a Child in Need of Care proceeding should continue representation of the child through any subsequent Certification for Adoption proceedings, including any relevant writs or appeals.

Standard 2. Duties

An attorney serving as independent counsel for a child owes the same duties of loyalty, confidentiality, advocacy and competent representation to the child as are owed to any client.

Standard 3. Client abilities

Counsel for a child should ensure the child's ability to provide client-based direction by structuring all communications to account for the child's age, level of education, developmental level, cultural context and degree of language acquisition.

Standard 4. Basic obligations

Counsel for a child should:

- 1) Obtain copies of all pleadings and notices;
- 2) Participate in discovery, negotiations, conferences and hearings;

- 3) Inform other parties and counsel of the attorney's representation and expectation of reasonable notice of any conferences and hearings and of any changes in circumstances affecting the child and the child's family;
- 4) Avoid creating and attempt to reduce delays in the proceedings and advocate for timely permanence for the child;
- 5) Advise the child about the case, the child's rights, the court system, the proceedings, counsel's role, expectations of the legal process, the risks and benefits of possible courses of action, and other relief;
- 6) Determine the client's desires and preferences in a developmentally appropriate and culturally sensitive manner;
- 7) Advocate for the desires and expressed preferences of the child and follow the child's direction throughout the case in a developmentally appropriate manner;
- 8) Develop a theory and strategy for hearings; and
- 9) Identify appropriate family and professional resources for the child.

Standard 5. Conflict of interest

If counsel is or has formerly represented another party in the case or is appointed for siblings, there may be a conflict which could require that counsel decline representation or withdraw from representing all of the children.

Standard 6. Client under a disability

Counsel for a child should determine whether the child is "under a disability" pursuant to the Rules of Professional Conduct with respect to each issue in which the child is called upon to direct the representation.

To the extent that a child cannot express his/her desires and preferences, counsel for the child shall make a good faith effort to determine the child's wishes and advocate accordingly and/or request appointment of a Court Appointed Special Advocate.

To the extent that a child does not or will not express his/her desires and preferences about particular issues, the child's attorney should determine and advocate the child's best interests. Determination of the child's best interests should be based on objective criteria, such as the child's specific needs and preferences, the goal of expeditious resolution of the case so the child can remain or return home or be placed in a safe, nurturing and permanent environment, and the use of the least restrictive alternatives available.

If counsel for a child determines that the child's expressed desires and preferences would be seriously injurious to the child, the lawyer may request appointment of a Court Appointed Special Advocate to advocate for the best interest of the child and continue to represent the child's expressed desires and preferences, unless the child's position is prohibited by law or is without any factual foundation. Counsel for a child shall not reveal the basis of the request for appointment of a Court Appointed Special Advocate which would compromise the child's position.

Standard 7. Meet with the child

Establishing and maintaining a relationship with a child is the foundation of representation. Regardless of the age of the child, counsel for the child must engage in regular and meaningful communication with the child in a developmentally appropriate manner, and should personally meet with the child no later than 15 days after appointment, prior to all court hearings, and when advised of any change in circumstances affecting the child.

Standard 8. Investigate

Counsel for a child should conduct thorough, continuing and independent investigations and discovery, including but not limited to:

- 1) Reviewing the social service, psychiatric, psychological, drug and alcohol, medical, law enforcement, school and other records of the child;
- 2) Reviewing the court files of the child and siblings, case-related records of the Department of Social Services and other service providers;
- 3) Contacting lawyers for other parties and Court Appointed Special Advocates for background information;
- 4) Contacting and meeting with the parents, guardians and/or caretakers of the child, with the permission of their attorneys;
- 5) Obtaining necessary authorizations for the release of information;
- 6) Interviewing individuals involved with the child, including school personnel, social workers, foster parents and other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
- 7) Reviewing relevant photographs, video or audio tapes and other evidence; and
- 8) Attending treatment, placement, and administrative hearings; other proceedings involving legal issues; and school conferences or staffings concerning the child as needed.

Standard 9. Filing pleadings

Counsel for a child should file petitions, motions, answers, responses or objections as necessary to represent the child, including but not limited to:

- 1) Request for mental or physical examination of the child or parent(s);
- 2) Request for protective order;
- 3) Object to an answer of his/her parent;
- 4) Motion to consolidate cases;
- 5) Motions for discovery;
- 6) Motion for disclosure of the court record;
- 7) Motion for medical treatment of the child;
- 8) Motion to dismiss;
- 9) Motion to elicit the child's testimony by videotape or closed-circuit television;
- 10) Motion to modify or terminate custody or visitation;
- 11) Request for a restraining order to prevent a change of placement;
- 12) Rule for contempt for non-compliance with the orders of the court;
- 13) Petition for termination of parental rights;
- 14) Request for services for the child and/or the family;
- 15) Objection to continuances and extensions of time;
- 16) Response to the case plan or case review report;
- 17) Request for a case plan review, case review hearing and/or permanency hearing;
- 18) Motion for sequestration of witnesses;
- 19) Motion to modify disposition;
- 20) Motion for sanctions for failure to comply with permanency planning requirements;
- 21) Writs; and
- 22) Appeals.

Standard 10. Request for services

Consistent with the child's wishes, counsel should seek and advocate for appropriate services to access entitlements to protect the child's interests and to formulate or implement a plan for services including, but not limited to:

- 1) Family preservation or reunification services;
- 2) Sibling and family visitation;
- 3) Child support;

- 4) Domestic violence prevention, intervention and treatment;
- 5) Medical and mental health care;
- 6) Drug and alcohol treatment;
- 7) Parenting education;
- 8) Independent living services;
- 9) Adoption services;
- 10) Education, special education and related services;
- 11) Recreation or social services;
- 12) Housing;
- 13) Supplemental security income (SSI) to help support needed services;
- 14) Services for developmental disabilities;
- 15) Therapeutic foster or group home care; and
- 16) Hospitalization or residential treatment.

Standard 11. Participation in mediation and settlement negotiations

Counsel for a child should participate in mediation and settlement negotiations to seek expeditious resolution of the case, keeping in mind the effect on the child of continuances and delays.

Standard 12. Hearings

Counsel for a child should attend and participate in all hearings and conferences with the court relevant to the child.

Counsel should explain to the child, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.

Counsel should make appropriate motions and objections. If necessary, counsel should file briefs in support of issues. During all hearings, counsel should preserve legal issues for appeal, as appropriate.

Counsel should present evidence, direct and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary.

The child should be present at significant court hearings, regardless of whether the child will testify, except when counsel affirmatively waives the child's presence because the child does not want to attend, is too young to sit through the hearing, would be severely traumatized by attending, or for other compelling reasons.

Counsel for a child should decide whether to call the child as a witness considering the child's need or desire to testify, any repercussions of testifying, the necessity of the child's testimony, the availability of alternative forms of admissible testimony, the child's developmental ability to provide testimony and withstand cross-examination.

Counsel should ensure that the child is prepared to testify, including familiarizing the child with the courtroom, court procedures and what to expect during direct and cross-examination.

Counsel should seek to ensure that questions to the child are phrased in an age and developmentally appropriate manner.

Counsel should be familiar with issues of competency and reliability of children's testimony and be prepared to establish or defend the competency or reliability of the child.

Counsel should review all written orders to ensure conformance with the law and with any verbal orders of the court, should discuss all orders and their consequences with the child, and monitor implementation of the orders.

Standard 13. Continuing duties

Counsel for a child should continue to remain in contact with all parties and service providers and monitor case progress between hearings.

Standard 14. Appellate Review

Counsel for a child should consider and discuss with the child, as developmentally appropriate, the possibility of a writ or an appeal. If after such consultation, the child wishes to appeal an order, and the appeal has merit, counsel should take all steps necessary to expedite the appeal and protect the interests of the child during the pendency of the appeal.

If counsel determines that an appeal would be frivolous or that counsel lacks the necessary experience or expertise to handle the appeal, counsel should notify the court and seek to join co-counsel, or be discharged or replaced.

The child's attorney should participate in an appeal filed by another party unless discharged.

When the appellate decision is received, counsel should explain the outcome of the case to the child.

Standard 15. Scope of representation

Counsel for a child should seek to ensure continued representation of the child at all child-related conferences and hearings so long as the court maintains its jurisdiction.

Counsel for a child should discuss the end of legal representation with the child and determine what contacts, if any, will continue between the child and his/her counsel.

This order shall become effective July 1, 2005, and shall remain in full force and effect thereafter, until amended through future orders of this Court.

New Orleans, Louisiana this ____ day of _____, 2005.

FOR THE COURT:

Pascal F. Calogero, Jr., Chief Justice