

LOUISIANA	Legal Authority
	GENERAL DUTIES AND ACTIVITIES OF THE CHILD'S LEGAL REPRESENTATIVE
<p>1. General Duties: <i>Timely appointment, mandatory or discretionary, attorney or lay person, represent child's interests, undertake basic obligations, address conflict situations, address special needs and disabilities, and accommodate client preferences.</i></p>	<p>- A. In every proceeding under this Title, the court shall appoint qualified, independent counsel for the child, including a referral to the district public defender. If attorneys are available through the Child Advocacy Program, the court shall contact the office of the program and request the assignment of an attorney who shall be appointed. Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right.</p> <p>B. If the court finds that the parents of the child are financially able, it may order the parents to pay some or all of the costs of the child's representation in accordance with Children's Code Articles 320 and 321.</p> <p>C. In any dispositional or postdispositional hearing which may result in the mental health institutionalization of a child who is in the custody of the state, the child shall be entitled to representation by an attorney appointed by the Mental Health Advocacy Service, unless unavailable as determined by the director, or representation by retained private counsel who shall represent only the interest of the child. Children's Code Art. 607.</p> <p>- A. The child and the parent shall each have the right to be represented by separate counsel in a termination proceeding brought under this Title. Neither the child nor anyone purporting to act on his behalf may be permitted to waive the child's right to counsel.</p> <p>B. The court shall appoint a qualified, independent attorney to represent the child in such a proceeding. If attorneys are available through the Child Advocacy Program, the court shall contact the office of the program and request the assignment of an attorney who shall be appointed.</p> <p>C. If the court determines that the parent is indigent and unable to employ counsel solely for that reason, an attorney shall be appointed to represent the parent in accordance with Article 320. Children's Code Art. 1016.</p> <p>- 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.</p> <p>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. LA Sup. Ct. R. XXXIII, Part III, Standard 1.</p> <p>- 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. LA Sup. Ct. R. XXXIII, Part III, Standard 2.</p>

	<p>- A. The court is authorized in child in need of care proceedings, or in any certification for adoption proceedings, and adoption proceedings arising from a child in need of care proceeding, or a safe haven relinquishment, to appoint a CASA program as defined in Article 116 to assist the court in fulfilling its duties and responsibilities to children brought into court.</p> <p>B. Except as otherwise ordered by the court, the appointment of a CASA program for a child shall include subsequent proceedings through permanent placement of the child as defined by Article 603, including families in need of services or delinquency proceedings.</p> <p>C. Upon appointment, the CASA program shall designate the individual CASA volunteer for assignment to the child. The CASA volunteer shall have as his special duty and responsibility the advocacy of the best interests of the child involved in the juvenile proceeding in which he is assigned.</p> <p>D. CASA volunteers serve without compensation and at the pleasure of the court exercising juvenile jurisdiction. The judge of the court will first satisfy himself of the volunteer's qualifications, training, and ability to serve as a CASA volunteer, including his ability to represent and advocate the best interest of children assigned to him. No volunteer shall be assigned until a comprehensive criminal background check has been conducted.</p> <p>E. All CASA volunteers shall:</p> <ol style="list-style-type: none"> (1) Be sworn by a judge of the court. (2) Swear or affirm to abide by all laws, regulations, and orders of court. (3) Swear or affirm to advocate what he perceives to be in the best interest of the child for whom he is assigned in all matters pending before the court. Children's Code Art. 424.1. <p>- A. The CASA volunteer shall be notified by the court of all court proceedings and hearings of any kind pertaining to a child for whom he is assigned.</p> <p>B. The CASA volunteer shall be notified by the department of all administrative review hearings concerning the case to which he has been assigned. Children's Code Art. 424.4.</p>
<p>2. Out of Court - Actions to be Taken: <i>Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</i></p>	<p>- 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. LA Sup. Ct. R. XXXIII, Part III, Standard 3.</p> <p>- A. The CASA volunteer shall be given access to all portions of the court record relating to proceedings pertaining to a child for whom he is assigned and to the child's family.</p> <p>B. Upon application to the court and notice to all parties, the court shall grant the CASA volunteer access to other information, including the department records as provided in R.S. 46:56, relating to the child and his family and to other matters involved in the proceeding in which he is appointed.</p> <p>C. All records and information requested or reviewed by the CASA volunteer in the course of his assignment shall be deemed confidential and shall not be disclosed by him except pursuant to court order. Such material will only</p>

be disclosed as directed by court order and will be subject to whatever protective order the court deems appropriate. [Children's Code Art. 424.6.](#)

- A. The CASA program shall submit reports to the court. Except as provided in Paragraph B, it shall distribute a copy of such reports, prior to or at the same time it is submitted to the court, to all counsel of record, any unrepresented party, and the department.

B. CASA reports may be subject to a protective order upon the request of the CASA volunteer, a party or party's attorney, or by the action of the judge. [Children's Code Art. 424.7.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 4.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 5.](#)

- 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.

[LA Sup. Ct. R. XXXIII, Part III, Standard 6.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 7.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 8.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 9.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 10.](#)

- 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. [LA Sup. Ct. R. XXXIII, Part III, Standard 11.](#)

- The CASA volunteer may request a hearing before the court for any of the following reasons:

- (1) The case plan on behalf of the child is not being implemented or adhered to by any party.
- (2) The plan is not meeting the child's needs.
- (3) Other reasons in the best interests of the child. [Children's Code Art. 424.8.](#)

- To accomplish the assignment of a CASA volunteer, the court shall issue an order of assignment which shall grant the CASA volunteer the authority to review all relevant documents pursuant to [Article 424.6](#) and to interview all parties and witnesses involved in the proceeding in which he is appointed. [Children's Code Art. 424.2.](#)

- Under the supervision of the CASA program, it shall be the duty of a CASA volunteer to:

- (1) Provide independent, factual information to the court regarding the children and cases to which they are assigned.
- (2) Advocate on behalf of the children involved in the cases in which they are assigned what they perceive to be in the best interest of the children.
- (3) Monitor proceedings in cases in which they have been assigned and advise and assist the court in its determination of the best interest of the children involved. [Children's Code Art. 424.3.](#)

3. In Court - Active Participation in Hearings:

Appear in court, explain proceedings to client, present evidence, ensure child is present, expand scope of representation into other needed areas, and undertake certain obligations post-disposition.

- 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...[LA Sup. Ct. R. XXXIII, Part III, Standard 12.](#)

- A. The CASA volunteer shall be entitled to attend all court proceedings and hearings of any kind pertaining to a child for whom he is assigned.

B. The CASA volunteer may be called as a witness in the proceedings by any party or by the court and may request of the court the opportunity to appear as a witness. [Children's Code Art. 424.5.](#)

<p>4. <i>Post-Hearing:</i> Review courts order, communicate order to child, and monitor implementation of orders.</p>	<p>- Counsel for a child should continue to remain in contact with all parties and service providers and monitor case progress between hearings. LA Sup. Ct. R. XXXIII, Part III, Standard 13.</p> <p>- ... 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. LA Sup. Ct. R. XXXIII, Part III, Standard 12.</p>
<p>5. <i>Appellate Advocacy:</i> Decision to appeal, withdrawal, participation in appeal, conclusion by appeal.</p>	<p>- 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.</p> <p>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.</p> <p>The child's attorney should participate in an appeal filed by another party unless discharged.</p> <p>When the appellate decision is received, counsel should explain the outcome of the case to the child. - Counsel for a child should continue to remain in contact with all parties and service providers and monitor case progress between hearings. LA Sup. Ct. R. XXXIII, Part III, Standard 14.</p>
<p>6. <i>Cessation of Representation:</i> Contacts post representation, if any.</p>	<p>- 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.</p> <p>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. LA Sup. Ct. R. XXXIII, Part III, Standard 15.</p> <p>- C. Any attorney appointed to represent the child in the termination action shall continue to represent the child in all subsequent review hearings until the child is permanently placed. Children's Code Art. 1042.</p> <p>- C. Any attorney previously appointed to represent the child shall continue to represent the child in all subsequent review hearings until the child is permanently placed. If no attorney was previously appointed, the court shall appoint an attorney to represent the child for the purpose of facilitating permanent placement by the department. When the department is not the legal custodian of the child, the court may appoint an attorney to represent the child if necessary for the best interest of the child. Children's Code Art. 1146.</p>

	Organizational and Administrative Supports for the Child Representative
<p>7. General Representation Rules: <i>Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</i></p>	<p>- ... 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. LA Sup. Ct. R. XXXIII, Part III, Section 3.</p> <p>- A new statewide system for representation of children and indigent parents in all child abuse and neglect cases was implemented starting January 1, 2010. This is responsive to an unanticipated urgency to expedite the original 5 year statewide implementation plan in order to ensure continued availability of state funds for this legally mandated representation. State funded representation under this system will require that, in all new cases involving the abuse or neglect of children filed after December 31, 2009, indigent parents be represented by the public defenders' office and children be represented by either the regional legal services corporation or the Mental Health Advocacy Service Child Advocacy Program. New appointments of counsel made otherwise will not be eligible for state payment. Chief Justice Catherine D. Kimball, Memorandum re New System of Representation in Child Protection Cases.</p>
<p>8. Lawyer Training: <i>Child representative trained, on-going training provided, new attorneys provided senior lawyer mentorship.</i></p>	<p>- Section 3. Qualifications of Appointed Counsel</p> <p>A. Prior to appointment as counsel for children in child abuse and neglect proceedings, an attorney shall have the following qualifications:</p> <ol style="list-style-type: none"> 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. <p>Evidence of qualifications may include proof of attendance at relevant continuing education programs or documentation of qualifications signed by a judge.</p> <ol style="list-style-type: none"> 3. Effective January 1, 2006 and thereafter, the attorney shall complete a minimum of six hours of

	<p>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.</p> <p>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.</p> <p>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...LA Sup. Ct. R. XXXIII, Part III, Section 3. Any attorney who has not submitted, prior to January 31 each year, evidence of attendance of at least six hours of approved continuing legal education in the past calendar year will no longer be considered as qualified under this Rule. Louisiana Supreme Court, Qualifications and Standards for Attorneys Representing Children in Need of Care.</p>
<p>9. Lawyer Compensation: <i>Adequate and timely compensation, reimbursement provided expenses.</i></p>	<p>- A.(1) To the extent funds are appropriated by the legislature for such purpose, the state, through the Department of Children and Family Services, office of children and family services, shall pay legal fees and approved expenses arising out of the ad hoc representation of children or indigent parents, but not both, and curatorships in child protection proceedings. Such payments shall be made if legal services, corporations, and private attorneys are not otherwise paid for services in these child protection proceedings. If authorized pursuant to Subsection B of this Section, the department shall also pay mediator fees in child protection proceedings arising out of court referrals pursuant to Article 437 of the Children's Code. Payment for legal fees and approved expenses shall be made only for services, including appeals rendered pursuant to appointments under Children's Code Articles 607, 608, 643, 1016, 1023, 1042, 1136, and 1146 exclusively. Funds appropriated for this purpose shall not be used to supplant a court's prior levels of indigent defender representation. RS 46:460.21.</p> <p>- Section 9. Schedule of fees for Child in Need of Care and Termination of Parental Rights Proceedings</p> <p>The following fee schedule is hereby established for occasions in which the State of Louisiana compensates attorneys who represent children and their indigent parents in Child in Need of Care and Termination of Parental Rights proceedings:</p> <p>A. Fees for in-court work: \$75 per hour B. Fees for out-of-court work: \$50 per hour C. Fees for a curatorship: \$100 total, plus a maximum of \$100 in reimbursable expenses</p>

	<p>Courts may also order higher rates of compensation in extraordinary cases. LA. GEN. ADMIN. R., § 9.</p> <p>- D. CASA volunteers serve without compensation and at the pleasure of the court exercising juvenile jurisdiction...</p> <p>Children's Code Art. 424.1.</p>
<p>10. Caseload Levels: <i>Caseloads are of a manageable size.</i></p>	<p><i>No explicit legal authority or requirement.</i></p>