

WHAT DOES A PETITION FOR INTERDICTION REQUIRE?

La. Code Civ. Proc. Art. 4541-Petition for Interdiction

- A. Any person may petition for the interdiction of a natural person of the age of majority or an emancipated minor. The petitioner shall verify the petition and, to the extent known, shall set forth the following with particularity:
1. The name, domicile, age, and current address of the petitioner and his relationship to the defendant.
 2. The name, domicile, age, and current address of the defendant and the place the petitioner proposes the defendant would reside if the relief sought in the petition is awarded.
 3. The reasons why interdiction is necessary, including a brief description of the nature and extent of the alleged infirmities of the defendant.
 4. If full interdiction is requested, the reasons why limited interdiction is inappropriate.
 5. If limited interdiction is requested, the capacity sought to be removed from the limited interdict, and the powers sought to be conferred upon the limited curator.
 6. The name and address of the spouse of the defendant.
 7. The name and address of the adult children of the defendant or, if he has none, of his parents and siblings or, if he has none, of his nearest adult relative.
 8. The name and address of any legal representative of the defendant.
 9. The name and address of any person previously designated as curator by the defendant in writing signed by the defendant.
 10. The name, domicile, age, education, and current address of the proposed curator, and the reasons why the proposed curator should be appointed.
 11. A description with particularity of the petitioner’s efforts to use less restrictive means before seeking interdiction, including all of the following:
 - a. The less restrictive means for meeting the defendant’s needs that were considered or implemented.
 - b. If a less restrictive means was not considered or implemented, the reason that the less restrictive means was not considered or implemented.
 - c. The reason a less restrictive means is insufficient to meet the needs of the defendant.

B. The petitioner shall make a reasonable effort to obtain the information required by this Article.

WHAT IS REQUIRED FOLLOWING THE PETITION FOR INTERDICTION?

La.Code Civ. Proc. Art. 4545 - Appointment of Examiner

After the filing of a petition for interdiction, the court may appoint an examiner who has training or experience in the type of infirmity alleged. The court may compel the defendant to submit to an examination by the examiner. Not less than seven days prior to a hearing, the examiner shall provide a written report to the court, all counsel of record, and any unrepresented parties. The report shall include such matters as the court directs. The report may consider the infirmities suffered by the defendant, the appropriateness of interdiction, including whether a less restrictive means of intervention is available, the type of interdiction that is appropriate, and any other relevant matters.

Considerations:

- The court should appoint a qualified examiner, such as a health care professional, with training or experience working with individuals with the same or similar disability as the defendant.
- The examiner should not also be appointed as an attorney to represent the defendant.

Tip: Contact the Office for Citizens with Developmental Disabilities (OCDD) for guidance to find an examiner.

HEARING PROCEDURES AND REQUIREMENTS

La. Code of Civ. Proc. Art. 4547 - Hearing

An interdiction proceeding shall be heard summarily and by preference. **The defendant has a right to be present at the hearing and the court shall not conduct the hearing in his absence unless the court determines that good cause exists to do so.** The defendant has the right to present evidence, to testify, to cross-examine witnesses, and to otherwise participate in the hearing. If the defendant is unable to come to the courthouse for the hearing, the judge may hold the hearing where the defendant is located. The hearing may be closed for good cause. The court may call witnesses not called by the parties and may require the presence of a proposed curator.

La. Code of Civ. Proc. Art. 4548 - Burden of Proof

The petitioner in an interdiction proceeding bears the burden of proof by clear and convincing evidence.

La. Code of Civ. Proc. Art. 27 - Presumption of Capacity

In the State of Louisiana, there is a presumption of capacity when an individual reaches age 18. See also La. Civ. Pro. Art. 28.

La. R.S. §28:454.3 - Capacity to Consent

- A. A person with a developmental disability is presumed to have the capacity to give consent to a particular decision, unless and until determined otherwise. The provisions of this Section shall apply only to persons with cognitive disabilities.
1. Capacity to give consent or make a particular decision exists when a person is able to comprehend the purposes, consequences, risks and benefits of the decision and any available alternatives.
 2. Decisions regarding daily activities and matters that are not of long-term consequence may require less comprehension than decisions concerning matters that have important legal, health, safety or other long-term consequences, including medical treatment decisions, behavioral or psychiatric treatment decisions, financial matters, contractual matters, living arrangements and rights restrictions.
 3. A decision may be expressed either orally, in writing, or by any other form of communication.
- B. The capacity of a person to consent can change and develop over time, depending upon health, environment, and other variables.
1. The capacity of a person to consent must be routinely assessed as decisions present themselves.
 2. Assessment shall use current standards and assessment tools, along with input from others, including family and direct service staff who are most familiar with the person.
 3. Lack of capacity to make a particular decision does not negate the possibility that a person may have capacity to make other decisions or later decisions.

C. Decisions concerning matters that have important legal, health, safety or other long-term consequences shall require legally adequate consent. Before a person with a developmental disability can be deemed to have given legally adequate consent, each of the following conditions must be met:

1. The person has not been placed under a judgment of interdiction or continuing tutorship that restricts the right of the person to make the decision in question.
2. The person has the capacity to consent and has been informed of the purposes, consequences, and risks of the decision being made and the benefits of any alternative decision.
3. The person understands that withholding or withdrawing of consent shall not prejudice future provision of care and services.
4. The person is giving such consent voluntarily and free from coercion and undue influence.

Considerations:

- Individuals with developmental disabilities are presumed to have the capacity and may retain attorneys to defend against an action threatening autonomy, including interdiction.
- Individuals who are under a full interdiction retain the right to retain an attorney to challenge the interdiction itself or the curator. See La. Code Civ. P. art. 4554 and 4544.
- If the defendant retains a private attorney, court-appointed counsel(s) will be discharged.

Reference Card: Interdiction Procedure and Less Restrictive Alternatives



SUPPORTED DECISION MAKING – A LESS RESTRICTIVE ALTERNATIVE TO INTERDICTION

La. R. S. §13:4261.103 Et Seq. - Supported Decision Making (SDM)

SDM is a less restrictive alternative to interdiction. La. R.S. §13:4261.103 through 4261.302 (the Supported Decision-Making Agreement Act) provide in more detail the necessary steps and information needed for the creation of an SDM Agreement.

La. R. S. §13:4261.103 - The Purpose of the Act

The purpose of the Act is to recognize a less restrictive decision making process and empower supported decision making as an option over interdiction for adults with disabilities who need assistance with decisions regarding daily living.

Tip: Find additional information regarding other alternatives to interdiction in the resources section.

ROLE OF THE ATTORNEY REPRESENTING THE DEFENDANT

La. Code of Civ. Pro. Art. 4544(B)- Appointment of Attorney

B. The attorney representing a defendant shall personally visit the defendant unless such visit is excused by the court for good cause. To the extent possible, the attorney shall discuss with the defendant the allegations in the petition, the relevant facts and law, and the rights and options of the defendant regarding the disposition of the case. Failure of the attorney to perform any of the duties imposed by this Paragraph shall not affect the validity of the proceeding, but may subject the attorney to sanctions.

Considerations:

- ▶ The role of the defendant's attorney (whether appointed or hired) is to represent and advocate for their client zealously as they should every client. See Comments to ABA Model Rule 1.3.
- ▶ The law does not provide for the appointment of a curator ad hoc in interdictions.
- ▶ An attorney appointed to represent the defendant may not serve as a curator ad hoc.

JUDICIAL CANONS

STEPS JUDGES MAY CONSIDER IN FACILITATING THE RIGHTS OF A SELF-REPRESENTED LITIGANT

COMMENTARY TO CANON 3A (4) (2013) to the Louisiana Code of Judicial Conduct

Steps judges may consider in facilitating the right of self-represented litigants to be heard, and which (they might find) are consistent with these principles include, but are not limited to:

- Making referrals to any resources available to assist the litigant in preparation of the case;
- Providing brief information about the proceeding and evidentiary and foundational requirements;
- Asking neutral questions to elicit or clarify information;
- Attempting to make legal concepts understandable by minimizing the use of legal jargon; and
- Explaining the basis for a ruling.

OTHER LESS RESTRICTIVE ALTERNATIVES

Other less restrictive alternatives to interdiction can include:

- ▶ Special Education – Transfer of Rights
- ▶ Representation and Mandate (Power of Attorney)
- ▶ Advance Directives
- ▶ Representative Payee
- ▶ Joint Bank Accounts
- ▶ Special Needs Trusts
- ▶ Achieving a Better Life Experience (ABLE) Account
- ▶ Medical Consent Law (Hierarchy of Consent)



Find more alternatives at:

<https://goea.louisiana.gov/media/fzub4iyf/video-1-alternatives-to-interdiction-checklist.pdf>

Alternatives To Interdiction and Continuing Tutorship (PDF)

<https://disabilityrightsla.org/wp-content/uploads/2021/05/Alternatives-to-Interdiction-and-Continuing-Tutorships.pdf>



MORE RESOURCES



Office for Citizens with Developmental Disabilities (OCDD)

Link: Services & Programs | La Dept. of Health
<https://ldh.la.gov/page/services-programs>

Disability Rights Louisiana: the Protection and Advocacy (“P&A”) agency for the State of Louisiana

Contact Information:

www.disabilityrightsla.org
8325 Oak Street, New Orleans, LA 70118
p. (504) 522-2337
f. (504) 522 5507



Louisiana Guardianship Services

Louisiana Guardianship Services, Inc (LGSi) a non-profit organization whose mission is to restore dignity and peace of mind to vulnerable adults through professional guardianship and advocacy when there is nobody else.
<https://www.laguardianship.org/>

The Arc of Louisiana - Supported Decision Making

Supported Decision-Making (SDM) allows individuals with disabilities to make choices about their own lives with support from a team of people they choose.

<http://www.thearca.org/supported-decision-making-dustin-gary-act/>

