

Children in Today's Courtroom

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There are multiple layers to the child welfare system. One of these layers is peeled back when there is a need to remove a child from his/her parents or caretakers because of allegations of abuse, neglect or abandonment. This removal requires the involvement of the court system.

At the beginning of these proceedings, the parties involved are entitled to, and appointed, an attorney to represent them. In Louisiana, there is a child representation system that affords legal advocates to every child in these proceedings. The entities that make up the child representation system are listed below. As managers of the entities that make up the child representation system, we want to provide a glimpse into our world and share some of our best practice tips regarding child representation.

The Child Representation System in Louisiana

The child representation system in Child in Need of Care (CINC) cases in Louisiana is comprised of three entities — the Mental Health Advocacy Service, Child Advocacy Program (MHAS); Acadiana Legal Service Corp. (ALSC); and Southeast Louisiana

Legal Services (SLLS).

MHAS was established pursuant to La. R.S. § 28:64. Act 271 created the Child Advocacy Program (within MHAS) to provide for specialized representation of children in child protection cases. MHAS/CAP currently provides attorneys in 19 parishes to represent children in abuse and neglect cases, in addition to its work dedicated to adult and juvenile mental health.

ALSC, incorporated in 1978, offers services to the economically challenged in the most pressing civil legal issues and needs, ensuring equal justice for all. ALSC is comprised of four substantive law units — Litigation, Family Law, Administrative Law and Child in Need of Care (CINC). The CINC Unit was created in 2010 and provides specialized legal representation to children in CINC cases in 36 parishes and 47 jurisdictions.

SLLS was created in 1978 and eventually became the main legal services entity for Southeast Louisiana when it merged with New Orleans Legal Assistance Corp. and Capital Area Legal Services. SLLS provides access to legal services in 22 parishes in the areas of CINC, Family Law and Domestic Violence, Housing, Veteran/Homeless, Consumer, Tax, Elder Law and Public Benefits. The CINC unit was created in

2010 and currently represents children in nine parishes.

Rules and Standards

The Louisiana Supreme Court Rule XXXIII outlines the standards and qualifications for children's attorneys. All assigned attorneys working with the above entities are specifically qualified to represent children involved in CINC proceedings in Louisiana in accordance with this Court rule. The three entities work collaboratively to provide a uniform standard of representation across Louisiana.

With regard to the specific rules and qualifications of children's attorneys, it is important to note that children are not incidental to CINC or juvenile mental health hearings in court; they are essential parties. Children are owed the same duties of competent and confidential representation as would a parent or another adult in the same proceeding. Right to notice of hearings and the right of the child to be heard are enumerated under Louisiana Children's Code article 623. The article specifies that any testimony given by a child may be taken by a videotaped interview, by closed-circuit television, or by an in-chambers conference attended only by the judge, court

reporter and counsel for the child, for the petitioner and for the parents. (This may seem different from what is experienced in family court as there is no requirement for a *Watermeier* hearing to obtain a child's testimony in CINC proceedings.) Article 623 also sets out that any child 12 or older shall be present in court unless the court waives the child's presence upon motion of the child's attorney. Additionally, a child under 12 shall be present in court if the court or the child's attorney requests the child's presence.

A child's attorney must evaluate many factors and circumstances to make sure the rights of the child are preserved. In regards to a child's testimony, in-person testimony is often the preferred method as with any other party to a proceeding but there are various circumstances wherein a child may not want to present himself/herself in court. A child could be a victim of abuse and/or neglect and wish to avoid contact with the perpetrator, or a child could simply be worried about addressing concerns or questions in an open courtroom full of people. A child may wish to attend court but not want to miss an ACT practice test or a class party. As any attorney should consult with his/her client about the desired participation in court and outcome, the attorney for the child shall elicit any and all information from the client prior to, and in conjunction with, each hearing. Advocacy on behalf of the child is essential and ensuring that the child is in a position to make a well-reasoned and informed decision is essential. Utilizing legal options to preserve the interest of the child-client is also very important.

Surmounting Pandemic Challenges

Challenged by the impact of the COVID-19 pandemic, these entities altered their practices to better assist clients in the post-pandemic world.

Attorneys and court systems had to explore all options to get important hearings back on track despite some courts being closed to the public for a long length of time. Attorneys used cre-

ative methods to maintain contact with their clients, such as Zoom, FaceTime, Google Duo and Marco Polo, while continuing to build rapport and engaging them in the court process. It is always the priority to ensure that clients are included and allowed to participate at their comfort level. Clients may not wish to attend in person and some jurisdictions continue to allow them to participate virtually, as permitted by law.

Some courts still permit a child to attend court via virtual means in order for the child to maintain the least invasive schedule change as possible. This alternate means of participation could be of great benefit to the child-clients. On the other hand, even if it means that children must miss a day of school, they maintain the right to be present and to be heard, and counsel for the children must request their presence. There are numerous factors to consider, but the child's wish is the attorney's and the court's primary concern. In some exceptional circumstances, it may be necessary to request another court date to ensure the participation of the child-client if that is the child's will. It is important to remember that the right to attend the hearing is that of the child's and the only proper person who can make a motion to waive the child's attendance is his/her attorney.

Conclusion

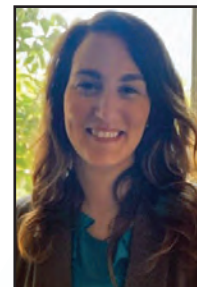
Representing children in CINC proceedings requires the attorney to be versed in other areas of the law to ensure competent representation. A familiarity with the basics of child development is essential. All three entities of the child representation system aim to provide holistic representation to their clients. A holistic approach may include addressing some of the following issues — mental health, education, LGBTQ, delinquency, substance abuse, and other issues that impact the child during an active case. Because of the complexity of these cases, holistic representation involves a substantial amount of out-of-court advocacy and meetings with doctors, teachers, therapists, etc. Even

though children hold a lot of information, they are often not treated as a party in proceedings that affect their lives directly. The unfortunate result is that this important information from an essential party gets lost. This can be very disheartening and discouraging to a child who wants to participate and engage in his/her own hearings. As a system, we have to realize that these cases change children and families' lives, and they deserve a voice in the decisions that are being made for them.

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