

LOUISIANA

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| <p>Structure, organization, and delivery of Child Representation State-by-state, county-by-county, etc.</p> | <p>The statewide Louisiana Child Representation System is hereby established under the oversight of the Louisiana Supreme Court. LA. CHILD. CODE ANN. art. 558.</p> <p>The purpose of this Part is to provide for an effective and efficient system of providing qualified legal representation for children in child abuse and neglect cases. LA. CHILD. CODE ANN. art. 557.</p> <p>A. A program designated by the Louisiana Supreme Court shall provide child representation services to each court exercising jurisdiction over abuse and neglect cases in accordance with a plan for service delivery developed by the program and approved by the supreme court.</p> <p>B. Representation of children in child abuse and neglect cases shall comply with the provisions of Part III of Rule J of the Administrative Rules of the Supreme Court, including qualifications of appointed counsel and child attorney standards. LA. CHILD. CODE ANN. art. 560.</p> <p>A. The Child Protection Representation Commission, referred to hereinafter as the “commission”, is hereby established for the purpose of reviewing the system of representation of children and indigent parents in child protection cases as provided in Chapters 5 and 6 of this Title....</p> <p>...</p> <p>C. The commission shall request and have the authority to obtain all information necessary to review the system of representation and shall meet periodically but in no event less than once annually. The commission shall ascertain the continued effectiveness and efficiency of the system and the adequacy of funding and may, at its discretion, issue such reports and recommendations as it deems necessary to ensure the programmatic efficacy and fiscal viability of the system. LA. CHILD. CODE ANN. art. 581.</p> <p>A. Full implementation of the new statewide system of legal representation of children and indigent parents in child protection cases is effective July 1, 2010. LA. ADMIN. CODE, tit. 67, § 5901.</p> |
| <p>Funding Child Representation</p> | <p>A. (2) To facilitate more efficient and effective provision of counsel through salaried or contract attorney arrangements, the Department of Children and Family Services, office of children and family services is explicitly authorized to transfer funds appropriated pursuant to this Section for representation of children and for representation of indigent parents. This transfer of funds shall be guided by the goal of providing for a more efficient and effective statewide system of representation in child protection proceedings by July 1, 2012. The transfer of funds shall not be contingent upon designations for payment of ad hoc fees pursuant to Paragraphs (1) and (6) of this Subsection, or prior utilization patterns.</p> <p>(3) For judicial districts not yet included or fully included in salaried or contract attorney arrangements as provided in Paragraph (2) of this Subsection, the Department of Children and Family Services, office of children and family services shall pay properly documented requests for legal fees and approved expenses and authorized mediator fees in date order of receipt pursuant to the provisions of Paragraph (1) of this Subsection, until appropriations for that fiscal year are exhausted. Subsequent fiscal year payments shall begin with any unpaid requests in date order of receipt including prior fiscal year requests. The Department of Children and Family Services, office of children and family services in collaboration with the</p> |

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| | <p>Child Advocacy Program and the Louisiana Indigent Defense Assistance Board, or any successor to that board, shall advise courts concerning the establishment of salaried and contract attorney arrangements in their respective jurisdictions pursuant to Paragraph (2) of this Subsection.</p> <p>(4) The department shall create a reserve at the beginning of each fiscal year from the funds appropriated pursuant to this Subsection for the payment of approved out-of-pocket expenses. Sixty days prior to the end of each fiscal year, any reserve over current and projected outstanding approved out-of-pocket expenses may be redirected for payment of fees as well as expenses. The amount of the reserve each year shall be based on an average of the last three fiscal year's percentage of approved expenses to total legal fees paid applied to the projected fiscal year obligation for fees and expenses.</p> <p>(5) For the judicial districts not yet included or fully included in a salaried or contract attorney arrangement as provided in Paragraph (2) of this Subsection, the chief administrative judge of each district, juvenile, city, or parish court exercising juvenile jurisdiction in child protection proceedings pursuant to Children's Code Article 302 shall designate in writing whether counsel for the children or counsel for the indigent parents are to be paid pursuant to this Section. When necessary, due to special circumstances within a judicial district, the chief administrative judge may make separate designations for child in need of care and judicial certification for adoption proceedings. The designations made by the chief administrative judge of a court shall apply in all child protection proceedings before the court except:</p> <p>(a) In all post-certification for adoption review hearings where parental rights to the child have been terminated and appeal rights have expired or been exhausted, counsel for the child not otherwise being paid for their services may be compensated pursuant to this Section.</p> <p>(b) When in an individual case the district indigent defender office providing representation in child protection proceedings before the court has a conflict of interest in representing the party it generally represents in such proceedings (i.e., child or parent) and has committed to representing the opposite party in the case, the judge exercising juvenile jurisdiction in the case may invoke a special exception to the designation upon written notification to all counsel and the legal fee processing unit of the department of the conflict and the prospective effective date of the special exception.</p> <p>...</p> <p>(3) In order to be reimbursed for legal fees and approved expenses, an attorney appointed to act as counsel during child in need of care proceedings shall provide representation during all subsequent stages of such proceedings except when an attorney has been appointed to provide representation at a continued custody hearing only, or when the court permits withdrawal upon a finding of specific extenuating circumstances justifying the withdrawal. Child in need of care proceedings include all child in need of care actions prior to adjudication, adjudication and disposition hearings, actions in support of such hearings, and all subsequent six-month review periods until the child is permanently placed, as defined in Children's Code Article 603, or judicial certification for adoption proceedings is instituted. LA. REV. STAT. ANN. 46:460.21.</p> |
| <p>1. General Duties: 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</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. LA. CHILD. CODE ANN. art. 1016.</p> |

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| <p>accommodate client preferences.</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 shall appoint the program designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child at the time the order setting the first court hearing is signed. Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right.</p> <p>...</p> <p>D. 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. LA. CHILD. CODE ANN. art. 607.</p> |
| <p>2. Out of Court - Actions to be Taken: Meet with child, undertake an investigation, provide advice and counseling, file pleadings, request services, address special needs, negotiate settlements</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>Counsel for a child should:</p> <ol style="list-style-type: none"> 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. <p>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.</p> |

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;

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| | <p>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.</p> <p>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.</p> <p>A. Any attorney representing a child in a child abuse and neglect case as defined herein shall have reasonable access to and the opportunity to consult with the child whenever and wherever necessary in the performance of his duties and shall have ready access to view and copy all medical, mental health, developmental disability, and education records pertaining to his client whether such records are in hard copy or electronic form.</p> <p>...</p> <p>C. A child shall have the right to communicate in any manner in private with counsel at all times. LA. CHILD. CODE ANN. art. 553.</p> <p>B. ... The attorney for the child shall have the authority to take actions, including but not limited to the following: (1) Accompany the child and be present for all court appearances, school hearings, and educational and other meetings related to the child. (2) View and copy the child's medical, dental, psychological, psychiatric, educational, or counseling records. LA. CHILD. CODE ANN. art. 607.</p> |
| <p>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.</p> | <p>Counsel for a child should attend and participate in all hearings and conferences with the court relevant to the child.</p> <p>Counsel should explain to the child, in a developmentally appropriate manner, what is expected to happen before, during and after each hearing.</p> <p>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.</p> <p>Counsel should present evidence, direct and cross-examine witnesses, offer exhibits, and provide independent evidence as necessary.</p> <p>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.</p> <p>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.</p> |

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| | <p>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.</p> <p>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.</p> <p>B. The child shall be a party to the proceedings, and the attorney for the child shall have the authority to represent the child at all stages of the proceedings. The attorney for the child shall have the authority to take actions, including but not limited to the following: (1) Accompany the child and be present for all court appearances... LA. CHILD. CODE ANN. art. 607.</p> <p>B. A child twelve years of age or older shall be present in court unless his presence is waived by the court upon motion of the child's counsel. A child below the age of twelve years shall be present in court upon the request of counsel for the child or the court. If the child is present in court, he may choose to testify as to his wishes, and the court shall consider his testimony in the matter. Any testimony given by a child may be taken by a videotaped interview or by closed-circuit television, as authorized by Chapter 8 of Title III of this Code, or by an in-chambers conference attended only by the judge and court reporter and by counsel for the child, for the petitioner, and for the parents. LA. CHILD. CODE ANN. art. 706.</p> |
| <p>4. Post-Hearing: 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. Appellate Advocacy: 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.</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 14.</p> |

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| <p>6. Cessation of Representation: 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. LA. CHILD. CODE ANN. 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. LA. CHILD. CODE ANN. art. 1146.</p> |
| <p>7. General Representation Rules: Administrative structure is clear for appointment, support and accountability of the CR. The child's representative is independent from the court</p> | <p>Upon the filing of the petition, the court shall provide notice and a copy of the petition to the program designated for the jurisdiction to provide counsel for the child in accordance with Children's Code Article 607, and to the program representing indigent parents in accordance with Children's Code Article 608. LA. CHILD. CODE ANN. art. 635.1.</p> <p>A. The court shall appoint the program designated for the jurisdiction by the Louisiana Supreme Court to provide qualified, independent counsel for the child at the time the order setting the first court hearing is signed. Neither the child nor anyone purporting to act on his behalf may be permitted to waive this right. LA. CHILD. CODE ANN. art. 607.</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: Child representative trained, on-</p> | <p>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:</p> |

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| <p>going training provided, new attorneys provided senior lawyer mentorship.</p> | <p>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</p> <p>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.</p> <p>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.</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.</p> <p>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: Adequate and timely compensation, reimbursement provided for expenses.</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. LA. REV. STAT. ANN. 46:460.21.</p> <p>Section 9. Schedule of fees for Child in Need of Care and Termination of Parental Rights Proceedings 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</p> <p>B. Fees for out-of-court work: \$50 per hour</p> <p>C. Fees for a curatorship: \$100 total, plus a maximum of \$100 in reimbursable expenses Courts may also order higher rates of compensation in extraordinary cases. LA. GEN. ADMIN. R., § 9.</p> <p>E. If the court finds that the parents are financially able, it may order them to reimburse the appointed counsel or district public defender's office for some or all of the costs of representing the child that are incurred before retained counsel has</p> |

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| | <p>enrolled as counsel of record. LA. CHILD. CODE ANN. art. 321.</p> <p>C. 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. LA. CHILD. CODE ANN. art. 607.</p> |
| <p>10. Caseload Levels: Caseloads are of a manageable size.</p> | <p><i>No explicit legal authority or requirement.</i></p> |