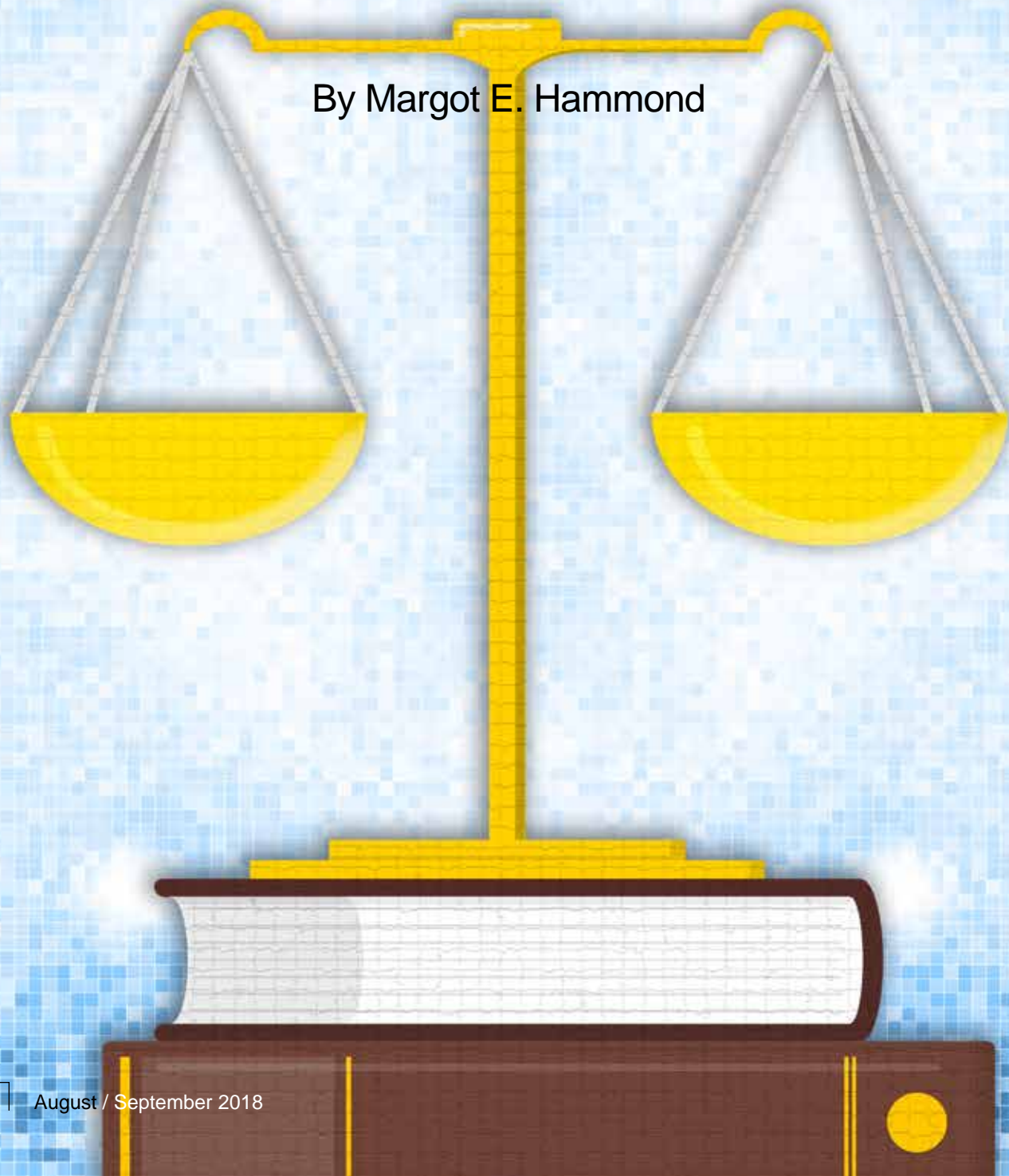


Legal Representation in Child Protection Cases

By Margot E. Hammond



Federal and state law both have historically recognized the authority and responsibility of states to protect children from abuse and neglect. In Louisiana, child protection is managed through the child welfare system, which involves both the executive and judicial branches of government.¹ The serious and intrusive nature of child protection proceedings necessarily implicates fundamental constitutional rights, including the child's liberty interest in safety, health and well-being, and the parents' rights to custody and control of their children. To balance the power of the state and to minimize unwarranted or prolonged intrusion into the family, due process requires that the state provide attorneys for both children and indigent parents in child protection proceedings.

Over the past several decades, Congress has passed significant pieces of legislation that support the state's duty and power to protect children, including the Child Abuse Prevention and Treatment Act (CAPTA), which provides guidance for child protection and requires qualified representation of children be provided by states as a condition of states' continued receipt of federal child welfare funding. Amendments to CAPTA further required that attorneys representing children receive training appropriate to their role.

The rights of children and indigent parents to representation in child protection cases are guaranteed in Louisiana Children's Code art. 607 and art. 608, as it was in the previous Code of Juvenile Procedure, and in La. R.S. 13:1579 prior to enactment of the Code of Juvenile Procedure. Until recently, however, there was no uniform statewide system in place to ensure equal access to quality legal representation.

In connection with the larger statewide Juvenile Justice Reform movement, HCR 44 of 2003 created a multi-disciplinary Task Force on Legal Representation in Child Protection Cases to "study systemic issues and concerns related to the provision of legal representation of abused and neglected children and their indigent parents in child protection cases and to

make recommendations on how these services may be more effectively and efficiently provided and funded."²

After years of study and incremental improvements, the multi-disciplinary Task Force recommended that the state transition to a uniform statewide system of representation providing greater specialization, more stability, efficiency and equity in expenditures, and improved quality control and administrative oversight. It was projected that ultimately the transformed system would yield long-term cost savings to the state and would contribute to improved outcomes for children. In 2014, the Task Force concluded its work and a state level Child Protection Representation Commission was established to provide continuing oversight of the system.³

Indigent Parent Representation

The Task Force on Legal Representation worked closely with the Task Force on Indigent Defense as it systematically addressed statewide inequities in funding and oversight challenges in the indigent defense system. Act 95 of the 2007 Regular Session created the Indigent Parents' Representation Program with the Indigent Defense Assistance Board (now the Louisiana Public Defender Board).⁴ Representation of indigent parents in child protection cases has been implemented statewide through the Indigent Parents' Representation Program, with legal services provided through local public defender offices in each jurisdiction across the state. Funding has been a continued challenge for this program, and many local offices have struggled to provide conflict-free representation to all indigent parents.

Most child protection cases have at least two indigent parents who need representation provided by the local public defender office. Many cases have in excess of two parents, as multi-child households may have multiple fathers or there may be multiple potential fathers of an individual child due to byzantine parentage laws. Each parent has a due process

right to representation, and, if the parent is indigent, that representation must be provided by the local public defender office. In cases with many parents needing representation, it can be a challenge to identify enough conflict-free attorneys to assign and to provide compensation for attorneys from already strained budgets.

Estimates from the Louisiana Public Defender Board show that public defender offices spend approximately \$4 million representing parents in the state. For this, public defenders receive an annual appropriation from the Legislature of just under \$1 million dedicated to parent representation. Although federal funding heavily subsidizes state funding for the state child welfare system, no federal funding is available for parent representation (although, without parent representation, court cases cannot proceed, which would jeopardize all federal funding of the child welfare system). The bulk of funding for parent representation must be made up from other sources of revenue, primarily court costs from traffic tickets. Insufficient state funding for indigent parent representation has created an untenable situation for local public defender offices which are also responsible for providing counsel in burgeoning indigent criminal and juvenile delinquency defense caseloads.⁵

How Lawyers Can Help Indigent Parent Representation

- ▶ Advocate for sufficient state funding levels to support indigent parent representation.
- ▶ Volunteer to accept pro bono conflict cases under supervision of local public defender offices.
- ▶ Provide pro bono services as a curator for absentee parents through local public defender offices.

Child Representation

In Louisiana, representation of children in child protection cases is overseen by the Louisiana Supreme Court, which designates appropriate programs for qualified legal representation in accordance with a plan for service delivery approved by the Court.⁶ The Mental Health

Advocacy Service's Child Advocacy Program and the Louisiana Bar Foundation as grantor for the Louisiana Legal Services Corporations are currently designated to provide children's representation.⁷

All attorneys representing children in child protection cases must be qualified in accordance with Part II of Rule XXXIII of the Administrative Rules of the Supreme Court. A minimum of six hours of specialized continuing legal education relevant to child welfare law is required each year, and documentation is provided annually to the Louisiana Supreme Court which publishes a list of qualified attorneys.

In 14 parishes, representation of children in child protection cases is provided by the Mental Health Advocacy Service's Child Advocacy Program (MHAS/Child Advocacy Program). MHAS is an executive branch agency authorized by La. R.S. 28:64 and governed by a board of trustees responsible for review and evaluation of the Child Advocacy Program. State funding for the Child Advocacy Program is included annually in the state executive budget.

In 50 parishes and an additional city court, representation of children in child protection cases is provided by Louisiana's two Legal Services Corporations (Acadiana Legal Service Corporation and Southeast Louisiana Legal Services). State funding is included as a line item in the Judicial Appropriations Bill each year and administered by the Louisiana Bar Foundation.

The level of state funding for children's representation in child protection cases has not kept pace with increasing caseloads. Insufficient funding challenges the ability of attorneys to provide quality representation in compliance with the Child Attorney Standards promulgated by the Louisiana Supreme Court.⁸

Each child in a child protection proceeding is entitled to independent representation of his/her wishes. Conflicts frequently arise in cases where multiple children have different positions or where the program previously represented a parent of the child client now requiring

representation.

Children involved in child protection cases often have legal needs beyond the scope of child welfare representation. This may include tort claims, educational rights, immigration problems, constitutional and civil rights violations, Social Security benefit claims and inheritance rights. Children's attorneys often do not have the time or knowledge to address these specialized legal matters.

Louisiana Bar Foundation Executive Director Donna Cuneo said, "The average adult encounters difficulty in accessing and navigating the legal system. To expect a child in need of care to do so without his/her own attorney is unconscionable. As a society, we talk about children being a priority. With the parent and child representation system, we have made children a priority in this state. Adequate funding for both systems is an essential component for success."

"The power to break up a family is one of the most awesome powers of the state. When done wrong, it harms children, parents, extended families and communities. Quality representation for parents helps ensure that the state does not interfere without very good reason, keeps parents engaged in the process after removal, and promotes safe reunification of children with their parents," said Richard M. Pittman, deputy public defender and director of Juvenile Defender Services for the Louisiana Public Defender Board.

How Lawyers Can Help with Children's Representation

- ▶ Advocate for sufficient state funding to support legal representation of children.
- ▶ Become qualified and volunteer with the local child representation program to represent a child as a conflict attorney.
- ▶ Offer the local child representation program legal services in specialized areas of law.
- ▶ Volunteer to assist the local child representation program with needed research and writing, including writs and appeals.

FOOTNOTES

1. The Louisiana Department of Children and Family Services has primary responsibility for child protection and foster care services. Since the enactment of P.L. 96-272, the Adoption Assistance and Child Welfare Act in 1980, courts exercising juvenile jurisdiction have substantial oversight responsibility in Child in Need of Care cases.

2. The history of the Task Force is chronicled in the Final Recommendations of the Task Force on Legal Representation in Child Protection Cases submitted March 10, 2014, to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A.

3. Louisiana Children's Code art. 581 provides for the membership and duties of the commission.

4. La. Ch. C. art. 571-575 provide for representation of indigent parents by public defenders in accordance with La. R.S. 15:185.1-185.9.

5. In 2016, some public defender offices began refusing indigent parent representation in some child protection cases due to an acute funding crisis. The result was that several termination of parental rights trials were delayed, resulting in delayed permanency for children and jeopardizing federal funding tied to timeliness measures.

6. See La. Ch. C. art. 558 and 560.

7. Although the original vision of the Task Force was to create a single uniform statewide system of representation for children in child protection cases, the current arrangement of utilizing both the MHAS/Child Advocacy Program and the LBF/Legal Services Corporations was necessitated by a demand for expeditious statewide implementation. The Task Force determined that both programs are currently providing qualified child representation in their respective jurisdictions, and that disruption to the service provision arrangement is not warranted. However, statewide uniformity has been achieved through Louisiana Supreme Court oversight of both child representation programs.

8. Administrative Rules of the Louisiana Supreme Court, Rule XXXIII, Part III, Subpart II.

Margot E. Hammond, prior to retirement, was the supervising attorney with the Mental Health Advocacy Service's Child Advocacy Program for more than 25 years and she continues to consult on cases. She was a member of the Legislative Task Force on Child Representation.



She currently serves on the Louisiana State Bar Association's (LSBA) Children's Law Committee and Legal Services for Persons with Disabilities Committee. She also is a member of the Louisiana State Law Institute's Children's Code Committee. She is a recipient of the LSBA's Children's Law Award and the President's Award. She received her JD degree in 1984 from Loyola University College of Law. (margot.hammond.la.gov; Ste. 1105, 1450 Poydras St., New Orleans, LA 70112)