

# Legal Representation of Children: Opportunities for Attorneys

By Guy R. Lain

**A**lthough children do not have the full legal capacity of adults, they are entitled to a panoply of special rights and protections under the law. As the body of law regarding children has developed since the early 1900s, so the practice of children's law has evolved "from a cottage-age industry to a sophisticated legal specialty."<sup>1</sup> In Louisiana, the opportunities to represent children are varied and increasing. Attorneys are representing children in many types of proceedings — juvenile court matters; custody and visitation; federal and state immigration; education; mental health; SSI and Medicaid benefits; and, most recently, human/sex trafficking victim's rights cases. Representing a child can be enormously rewarding, but attorneys representing children encounter unique challenges.

Children's law is complex, often involving topic-specific federal and state

law, policy and regulation. Enacted in 1992, the Louisiana Children's Code is applicable to legal proceedings subject to juvenile jurisdiction of courts. Juvenile proceedings include, most notably, delinquency proceedings; family in need of services proceedings; child welfare proceedings; termination of parental rights proceedings; adoptions, including facilitating interstate adoptions under the Interstate Compact on the Placement of Children; mental health commitment proceedings involving minors; the implementation of interstate child support orders under the Uniform Reciprocal Enforcement of Support Act; voluntary transfers of custody; and when extraordinary life-sustaining procedures can be withdrawn from a terminally ill child. In addition, a juvenile judge can approve juvenile marriages and can enter protective orders in situations involving family violence.<sup>2</sup> Many provisions of the Children's Code are

distinct from civil and criminal law, including legal representation, identification and rights of parties, confidentiality of proceedings and records, discovery, mandatory time constraints for hearings, required judicial findings and special appellate procedures. The Children's Code has incorporated many of the applicable federal requirements within its provisions; however, additional federal laws and regulations also may be applicable.<sup>3</sup>

In addition to statutory law, the Louisiana Rules of Court also include special rules for juvenile court matters. Part J of the Rules of the Supreme Court include "Special Rules for Cases Involving the Protection of Children," including provisions for specialized divisions of court, timeliness of hearings and decision-making, confidentiality, child attorney qualification and standards, and special appeal and writ procedures for child protection, adoption and custody cases. Rule 5 of the



Uniform Court of Appeal Rules include “Procedures for Writs and Appeals in Certain Cases Involving Minors,” including expedited handling of cases and confidentiality. In addition, the District Court Rules include separate rules for family law proceedings (Title IV) and rules for juvenile proceedings (Title V).

The Louisiana Rules of Professional Conduct do not distinguish representation of children from representation of adult clients, and guidance addressing the unique challenges of representing a child is scant. Competent representation of children demands more than the “legal knowledge and skill” required by Rule 1.1. Effective legal representation necessarily includes an understanding of child development and the effects of trauma.<sup>4</sup> Providing client-directed representation for a very young child client is particularly challenging. Rule 1.14 provides that a lawyer must, as far as reasonably possible, maintain a normal lawyer-client relationship with a client having diminished capacity as a result of “minority.” Under some circumstances, “the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client.” In “appropriate cases,” the lawyer may seek court appointment of a tutor or curator to “protect the interest” of the child client. However, in Louisiana, it is not the function of a child’s attorney to represent the “best interests” of the child, unless specifically appointed by a court for that purpose.<sup>5</sup>

Application of other provisions of the Rules also may be problematic. Pursuant to Rule 1.8(f), attorneys may not accept compensation from someone other than the client except as specifically provided. Frequently, attorneys represent children by court appointment, through an agency designated to represent children, or as retained by an adult on behalf of the child. Under these circumstances, the lawyer must maintain both independence and confidentiality in representation. Attorney-client communication, as contemplated in Rule 1.4, is particularly challenging with a child client, especially with a child who is nonverbal or has very limited verbal skills. Frequent meetings

“*The Louisiana Rules of Professional Conduct do not distinguish representation of children from representation of adult clients, and guidance addressing the unique challenges of representing a child is scant. Competent representation of children demands more than the “legal knowledge and skill” required by Rule 1.1. Effective legal representation necessarily includes an understanding of child development and the effects of trauma.*”

with the child may be needed to build trust and to learn how the child communicates verbally and non-verbally.

The children most in need of legal representation are frequently involved in multiple systems. It is not uncommon for a child in foster care also to be involved in the juvenile justice system or the immigration system, be facing suspension or expulsion from school, or be a sex trafficking victim. Today, to fully meet the legal representation needs of a child client, often more than one attorney is required, each providing specific experience.

The practice of law for children has become increasingly specialized and Louisiana has made great strides to meet the basic legal representation rights of children. However, there is much to be done:

► Attorneys statewide should understand and appreciate the nature and importance of children’s law practice and support efforts to improve access to quality representation of children.

► Training on representation of children and on children’s law issues should

be widely available to ensure quality legal representation of children.

► Agencies and organizations that provide legal services to children should be adequately funded for attorney salaries, administration and oversight, support services, court and expert witness fees, and other costs.

Louisiana’s children — Louisiana’s future — deserve the full commitment of all members of the Bar to ensure that the increasing needs of children for legal representation are met.

## FOOTNOTES

1. “From Cause to Profession: The Development of Children’s Law and Practice,” Marvin Ventrell, *The Colorado Lawyer*, January 2003.

2. Louisiana Children’s Code, Louisiana Children’s Code Project, pgs xvi-xvii.

3. For example, federal requirements of the Indian Child Welfare Act enacted in 1978 have only been recently referenced in the Children’s Code. See Act 296 of 2018.

4. See, “The Basics of Brain Development,” Joan Stiles and Terry L. Jemigan, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2989000/>;

“The Impact of Trauma on Child Development,” Frank W. Putnam, *Juvenile and Family Court Journal*, Winter 2006. See also, “How Trauma in Childhood Affects the Brain: New Research Points to Neurobiological Sex Differences in Youth with PTSD,” Sarah-Nicole Bostan, M.A., <https://www.psychologytoday.com/us/blog/greater-the-sum-its-parts/201703/how-trauma-in-childhood-affects-the-brain>, posted March 20, 2017; “The Adverse Childhood Experiences Study: Child Abuse and Public Health,” Why Prevention Matters Series, Dr. Robert Anda, Prevent Child Abuse America, [www.preventchildabuse.org](http://www.preventchildabuse.org).

5. In child protection cases, the best interests of the child may be represented by a Court Appointed Special Advocate while the child’s attorney represents the wishes of the child.

Guy R. Lain is an attorney with the Louisiana State Department of Children and Family Services (DCFS). Before his work with DCFS, he was the children’s attorney with the 7th JDC Indigent Defense Office. He is a 1992 graduate of Louisiana State University Paul M. Hebert Law Center, is certified by the National Association of Counsel for Children as a child welfare law specialist and is a member of the Louisiana State Bar Association’s Children’s Law Committee. ([guy.lain.dcf@la.gov](mailto:guy.lain.dcf@la.gov); 1721 Carter St., Vidalia, LA 71373)

