

JEFFERSON PARISH CORONER'S OFFICE GUIDELINES
FOR CONTINUING TUTORSHIP OF PERSONS WITH
DISABILITIES
WITH CORONER CONCURRENCE
EFFECTIVE AUGUST 1, 2024

Louisiana law provides a process for a parent or guardian to obtain a full or limited Continuing Tutorship when an unemancipated minor above the age of 15 years but less than 18 years old possesses less than 2/3 of the average intellectual or adaptive functioning of a person the same age as determined by standard testing procedures or other relevant evidence.

THE LAW

Louisiana law on this subject begins with La. Civil Code Annotated. Article 354 which reads:

SECTION 12

OF CONTINUING TUTORSHIP OF PERSONS WITH DISABILITIES

LSA CIVIL CODE Art. 354. Placing under continuing tutorship

Certain children with disabilities may be placed under full or limited continuing tutorship in accordance with the following rules and the provisions of the Code of Civil Procedure.

Revision Comments – 2024

(a) This revision changes the law to provide for the possibility of a limited continuing tutorship for an unemancipated minor and to mirror the law of interdiction, which provides for the possibility of both full and limited interdiction for emancipated minors and persons over the age of majority. Where the unemancipated minor who is a candidate for continuing tutorship has an intellectual or adaptive functioning level that renders him consistently able to make reasoned decisions regarding some but not all matters, a limited continuing tutorship may be appropriate.

(b) This revision changes the nomenclature to refer only to "continuing" tutorship. Previously, the phrases "continuing tutorship" and "permanent tutorship" were used interchangeably. This revision suppresses the use of the phrase "permanent tutorship" to promote accuracy and to avoid superfluity.

LSA CIVIL CODE Art. 355.

Petition for full or limited continuing or permanent tutorship

When an unemancipated minor above the age of fifteen possesses less than two-thirds of the intellectual or adaptive functioning of a person of the same age with average intellectual or adaptive functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court, the parents of the minor, or the person entitled to custody or tutorship of the minor if one or both parents are dead, incapacitated, or absent persons, or if the parents are judicially separated or divorced or have never been married to each other, may, with the written concurrence of the coroner of the parish of the minor's domicile, petition the court of that district to place the minor under a full or limited continuing tutorship that shall not automatically end at any age but shall continue until revoked by the court of domicile. The petitioner shall not bear the coroner's costs or fees associated with securing the coroner's concurrence.

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Revision Comments – 2024

(a) This revision changes the standard for placing a person under continuing tutorship to allow the court to consider either intellectual or adaptive functioning. Prior law did not allow children functioning at very low levels in the areas of communication, daily living skills, and socialization to be placed under continuing tutorship if their intellectual functioning was near average. This revision permits broader considerations of disability, including, for example, adaptive functioning under the Vineland-3 Adaptive Behavior Scales.

(b) This revision also clarifies that continuing tutorship may be sought only for persons between the ages of fifteen and eighteen. Once a person reaches the age of majority, Louisiana's law of interdiction applies. See, e.g., Civil Code Article 389 et seq.

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There are no Coroner costs or fees born by the requesting party in requesting a coroner concurrence.

LSA CIVIL CODE Art. 356.

Title of proceedings; procedural rules; parent to be named tutor

The title of the proceedings shall be Continuing Tutorship of (Name of Person), A Person with a Disability and the proceeding shall be conducted according to the procedural rules established for ordinary tutorships.

(1) When the parents of the person to be placed under a full or limited continuing tutorship are married to each other and petition jointly, the court shall appoint the parents as co-tutors, unless for good cause the court decrees otherwise.

(2) When the parents of the person to be placed under a full or limited continuing tutorship are married to each other but do not petition jointly, the court shall appoint either a petitioning parent as tutor or both individually petitioning parents as co-tutors, in accordance with the best interest of the child.

(3) Upon the petition of a parent of the person to be placed under the full or limited continuing tutorship, the court shall, unless good cause requires otherwise, appoint as tutor the petitioning parent who is:

(a) The surviving parent, if one parent is dead.

(b) The parent awarded custody of the child to be placed under the full or limited continuing tutorship, if the parents are divorced or judicially separated.

(c) The parent who is tutor or tutrix, if the parents were never married to each other.

LSA CIVIL CODE Art. 357. Decree; place of recording,; notice.

If the prayer for full or limited continuing tutorship is granted, the decree shall be recorded in the conveyance and mortgage records of the parish of the minor's domicile, and of any future domicile, and in other parishes as may be deemed expedient. The decree shall not be effective as to persons without notice thereof outside of the parishes in which it is recorded.

LSA CIVIL CODE Art. 358. Authority, Full continuing tutorship; authority; privileges, and duties of tutor and undertutor;

The granting of a decree of full continuing tutorship shall confer upon the tutor and undertutor the same authority, privileges, and responsibilities as in other tutorships, including the same authority to give consent for any medical treatment or procedure, to give consent for any educational plan or procedure, and to obtain medical, educational, or other records, but the responsibility of the tutor for the offenses or quasi-offenses of the person under full continuing tutorship shall be the same as that of a curator for those of an interdicted person

LSA CIVIL CODE Art. 358.1. Limited continuing tutorship; authority; privileges and duties of tutor and undertutor

The granting of a decree of limited continuing tutorship shall confer upon the tutor and under tutor only the authority, privileges, and responsibilities required to protect the interest of the person under limited continuing tutorship.

LSA CIVIL CODE Art. 358.2. Termination of continuing tutorship

A full or limited continuing tutorship shall not terminate until the decree is set aside by the court of the domicile of the person under continuing tutorship, or the court of last domicile if the domicile of the person under continuing tutorship is removed from the state.

LSA CIVIL CODE Art. 359. Restriction on legal capacity

A person under full continuing tutorship has the legal capacity of an unemancipated minor or any lesser capacity as may be ordered in the decree. A person under limited continuing tutorship has legal capacity in accordance with the decree of continuing tutorship.

LSA CIVIL CODE Art. 360. Parents' rights of administration

In addition to the rights of tutorship, the parents shall retain, during the

marriage and during the minority of the child under full or limited continuing tutorship, all rights of administration granted to parents of children not under continuing tutorship during their minority.

LSA CIVIL CODE Art. 361. Contest of decree restricting legal capacity

The decree restricting legal capacity may be contested in the court of domicile by the person under full or limited continuing tutorship or by anyone adversely affected by the decree. For good cause, the court may modify or terminate the decree restricting legal capacity.

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Revision Comments – 2024

Under this Article, a person may contest the decree by objecting to its initial issuance or by seeking a later modification or termination of the decree.

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LSA CIVIL CODE Art. 362. Persons subject to interdiction.

Persons subject to interdiction in accordance with the provisions of Title IX of this Book, remain subject to interdiction as provided in Articles 389 through 399, and any other applicable laws.

THE PROCESS

To begin this process, a parent or guardian normally selects an attorney familiar with this area of the law. The attorney must meet with the family or guardians to determine who will assume the role of Tutor and Undertutor and what standard testing or other relevant evidence which is timely shows

the intellectual functioning of the person to be put under the Continuing Tutorship. Once satisfied, the attorney must draft and execute legal pleadings entitled “ Continuing Tutorship of (Name of Person), a person with a disability.”

Once the legal pleadings are finalized and signed, it is suggested that prior to filing with the Clerk of Court, the attorney drop off to the Coroner’s office a complete set of the written pleadings and attachments to be filed in Court with a properly drafted Coroner Concurrence containing the language shown later in these guidelines.

Once received, the attorney for the Coroner will review those pleadings and attachments for sufficiency under the law. Expert medical reports and testing results are preferred but may or may not require an update depending on the date of testing and the degree of disability.

If the Coroner does not find that the pleadings and attached documentation complies with Louisiana law, he/she may refuse to sign the written Coroner Concurrence until said pleadings are in compliance with the law.

Once satisfied, the Coroner’s attorney will recommend that the Coroner Concurrence be signed by the Coroner. Once signed, the requesting attorney will be notified that the pleadings are ready to be picked up and filed with the Court.

Please note that as of August 1, 2024, the law is clear that Continuing Tutorship of a person with a disability only applies to juveniles ages 15-18. If time is limited to meet any deadline, the attorney for the petitioner assumes all liability in submitting the pleadings in a timely manner to the Coroner to allow sufficient time to file timely with the Court. Otherwise, the requesting attorney may file directly with the Court and then seek Coroner Concurrence. After 18 years old, Interdiction applies.

ADDITIONAL GUIDELINES

The following guidelines are presented to assist attorneys and persons seeking a Coroner Concurrence in connection with a Petition for Continuing Tutorship:

GENERAL: This matter generally involves filing pleadings with the clerk of court, namely, a petition with supporting affidavits and documentation seeking to place a minor with a disability under a continuing tutorship which shall not automatically end at any age but shall continue until revoked by the Court.

It may be filed by the parents of the minor, or the person entitled to custody or tutorship of the minor if one or both parents are dead, incapacitated, or absent persons, or if the parents are judicially separated or divorced or have never been married to each other.

The Petition is based on an individual's failure to possess two thirds of the normal intellectual functioning or adaptive functioning of a person his or her age as evidenced by standard testing procedures, an expert medical report or other relevant evidence of a timely nature.

It is highly recommended that attorneys submit the pleadings and attachments to the Coroner's office for review and signature of the Coroner Concurrence prior to filing with the Court to avoid delays in the case. However there is no requirement that you do so.

Prior to signing, some items to be checked by the Coroner as per La. Civ. Code Ann. art. 356 include but are not limited to:

The title of the proceedings shall be:

“ Continuing Tutorship of (Name of Person),
a Person with a Disability.”

Other factors:

(1) When the parents of the person to be placed under a full or limited continuing tutorship are married to each other and petition jointly, the court shall appoint the parents as co-tutors, unless for good cause the court decrees otherwise.

(2) When the parents of the person to be placed under a full or limited continuing tutorship are married to each other but do not petition jointly, the court shall appoint either a petitioning parent as tutor or both individually

petitioning parents as co-tutors, in accordance with the best interest of the child.

(3) Upon the petition of a parent of the person to be placed under the full or limited continuing tutorship, the court shall, unless good cause requires otherwise, appoint as tutor the petitioning parent who is:

(a) The surviving parent, if one parent is dead.

(b) The parent awarded custody of the child to be placed under the full or limited continuing tutorship, if the parents are divorced or judicially separated.

(c) The parent who is tutor or tutrix, if the parents were never married to each other.

The legal capacity to file the pleadings:

The first paragraph should establish the right of the person seeking the continuing tutorship to file this pleading: examples.... NOW INTO COURT, COMES YYY, surviving parent of XXXX, OR divorced spouse of ZZZ, or person entitled to sole custody of YYY, or natural tutor or tutrix of XXXX. (as per LSA CIVIL CODE ART 355)

The legal standard of evidence necessary to present for Court to render a judgment:

Standard testing documentation, such as an IEP (Individual Education Plan), an expert medical or psychological report, current expert reports or Psychological report. Please note that If an Individual Education Plan (IEP) or other school based documentation is submitted, It may not state the legal standard as required by law and may be too old for its intended use.

The legal standard of proof:

For those over 18 years old:

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

La. Code Civ. Proc. Ann. art. 4548

For those over 15 years old but under 18 years old:

The legal standard to be met by clear and convincing proof reads as follows:

When an unemancipated minor above the age of fifteen possesses less than two-thirds of the intellectual or adaptive functioning of a person of the same age with average intellectual or adaptive functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court, Civ. Code Ann. art. 355 The petition should say what evidence supports this standard.

The legal wording for the Coroner Concurrence:

The only acceptable language for the pleading entitled “ Coroner Concurrence” is as follows:

I, **DR. GERRY CVITANOVICH** , as the duly elected Coroner of Jefferson Parish, after review of the pleadings and supporting documents filed herein, certify that the minor child, XXXX,, in my opinion, possesses less than two-thirds of the intellectual or adaptive functioning of a person of the same age with average intellectual functioning, as evidenced by standard testing procedures administered by competent persons or other relevant evidence, and I concur in the recommendation of his parents or guardian that he/she be placed under a full or limited continuing tutorship to be determined by the Court

Harvey, La this day of ,20 _____.

DR GERRY CVITANOVICH, CORONER, JEFFERSON PARISH

OTHER LAWS:

If the prayer for full or limited continuing tutorship is granted, the decree shall be recorded in the conveyance and mortgage records of the parish of the minor's domicile, and of any future domicile, and in other parishes as may be deemed expedient. The decree shall not be effective as to persons without notice thereof outside of the parishes in which it is recorded.

La. Civ. Code Ann. art. 357

The granting of a decree of full continuing tutorship shall confer upon the tutor and undertutor the same authority, privileges, and responsibilities as in other tutorships, including the same authority to give consent for any

medical treatment or procedure, to give consent for any educational plan or procedure, and to obtain medical, educational, or other records, but the responsibility of the tutor for the offenses or quasi-offenses of the person under full continuing tutorship shall be the same as that of a curator for an interdicted person. La. Civ. Code Ann. art. 358

The granting of a decree of limited continuing tutorship shall confer upon the tutor and undertutor only the authority, privileges, and responsibilities required to protect the interest of the person under limited continuing tutorship.

La. Civ. Code Ann. art. 358.1

A full or limited continuing tutorship shall not terminate until the decree is set aside by the court of the domicile of the person under continuing tutorship, or the court of last domicile if the domicile of the person under continuing tutorship is removed from the state.

La. Civ. Code Ann. art. 358.2

A person under full continuing tutorship has the legal capacity of an unemancipated minor or any lesser capacity as may be ordered in the decree. A person under limited continuing tutorship has legal capacity in accordance with the decree of continuing tutorship.

La. Civ. Code Ann. art. 359

In addition to the rights of tutorship, the parents shall retain, during the marriage and during the minority of the child under full or limited continuing tutorship, all rights of administration granted to parents of children not under continuing tutorship during their minority.

La. Civ. Code Ann. art. 360

The decree restricting legal capacity may be contested in the court of domicile by the person under full or limited continuing tutorship or by anyone adversely affected by the decree. For good cause, the court may modify or terminate the decree restricting legal capacity.

La. Civ. Code Ann. art. 361

Persons subject to interdiction in accordance with the provisions of Title IX of this Book, remain subject to interdiction as provided in Articles 389 through 399, and any other applicable laws.

La. Civ. Code Ann. art. 362

When a petition for appointment as legal or dative tutor is filed, the applicant shall annex an affidavit listing to the best of his knowledge the minor's ascendants and collaterals by blood within the third degree and the surviving spouse of the minor's mother or father dying last who reside in the state. **A copy of the petition for appointment shall be mailed by registered or certified mail to each person listed in the affidavit. Notice of the application shall be published once in the parish where the petition was filed, in the manner provided by law.**

La. Code Civ. Proc. Ann. art. 4065

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PLEASE DIRECT ANY QUESTIONS CONCERNING A FULL OR LIMITED CONTINUING TUTORSHIP TO THE ATTORNEY FOR THE JEFFERSON PARISH. CORONER:

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