

JEFFERSON PARISH CORONER'S OFFICE GUIDELINES
FOR CONTINUING OR PERMANENT TUTORSHIP
WITH CORONER CONCURRENCE
2021

Louisiana law provides a process for a parent or guardian to obtain a Continuing or Permanent Tutorship when an individual above the age of 15 years old possesses less than 2/3 of the average intellectual functioning of a person the same age as determined by standard testing procedures.

THE LAW

Louisiana law on this subject begins with La. Civil Code Annotated. Article 355 which reads:

When a person **above the age of fifteen possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court,** the parents of such person, or the person entitled to custody or tutorship 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 intellectually disabled person's domicile, petition the court** of that district to place such person under a continuing tutorship **which 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.

La. Civ. Code Ann. art. 355

THE PROCESS

To begin this process, a parent or guardian normally selects an attorney familiar with this part of the law. The attorney must meet with the family or guardians to determine who will assume the role of Curator and Under Curator and what standard testing shows the intellectual functioning of the person to be put under the Tutorship. Once satisfied, the attorney must draft and execute legal pleadings entitled a Petition for Continuing or Permanent Tutorship.

Once the legal pleadings are finalized and signed, it is suggested that 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 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.

ADDITIONAL GUIDELINES

The following guidelines are presented to assist attorneys and persons seeking a Coroner Concurrence in connection with a Petition for Continuing or Permanent 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 person with an intellectual disability under a continuing or permanent tutorship which shall not automatically end at any age but shall continue until revoked by the Court.

It can be filed by any interested party but usually is filed by:

- 1) the parents of a person with an intellectual disability who is above the age of fifteen (15) who possesses less than two-thirds of the intellectual functioning of a person the same age, **or**
- 2) the person entitled to custody or tutorship if one or both parents are dead, incapacitated, or are absent, or if the parents are judicially separated or divorced.

The Petition is based on the individual's failure to possess two thirds of the normal intellectual functioning ability of a person his or her age as evidenced by standard testing procedures and an expert medical report.

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 but are not required to 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 an Intellectual Disability."

Other factors:

if the respondent is under the age of majority:

(1) When the person to be placed under the continuing tutorship is above the age of fifteen, and under the age of majority, the proceeding shall be conducted according to the procedural rules established for ordinary tutorships. La. Civ. Code Ann. art. 356

if the respondent is above the age of majority:

(2) When the person to be placed under the continuing tutorship is above the age of majority, the proceeding shall be conducted according to the procedural rules established for interdictions.

(3) When the parents of the person to be placed under the 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.

(4) When the parents of the person to be placed under the 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.

(5) Upon the petition of a parent of the person to be placed under the 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 during minority of the person to be placed under the continuing tutorship, if the parents are divorced or judicially separated.

(c) The parent who was tutor or tutrix during minority, 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 proof:

3) The legal standard to be met reads as follows: "When a person above the age of fifteen possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning, evidenced by standard testing procedures administered by competent persons or other relevant evidence acceptable to the court," La. Civ. Code Ann. art. 355 The petition should say what evidence supports this standard.

The legal standard of evidence necessary for Court:

4) Standard testing documentation. Current expert reports or psychological testing results are preferred and should be attached to the petition as an exhibit for review by the coroner. 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 wording for the Coroner Concurrence:

5) 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 _____, in my opinion, possesses less than two-thirds of the intellectual functioning of a person of the same age with average intellectual functioning, 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 be placed under a continuing tutorship.

Harvey, La this _____ day of _____, 20_____,

DR GERRY CVITANOVICH, CORONER, JEFFERSON PARISH

6) The Jefferson Parish Coroner charges no fee for signing this Concurrence.

OTHER LAWS THAT MAY APPLY:

If the prayer for continuing or permanent tutorship be 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 such 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 the decree shall confer upon the tutor and under tutor 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 with an intellectual disability shall be the same as that of a curator for those of the interdicted person and the tutorship shall not terminate until the decree is set aside by the court of the domicile, or the court of last domicile if the domicile of the person with an intellectual disability is removed from the State of Louisiana. La. Civ. Code Ann. art. 358

The decree if granted shall restrict the legal capacity of the person with an intellectual disability to that of a minor. La. Civ. Code Ann. art. 3591n
In addition to the rights of tutorship, the parents shall retain, during the marriage and for the minority of the child with an intellectual disability, all rights of administration granted to parents of children without an intellectual disability during their minority. La. Civ. Code Ann. art. 36

The decree restricting his legal capacity may be contested in the court of domicile by the person himself 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 mental or physical illness or disability, whether of a temporary or permanent nature, of such a degree as to render them subject to interdiction, under the provisions of Title IX hereof, remain subject to interdiction as provided in Articles 389 to 399, inclusive, and such other laws as may relate thereto. La. Civ. Code Ann. art. 362

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

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