

Family Law Bench Book

Judge Edwin H. Byrd, III
District Judge, First Judicial District Court

General

Venue

Divorce

Either party's domicile or last matrimonial domicile. La. C.C.P. art. 394.

Original support or custody proceeding

Either parent's domicile or last matrimonial domicile. La. C.C.P. art. 74.2 (A).

Modification of custody

Where person awarded custody is domiciled, unless that person is now out of state, in which case the domicile of the person seeking custody; or parish where decree was entered. *Id.* at 74.2 (B)

Modification of support if person awarded support is in Louisiana

Parish where person awarded support is domiciled if award is registered. *Id.* at 74.2 (C)(2).

Parish where rendered if not registered elsewhere. *Id.*

Where support award was last registered if multiple registrations. *Id.*
See also La. C.C. art. 2785.

Modification of support if person awarded support is not in Louisiana.

Parish where payor is domiciled.

Where rendered if not registered elsewhere in Louisiana.

Where last "confirmed." (La. C.C. art. 2785 and 74.2(c)).

Custody venue can be waived, but divorce cannot (La. C.C.P. art. 3941).

Domicile Proof:

Burden is not difficult: proof of the establishment of a new domicile as a matter of fact with the intent of remaining and abandoning the former domicile. To prove intent: evidence of change in circumstances or declaration of intent filed with clerk.

Domicile for subject matter jurisdiction: if 6 months residence in Louisiana, rebuttable presumption that Louisiana.

Evidence

In custody matters rules are “guidelines.” C.E. 1101 (B)(2). Testimonial privileges apply. Exclusionary rules apply “to the extent promote the purpose of the proceeding.”

Discovery

15 days to respond to written discovery other than requests for admission (30 days if served with petition). *Ex parte* orders are routinely requested to reduce the 30 days to 15 days if included with petition. *Ex parte* orders are also routinely requested to order production of particular categories of documents without a discovery request. See La. R.S. 9:326, mandatory disclosure for spousal support; and La. R.S. 9:315.2, documentation to be produced for calculation of child support.

Curators

Non-resident or absentee:

Attorney appointed to represent non-resident or absentee who has not been served. La. C.C.P. art. 5091(A)(1)(a).

Absentee definition:

- (1) Non-resident;
- (2) Domiciled but departed from state;
- (3) Whereabouts unknown.

La. C.C.P. art. 5251(1).

Curator must attempt to contact absentee, but if unsuccessful “has the same duty, responsibility, and authority in defending the action or proceeding as if he had been retained as counsel,” for the absentee defendant.

La. C. Civ. P. art. 5095

Appointment of Attorney

Appointment of attorney is authorized for adoptions to assist the court. Art. 5091.2.

Appointment of attorney is mandatory to represent child in disavowal action. La. C.C.P. art 5091.1.

Payment: reasonable fee, taxed as court costs.

Summary Proceedings in Family Matters

Legal custody

Physical custody

Child support

Spousal support

Use of family home

Use of community property

Homologation of judicial partition (La. C.C.P. art. 2592(8))

102 Divorce. Note that if 102 divorce (summary proceeding) is amended to a 103 divorce (which is ordinary proceeding), the matter is now an ordinary proceeding.

Personal Jurisdiction for Support or Parentage

Resided with spouse or child in Louisiana or conceived child while resided in Louisiana. La. 13:3201(6) and (7). See also UCCJEA, La. R.S. 13:1801.

Service of Process

Service of: Certified copy of citation, 102 notice, petition, contradictory motion, or rule to show cause by:

Registered mail; Certified mail; Actual delivery by courier, court appointed server, or person authorized in that state to serve; and if none of the above, upon curator (La. R.S. 13:3204). Note: If 102 divorce and parties are still living together, no domiciliary service.

Note: Affidavit and return receipt confirmation of delivery must be filed at least thirty (30) days prior to hearing. 13:3205.

Consolidation

Can hear custody and child support together if there is consent. La. R.S. 9:356.

Judgment

Must include:

- Decretal language to state the party in whose favor the judgment is rendered.
- The substance of the judgment must be able to be determined without reference to other documents.
- Review of judgment: Unless “precise, definite, and certain,” there is no review and cannot refer to other documents to provide details.
- On its own page with caption of the case.

Final judgment: Determines the merits of a controversy in whole or in part.

Partial No Cause

Cannot address one theory of recovery arising out of the same transaction or occurrence but can do so with summary judgment. Example, summary judgment on the retroactivity of a request for child support modification is proper, but partial no cause on that issue is not.

Zoom Testimony

The court may order, upon a showing of appropriate safeguards, live testimony of a witness to be presented in open court by teleconference, video link, or other visual remote technology, if the witness is beyond the subpoena power of the court or when compelling circumstances are shown. The order may be entered at a pretrial conference or, in exceptional circumstances, on motion set for hearing at least ten days prior to trial or at another time that does not prejudice the parties.

La. C. Civ. P. art. 1633.1. See also La. R.S. 15:283 (use of video expert testimony).

Contempt

Direct contempt:

Act committed in the view of the judge, or a “contumacious” failure to comply with a subpoena or summons.

Must be provided opportunity to establish “defense or mitigation,” but can be found guilty without a trial.

Constructive contempt:

Willful disobedience of any lawful judgment, order, mandate, writ, or process of the court; any act intended to obstruct or interfere with orderly administration of justice or impair the dignity of the court or respect for its authority which is not direct contempt. La. C.C.P. art. 224.

Constructive contempt proceeding requires trial on guilt and punishment, preceded by written motion and rule to show cause served at least 48 hours before trial.

Can keep in jail until purged or punishment without purge.

Maximum punishment for contempt:

Violating restraining order: \$1,000 or six months or both

Failure to pay child support or spousal support, violation of child custody or visitation order: \$500 or three months or both

Court approved litter abatement or community service

Make-up visitation

Parent education

Counseling

Mediation

If pattern, modification of custody order

Attorney fees

Mandatory if contempt for “failure to exercise visitation, custody, or time rights.” See *Vitaliano v. Blackstock*, 424 So.3d 786 (La. App. 4 Cir. 10/30/25)

(Although fees not available under 9:346 because contempt was not custody but was for moving with child in violation of order, \$50,000 in fees properly awarded under 13:4611).

Wall v. Galiano, 417 So.3d 1232 (La. App. 1 Cir. 7/23/25) Contempt statute could not be used to automatically forfeit custodial time for failure to notify mother of emergency visits as this requires a contempt adjudication.

Lloyd v. Wilfred, 426 So.3d 180 (La. App. 5 Cir. 10/29/25). Court imposed fixed sentence without a purge clause, five days in jail and \$2,000 in attorney fees, for failure of mother to post the child's schedule on Our Family Wizard App. This was to punish rather than compel compliance. Accordingly, this required proof beyond a reasonable doubt that mother intentionally, knowingly, and purposefully violated the order, a burden not satisfied.

Filiation

Presumptions

Husband of the mother is presumed to be the father of a child born up to 300 days after termination of the marriage. La. C.C. art. 185.

If there is acknowledgement by authentic act, there is presumption that the father. La. C.C. art. 195.

Note issue re: same sex spouses with a natural parent.

Avowal action timeliness

If there is presumption in place that child is “of another man” and good faith, one year from birth; bad faith, ten years from birth or one year from when knew or should have known of his paternity. Example of bad faith, telling him: “it is not your child....” If no presumption can establish his paternity, then timely “at any time.” La. C.C. art. 198. But see *Davidson v. Hardy*, 429 So.3d 239 (La. 3/9/2026). Child was born 100 days after mother’s divorce from former husband and while mother was living with father; accordingly, child would be presumed to be the child of the former husband. Father filed avowal action more than one year after child’s birth; under Civ. Code art. 198 his claim would have been time barred, but one year prescription was unconstitutional “under these particular facts,” where the presumed father did not desire to raise the child and the child was “both conceived and born into the biological father’s family unit.”

Disavowal action timeliness

One year from birth or when husband knew or should have known he may not be the parent of the child. La. C.C. art. 189.

Procedure for admitting blood test results, La. R.S. 9:396 et seq.

Testifying procedure must be challenged with 30 days of service of notice from the clerk of receipt of test results (“report”). 9:397.3(3).

Attorney must be appointed to represent the child in every disavowal action. C. Civ. P. art. 5091.1.

103 Divorce

Except in the case of a covenant marriage, a divorce shall be granted on the petition of a spouse upon proof that:

- (1) The spouses have been living separate and apart continuously for the requisite period of time, in accordance with Article 103.1, or more on the date the petition is filed.
- (2) The other spouse has committed adultery.
- (3) The other spouse has committed a felony and has been sentenced to death or imprisonment at hard labor.
- (4) During the marriage, the other spouse physically or sexually abused the spouse seeking divorce or a child of one of the spouses, regardless of whether the other spouse was prosecuted for the act of abuse.
- (5) After a contradictory hearing or consent decree, a protective order or an injunction was issued during the marriage against the other spouse seeking the divorce or a child of one of the spouses from abuse.
 - *Carrington v. Carrington*, 2024-1016 (La. App. 1 Cir. 4/11/25). Divorce obtained on basis of wife's sentence to hard labor for fraud; wife waived service in person. Following divorce parties partitioned property. However, wife was not yet sentenced at time of divorce. Wife's annulment petition was denied because she acquiesced and benefitted.

Default Procedure (See, La. C. Civ. P. art. 1702(F):

Service plus 21 days plus 7 day notice, can sign in chambers.

Service plus 21 days plus 2 day notice, in court with witness.

No service but waiver plus 2 days notice, in court with witness.

102 Divorce

The requisite period of time, in accordance with Article 103.1, has elapsed from the service of the petition or from the execution of written waiver of the service, and that the spouses have lived separate and apart continuously for at least the requisite period of time, in accordance with Article 103.1, prior to the filing of the rule to show cause.

Requisite time of separation occurs after filing.

- Apart greater than 180/365 days from service of petition or waiver prior to when Rule is filed.
- Summary process so no default is available (but no summary judgment available).
- At 180 or 365 days apart you can file Rule and affidavit; after Rule is filed, must execute another affidavit that they have remained separate and apart.

102 Rule to Show Cause must:

- **Allege Service**
Allege proper service of the initial petition for divorce. Service of the initial petition must be requested within 90 days of filing.
- **Allege Time Period Since Service**
Allege that the requisite time period has elapsed since service or waiver of service of that petition.
- **Allege Separation**
Allege that the spouses have lived separate and apart continuously for either 180 or 365 days prior to filing rule to show cause.
- **Verified by Mover**
Be verified by the affidavit of the mover.

Required Evidence at Hearing on 102 Rule

The facts entitling movant to a 102 divorce may be established by the following:

- **Petition**
The petition for divorce; and
- **Return of Service of Petition**
Return of service in one of the following forms:
 - The sheriff's return of service of the petition;
 - The sheriff's return of service showing personal service on the defendant if the parties were living together at the time of the filing of the petition;
 - The return receipt when service is effected pursuant to the Louisiana long-arm statute; or
 - Written waiver of service of the petition.

- Rule to Show Cause and Verifying Affidavit
The rule to show cause and the affidavit required by Code of Civil Procedure article 3952.
- Return of Service of Rule
The sheriff's return of personal service of the rule or written waiver of service.
- Affidavit of Mover
The affidavit of the mover, executed after the filing of the rule, swearing that the parties have lived separate and apart continuously prior to filing of rule and that the mover desires to be divorced. Note that this is a separate affidavit from that required to be filed along with the rule to show cause.

Abandonment

A 102 petition for divorce is deemed abandoned if a rule to show cause is not filed within **two** years of service of the original petition (La. Code of Civ. Proc. Art 3954).

Pleading 102

Do not have to allege that living separate and apart, simply that one wants a divorce.

Art. 102, Comment (b). Only at the rule stage must movant prove that living separate and apart. Accordingly, a court can address collateral issues while still living together, such as exclusive use of marital home.

102 Effect on Community Property:

Because the community property regime is terminated retroactively to the date of the filing of the petition for divorce, if the divorce is granted based on an article 102 petition, the regime will terminate **before** separation, earlier than in an article 103(1) divorce (La. Civ. Code art. 159).

Miscellaneous Divorce Provisions

Reconciliation

Resumption of life together with mutual intent to resume the marriage constitutes reconciliation. Spouses who cohabitate on a trial basis do not have a present intent to resume married life on a permanent basis.

Each parent asserts a different basis for divorce:

A spouse asserting fault must be permitted to prove fault despite allegations of living separate and apart. *Guillot v. Guillot*, 428 So.3d 882 (La. App. 5 Cir. 12/16/25).

“Amending” versus “Supplemental” Petition

Duplantis v. Duplantis, 416 So.3d 595 (La. App. 3 Cir. 5/8/25). Subsequent to 102 petition a “First Supplemental and Amending Petition” was allowed to be filed ex parte to assert 102 claim, and divorce granted on 102 rule. Divorce invalid because amendment is not permitted ex parte.

Suits between spouses

May only sue spouse for causes of action pertaining to contracts; matrimonial regimes; for restitution of separate property; divorce; and if living separate and apart, for spousal support or custody. See La. R.S. 9:291

Ancillary Proceedings

Essentially, “arising out of divorce” is the test for “same transaction or occurrence” for purposes of *lis pendens* analysis even though incidentals do not have to be brought at time of the divorce petition. See *Gamble v. Gamble*. Example:

Divorce without incidentals filed in Caddo; divorce with incidentals filed in Bossier. *Lis Pendens* is proper in Bossier, as Caddo was to hear all actions arising out of the divorce, i.e., incidentals. (Unless the divorce is granted, at which time you can file incidentals in another court) (note that per La. C.C.P. art. 425, domestic claims are excepted from requirement that all matters arising out of the same transaction or occurrence must be asserted or be subject to *res judicata*).

Injunctions

- Disposal of community. 9:371
- No abuse. 9:372
- No harassment. 9:372.1

Covenant Marriage

After counseling (which shall begin at “marital difficulty” and continue to divorce) and any of the following:

- (1) Adultery
- (2) Hard labor sentence
- (3) One year abandonment and refuses to return
- (4) Physical or sexual abuse
- (5) 2 year separation
- (6) 1 year separation since judgment of separation unless minor child; if so 18 months separation since judgment of separation (unless there is abuse of a child, then it is one year)
- (7) Judgment of separation requires any of (1) through (5) or “intemperance,” “excesses,” “cruel treatment,” or “outrages,” that render marriage “insupportable.”

Protective Orders

Ex parte order to protect from abuse allegation of immediate and present danger of abuse. If issued without notice, must be set within 21 days. Service with 24 hours of hearing. If denied, must be set as soon as possible but no later than 10 days after service. Continuance cannot exceed 15 days absent good cause. At hearing petitioner's burden is preponderance of the evidence.

Stalking:

Stalking is the **intentional and repeated following or harassing of another person that would cause a reasonable person to feel alarmed or to suffer emotional distress**. Stalking shall include but not be limited to the **intentional and repeated uninvited presence of the perpetrator at another person's home**, workplace, school, or any place which would cause a reasonable person to be alarmed, or to suffer emotional distress as a result of verbal, written, or behaviorally implied threats of death, bodily injury, sexual assault, kidnapping, or any other statutory criminal act to himself or any member of his family or any person with whom he is acquainted. La. R.S. 14:40.2

Under the exception provided in La. R.S. 46:2136F(2), the court may grant a protective order for *an indefinite period of time*, on its own motion of the petitioner, but only as to that portion of the protective order that directs the defendant to refrain from abusing, harassing, or interfering with the protected persons or going near the residence or employer as provided in La. R.S. 46:2135A(1) (A protective order may “[direct] the defendant to refrain from abusing, harassing, or interfering with the person or employment or going near the residence or place of employment of the petitioner [or] the minor children ... on whose behalf [the] petition was filed ...”). The court must conduct a hearing for a motion to issue an indefinite protective order and shall hold such hearing concurrently with the hearing for the rule to show cause why the protective order should be issued. *See* La. R.S. 46:2136F(2)(b).

See Butler v. Butler, 2025 WL 655585 (unpublished) (La. App. 1 Cir. 2/28/25). Protective order denied despite past physical violence because there was no proof of ongoing violence or threats sufficient to show an immediate and present danger of abuse. However, the court issued a permanent injunction under La. Civ. C. art. 3601 prohibiting “all contact except through the Our Family Wizard app.”

See Marshall v. Thurman, 4223 So.3d 211 (La. App. 5 Cir. 9/24/25). Affirmed finding of history of perpetuating family violence, and that mother proved by

clear and convincing evidence that presumption applied, providing sole custody to mother.

Custody and Visitation

Summary of La. Civ. C. art. 134 Factors

- Potential for abuse
- Love/affection/emotional support
- Capacity to give love/affection/emotional support
- Capacity to support (\$)
- Length of stable environment
- Continuity of family unit
- Moral fitness as effects welfare of the child
- History of
 - Substance abuse
 - Violence
 - Criminal activity
- Mental and physical health of parents
- Home/school/community history
- Preference of child (if capable)
- Willingness to facilitate relationship with other parent
- Distance
- History of responsibility for the child

Types of Custody

- Semantics: if there is joint custody there is “physical custody” not “visitation.” See *Diamond v. Jenkins*, 412 So.3d 1131 (La. App. 2 Cir. 5/21/25) (appellate court reviewed *de novo* because use of terms “primary custody” and “visitation” made it difficult to determine whether there was sole custody for father and grandparent visitation, or joint custody for father and grandparent and a physical custody schedule).
- Joint – presumed unless (1) clear and convincing that not in best interest; (2) there is La. R.S. 9:364 abuse; or (3) there is agreement (and no La. R.S. 9:364 abuse).
- Sole to one parent – only if clear and convincing evidence.

Split custody

Each parent has custody of one or more children.

Custody to Non-Parent – Art. 133

Non-parent: if custody to either parent results in substantial harm, then custody okay to person providing or able to provide adequate and stable environment. Art. 133.

Joint Custody Decree

- A. (1) In a proceeding in which joint custody is decreed, the court shall render a joint custody implementation order except for good cause shown.
- (2) (a) The implementation order shall allocate the time periods during which each parent shall have physical custody of the child so that the child is assured of frequent and continuing contact with both parents.
- (b) Unless the court determines it is not feasible or in the best interest of the child, physical custody of the child shall be shared equally.
- (3) The implementation order shall allocate the legal authority and responsibility of the parents.
- B. (1) In a decree of joint custody the court shall designate a domiciliary parent except when there is an implementation order to the contrary or for other good cause shown.
- (2) The domiciliary parent is the parent with whom the child shall primarily reside, but the other parent shall have physical custody during time periods that assure that the child has frequent and continuing contact with both parents.
- (3) The domiciliary parent shall have authority to make all decisions affecting the child unless an implementation order provides otherwise. All major decisions made by the domiciliary parent concerning the child shall be subject to review by the court upon motion of the other parent. It shall be presumed that all major decisions made by the domiciliary parent are in the best interest of the child.

La. R.S. 9:335.

Shared Custody

Old Law:

To the extent it is feasible and in the best interest of the child, physical custody of the children shall be shared equally.

New Law:

Unless the court determines that it is not feasible or in the best interest of the child, physical custody shall be shared equally.

Revision to La. R.S. 9:335, effective June 1, 2026.

Consent Decree

Louisiana jurisprudence explains that a consent decree is one made through a stipulated judgment, such as when the parties consent to a custodial arrangement, and no evidence of parental fitness is taken.

Considered Decree

A considered decree is one “wherein the trial court receives evidence of parental fitness to exercise care, custody, and control of a child.” *McCorvey v. McCorvey*, 916 So.2d 357, 370-71 (La. App. 3 Cir. 2005); *Evans v. Lungrin*, 708 So.2d 731 (La. 1998).

Standard for Custody Modification

- Interim order – without prejudice so can modify without limitation or deference.
- Consent decree – *Evans v. Lungrin*: material change and best interest of child (to be material must affect the welfare of the child).
- Old law regarding considered decrees – *Bergeron v. Bergeron*: current status is “so deleterious...as to justify modification,” or “harm by change is outweighed by advantages to the child.” See *Angelica v. Angelica*, 435 So.3d 715 (La. App. 5 Cir. 4/1/26), wherein the district court applied consent standard and found that father’s change in work schedule was a material change in circumstances. The court also found that considered decree standard did not apply because that court had not given reasons or applied art. 134 factors. Reversal necessary;

considered decree applied because there was a trial on the merits where evidence was taken.

New Civil Code Article Added, “Modification of Custody Award”

A. When a court has awarded custody pursuant to a judgment rendered by considered decree, the award may be modified by the court within the period of five years after the date of the judgment, in accordance with the best interest of the child, only upon proof of either of the following:

(1) By clear and convincing evidence that the harm likely to be caused by a change of custody is substantially outweighed by the advantages to the child.

(2) That the continuation of the present custody award is so harmful to the child as to justify modification.

B. After five years have elapsed from the date of a judgment rendered by considered decree, and in all other cases, an award of custody may be modified by the court upon a change in circumstances that materially affects the welfare of the child if the modification is in the best interest of the child.

C. A judgment is "rendered by considered decree" when the trial court receives evidence of parental fitness to exercise care, custody, and control of a child and enters a final and appealable judgment based on its evaluation of that evidence.

La. Civ. Code art. 138 (emphasis added).

Summary of change in the law:

- (1) Regarding a considered decree, *Bergeron* standard only applies for five years; and
- (2) Clarifies what is a “consent decree.” Some Louisiana courts have noted that judgments may be “hybrid” proceedings, as when the court received some evidence of parental fitness but the parties enter into a stipulated judgment prior to the court's ruling. Such hybrid judgments should be treated under the modification standard applicable to consent decrees. The use of “in all other cases” in Paragraph B contemplates application of the lesser evidentiary standard to (1) modification of a consent decree, (2) a

considered decree once five years have elapsed from the date of the decree, and (3) a judgment as a result of hybrid proceedings.

Note: The jurisprudential authority “tweeking” of consent or considered decrees is not addressed except as follows in comment (e):

The standards set forth in this article apply to ... physical ... custody. They do not, however, apply to minor changes, such a change in visitation of a parent from a Tuesday night to a Wednesday night.

Civil Writ for Picking Up Child

- Affidavit and *ex parte* order.
- Art. 3821 *Habeas Corpus* applies to children.

Emergency *Ex Parte* Custody Order (La. C.C.P. art. 3945)

- Immediate and irreparable harm and application must explain why no notice.
- Null if no compliance with all requirements.

If granted:

- Must have hearing within 30 days (if no hearing, expires at 30 days). Can extend an *ex parte* order once for 15 days for good cause (so maximum 45 days).
- Temporary visitation required of no less than 48 hours each 15 days.

If denied:

- Hearing within 30 days.

Custody Procedure

- Summary process by Rule, so no default (failure to appear after service is considered consent judgment for purposes of modification standard).

Custody Where There is Domestic Violence

There is a presumption against joint custody, i.e., a presumption of sole custody for one parent, and only supervised visitation for the other if there is:

- (1) History of family violence. La. R.S. 9:362. “History” means a single incident with “serious bodily injury,” or more than one incident of

family violence. *Simmons v. Simmons*, 26,414 (La. App. 2 Cir. 1/25/95); 649 So.2d 799,801) **or**

(2) Domestic Abuse, La. R.S. 46:2132, which is any “offense against the person” (except defamation or negligent injury).

To overcome presumption against joint custody:

- Domestic abuse program
- No abuse of alcohol or illegal substances
- Best interest of the child

For return to non-supervised visitation:

- Attend domestic abuse program
- Court will consider current mental state
- Best interest of the child

Custody Where There is Sexual Abuse

- No visitation, even supervised, until sex abuse program.

Domiciliary Parent Designation, La. R.S. 9:335

Domiciliary parent has authority to make all major decisions unless an implementation order clearly outlines shared responsibilities. La. R.S. 9:335 (B)(3). See *Thibodeaux v. Thibodeaux*, 415 So.3d 932 (La. 8/6/25) (Judgment named father domiciliary parent, but also stated that children were to remain in same school system as long as mother lived in that community. This was an improper restriction on the domiciliary parent because mother was not granted any defined decision making role; i.e., no clearly outlined shared responsibilities).

- Makes “major” decisions, but subject to Rule to challenge those decisions by other parent. Issue: is use of cell phone by the child a “major” decision?
- Must confer regarding “health, education, and welfare.” La. R.S. 9:336
- “Co-domiciliary” parents are not permitted
- Joint custody implementation order (JCIO) is mandatory absent good cause but simply needs to set forth periods of custody and legal authority of each parent

- Alternative to having a domiciliary parent is either a parenting coordinator or specified provisions placed in a JCIO
- Home school as school choice. See *Brue v. Brue*, 423 So.3d 73 (La. 11/25/25). Domiciliary parent elected to home school, and father objected and contended that this was done to limit his time with the children and did not adequately address dyslexia. Trial court ordered attendance at public school. Supreme Court reversed because absent evidence of some performance issues the father failed to overcome presumption benefitting domiciliary parent.
- *Robert v. Robert*, 415 So.3d 931 (La. 8/5/25). Supreme Court addressed burden of overcoming domiciliary parent's school choice decision; court cannot substitute its own opinion and non-domiciliary offered no "compelling evidence..." (note, the decision was by an arbitrator, but court applied domiciliary deference).

Relocation of Child

- If move 75 miles or out of state need to follow procedure, advanced notice by certified mail, etc. Although failure to follow is a consideration, failure to follow the procedure is not a procedural bar to relocation. La. R.S. 9:355.1 - 355.19.
- See *Thibodeaux v. Thibodeaux*, 407 So.3d 948 (La. App. 1 Cir. 2/28/25) (exception of no cause of action denied on motion to modify for failure to comply with relocation statute by moving less than 75 miles as crow flies, but more than 75 by road).

Physical Custody

Parent not granted custody "shall" have reasonable visitation. La. Civ. C. art. 136 (if *ex parte* 3945 order, parent must be minimum 48 hours of supervised visitation per 15 days).

Visitation

Grandparent or sibling visitation

- *Ives v. Ives*, 428 So.3d 863 (La. App. 5 Cir. 12/15/25). Although father had constitutional right to control his children's associations (*Troxel v. Granville*), grandparent was provided alternating Saturday visitation in light of "deep involvement" with child.

- Visitation to parents of a deceased/incarcerated parent who was either married or living with other parent, if in best interest of the child. If parents were married, grandparent visitation also includes interdicted parent, not just deceased or incarcerated. La. R.S. 9:344 (A)-(C).
- If the parent related to grandparent or sibling is alive and they have been separated more than six months, visitation is possible but only if there are extraordinary circumstances and in best interest of children. La. R.S. 9:344 (D).

Any relative

If parents are not married and living together, only if divorce is pending, or are not married or living together; and there are extraordinary circumstances. La. C.C. art. 136.

Hearing is necessary to determine whether attorney should be appointed. La. C.C. art. 136 and 9:345.

Court ordered third party visitation: only if extraordinary circumstances.

Denial of visitation to relative where murder of parent. Art. 137.

Parenting Coordinator

Can appoint for up to two one-year terms by agreement or good cause

Mental Health Evaluations

With good cause and hearing. 9:331.

See Statute regarding allocation of cost and testimony as expert for court.

Parenting Education Programs

With good cause and hearing. 9:331.2.

Attorney for the Child

Allowed, after hearing, in any custody case if in best interest; required where there is abuse and required in disavowal actions.

Before court ordered grandparent visitation need hearing to determine whether an attorney should be appointed. La. C.C. art. 136 and 9:345.

Watermeier Interview

- In chambers (or closed courtroom)
- First must establish that child is competent and do this with lawyer participation, then court can interview the child if competent, but lawyers only there to observe
- Parties may consent to have no lawyers present for any or all of this

Drug Testing

- Good cause
- Confidentiality of both the testing order and the results
- 30 days to object to testing procedure

Mediation

- Court can order without consent
- Mediator selected by court if no agreement

Child Support

Court Must Approve

Judge has gatekeeping function that must be exercised to ensure that child support falls within guidelines or departure – even if parties have agreed to the amount. See *Stogner v. Stogner*, 739 So.2d 762 (La. 1999)

Income Assignment Order

If at least 30 days with late payments, can get ex parte income assignment order.

Use of Guidelines and Worksheets (La. R.S. 9:315 – 320)

Physical custody determines which worksheet is used; worksheet B if “shared physical custody” (close to 50/50); worksheet A if not shared physical custody, i.e., one parent has most of custody. See *Bordelon v. Bordelon*, 402 So.3d 714 (La. App. 2 Cir. 1/15/25) (worksheet A used where father’s physical custody was 46% of the time).

Example of application of steps with a hypothetical family with combined income of \$180,000 and one child:

Worksheet A - Non-Shared Custody

1. What is combined monthly gross?
 - a. Father, \$10,000/month
 - b. Mother, \$5,000/month
 - c. Combined, \$15,000/month
2. Apply guideline based on combined income and number of children.
Per guideline for one child and \$15,000 combined monthly income, \$1,538 per month
3. Calculate percentages based only on income; \$10,000 to \$5,000 provides that father is .667 percent.
4. Apply those percentages to \$1,538 to determine basic child support obligation: Father = .667 x \$1,538 = \$1,025
5. Father owes mother \$1,538 per month in basic child support

Worksheet B – Shared Custody

1. What is combined monthly gross?
 - a. Father, \$10,000/month

- b. Mother, \$5,000/month
 - c. Combined, \$15,000/month
- 2. Apply guideline based on combined income and number of children:
Per guidelines for one child and \$15,000 combined income, \$1,538 per month
- 3. Multiply $\$1,538 \times 1.5 = \$2,307$
- 4. Calculate percentages based only on income; \$10,000 to \$5,000 provides that father is .667 percent and mother .333 percent
- 5. Apply those percentages to \$2,307 to determine basic child support obligation.
 - a. Father: .667 of \$2,307 (\$1,538)
 - b. Mother: .333 of \$2,307 (\$768)
- 6. Each owe 50%, father \$769; mother \$384
- 7. Subtract mother from father and father owes mother \$385 per month.

Extracurricular Activities 9:315.6

Application to Split Custody

Use two worksheet As.

Deviation from Guidelines, 9:315.6

Reasons must be given why not in best interest or inequitable. See *Brignac v. Brignac*, 409 So.3d 838 (La. App. 5 Cir. 12/4/24). Downward deviation from \$1,941 per month to \$1,500 per month appropriate where wife's finances were supplemented by family; dissent contended gifts were not sufficiently consistent or significant to warrant deviation.

“Off Chart” Income

If more than \$40,000 per month combined income, court awards discretionary amount above top of guidelines.

Gross Income

- Does not include welfare, per diems not taxable as income, extraordinary overtime or seasonal pay, or gift meant to supplement child support
- Includes in kind income
- Self-employment is based on gross minus cost to produce

Potential Income

Underemployed or unemployed without being “incapable of being employed.” See *Triche v. Triche*, 406 So3d 1205 (La. App. 5 Cir. 2/26/25) (imputation of \$11,900 per month income despite \$2,000 per month earnings was affirmed: fired for sleeping on the job; 20 years experience as plant worker; mentally and physically fit; changed careers to sell insurance with decreased wages from \$140,000 as plant worker to \$24,000 selling insurance). See also *Albin v. Albin*, 424 So.3d 1137 (La. App. 1 Cir. 11/7/25) (\$5,500 per month imputation; even though had back surgery he was not “totally unemployable....”) (note that court considered as income assistance received from his family).

Net Childcare Costs

Reasonable cost of sitter minus value of tax credits.

Taxes

Parent with greater than 50% physical custody gets benefit if not detrimental to other parent.

State Child Support Services

If state is providing child support services the state must be added as a party to proceeding to modify. La. R.S. 46:236.1.9.

Extra Judicial Agreement Modifying Support

Dubroc v. Dubroc, 388 So.2d 377 (La. 1980) (Must have “explicit agreement” and it cannot “thwart the purpose for which the right is established....”).

Spousal Support

Interim Spousal Support

Based on need, ability to pay, and standard of living. La. C.C. art. 113. Lifestyle maintained as best as income allows.

Shortcut:

Can compare income for each, minus child support, then one-half of the result goes to other spouse.

Do not have to deplete assets.

Can consider earning capacity on limited basis.

Terminates six months post-divorce (and spouse must receive six months, not less) (but interim “contractual” support terminates at divorce if by agreement).

Pre-nuptials cannot waive interim.

Interim support for six months post divorce.

See *Gambel v. Gambel*, 417 So.3d 963 (La. App. 1 Cir. 6/16/25) (wife awarded \$8,000 per month in interim support instead of \$11,000 because their lifestyle was beyond their means). *Lockhart v. Norred*, 424 So.3d 194 (La. App. 1 Cir. 10/6/25) (Lump sum of \$20,000 in interim support was raised to \$7,500 per month; “standard of living” was based on expenditures of \$11,000 per month, and husband earned \$60,000 per month).

Final Spousal Support

- Not at fault
- Based on need and ability to pay
- Maintenance only, not “accustomed to” style of living
- Cannot exceed one-third of net income (unless there is abuse). La. C.C. art. 112 (D). Note that appropriate to exceed this limit with contractual final spousal support. See *Lloyd v. Elaire*, 408 So.3d 479 (La. App. 3 Cir. 3/12/25) (agreement to pay \$500 per week for life “regardless of any material change in circumstances” was lawful; even if there was error, there was no evidence that other spouse knew or should have known of the error).
- Terminates at re-marriage or living together.

- Spouse seeking final support has initial burden to prove that not at fault, at which point burden shifts to other spouse to prove otherwise. *Lalonde v. Lalonde*, 416 So.3d. 663 (La. App. 3 Cir. 5/8/25).
- *DeLouche v. DeLouche*, 425 So.3d 155 (La. App. 3 Cir. 11/12/25) (Pursuant to stipulated judgment husband agreed to pay \$4,000 per month for sixty months in final support but stipulation did not provide that it could not be modified. Res Judicata exception granted on wife's motion to extend beyond sixty months).

Contributions to Education: One parent's contribution increased other spouses earning power and other spouse did not benefit from same during the marriage.

Property Issues

Community Property Basics

- Fruits are community unless reserved. La. C.C. art. 2339
- Presumption of community. La. C.C. art. 2341
- Donation of community to other spouse transforms to separate. La. C.C. art. 2343
- Can transfer separate to community. La. C.C. art. 2343.1
- Personal injury damages are separate (other than economic). La. C.C. art. 2344
- If only one spouse is the partner or member, that spouse has exclusive right to manage partnership or LLC (subject to LLC operating agreement). La. C.C. art. 2352
- 30 days separate to terminate community
- *Orgeron v. Orgeron*, 413 So.3d 390 (La. 6/27/25). Issue: Should payment be considered a right to receive liquidated damages under community contract such that it is a community asset, or is it future compensation for services after the divorce and therefore separate asset?
- “Substitute Corporation” doctrine. See *Reis v. Reis*, 439 So.3d 270 (La. 3/6/26). Husband created a new corporation four months after termination of community and “appropriated employees, equipment, or business” from the former community company. Trial and appellate courts held that this was a “continuation and substitute of the community business” so was a “substitute corporation.” Supreme Court rejected such a doctrine. Although spouse may have a claim for failure to preserve or manage community, the time of formation governs classification.

Reimbursement

Process of allocation of benefit to one spouse by the other spouse’s separate property that is not a reasonable and necessary expense of the marriage.

For example, separate property used to satisfy other spouse’s separate debt or the value of separate property increases due to labor during marriage.

Reimbursement can be 100% or 50% of contribution:

- If use of separate to benefit community, can claim reimbursement of 50% of separate property used

- If use separate to benefit separate, can claim reimbursement of 100% of separate property used

See *O’Krepki v. O’Krepki*, 432 So.3d 123 (La. 5/1/2026).

- (1) Court resolved conflicts among circuit courts and found that spouse entitled to reimbursement of contribution to co-owned property as well as improvement costs prior to splitting value;
- (2) Delivery of \$1,000,000 check not sufficient to prove donative intent for manual donation.

Rental Reimbursement

1/2 of rental value of community home is owed by spouse occupying home. Note that interest paid on debt for benefit of separate property is community so no reimbursement, but principal is subject to reimbursement.

Once requested goes back to the date of property separation.

Interim Use of Matrimonial Domicile

Consider relative economic status, needs of children, and best interest 134 factors. La. R.S. 9:374.

If home is separate property of a spouse, then that parent gets use unless custodial parent petitions for use and satisfies La. R.S. 9:374.

If home is community, apply La. R.S. 9:374.

If 102 has been filed while still living together can remove parent from home.

Interim Use of Community Moveables

Can obtain order permitting disbursal of funds or property.

9:2801 Partition Process

- 45 days to file detailed descriptive list (DDL) after motion
- 60 days to traverse other DDL after DDLs are filed
- Classification is summary procedure and valuation is ordinary procedure, but court can elect to do both in one trial using ordinary procedure
- If failure to timely file DDL, following motion court will accept the timely classification absent good cause, and therefore there will be no summary

classification trial but will only have trial on valuation and this by ordinary procedure

- Can appoint experts
- To fund partition can order mortgage to pay other spouse; can draw lots; can order sale and split proceeds (licitation (public sale) only if private sale not successful).

Effect of failure to file DDL or traversal

Mclauren v. Mclauren, 426 So.3d 32 (La. App. 5 Cir. 10/6/25). Wife failed to file her own detailed descriptive list and husband's was deemed the judicial determination of community assets and liabilities, and husband's list stated that home was separate property. Husband's counsel admitted at trial that the home was purchased during marriage, so appellate court remanded to trial court to consider despite prior judicial determination for failure to traverse or file DDL.

Disposal of Community

If parties cannot agree on management or other decisions, see C.C. art. 2355, (authorization of spouse to act without concurrence of the other party if necessary, is in best interest, and not detrimental. Example, sale of residence if risk of foreclosure).

Spouse has authority to dispose of community without consent. Accordingly, La. R.S. 9:371 *ex parte* orders are issued to prevent disposition pending partition.

Termination of Community

Available 30 days after separation retroactive to date of filing that sought the relief, whether original petition or reconventional demand (whichever is being heard).

Sims Formula: Calculate percentage of retirement earning during marriage

See *Reinsch v. Rensch*, 426 So.3d 981 (La. App. 3 Cir. 12/10/25). Teacher retirement account and 403(b) accounts were defined contribution plans subject to *Sims* formula calculation. Court erred in splitting 50/50; wife continued to work after termination of community or community portion had to be determined under *Sims*.

Modification of Consent Partition Judgment

See *Finta-Volpati v. Volpati*, 428 So.3d 759 (La. App. 5 Cir. 12/10/25). Consent judgment of partition is bilateral contract and is not subject to modification due to change in circumstances; instead, must prove error vitiating consent or nullity for ill practices, etc.

Application of Lesion to Partitions

If “judicial” partition, lesion cannot be asserted. If extra-judicial partition, lesion can be asserted. Issue is whether incorporation of an agreement into a judgment without utilizing the 9:2801 partition procedure is a “judicial partition.” Sometimes referenced as “judicial recognition of an extrajudicial partition” or “extrajudicial consent decree,” and whether those are judicial partitions to which lesion is not available.

Uniform Child Custody Jurisdiction and Enforcement Act
(UCCJEA) (La. R.S. 13:1801 et.seq.)

- Home state is child's location for six months immediately before the proceeding
- Even if Louisiana is not home state, emergency jurisdiction can be exercised in Louisiana for enough time to allow parent to file proceeding in the home state (La. R.S. 13:1816)
- Flow charts address application to initial decrees and modification. Example:
 - Has there been a custody order?
 - If no, go to "initial orders" chart
 - If yes, does the petition seek to enforce an out of state order?
 - If no, go to "modification" chart
 - If yes, go to "enforcement" chart

Charts then assist in the application of the UCJEA, whether this Court has jurisdiction; whether this state has no jurisdiction unless home state declines to exercise jurisdiction; whether this state has no jurisdiction on any basis; or this state has exclusive jurisdiction.

- Temporary emergency, 13:1816