



I am for the child®



## Fall 2018 Legal Briefs Newsletter



### CONGRATULATIONS!

The Guardian ad Litem Program has doubled the number of our attorneys who are now board certified in Juvenile Law! Last year was the first class, and the GAL program had 9 attorneys who became board certified. This year we have increased to a total of 19 GAL attorneys!

**CONGRATULATIONS TO THE FOLLOWING GUARDIAN AD LITEM ATTORNEYS WHO ARE NOW BOARD CERTIFIED IN JUVENILE LAW:**

Alan Abramowitz  
Paula Adams  
Mark Adelstein  
Matthew Bachman  
Bradford Bobbitt  
Mary Kathleen Clendining  
Kathryn Errington  
Donald Frenette  
Sharlene Gianfortune  
David Gould  
Sharon Hornett  
Laura Klossner

Christine Meyer  
Thomasina Moore  
Liza Ricci  
Brittany Rutan  
Kelly Swartz  
Suzanne Taylor  
Thomas Turcotte

We are very proud of this accomplishment and grateful for the dedication and commitment our attorneys demonstrate every day in their continued effort to advocate on behalf of Florida's abused, abandoned and neglected children!

We would also like to extend our congratulations to all the attorneys who are certified. The GAL strives for excellence in its own advocacy and supports excellence in others. We know that having high-quality lawyers working on behalf of children and families benefits their best interests and results in better outcomes.

According to the Florida Bar website, "Board certification recognizes attorneys' special knowledge, skills and proficiency in various areas of law and professionalism and ethics in practice." The Guardian ad Litem Program is working to encourage more and more attorneys who advocate in juvenile court to become Board Certified.

In fact, the Florida Bar's Board of Legal Specialization & Education recognized the Statewide Guardian ad Litem Program in June for promoting Board Certification in Juvenile Law among attorneys who represent abused and neglected children and their families within the state dependency system. Click [HERE](#) to read the article.

For those who are considering becoming board certified, the deadline for submission of your application is October 31, 2018.

<https://www.floridabar.org/about/cert/cert-jl/>

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## GAL Disabilities Training Conference Videos



Available at [GuardianadLitem.org](http://GuardianadLitem.org)

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## Read Opinions

The Department of Children and Families argued TPR should be overturned. The Guardian ad Litem disagreed and TPR was affirmed securing an opinion that pursuant to § 39.806(1)(e)2 the trial court may properly consider a parent's non-compliance with a previous case plan when terminating parental rights based on material breach of the amended case plan.

[W.D. v. Dep't of Children & Families, 2018 Fla. App. LEXIS 14315](#)

### Summary

**Practice Tip:** Trial courts must look to the totality of the circumstances when deciding whether to terminate parental rights. A history of noncompliance with case plan tasks is relevant to that determination and therefore should be considered.

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Section 39.806(1)(d)(2) and Constitutional Challenge-Court rejects father's argument that ground for termination of parental rights based on incarceration and designation as a sexual predator is unconstitutional.

[C.H. v. Dep't of Children & Families \(In the Interest C.M.H.\), 2018 Fla. App. LEXIS 12221, 2018 WL 4100187](#)

### Summary

**Practice Tip:** Always be prepared to prove nexus to establish a link between parental conduct and actual harm or a significant risk of harm to another child, especially when Chapter 39 does not expressly state that no nexus is required as in §§ 39.806(1)(f), and (h). At times, expert testimony may be required to prove this nexus. Remember, expert testimony regarding risk assessment can be provided by a case worker or other witness qualified as an expert by knowledge, skill, experience, training, or education.

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Sexual Abuse and Statutory Definitions-Trial court incorrectly applied the statute defining sexual abuse in Chapter 39. Sexual abuse of a child by a parent is egregious conduct.

[Fla. Dep't of Children & Families v. A.R., 2018 Fla. App. LEXIS 10977 \(Fla. Dist. Ct. App. 3d Dist. August 3, 2018\)](#)

### Summary

**Practice Tip:** Cases such as this, where an AAL was appointed to represent the express wishes of the child, demonstrate the critical need for our best interest advocacy in all cases. Clearly, the best interest of the child demanded vigorous advocacy both at the trial level and on appeal and the GAL program was able to provide such advocacy, resulting in a reversal of

the trial court's order.

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Denial of Motion for Continuance-Trial court abused discretion in denying mother's motion for continuance where denial created an injustice for the mother, no dilatory practices were demonstrated, and no prejudice was shown.

[Y.G. v. Dep't of Children & Families, 246 So. 3d 509, 2018 Fla. App. LEXIS 6165 \(Fla. 1st DCA 2018\)](#)

### Summary

**Practice Tip: #1.** This opinion recognizes the parent's right to select an adoptive placement is statutory and not constitutional by holding that it is not absolute. **#2.** This opinion analyzed the contours of court discretion when determining whether to grant a motion to continue. It does not interpret the provisions of the adoption intervention statute.

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Sections 39.806(1)(e)(1) and (3)-Evidence did not support the termination of a mother's parental rights under Sections 39.806(1)(e)(1) or (3) for case plan non-compliance where review of the record showed mother had successfully completed all tasks in her case plans.

[C.R. v. Dep't of Children & Families, 2018 Fla. App. LEXIS 11041 \(Fla. Dist. Ct. App. 3d Dist. August 8, 2018\)](#)

### Summary

**Practice Tip:** In order to terminate parental rights pursuant to 39.806(1)(e)(3), the child must have been in care for any 12 of the last 22 months and the parent must not have substantially complied with the case plan so as to permit reunification under § 39.522(2), Fla. Stat. (2018), which addresses reunification in light of conditions for return and in home safety plan.

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Biological Fathers and Standing-Putative biological father can establish standing to challenge paternity and assert paternal rights by demonstrating that he has shown a substantial and continuing concern for the welfare of the children.

[M.L.H. v. Dep't of Children & Families, 2018 Fla. App. LEXIS 10935, 43 Fla. L. Weekly D 1782, 2018 WL 3672945 \(Fla. 2d DCA Aug. 3, 2018\)](#)

### Summary

**Practice Tip:** In cases where a putative biological parent is taking affirmative

action to assert parental rights or to be considered as a placement, the program should support such effort if it is in the best interest of the child to do so. Although there is a strong presumption of legitimacy of a child born to an intact marriage, in Florida, a putative biological father is not precluded from challenging paternity as a matter of law, and may overcome the presumption by establishing a clear and compelling reason based primarily on the child's best interests.

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Rules of Juvenile Procedure-Florida Supreme Court approved amendments to the Juvenile Rules as recommended by the Juvenile Rules Committee in response to legislation effective July 1, 2018.

[In re Amendments to the Fla. Rules of Juvenile Procedure, 2018 Fla. LEXIS 1476, 43 Fla. L. Weekly S 310.](#)

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