

The Basics Every Attorney Should do to Ensure Positive Outcomes

1. **Read The File.** Review the file from shelter petition forward. Understand the path of the case and the current legal status of the case. Review motions filed and court orders.
2. **Know the Law.** Understand statutes (below) and case law that concern permanency and time frames and be prepared to submit memorandums of law when necessary. Sign up for the GAL Legal Briefs Newsletter to keep up to date on the latest case law.
3. **Issue Spot.** Every fact has a corresponding legal issue. Treat the facts like a law school hypothetical and spot the issues for every fact provided.
4. **Docket Your Cases.** - When you receive a next date(s) on a case, calendar it immediately. You should know (subject to last minute changes) what you have on calendar in advance and prepare for your calendar.
5. **Act.** File a motion, prepare for trial, attend mediations, case planning conferences, etc.
6. **Use Available Resources.** Review the Guardian ad Litem website (www.GuardianadLitem.org) for checklists, worksheets, trainings and other information. Review the Dependency Practice Manual. http://guardianadlitem.org/att_practice_manual.asp
7. **Keep Your Eye on the Clock.** Ensure timeframes are met, continuances are limited, and concurrent planning is used, if appropriate.

Shelter

Requesting Appointment.

1. Section 39.402(8)(C)1 provides that "At the shelter hearing, the court shall: Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary." Section 39.822(1) provides that "A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceedings, whether civil or criminal."

Ensure Shelter Proceedings Are Thorough.

1. **Unknown Parent.** If the identity or location of a parent is unknown, the Court is required to apply § 39.503. <http://bit.ly/9ZFyuu>.
2. **Relative Placements.** Ensure that all possible relative placements are identified and that the parent is instructed of their continuing duty to inform the court of possible relative placements as well. See § 39.402(17). <http://bit.ly/ajuv51>
3. **Services for the Child.** Ensure court orders for services, such as medications, evaluations or educational needs. See §§39.407 <http://bit.ly/bdWCwR>, 39.0016(3) <http://bit.ly/bJrNmL>, 39.402(11)(d), <http://bit.ly/ajuv51> and 39.4085(17) <http://bit.ly/aJk3os>.
4. **Placement.** Health and safety of the child. Placement with a non-offending parent if parent currently seeking custody, completed home study, and placement does not endanger the child. §39.521(3)(b).
5. **Visitation.** Visitation should begin in **72 hours** unless there is clear and convincing evidence showing that visitation is not in the child's best interests. §39.402(9). Visitation should occur at least once a week with siblings and at least once a month with parents unless the court orders otherwise. Review visitation with grandparents. Review Keeping Children Safe Act Training on Guardian ad Litem Website. http://guardianadlitem.org/att_conf_train.asp
6. **Child Support.** The parents should be ordered to pay child support based on the child support guidelines. This may require the court to order the parents to submit financial affidavits by a date certain.
7. **Education.** Consider location of the school. Does child have IEP?
8. **Counseling.** Counseling may start immediately if appropriate. Ensure the compliance with court orders (i.e. referrals).
9. **Psychotropic Medications.** See information, practice aids and guidelines on GuardianadLitem.org. <http://bit.ly/crhgB>.
10. **Other.** Substance abuse assessments ordered for anyone with custody or anyone requesting custody. §39.407(16) <http://bit.ly/bdWCwR>; ICPC; ICWA; AAL appointment; Developmental Disabilities; no contact orders if appropriate.
11. **Review Court Order.** The order should be carefully reviewed for written finding required in §39.402(8)(h) <http://bit.ly/ajuv51>. Ensure everything discussed during the hearing is reflected in the court order.
12. **Review Shelter Checklist.** <http://bit.ly/94EViO>.

Arraignment

1. **Review Petition for legal sufficiency.** See Dependency Petition Checklist. <http://bit.ly/cbdhOY>.
2. **Proper Service.** Make sure that the parents are properly served with notice pursuant to § 39.506(3). Proper service is required to make the record for entry of consent, if applicable. Service must be 72 hours in advance of the arraignment. § 39.501(4) <http://bit.ly/aXtaQB>. May be substitute service on an adult household member. Prospective parents whose paternity has not been established are only entitled to notice.
3. **Diligent Search.** If service cannot be perfected, ask the court to order diligent search. Monitor to ensure diligent search, § 39.503(6), is timely initiated and completed with the filing of an affidavit of diligent search by the petitioner. If there is a legal father, there is no need to seek biological fathers.
 - a. If the diligent search is sufficient, the court may relieve the petitioner of further duty to search for the missing parent or prospective parent.
 - b. Publication is not required.
 - c. Do not get an implied consent on a prospective parent as their parentage and party status have not been established.
 - d. Ensure the order reflects that the petitioner complied with the statutory requirements to provide notice and the prospective parent did not appear despite the petitioner's efforts to provide notice. See also Fla.Juv.R.Pro 8.225. <http://bit.ly/aPZI16>
4. **Ensure Timeframes are Met.** See Timeframes chart. <http://bit.ly/aRNd74>.

Pre-Trial

1. Motions for Protective Order.
2. Child Hearsay Motion. See training on child hearsay. http://guardianadlitem.org/att_conf_train.asp.
3. Motion for In-Camera Examination. See Fla.Juv.R.Pro. 8.255. <http://bit.ly/aPZI16>.
4. Qualifying the Child-Witness. No minimum age is established at which a person is determined to be competent to testify in a Florida Court.

Adjudication and Adjudicatory Hearing

1. All parties have the right to be present at all hearings. Rule 8.330(c). <http://bit.ly/aPZI16>. Determine if the child wishes to be present at the hearing and if appropriate whether transportation is arranged. If necessary file a motion.

2. **GAL Attorney Standards of Practice** require prepared, informed, and zealous advocacy.
3. **Continuances.** The court is required to limit continuances to the amount necessary to preserve the child's best interests or the rights of a party. Section 39.0136(3) <http://bit.ly/d6zWBR>, limits the cumulative days permitted for continuances by ALL parties to 60 days within any 12-month period.
4. **Relative Caregiver Funds.** Monies will not go into effect until the child has been adjudicated dependent. Review GuardianadLitem.org for trainings and Resources by Topic section on Subsidies available at:
 - a. http://guardianadlitem.org/resources_adoptions_quick_reference.asp
 - b. <http://guardianadlitem.org/ConferencesandTrainingArchive2007.asp>.
5. **Trial Skills.** Review training on Evidence, Practice Manual: Trial Advocacy and Common Objection checklists. http://guardianadlitem.org/att_practice_manual.asp#.
6. **Nexus.**
 - a. Review training on Nexus. <http://guardianadlitem.org/ConferencesandTrainingArchive2007.asp>
 - b. Read the Practice Bulletin on Nexus. <http://guardianadlitem.org/documents/NexusPracticeBulletinSummer2009.pdf>.

Disposition

The purpose of the disposition is for the court to determine what needs to be done by the parent, department and or the child to ensure the safety of the child and to move the parties toward the stated goal of the case plan.

1. **Pre-Disposition Study.** Prepared by the department and furnished to the parties 72 hours prior to the hearing. §39.521(1)(a).
2. **GAL Disposition Report.** Prepared by the GAL in consultation with the case coordinator and program attorney. Furnished to the parties 72 hours before the hearing.
3. **Placement.** The court will make determinations as to placement - home studies must be completed.
4. **Identification of Relatives.** The parents have a continuing obligation to identify possible relative placements.
5. **Visitation.** Parents, siblings, and grandparents.
 - a. Keeping Children Safe Act. § 39.0139. See Keeping Children Safe Act training http://guardianadlitem.org/att_conf_train.asp, and Practice Manual http://guardianadlitem.org/att_practice_manual.asp.

Case Plan

1. Regularly attend staffings and case plan meetings.
2. Ensure that all needed services for the child are in the case plan.
3. Ensure that all required services for the parent(s) are in the case plan.
4. Look for creative tasks that truly address barriers to reunification.
 - a. Ensure that an incarcerated parent has a meaningful case plan and that the parent is personally served with that case plan.
5. Has anything new arisen that was not previously considered in developing the case plan?
6. **AMEND CASE PLAN** as necessary. There may be changes in information or circumstances as the case progresses. Section 39.6013(2) permits amendment of the case plan "at any time." Move to amend the case plan. *It is not sufficient to simply have the court issue an order requiring the service. The case plan must be amended to require the service.*
 - a. Make sure that the order amending the case plan also requires the agency to produce an amended (new) case plan within 30 days of the ruling. If the task is in a court order and not in the case plan, failure to comply with the court ordered task does show failure to comply with the case plan.
 - b. **REMEMBER:** The goal of the case plan can be changed "at any time." § 39.6013(2). To change the goal, look at the factors in § 39.621. If the facts change and you think the goal should change, file a motion.
7. Review Case Plan Checklist, and Worksheet.
 - a. Case Plan Checklist http://guardianadlitem.org/Practice_Manual_files/PDFs/Ch7_CASE_PLAN_checklist.pdf
 - b. Case Plan Worksheet. http://guardianadlitem.org/Practice_Manual_files/PDFs/Ch7_CASE_PLAN_WORKSHEET.pdf.

Judicial Review

1. **Advocacy Framework Review.** Hold an advocacy framework review prior to the Judicial Review hearing. Complete all sections and determine whether any deficiencies can be addressed in Judicial Review or should be addressed in separate motion.
2. **GAL Judicial Review Report.** Review the GALS Judicial Review report. Determine legal sufficiency (i.e., that the recommendations of goal, visitation and services are legally appropriate). Report should be in state approved format and include a statement to the court of the child's wishes. Report should be filed and served on the other parties and the custodians 72 hours prior to the hearing.
3. **Concurrent Planning.** Consider whether to ask for a finding that it is unlikely that the child will be reunified with the parent within 12 months of removal under 39.701(10)(e).
 - a. If the court finds reunification unlikely **must** begin concurrent planning at 6 month review § 39.701(9)(e).
 - i. The department must file an amended case plan with concurrent case plan tasks 10 business days after the findings of the court.
 - b. The case plan **may** be amended at **anytime** to employ concurrent planning. 39.6013(2).
4. **Review the JSSR.** Ensure that master trust accountings are attached for any child with a master trust account. If accounting is not attached, determine if a motion to compel the filing of an accounting. Medical, mental health, educational, and pre-independent living, life-skills, and independent living records/assessments should be filed as appropriate. The court will; review permanency goal, GAL recommendations, clothing allotment, understand the child's wishes, psychotropic medication issues, referrals made for services, case plan amendments, concurrent planning, normalcy, visitation, placement – including supervised independent living, educational issues, financial issues (master trusts, PASS accounts, foster care allowances, removal of disability of non-age), developmental disabilities.
 - a. Master Trust Checklist. http://guardianadlitem.org/Practice_Manual_files/PDFs/Ch19_Master_Trust_Checklist.pdf
 - b. Master Trust Training http://guardianadlitem.org/att_conf_train.asp.
5. **Review Case Plan Goal and Services.**
6. **RTC.** Children in Residential Treatment Centers should be reviewed every 90 days.
7. **Child's Presence at Hearing.** Determine if the child wishes to be present at the hearing and if so whether transportation is arranged.
8. **Notice.** Ensure notice was sent to all persons required to receive notice.
9. **Special Preparation for 17-Year Old Judicial Review.**
 - a. See 17 Year Old Judicial Review Checklist <http://bit.ly/cGUEXP>
 - b. See Independent Living Section of GAL website http://guardianadlitem.org/resources_ind_living_quick_reference.asp.

Permanency Hearing

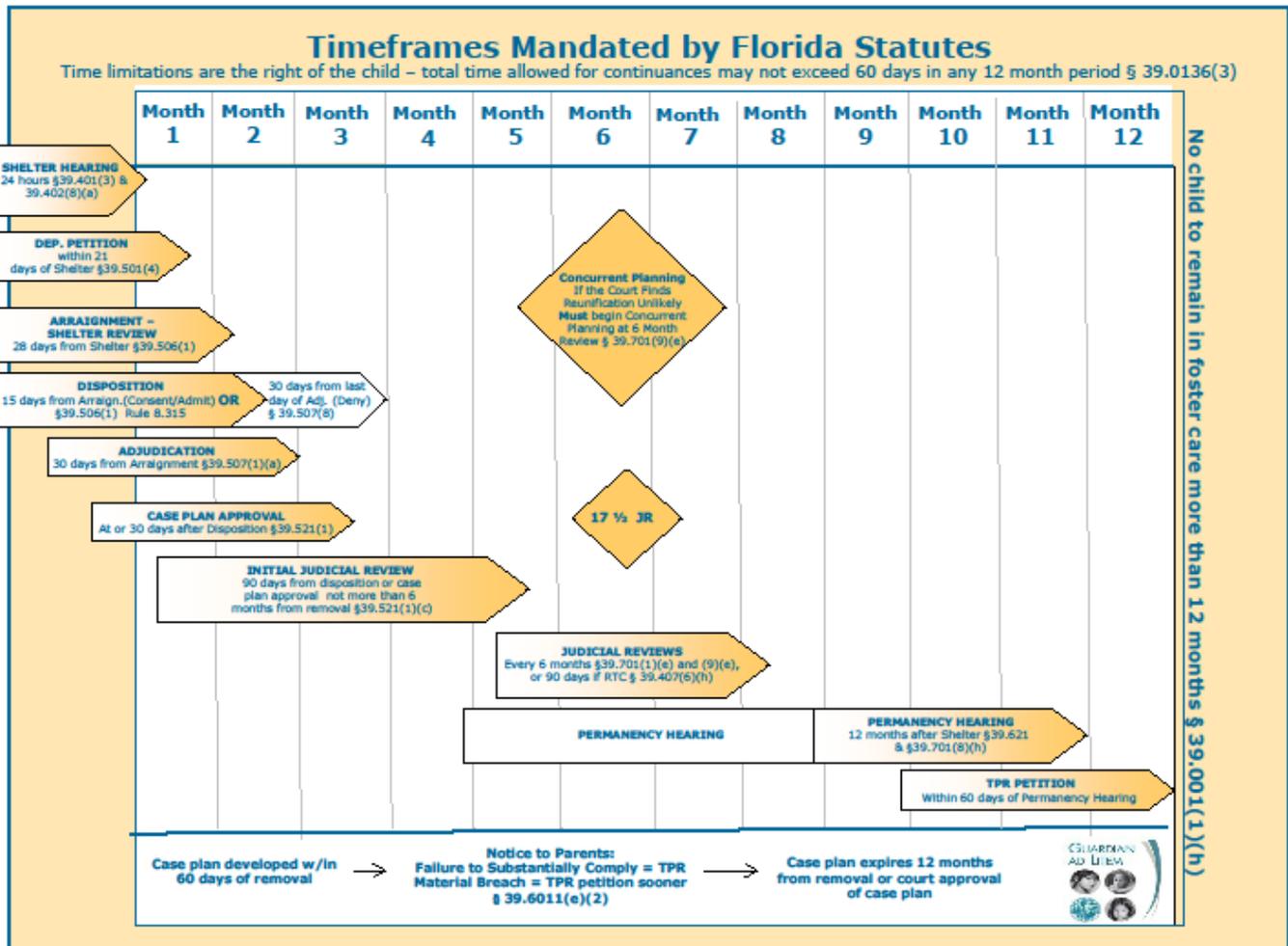
1. Purpose of the Permanency Hearing is to determine whether the current permanency goal for the child is appropriate or should be changed; when the child will achieve one of the permanency goals; and whether the departments has made reasonable efforts to finalize the permanency plan.
2. Review the GALS Judicial Review report prior to filing to determine legal sufficiency of recommended goal.
 - a. If the goal is something other than reunification or adoption, the court must make specific findings. For any goal other than reunification or adoption, the court must say why adoption is not in the child's best interest.

Termination of Parental Rights

TPR = Statutory Ground (+) MBI (+) LRM

Termination of Parental Rights: Must prove by Clear and Convincing evidence grounds for TPR under § 39.806, and TPR is in the child's Manifest Best Interest (MBI) under §39.810, and TPR is the Least Restrictive Means (LRM) of protecting the child from harm

1. **Review the TPR Petition.** Upon receipt of the petition, review to determine the appropriateness of the allegations and grounds. Go through the TPR checklist and review what is required to prove each ground (see worksheet) and what witness will supply the required evidence.
 - a. See training on Termination of Parental Rights, Checklists and the Dependency Practice Manual, Termination of Parental Rights Checklist http://guardianadlitem.org/Practice_Manual_files/PDFs/Ch10_Termination_of_Parental_Rights_Checklist.pdf
 - b. Termination of Parental Right Evidence Chart <http://bit.ly/bOKT7r>
 - c. Manifest Best Interests Worksheet <http://bit.ly/bCKRr7>
 - d. Practice Manual http://guardianadlitem.org/att_practice_manual.asp#
 - e. Training <http://guardianadlitem.org/ConferencesandTrainingArchive2007.asp>.
2. **Demand for Discovery.** File a demand for discovery from the opposing parties. Respond to any demands for discovery. Include a witness list and an exhibit list if you will be entering exhibits. Work with opposing counsel to work out stipulations to exhibits and facts prior to trial. If there are any delays in the discovery process obtain a pre-trial order with time deadlines for conducting discovery.
3. **Prepare for Trial.**
 - a. Prepare a list of all elements that must be proven and from which witnesses the evidence is expected. As the questions are asked eliciting the evidence, check it off. Make sure to ask those that were not asked.
 - b. Issue subpoenas.
 - c. Provide exhibits to opposing counsel.
 - d. Speak with witnesses to prepare them to testify. File any necessary motions for in camera examination, child victim hearsay, etc.
 - e. Prepare an opening statement and closing argument.
 - f. Research case law and make copies for court and opposing counsel to use in closing argument.
 - i. Keep up with current case law by subscribing to the Legal Briefs Newsletter. Archived newsletters are available on the website. The website also has a searchable case summary library.
 1. Sign Up Here. http://guardianadlitem.org/att_main.asp
 2. Case summaries http://guardianadlitem.org/att_case_sum.asp
 3. Archived Newsletters http://guardianadlitem.org/att_archnews.asp.
 - g. Identify weaknesses in your case and be prepared to respond to objections, cross examine witnesses, rehabilitate your witnesses, and call rebuttal witnesses.
4. Ensure appropriate appointment of appellate counsel. It is the duty of TRIAL COUNSEL to: 1) file the notice of appeal; 2) file designations to the court reporter; 3) file directions to the clerk; and 4) present an affidavit of indigency to the court. (Remember appeal is a new proceeding and indigency has to be established at every new proceeding)



Adapted from Expediting Permanency Training, Hillary Kambour, Florida Statewide Guardian ad Litem Program