

LEGAL OPTIONS FOR RELATIVE CAREGIVERS OF MINOR CHILDREN:

ADOPTION, GUARDIANSHIP, DEPENDENCY AND TEMPORARY CUSTODY OF MINOR CHILDREN BY EXTENDED FAMILY MEMBERS

When representing a caregiver who is examining the best option in securing permanency for the child(ren) in their care, several legal options are available under Florida law to provide formal legal recognition for custodian – child relationship. These other legal options include:

1. Adoption, The Florida Adoption Act, F.S. Chapter 63.
2. Guardianship, Florida Guardianship Law, F.S. Chapter 744.
3. Dependency, Proceedings Relating to Children, F.S. Chapter 39.
4. Temporary Custody of Minor Children By Extended Family Member, F.S. Chapter 751.

The analysis of these legal options are fact intensive and often times no two cases are the same. However, the common theme for these legal options is that they are legal proceedings in which parental rights are removed, either permanently or temporarily, and the bundle of parental rights given to another party by Court Order. Parental rights, in almost all cases, are fundamental rights and therefore, constitutional protections are extended to parents. It is important for any practitioner in this field to ensure and follow strict adherence to notice requirements and time sensitive deadlines as dictated by case law and statute.

Each of these statutory sections are governed by their separate rules of procedure and practitioner must be aware of the evidentiary standard applied in each statutory section for the termination of parental rights or the interference with the parent's fundamental right to parent.

Adoption Evidentiary Standard and Rules of Procedure Governing	Guardianship Evidentiary Standard and Rules of Procedure Governing	Dependency Evidentiary Standard and Rules of Procedure Governing
<p>Evidentiary Standard*: Clear and Convincing Evidence Supported by Written Findings of Fact §63.089(3). Same standard for voluntarily or involuntarily termination of parental rights. All adoptions are governed by Best Interest Standard for the Child. §63.022(2).</p>	<p>Evidentiary Standard: Clear and Convincing Evidence §744.331</p>	<p>Evidentiary Standard*: For termination of parental rights – Clear and Convincing Evidence that Grounds for Termination Exist, Least Restrictive Means and Manifest Best Interest. §39.809(1) - §39.806 (Grounds), §39.810 (Best Interest), See case law, both Federal and State.</p> <p>----- For Adjudication of Dependency - Preponderance of Evidence §39.057(1)(b)</p> <p>----- For Shelter - Probably Cause § 39.042(1)</p>
<p>Rules of Procedure for Adoption: Family Law Rules §63.087(6) + Administrative Orders as applicable Adoption Statute contains specific statutory sections as to content of Notice of Hearings and Venue.</p>	<p>Rules of Procedure for Guardianship: Rules of Probate and Guardianship + Administrative Orders as applicable</p>	<p>Rules of Procedure for Dependency: Juvenile Rules of Procedures + Administrative Orders as applicable</p>

* Heightened Standard for the Indian Child Welfare Act (ICWA) cases for Termination of Parental Rights under F.S. Chapter 39 and F.S. Chapter 63.