

GAL Reports and the Use of Hearsay in your Testimony and Reports.

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Summary of Materials

Guardian Ad Litem are appointed in numerous different cases, juvenile delinquency and abuse and neglect proceedings, criminal matters, orders of protection, dissolution and parentage cases, medical malpractice and personal injury matters, probate cases and guardianships just to name a few. The statutes that govern your service as a GAL let you know what you *must* do vs. what you *should or may* do. When you are appointed, always consult the statute that governs the action where you are appointed. Judges may, of course, appoint GALs in cases where the statute does not absolutely call for a Guardian Ad Litem's appointment in the event that the Judge feels that a person's interests (a child or disabled adult) are not being represented adequately. For our purposes, I will be discussing reporting as a GAL in cases involving the IMDMA and the Probate Act as parental responsibilities and contested guardianships are the typical matters where a Judge will appoint a GAL.

Juvenile Court Act GALs in Central Illinois are typically handled by a County appointed GAL and, due to case load as well as the interplay between the GAL, the ASAs and DCFs, my comments regarding written reports (which I prefer) are not as applicable.

Hearsay for GALs can be tricky. There are certain cases where hearsay is strictly forbidden but for typical hearsay exceptions (the Juvenile Court Act) but there are others where hearsay is allowed for minors under certain circumstances (civil cases such as Orders of Protection and No Stalking/No Contact Orders) and hearsay testimony of disabled adults under the domestic violence act. I've included the sections of the statute that deal with allowable hearsay for your review. It used to be that hearsay was allowable in parentage/dissolution cases to help determine custody and visitation (back when those words were used); that is no longer the case as that section of the IMDMA was repealed in the 2016 rewrite. If the hearsay statements do not fall under a hearsay exception, still feel free to put the hearsay in your report if the reason you are reporting the out of Court statement is because it is *why you came to the conclusions that you did*. In this way, the hearsay you are reporting is not reported for the truth of the matter asserted – it is only reported for the affect that the statement had on you and your decision-making.

Reports as evidence. GAL reports in and of themselves are not evidence unless the parties and counsel agree to have the Court consider the report as evidence (which will inevitably shorten trial and

lessen the amount of time you will spend on the stand). If counsel does not agree to allow the Court to consider your report as evidence, the contents of your report will need to come in through testimony on the day of trial. Again, all of the hearsay is admissible if your reason for relaying the information is to explain why you came to the conclusions you did. For example: child says: “my step mom put her arm around my throat.” In response to the child’s statement, I asked the child if her step mom was trying to make it hard for her to breathe. The child stated: “No, she was trying to turn my head so that I could see myself crying on her phone’s camera because I looked ridiculous.” - I found the child believable and her statements led me to the conclusion that the child was not strangled or physically abused, but the step mom was greatly minimizing the child’s feelings and making her feel that crying was “ridiculous.”

Finally – I’ve included a sample GAL Report for a complex IMDMA case with all identifying factors changed to protect the identity of the parties to help show how to tell the story, pull out the important facts and then apply the facts to the factors you must consider.

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750 ILCS 5/506 Representation of child - IMDMA

(a) Duties. In any proceedings involving the support, custody, visitation, allocation of parental responsibilities, education, parentage, property interest, or general welfare of a minor or dependent child, the court may, on its own motion or that of any party, appoint an attorney to serve in one of the following capacities to address the issues the court delineates:

- (1)** Attorney. The attorney shall provide independent legal counsel for the child and shall owe the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.
- (2)** Guardian ad litem. The guardian ad litem shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child. The report shall be made available to all parties. The guardian ad litem may be called as a witness for purposes of cross-examination regarding the guardian ad litem’s report or recommendations. The guardian ad litem shall investigate the facts of the case and interview the child and the parties.
- (3)** Child representative. The child representative shall advocate what the child representative finds to be in the best interests of the child after reviewing the facts and circumstances of the case. The child representative shall meet with the child

and the parties, investigate the facts of the case, and encourage settlement and the use of alternative forms of dispute resolution. The child representative shall have the same authority and obligation to participate in the litigation as does an attorney for a party and shall possess all the powers of investigation as does a guardian ad litem. The child representative shall consider, but not be bound by, the expressed wishes of the child. A child representative shall have received training in child advocacy or shall possess such experience as determined to be equivalent to such training by the chief judge of the circuit where the child representative has been appointed. The child representative shall not disclose confidential communications made by the child, except as required by law or by the Rules of Professional Conduct. The child representative shall not render an opinion, recommendation, or report to the court and shall not be called as a witness, but shall offer evidence-based legal arguments. The child representative shall disclose the position as to what the child representative intends to advocate in a pre-trial memorandum that shall be served upon all counsel of record prior to the trial. The position disclosed in the pre-trial memorandum shall not be considered evidence. The court and the parties may consider the position of the child representative for purposes of a settlement conference.

(a-3) Additional appointments. During the proceedings the court may appoint an additional attorney to serve in the capacity described in subdivision (a)(1) or an additional attorney to serve in another of the capacities described in subdivision (a)(2) or (a)(3) on the court's own motion or that of a party only for good cause shown and when the reasons for the additional appointment are set forth in specific findings.

(a-5) Appointment considerations. In deciding whether to make an appointment of an attorney for the minor child, a guardian ad litem, or a child representative, the court shall consider the nature and adequacy of the evidence to be presented by the parties and the availability of other methods of obtaining information, including social service organizations and evaluations by mental health professions, as well as resources for payment.

In no event is this Section intended to or designed to abrogate the decision making power of the trier of fact. Any appointment made under this Section is not intended to nor should it serve to place any appointed individual in the role of a surrogate judge.

(b) Fees and costs. The court shall enter an order as appropriate for costs, fees, and disbursements, including a retainer, when the attorney, guardian ad litem, or child's representative is appointed. Any person appointed under this Section shall file with the court within 90 days of his or her appointment, and every subsequent 90-day period thereafter during the course of his or her representation, a detailed invoice for services rendered with a copy being sent to each party. The court shall review the invoice submitted and approve the fees, if they are reasonable and necessary. Any order approving the fees shall require payment by either or both parents, by any other party or source, or from the marital estate or the child's separate estate. The court may not order payment by the Department of Healthcare and Family Services in cases in which the Department is providing child support enforcement services under Article X of the Illinois Public Aid Code [[305 ILCS 5/1-1](#) et seq.]. Unless otherwise ordered by the court at the time fees and costs are approved, all fees and costs payable to an attorney, guardian ad litem, or child representative under this Section are by implication deemed to be in the nature of support of the child and are within the exceptions to discharge in bankruptcy under [11 U.S.C.A. 523](#). The provisions of Sections 501 and 508 of this Act [[750 ILCS 5/501](#) and [750 ILCS 5/508](#)] shall apply to fees and costs for attorneys appointed under this Section.

PROBATE ACT – GAL: 755 ILCS 5/11a-10 Procedures preliminary to hearing.

(a) Upon the filing of a petition pursuant to Section 11a-8, the court shall set a date and place for hearing to take place within 30 days. The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition. If the guardian ad litem is not a licensed attorney, he or she shall be qualified, by training or experience, to work with or advocate for persons with developmental disabilities, the mentally ill, persons with physical disabilities, the elderly, or persons with a disability due to mental deterioration, depending on the type of disability that is alleged in the petition. The court may allow the guardian ad litem reasonable compensation. The guardian ad litem may consult with a person who by training or experience is qualified to work with persons with a developmental disability, persons with mental illness, persons with physical disabilities, or persons with a disability due to mental deterioration, depending on the type of disability that is alleged. The guardian ad litem shall personally observe the respondent prior to the hearing and shall inform him orally and in writing of the contents of the petition and of his rights under Section 11a-11 [755 ILCS 5/11a-11]. The guardian ad litem shall also attempt to elicit the respondent's position concerning the adjudication of disability, the proposed guardian, a proposed change in residential placement, changes in care that might result from the guardianship, and other areas of inquiry deemed appropriate by the court. Notwithstanding any provision in the Mental Health and Developmental Disabilities Confidentiality Act [740 ILCS 110/1 et seq.] or any other law, a guardian ad litem shall have the right to inspect and copy any medical or mental health record of the respondent which the guardian ad litem deems necessary, provided that the information so disclosed shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings. At or before the hearing, the guardian ad litem shall file a written report detailing his or her observations of the respondent, the responses of the respondent to any of the inquiries detailed in this Section, the opinion of the guardian ad litem or other professionals with whom the guardian ad litem consulted concerning the appropriateness of guardianship, and any other material issue discovered by the guardian ad litem. The guardian ad litem shall appear at the hearing and testify as to any issues presented in his or her report.

(b) The court (1) may appoint counsel for the respondent, if the court finds that the interests of the respondent will be best served by the appointment, and (2) shall appoint counsel upon respondent's request or if the respondent takes a position adverse to that of the guardian ad litem. The respondent shall be permitted to obtain the appointment of counsel either at the hearing or by any written or oral request communicated to the court prior to the hearing. The summons shall inform the respondent of this right to obtain appointed counsel. The court may allow counsel for the respondent reasonable compensation.

(c) The allocation of guardian ad litem fees and costs is within the discretion of the court. No legal fees, appointed counsel fees, guardian ad litem fees, or costs shall be assessed against the Office of the State Guardian, the public guardian, an adult protective services agency, the Department of Children and Family Services, or the agency designated by the Governor under Section 1 of the Protection and Advocacy for Persons with Developmental Disabilities Act [405 ILCS 40/1].

(d) The hearing may be held at such convenient place as the court directs, including at a facility in which the respondent resides.

(e) Unless he is the petitioner, the respondent shall be personally served with a copy of the petition and a summons not less than 14 days before the hearing. The summons shall be printed in large, bold type and shall include the following notice:

NOTICE OF RIGHTS OF RESPONDENT

You have been named as a respondent in a guardianship petition asking that you be declared a person with a disability. If the court grants the petition, a guardian will be appointed for you. A copy of the guardianship petition is attached for your convenience.

The date and time of the hearing are:

The place where the hearing will occur is:

The Judge's name and phone number is:

If a guardian is appointed for you, the guardian may be given the right to make all important personal decisions for you, such as where you may live, what medical treatment you may receive, what places you may visit, and who may visit you. A guardian may also be given the right to control and manage your money and other property, including your home, if you own one. You may lose the right to make these decisions for yourself.

You have the following legal rights:

- (1) You have the right to be present at the court hearing.
- (2) You have the right to be represented by a lawyer, either one that you retain, or one appointed by the Judge.
- (3) You have the right to ask for a jury of six persons to hear your case.
- (4) You have the right to present evidence to the court and to confront and cross-examine witnesses.
- (5) You have the right to ask the Judge to appoint an independent expert to examine you and give an opinion about your need for a guardian.
- (6) You have the right to ask that the court hearing be closed to the public.
- (7) You have the right to tell the court whom you prefer to have for your guardian.

You do not have to attend the court hearing if you do not want to be there. If you do not attend, the Judge may appoint a guardian if the Judge finds that a guardian would be of benefit to you. The hearing will not be postponed or canceled if you do not attend. If you are unable to attend the hearing in person or you will suffer harm if you attend, the Judge can decide to hold the hearing at a place that is convenient. The Judge can also follow the rule of the Supreme Court of this State, or its local equivalent, and decide if a video conference is appropriate.

IT IS VERY IMPORTANT THAT YOU ATTEND THE HEARING IF YOU DO NOT WANT A GUARDIAN OR IF YOU WANT SOMEONE OTHER THAN THE PERSON NAMED IN THE GUARDIANSHIP PETITION TO BE YOUR GUARDIAN. IF YOU DO NOT WANT A GUARDIAN OR IF YOU HAVE ANY OTHER PROBLEMS, YOU SHOULD CONTACT AN ATTORNEY OR COME TO COURT AND TELL THE JUDGE.

Service of summons and the petition may be made by a private person 18 years of age or over who is not a party to the action.

(f) Notice of the time and place of the hearing shall be given by the petitioner by mail or in person to those persons, including the proposed guardian, whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

725 ILCS 5/115-10 Certain hearsay exceptions. – Code of Civil Procedure.

(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13, a person with an intellectual disability, a person with a cognitive impairment, or a person with a developmental disability, including, but not limited to, prosecutions for violations of Sections 11-1.20 through 11-1.60 or 12-13 through 12-16 of the Criminal Code of 1961 or the Criminal Code of 2012 [[720 ILCS 5/1-1](#) et seq.] and prosecutions for violations of Sections 10-1 (kidnapping), 10-2 (aggravated kidnapping), 10-3 (unlawful restraint), 10-3.1 (aggravated unlawful restraint), 10-4 (forcible detention), 10-5 (child abduction), 10-6 (harboring a runaway), 10-7 (aiding or abetting child

abduction), 11-9 (public indecency), 11-11 (sexual relations within families), 11-21 (harmful material), 12-1 (assault), 12-2 (aggravated assault), 12-3 (battery), 12-3.2 (domestic battery), 12-3.3 (aggravated domestic battery), 12-3.05 or 12-4 (aggravated battery), 12-4.1 (heinous battery), 12-4.2 (aggravated battery with a firearm), 12-4.3 (aggravated battery of a child), 12-4.7 (drug induced infliction of great bodily harm), 12-5 (reckless conduct), 12-6 (intimidation), 12-6.1 or 12-6.5 (compelling organization membership of persons), 12-7.1 (hate crime), 12-7.3 (stalking), 12-7.4 (aggravated stalking), 12-10 or 12C-35 (tattooing the body of a minor), 12-11 or 19-6 (home invasion), 12-21.5 or 12C-10 (child abandonment), 12-21.6 or 12C-5 (endangering the life or health of a child) or 12-32 (ritual mutilation) of the Criminal Code of 1961 or the Criminal Code of 2012 or any sex offense as defined in subsection (B) of Section 2 of the Sex Offender Registration Act [[730 ILCS 150/2](#)], the following evidence shall be admitted as an exception to the hearsay rule:

(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and

(2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.

(c) Such testimony shall only be admitted if:

(1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and

(2) The child or person with an intellectual disability, a cognitive impairment, or developmental disability either:

- a. testifies at the proceeding; or
- b. is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement; and

(3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding.

(c) If a statement is admitted pursuant to this Section, the court shall instruct the jury that it is for the jury to determine the weight and credibility to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, or the intellectual capabilities of the person with an intellectual disability, a cognitive impairment, or developmental disability, the nature of the statement, the circumstances under which the statement was made, and any other relevant factor.

(d) The proponent of the statement shall give the adverse party reasonable notice of his intention to offer the statement and the particulars of the statement.

(e) Statements described in paragraphs (1) and (2) of subsection (a) shall not be excluded on the basis that they were obtained as a result of interviews conducted pursuant to a protocol adopted by a Child Advocacy Advisory Board as set forth in subsections (c), (d), and (e) of Section 3 of the Children's Advocacy Center Act [[55 ILCS 80/3](#)] or that an interviewer or witness to the interview was or is an employee, agent, or investigator of a State's Attorney's office.

(f) For the purposes of this Section:

"Person with a cognitive impairment" means a person with a significant impairment of cognition or memory that represents a marked deterioration from a previous level of function. Cognitive impairment includes, but is not limited to, dementia, amnesia, delirium, or a traumatic brain injury.

"Person with a developmental disability" means a person with a disability that is attributable to (1) an intellectual disability, cerebral palsy, epilepsy, or autism, or (2) any other condition that results in an impairment similar to that caused by an intellectual disability and requires services similar to those required by a person with an intellectual disability.

"Person with an intellectual disability" means a person with significantly subaverage general intellectual functioning which exists concurrently with an impairment in adaptive behavior.

DOMESTIC VIOLENCE ACT – USE OF HEARSAY (750 ILCS 50/213.1)

Hearsay exception. In an action for an order of protection **on behalf of a high-risk adult with disabilities**, a finding of lack of capacity to testify shall not render inadmissible any statement as long as the reliability of the statement is ensured by circumstances bringing it within the scope of a hearsay exception. The following evidence shall be admitted as an exception to the hearsay rule whether or not the declarant is available as a witness:

(1) A statement relating to a startling event or condition made spontaneously while the declarant was under the contemporaneous or continuing stress of excitement caused by the event or condition.

(2) A statement made for the purpose of obtaining, receiving, or promoting medical diagnosis or treatment, including psychotherapy, and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment. For purposes of obtaining a protective order, the identity of any person inflicting abuse or neglect as defined in this Act shall be deemed reasonably pertinent to diagnosis or treatment.

(3) A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that

(A) the statement is offered as evidence of a material fact, and

(B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts.

Circumstantial guarantees of trustworthiness include:

(1) the credibility of the witness who testifies the statement was made;

(2) assurance of the declarant's personal knowledge of the event;

(3) the declarant's interest or bias and the presence or absence of capacity or motive to fabricate;

(4) the presence or absence of suggestiveness or prompting at the time the statement was made;

(5) whether the declarant has ever reaffirmed or recanted the statement; and

(6) corroboration by physical evidence or behavioral changes in the declarant.

The record shall reflect the court's findings of fact and conclusions of law as to the trustworthiness requirement.

A statement shall not be admitted under the exception set forth in this Section unless its proponent gives written notice stating his or her intention to offer the statement and the particulars of it to the adverse party sufficiently in advance of offering the statement to provide the adverse party with a fair opportunity to prepare to meet the statement.

SAMPLE GAL REPORT:

IN THE CIRCUIT COURT of the TENTH JUDICIAL CIRCUIT OF ILLINOIS
PEORIA COUNTY

IN RE THE MARRIAGE OF:)	
)	
JANE DOE,)	
PETITIONER,)	
)	
VS)	CASE NO. 2020 D WHATEVER
)	
JOHN DOE,)	
RESPONDENT.)	

REPORT OF GUARDIAN AD LITEM

Now comes Ann R. Pieper, of Kavanagh Scully Sudow White & Frederick, P.C., as Guardian Ad Litem for the minor children in this matter, (hereinafter Ben, Betty, Ron, Rose and Rachel) and respectfully reports to the Court as follows:

1. I spoke to Mom (Jane) and Dad (John) at length, individually, in my office. John sent emails to further clarify his thoughts as well. I spoke to all of the children of the parties. The youngest of the children, Rose and Rachel, were with their dad at the family home when I spoke to them (Dad went for a long walk so we could speak privately). Sally and Molly (the parties’ oldest girls who are both over the age of 18), Ben, Betty and Ron were at their mom’s home when I spoke to them (Mom drove to the park that is near their home and only returned as I was leaving – again, so the kids could speak freely with me).

2. **Background:** Jane and John have been married for many years. They have five daughters and two sons. It will help, I believe, for me to start with descriptions of the children at the present time. As I stated above, I met with the oldest five together, and the younger two girls together. Sally is 22 years old and recently moved to an apartment in Tremont – I observed

her to be quiet, contemplative, friendly and intelligent. Sally does not talk all the time, but when she does, her thoughts are articulately expressed. Molly is 20 years old and lives at home with her mom and siblings. Molly truly listens to her siblings – she has a way of guiding conversations, giving everyone their opportunity to speak while also making sure that they clarify their statements if they are confusing (she would make an excellent teacher or a counselor). Ben is the oldest son of the parties at 17. He is very social, athletic, and has a huge personality. Ben was the first to talk to me when I walked in the room and will take over conversations from his perspective if people let him. He is very personable. Betty is 14 and very similar to Ben in that she is also social, athletic and lights up a room with her personality. Betty has a “tell it like it is” attitude that I relate to. Betty hides her pain with laughter and sarcasm, but she is self-aware about it. Ron is 13 years old and he is very quiet. He deals with his anxiety by staying quiet and avoiding the situation that is causing him anxiety, as a result, it took him awhile to open up and at first, he looked as if he really wanted to leave the room. Rose is 10 years old and reminds me a lot of Molly and Betty – she has Molly’s explanatory nature, with Betty’s bluntness. She asked me questions about me for about 15 minutes and once I answered those questions to her satisfaction, she answered questions that I asked her and was willing to open up. Rachel is 8 years old and seemed to be reserved and quiet (like Sally and Ron) – she loves horses and cats and the world around her and seems very happy in general – and wants to remain out of the fray. All seven of the Doe children are friendly, empathetic, intelligent and well spoken.

Jane is a certified teacher (since 1994) through the Illinois Department of Education; the Peoria Regional Office of Education maintains her active certification which shows a k-9 endorsement. I believe that Jane was employed with Peoria schools until she began

concentrating on home schooling her own children full time. Jane currently home schools Betty, Ron, Rose and Rachel. Sally and Molly finished high school and Molly actively assists home schooling Betty, Ron, Rose and Rachel presently when Jane is at work. Ben elected to attend Richwoods High School this year (he is a junior) because he wanted to participate in school sports and otherwise socialize.¹ The kids adhere to their school schedule and take their studies seriously (and it shows) as they are all critical thinkers, willing to listen to others' opinions, and are right in line with, if not beyond, their non-home-schooled peers as far as their mastery of curriculum in all areas.

Since Jane left the marital home (in November of 2020), she has had to obtain full time employment outside of the home to provide for the family. She started working as a substitute teacher for a while and finally obtained full time employment with the Marriott Pere Marquette as an Office Administrator (bookkeeper, payroll, expenses, invoices), working Monday through Friday from 8:00 a.m. to 3:00 p.m. Jane's work schedule has modified the home-schooling schedule for the kids a bit. Presently, the kids self-motivate to work through assignments when Jane is at work and then go through anything where they had difficulty, or learn new material with Jane, in the evenings. Sally, Molly and Ben (before or after his school day) will help by transporting the kids to co-op on Fridays if mom is working (the family does a very good job of organizing work schedules and helping one another).

Throughout the parties' marriage, Jane took the child rearing role while John worked to provide for the family. John is an engineer by trade and he owns and operates a custom stereo

¹ Ben entered Richwoods as a Junior this year but is slated to graduate "early" at the end of the first semester of the 2022-2023 school year. Ben's home schooling has well prepared him for public school and he is excelling, if not a bit bored, in all subjects but for math, which is his least favorite.

business in Peoria. As a business owner and operator, John worked long hours and was not, typically, a part of the day-to-day family life in the home until he returned from work late in the evenings. From the kids' perspectives, their mom was the primary parent and their Dad was around on Sundays, for the most part, and when they had special events and holidays – in the evenings, he was there for dinner and around before bed, but he was not part of the routine which was run by Jane.

The marriage began breaking down in late 2017/early 2018. Jane's complaint at the time was that John was incredibly critical and controlling to the point that the children would nearly flee from John when he came home. John and Jane argued often and their continued friction culminated in Jane moving out of her and John's shared bedroom in 2018. Jane chose to sleep in the girls' room at that time with Sally, Molly, Betty, Rose and Rachel (the bedroom is, technically, the master bedroom in the home – but was used for the girls so that the family could accommodate the three bunk beds, dressers, and the girls would have the benefit of a large closet and their own bathroom). John stayed in the master bedroom and Ben and Ron shared the remaining bedroom in the three-bedroom ranch home. The situation did not improve after the in home separation in 2018 and the parties' arguments in the evenings when John would come home from work, increased. Jane felt she was in the middle between John and the children. She often tried to minimize the impact that John's harsh words had on the children while trying to explain to John how he could get his point across in a different way or why he should not care about certain things. John, on the other hand, felt that Jane did not discipline the children enough and because Jane did not follow his disciplinary lead, he was disrespected and ostracized in the home. The parties attempted marriage counseling to no avail.

Prior to Jane and the children leaving the home, in November of 2020, the situation had reached a fever pitch. Jane and the children would operate normally during the day (when John was at work) and when John would come home the children (and Jane) would scatter to their rooms and try and avoid conflict with John. Jane and John would verbally argue and John would accuse Jane of “poisoning the children” against him. The children would hear the argument and come in and defend Jane to John which typically resulted in whole household arguments where John would explain how they were all wrong, all disrespectful, and were not honoring their father as God commands. When the family went to church, something they still tried to do as a family, the kids who went in the car with John would be told how horrible Jane was and how she was “poisoning the children” against John. John would accuse Jane of being “a liberal and a feminist” and would criticize the children for becoming indoctrinated by Jane’s liberal ways. In Jane’s car, the children would complain about John to Jane, and Jane would try and advise the children to “be respectful” while at the same time explaining to them that they needed to advocate for themselves with their father. When the children tried to talk to John about their feelings, John would “turn the argument around” and explain how they were wrong and why their feelings were not valid. Jane would try and assist the kids with John and explain that while the children needed to respect John, John also needed to respect the children, be mindful of their feelings, and avoid condescension and being critical about everything they did. When Jane would attempt to advocate for the children with John, John would get mad and criticize Jane which would cause the children to jump to her defense, making the arguments cyclical.

The situation came to a head on Thanksgiving of 2020 when the children all expressed to John that they did not want to be around him because he was so mean to them. Jane tried to have the family all sit down to eat but the tension at the table was palpable and the kids each decided

they were “finished” after a few bites. Molly tried to take a picture of all of the kids together and John kept trying to photobomb the picture at which point Molly blew up and started telling her father everything she felt he did wrong. John told Molly that if she did not want to follow the rules and be respectful (which to her meant that she had to agree with him), she should move out. Molly agreed and all of the kids and Jane got in the car and left. As they sped off, John decided to follow them. The result was a bit of a car chase that only ended when Jane and the kids “lost him.” The family went to a friend’s house and determined that they would not return.

Jane and the kids stayed with friends from the home school co-op and only returned to the family home to get their belongings when they knew John would be at work. Jane filed the present action for dissolution while trying to make arrangements to secure income to support the family and find a place to live. John remained in the family home (which is a property owned by Jane’s parents and rented to the Does).

Presently, John has parenting time with Rose (10) and Rachel (8) every other Friday through Monday morning. Ben (17) does not see John on a regular basis, but has been by the house a couple of times (once when he was in trouble with his mother for breaking his curfew). All times Ben has been at his dad’s there has been tension between Ben and his father. Betty (14) and Ron (13) do not want to see John at all. Betty did attempt to go to the house but when she arrived, she became so stressed out that she could not stop crying for hours. Ron does not want to be around his dad and feels like he would run if he was put in a home with his father. Both Betty and Ron admit that their dad has never physically hurt them; however, they do not want to be around him because they feel as if they cannot do anything right and that he really just

does not honestly like them at all. When I asked *what John did* that caused these feelings, the kids all tried to explain, using examples, as best they could.²

Rose and Rachel did not seem to be as nervous about seeing their dad and told their mom they wanted to go. Rose was worried at first, but for the most part, she and Rachel really enjoy their time with John. Rose explained that she believes that they see a different Dad than her older siblings know because he has one on one time with them and he has to do things like make meals and stuff that he never did before. Dad also takes them places and they *do* things with him where they have never really had that relationship with him before. Molly, Ben, Betty and Ron seem to think that the girls are only ok with John because John is on his best behavior right now and is “buying” the girls or get them on his side and he will not be able to maintain the situation. Rose remembers her dad yelling at them all the time and she is worried that the different Dad she sees now is temporary, but she is hopeful that her dad now is just better— maybe because it is just her and Rachel, or maybe because he has more time, or just because he is happier. Neither Rose nor Rachel argue with their dad much (but they didn’t argue much with him to begin with). I would note that John does not seem to understand what are and are not age-appropriate chores (Rose should not be operating a lawn mower at 10 years old – and if she *is* operating a lawn mower, it should be strictly supervised and she should not be mowing the ditch right next to Radnor Road while cars are whizzing by at 45 mph, for example). However; for the first time in his life as a father, John is mixing up his requests for chores and his criticisms of things that are

²Ben: “nothing is ever good enough for him.” Molly: “if you do not treat him like the authority he is, he will not treat you as a person.” Sally: “You are not your own person, you are just ‘a child.’” Ron: “if you try and say what you feel, he just gets madder and madder.” Betty: “there’s no empathy. He just belittles me.” Ron: “he makes me feel like I am stupid, weak, like I am worse than nothing.”

wrong, with enjoying outside non-church activities with the girls (simply taking them shopping, for example) and the girls are responding well to the change.

Rose and Rachel both believe that their parents are better off now that they are not together. Rose explained that almost every night there would be yelling between her parents and her mom would be hurt and upset and Ron would be scared and Ben, Betty and Molly would be so angry. Now, the older kids are happier and doing better at home and with school. Rosa believes that her mom is happier and she believes that her dad is better too because he is not so angry all the time and he is spending time with them. Rachel said: “They are all just calmer and they smile more.”

3. **John’s Perspective:** John does not understand what he has done wrong and does not know how to fix it. He knows that he was critical and impatient with the kids and accepts that and wants to make it better. However; he still does not understand how his “requests” were wrong. For example, he told me that he would get angry because the kids would leave DVD’s all over the entertainment center when picking them up was such an easy thing to do. He explained to me how not doing that “simple thing” for him was disrespectful and not taking care of your things is an example of you failing to be a “good steward of the things God entrusted you with.” Molly verbalized that even if they *did* pick up the DVD’s he would criticize something else they forgot while minimizing everything they did all day. “You do nothing all day and you cannot do this *one* simple thing.” John feels that he failed by trying to *explain* his corrections and argue with the kids about it, instead of just giving the kids consequences. John is trying to work on a calmer demeanor. At base, however; he feels that if he would have had support from Jane in parenting, that the children would have been receptive and they would not be in this position.

John does not want to be divorced. If he could have what he wants, it would be that Jane and the kids would come home, see that he has made some real changes, Jane would make some changes, and he and Jane would work together to rebuild the marriage. If the divorce has to happen, he does want to have a relationship with all of his kids. John visited with Sally a few times since Jane and the kids left and he believes that Sally sees that he has made changes. John wants regular contact with Molly, Ben, Betty and Ron like he has with Rose and Rachel.

4. Jane: Jane's major concern is that her children cannot handle being around John. Jane explained that when the kids do not do exactly what John expects, he responds by personally tearing them down. Jane points out that all of the children pull away from John when they get into their teenage years and she fears that the same will happen with Rose and Rachel. Jane knows that John cares about the kids – but she also knows that the kids truly *fear* John – not because he will physically hurt them, but because his words have the effect of destroying their confidence and making them feel like they are stupid and worthless. Jane is tired of picking up the pieces for the kids and trying to rebuild their confidence when he emotionally destroys them in minutes the second he walks in the door. Though she did not say it directly, I believe that Jane is also tired of John emotionally destroying her with criticism as well. Jane does not believe that Betty and Ron can handle being around their father, presently. Betty is striking out against John (in ways that are not at all respectful) but that is coming from a profound feeling of pain – as evidenced by her *hours* of tears after going home to visit her father for merely two hours.³ Ron

³ Betty explained that when she started crying her dad called her bitter and told her that she had a hateful heart. I asked her to think about what made her start crying – and she told me: “when I went back in there, I saw my cat who I loved, and it was like my poor cat was just left there in all this darkness. We were fine there when Dad was at work, and then he came home and he was like a shadow that tore the house apart. I cannot live with him there and I can't be in the house anymore and it just made me so unbelievably sad.”

literally runs from his father and will try and avoid him at all costs.⁴ Jane is agreeable to the schedule with Rose and Rachel as it is because they want to see John and do not seem to be upset by seeing John. Jane left because she could not watch John treat the children in the same judgmental and mean-spirited way that he treated her because it is emotionally damaging to them. Jane does not want the children to be around John if it is harmful to them.

Jane would like for the children to be able to see John on alternative weekends from Friday through to Monday morning *if they would like to do so*. She does not want the kids to be forced to go – and she especially does not believe it would be healthy for Betty and Ron to go as they are both in a very bad emotional place when it comes to their father. Jane hopes that John and the kids can repair their relationship but does not think it is possible presently.

Analysis

There has never been a parenting time or parental responsibilities allocation in this case as a result, to make a determination, the Court needs to look at the statutory best interest factors, which are:

1. the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
2. the child's adjustment to his or her home, school, and community;
3. the mental and physical health of all individuals involved;
4. the ability of the parent to cooperate to make decisions, or the level of conflict between the parties that may affect their ability to share decision-making;
5. the level of each parent's participation in the past significant decision-making with respect to the child;
6. any prior agreement or course of conduct between the parents relating to decision-making with respect to the child;
7. the wishes of the parents;

⁴ When I asked Ron why he was scared he told me: "he makes me feel small. Like I am stupid and nothing. I hate feeling like that." When Ron sees his dad, he starts to experience high anxiety trying to figure out what he has done wrong so he can fix it before his dad sees it and "it is just too much!"

8. the child's needs;
9. the distance between the parents' residences, the cost and difficulty of transporting the child, each parent's and the child's daily schedules, and the ability of the parents to cooperate in the arrangement;
10. whether a restriction on decision-making or parenting time is appropriate under Section 603.10;
11. the willingness and ability of each parent to facilitate and encourage a close and continuing relationship between the other parent and the child;
12. the physical violence or threat of physical violence by the child's parent directed against the child;
13. the occurrence of abuse against the child or other member of the child's household;
14. Whether one of the parents is a convicted sex offender or lives with a convicted sex offender and, if so, the exact nature of the offense and what if any treatment the offender has successfully participated in; the parties are entitled to a hearing on the issues raised in this paragraph;
15. any other factor that the court expressly finds to be relevant

To determine parenting time the court must consider all of the same factors as above with the addition of three factors:

1. the interaction and interrelationship of the child with his or her parents and siblings and with any other person who may significantly affect the child's best interests;
2. The willingness and ability of each parent to place the needs of the child ahead of his or her own needs;
3. the terms of a parent's military family-care plan that a parent must complete before deployment if a parent is a member of the United States Armed Forces who is being deployed.

1. The wishes of the children taking into account the children's maturity and ability to express well-reasoned opinions and preferences. Ben, Betty and Ron do not want to be forced to see their father. Betty and Ron both experience severe anxiety surrounding their father and were visibly shaken having to discuss the situation. I found their reasons for their anxiety and pain surrounding their relationship with their father to be well reasoned, real, and not exaggerated. Rose and Rachel did not experience the past few years in the same way as their older siblings. As a result, they are able to accept their dad in a different light. The youngest girls are adjusting to the every-other weekend schedule and though they don't always want to go

to Dad's (because it gets boring sometimes) they are not experiencing anxiety or emotional distress around visits.

2. The children's adjustment to home, school and community. Both Mom and Dad live in North Peoria in the Dunlap school district. The children have all been homeschooled (by Mom) and are members of the home school co-op where they are very active. Ben is doing well at Dunlap High School. The children participate in sports (soccer leagues) and have been very involved in churches where they regularly attended.⁵

3. The mental and physical health of all involved. The parties are mentally and physically healthy. John worries that Jane suffers from depression. I did not personally observe any signs of depression. Betty and Ron (and to a lesser extent, Ben) all have *significant* anxiety revolving around their relationship with their father to the point that it does affect their day to day lives. Sally reported that she, like Ron, had pretty severe anxiety around her relationship with her father and she has benefitted greatly from therapy. I believe that Ben, Betty and Ron could use counseling to help them move forward as well as deal with their hurt and anger.⁶

4. The ability of the parties to cooperate in decision-making or the level of conflict between the parties. Jane and John have never really communicated about decision-making for the children because the children were Jane's purview. John does not know what the children are studying or where they are studying – nor does he know their routine. Medically,

⁵ The churches the family attended has changed over the years. I believe that Jane and John met when they were both attending a Presbyterian church. At some point, the family moved to an Apostolic Christian Church in Peoria as John felt that the Presbyterian church was a bit too liberal. Jane and the kids are back to attending church at the Presbyterian Church. I believe that John is now attending church at another Peoria Apostolic Christian Church.

⁶ I believe that paying for therapy may be an issue. Jane may qualify for AllKids for the children in light of her income which should cover some counseling – but options may be limited at the present time.

the children have been very healthy and have only needed care on occasion at which point a prompt care was utilized (which Jane was responsible for). Religious decisions were made by John as he determined the church the family would attend. Extra-curricular activities typically happened through Church or the co-op. Jane and the children decided whether or not to participate. John did, on occasion, help out with coaching which went well, or horribly, depending upon who you ask.⁷

5. Prior agreement or course of conduct with decision making as it relates to the children. The course of conduct was that Jane handled the children and took care of the home. John took care of providing for the family and being the head of the family when they were out socially, such as at church.

6. The Wishes of the parents. See above for the parent's wishes.

7. The children's needs. This varies depending upon the children. Sally and Molly are, of course, outside of the Court's reach as they are both adults. Ben is 17. I believe that Ben will not be forced to do much of anything unless he wants to do it. Betty and Ron really do need counseling. I believe that they are trying to process what they feel for their father – and right now that is hate and fear, depending upon which one we ask. If there is any hope for Betty and Ron to have a relationship with John, it can only occur once Betty and Ron have worked through their own emotions enough to accept that their relationship with their dad is far more complicated than single emotions and their Dad's reactions to them is more complicated than just

⁷ John has fond memories of coaching soccer. Betty has horrific memories of her father coaching soccer because "he was so mean to everyone and just did not have anything nice to say. Some of the parents wrote letters about how he was so discouraging to the children that soccer was not fun. Another parent called after the game and Dad put him on speaker phone and the father on the phone called him a dick. It was mortifying the way he treated people." Molly stated: "we've even had to apologize to the UPS man because Dad can be so horrible."

being “mean” or not. Once they are ready, I believe that Betty and Ron would really benefit from some joint sessions with their father to help them all move forward in a new way. Rose and Rachel need to not hear bad things about their father from their siblings (I do not believe that Jane speaks poorly about John in front of the kids) and they need to stay on their current schedule with their dad. Rose and Rachel are young enough not to remember a lot of the horrible arguments between their parents, and their dad and their older siblings, and are getting the benefit of a different relationship with John made possible by the change in circumstance.

8. Distance between the residences. This is not a real issue in this matter – both of the parents are in North Peoria and not far from each other’s residences. I do think it is a good idea that neither party go to the other parent’s residence at the current time. The parents have been meeting at a public location and that is probably good for the time being.

9. Whether a restriction on parenting time is appropriate. I believe that throwing Ron, Betty, and Ben into mandatory visits with their father will not be good for their emotional or mental health. Additionally, Ben and Betty cope with their emotions by being hateful to their father (as they perceive he was to them). Forced time for Ben and Betty will result in verbal altercations that Rose and Rachel will witness that will cause damage to their emotional and mental stability and well-being, as well as damage to their relationship with John. To be mindful of all of the kids, therefore, I suggest restrictions to John’s parenting time as to Ben, Betty and Ron and no restrictions with respect to Rose and Rachel presently.

10. Willingness of each parent to foster a loving relationship with the other parent. Jane has been trying to foster a loving relationship between John and the children for years, but he has not been receptive to her suggestions. John is going to need to work on not bad-mouthing Jane, Sally, Molly, Ben, Betty and Ron in front of Rose or Rachel. He needs to

live by the old adage that he should not say anything about anyone unless it is something nice. The girls do not need to hear him being critical of others.

11. Threat of physical violence against the children? This is not a factor.

12. The occurrence of abuse against another member of the child's household in the child's presence. I believe my responses above cover this factor. There is no physical violence in the household – however, there have been verbal altercations that have cut deeply.

13. Either parent a sex offender or in the company of sex offenders? None of the people that the children are around are sex offenders.

1. Interactions with others who affect the child's best interests? The biggest factor here is the oldest siblings, Sally and Molly. Probably needless to say, the kids do need to continue to make their ongoing relationship with their older sisters a priority.

Jane is somewhat estranged from her parents and siblings as a result of an incident at her parents' house in Missouri a few years ago where Jane confronted her parents and siblings for being both critical of, and minimizing, her parenting decisions. Since that time, Jane's parents (who would see the kids every year, sometimes twice a year) have not really seen the children and are irritated about the situation. The children seem relatively unaffected and have spoken to their grandparents on occasion. John, however; is building a relationship with Jane's parents and siblings (in a way that may be doing more harm than good). When Jane left the marital home (which is owned by Jane's parents), John called Jane's parents to let them know of the situation. Since that time, John and Jane's father have had numerous long conversations where they commiserate about Jane's perceived failings and ways that she can (and should) be changed. I do not believe that there is any way that this situation can end well for the children who will be in the middle of a lot of conflicting emotions.

2. Willingness of each parent to place the child's needs ahead of their own.

Time will tell. I know that John wants to be a better father to his children. I know that Jane wants to protect the children while at the same time facilitating a good relationship between the kids and John. Wanting and doing, however; are two different things as doing can be very uncomfortable.

3. Military care plan: is not applicable in this case.

RECOMMENDATION OF THE GAL:

As I stated above, I do believe that Ben and to a greater extent, Betty and Ron should not be forced to have parenting time with John at this point. The three of them have a lot of anxiety surrounding their father that is severe. My recommendation is that Betty, Ron and Ben attend counseling to work through their relationship and their feelings regarding their father. When their counselors believe that they are ready, John can be added into sessions for reintegration where Ben, Betty, Ron and John can all learn how to speak to and listen to one another in a healthy and productive way moving forward. When they are ready, then they can move forward to visits that are not forced, but are productive and healthy. As for Rose and Rachel, I suggest as follows:

1. **Parenting Time:** Mom shall have parenting time when Dad does not. Dad shall have parenting time on
 - a. **Regular Schedule: Alternating weekends:** From Friday at 6:00 p.m. (when the parties or any licensed driver as a designee meet at a designated mid-point) through to Monday morning at 9:00 a.m. (when the parties or any licensed driver as a designee meet at a designated mid-point).

b. Holiday Schedule: The parties shall alternate holidays as follows (there is no magic to this suggested schedule – I just tried to alternate the holidays and keep with the scheduled times as much as possible – the parents will probably have a better suggestion that would work with their family traditions:

Holiday	Description of Time	Odd Years	Even Years
Thanksgiving	From 9:00 a.m. on Thanksgiving through to 9:00 a.m. the Friday after Thanksgiving	Mom	Dad
Day after Thanksgiving	From 9:00 a.m. on Friday after Thanksgiving through to 9:00 a.m. the next Day.	Dad	Mom
Christmas Eve	From 9:00 a.m. on Christmas Eve through to 9:00 a.m. on Christmas morning	Dad	Mom
Christmas Day to the next day	From 9:00 a.m. on Christmas Morning through to 9:00 a.m. the day after Christmas	Mom	Dad
Easter	From 9:00 a.m. the Saturday before Easter through Easter to 9:00 a.m. the day after Easter.	Mom	Dad
Mother’s Day	The weekend from Friday at 6:00 p.m. through to Monday at 9:00 a.m.	Mom	Mom
Memorial Day Weekend	From Friday at 6:00 p.m. through to Tuesday at 9:00 a.m.	Dad	Mom
Father’s Day	From Friday at 6:00 p.m. through to Monday at 9:00 a.m.	Dad	Dad
4th of July	From 9:00 a.m. on the 4 th through to 9:00 a.m. on the 5 th	Mom	Dad
Labor Day Weekend	From Friday at 6:00 p.m. through to Tuesday at 9:00 a.m.	Mom	Dad

c. Vacation Times: Mom and Dad should both be able to travel with the children if they wish to do so. I suggest that they each be entitled to three 7-day, non-consecutive weeks from Friday at 6:00 p.m. through to Friday at 6:00 p.m. The vacation weeks cannot supersede the holiday schedule written above. Further, the parties shall pick their vacation weeks by January 15th of every year for the next calendar year. In the event that both parents want the same week, Mom’s choices will take precedence in Odd Years and Dad’s choices will take precedence in Even Years.

2. **Parenting Responsibilities:** Mom has been the primary caretaker for years – she should remain in that capacity as the sole decisionmaker. However; Dad needs to be able to obtain information so he can stay up to date and have his questions answered on his own, without relying on Jane.

School Information and Contact:

In the event that a public school is utilized for the children, Mom’s address shall be utilized for school purposes.

As for school choice, Mom shall continue to handle the schooling and to determine whether or not the children continue to be homeschooled, their ongoing curriculum, and what Co-Op they will participate in, if any. Mom will send Dad periodic updates if she is homeschooling the kids to let him know what the kids are working on and how they are progressing.

In the event that Mom elects to send the children to public or private school, she will register the kids for school and will list Father as the children’s Father on school records and will provide with Father with the information necessary so that Father is able to access to any online portals and teacher information.

Father and Mother are both entitled to all student records regarding the children.

Medical/Dental/Mental Health. In case of an acute illness either parent may take the child to a prompt care or an emergency room. In the event that such a visit is necessary, the parents shall text the other parent as soon as possible and let the other parent know where they are taking/took the child, what is happening, a diagnosis and any follow up instructions.

Mother shall be responsible for making the appointments for all annual physicals, developmental checks, dental and vision care for the child. Immediately after the appointment is made, Mom shall notify Dad of the time and location of the appointment via email or text so that Dad may attend if he is able or he may contact the doctors/dentists/optometrists with his questions or concerns.

Both parties shall be listed as parents and shall have access to all medical records. Both parents are may speak directly with medical providers about the care for their child or the doctor’s recommendations.

In the event of a disagreement over medical care, the parents shall confer with the treating physician or doctor and express their concerns so that the physician can weigh in on the situation. If there is still disagreement after this process, Jane shall make the final decision.

Religious education decisions will be made by both parents as outlined here.

Both parties may take the children to any church or religious services on their own time.

Extracurricular activities decisions.

Jane will continue to make the extracurricular decisions for the children. She will notify John of what activities the children are participating in and the schedule so that John can attend games and/or performances if he chooses to do so. In the event that the children have an extra-curricular activity on John's time, John shall take the children to the activity unless other arrangements are agreed to between John and Jane.

- A. **Child's Contact with the Parent they are not with:** The children should be allowed to contact the parent they are not with via phone or Facetime at his/her election.
- B. **Transportation:** Typically, the parents will meet at a midpoint between their two homes for exchanges.
- C. **Right of First Refusal:** In light of the age of the children, there is no right of first refusal.
- D. **Ability to Modify:** Both parties need to remember that they can always *ask* to modify the parenting time schedule and it is up to each of them to agree or disagree. If the parties cannot agree to a modification or a change, then the parenting plan order is what will be followed.

Respectfully Submitted,

/s/Ann R. Pieper
Ann R. Pieper
Guardian Ad Litem

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was served upon the both attorneys of record as listed below on September 13, 2021 via email as required by rule.

/s/Ann R. Pieper
Ann R. Pieper

Attorney A Attorneya@office.com	Attorney B attorneyb@office.com
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