

GAL REPORTS AND THE USE OF HEARSAY

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IF WE START OUR INVESTIGATION WITH THE REPORT IN MIND, WE KNOW WHAT TO INVESTIGATE.

Changes the Focus of the parties	Explains the Background from numerous different perspectives	<p>Why Discuss Reports?</p>
Shows the parties how the facts will appear to a neutral.	The parties and the attorneys can see where their cases are strong and where they are weak.	
Shows Mom and Dad what the Court Order will look like, what the Court Order can solve, and what the Court Order Can't solve.	The Report is a stopping point for us – tells the Court that we are done with our investigation and the parties need to either negotiate and agree, or they need to finish up discovery and set the matter for trial.	

Statutory Duties of the GAL in the IMDMA

• 750 ILCS 5/506 (a)(2)

- Shall testify or submit a written report to the court regarding his or her recommendations in accordance with the best interest of the child.
- May be called as a witness for purposes of cross examination regarding the contents of their report and recommendations.
- Shall interview the parties and the child.

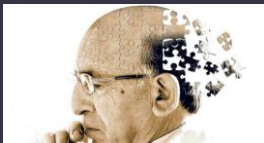


Disabled Adults (Probate Act)

• 755 ILCS 5/11a-10

- Shall personally observe the respondent and SHALL inform him/her orally and in writing of the contents of the petition and of his/her rights under the law.
- Shall attempt to obtain the respondent's position as to the guardianship generally, the proposed guardian, and a change in placement/living arrangements.
- Shall have the right to inspect medical records and mental health records and MAY talk to others with relevant information (such as treatment providers)
- SHALL file a written report detailing observations of the respondent, the respondent's responses to inquiries, your own opinion as to Guardianship AND the opinion of other professionals whom you consulted concerning the appropriateness of guardianship.
- SHALL appear at the hearing and testify as to any issues presented in the report.

Considerations in Reporting on Probate Cases




- Be kind in your reports. Typically, the petitioners are family.
- Understand that the disabled adult may have moments of clarity. Ask the hard questions even if the adult is confused and upset.
- It is useful to have a nurse or employee of a care center introduce you to the disabled adult to prevent fear.
- If there is no question in your mind - be specific so the judge can see what you see.

The Statute is important.
The factors are different depending upon the pleading at issue.

- Are you dealing with a first time parental responsibility allocation?
- How about a removal?
- Are you dealing with an OP or a No Stalking No Contact?
- A disabled adult?

Your Duties depend on the factors the Court must consider because you MUST give a recommendation that is based in law – not just on emotion.

**READ THE STATUTE,
READ THE STATUTE,
READ THE STATUTE!!!**



DRAFTING A REPORT THAT MAKES SENSE

Tell the story

- First – you need to detail who you spoke with, what you observed and what you reviewed.
- Second – What is the relevant background for the Court to know?
- Include a section where you detail Mom's position/Dad's position and the child's position.
- If you have a suspicion or an outside fact that is important for the overall understanding of the matter, put it in a footnote.

Apply the story to the statute

- Go through the factors – list them and then apply the facts to the statute. (See sample report included in your materials – names have been changed to protect the parties).
- Provide USEFUL recommendations.
 - Should the OP enter?
 - Should the Court enter a guardianship?
 - What should the parenting plan look like.



Why Report when you can just testify?

Your opinions will be clearer.


There are better chances for settlement

You give the parties a chance to really see a parenting plan.

Hearsay in your reports and testimony.

Is hearsay, in and of itself, allowable?

- Illinois Code of Civil Procedure, 735 ILCS 5/8-2601
- Juvenile Court Act, 705 ILCS 405/2-18 (4)(c).
- IMDMA, 750 ILCS 5/606.5c
- Domestic Violence Act, 750 ILCS 60/213.1c



So? When do we use what?

1. Disabled adult? The specifics in the Domestic Violence Act clearly apply.
2. Parental Rights? The Abuse and neglect – Juvenile Court Act.
3. Custody – IMDMA – Just like the Juvenile Court Act.
4. OP with respect to children? Well...

Split in the Districts

Daria vs. Flannery

3rd District – *Daria v. Bradley*: 317 Ill.App.3d 194 (3rd Dist, 2000). OPs should use the IMDMA instead of the Code of Civil Procedure for Ops because the IMDMA specifically is addressing parenting time with minor children.

2nd District: In re Marriage of Flannery 328 Ill.App.3d 602, 2nd Dist. 2002. Orders of Protection need to follow the procedure in the Code of Civil Procedure.

4th District: AGREES WITH THE 2nd in *Arika M.*, 2019 Ill.App.4th 190125.



IN RE PORTILLO, 2021 IL App (3d) 200221

The 3rd District agrees with the 4th and the 2nd and overrules Daria.

FOR A FLEARNARY OP – HAVE A HEARING PURSUANT TO 735 ILCS 5/8-26/1 BEFORE YOU PRESENT THE HEARSAY TESTIMONY.



A GAL is in a unique position to get the hearsay testimony in the record – without all the rigmarole

- If the report (which will be full of hearsay – is not entered, consider how you will testify.
- YOU recommended restrictions.
- WHY? Because considering the child's statements to me, and (insert the facts that lead you to believe the child was truthful)
- I believe that the following events happened.
