

# Relevant Law for the Rule 907 Child Attorney



Presented at the Bradley University Training  
January, 2009

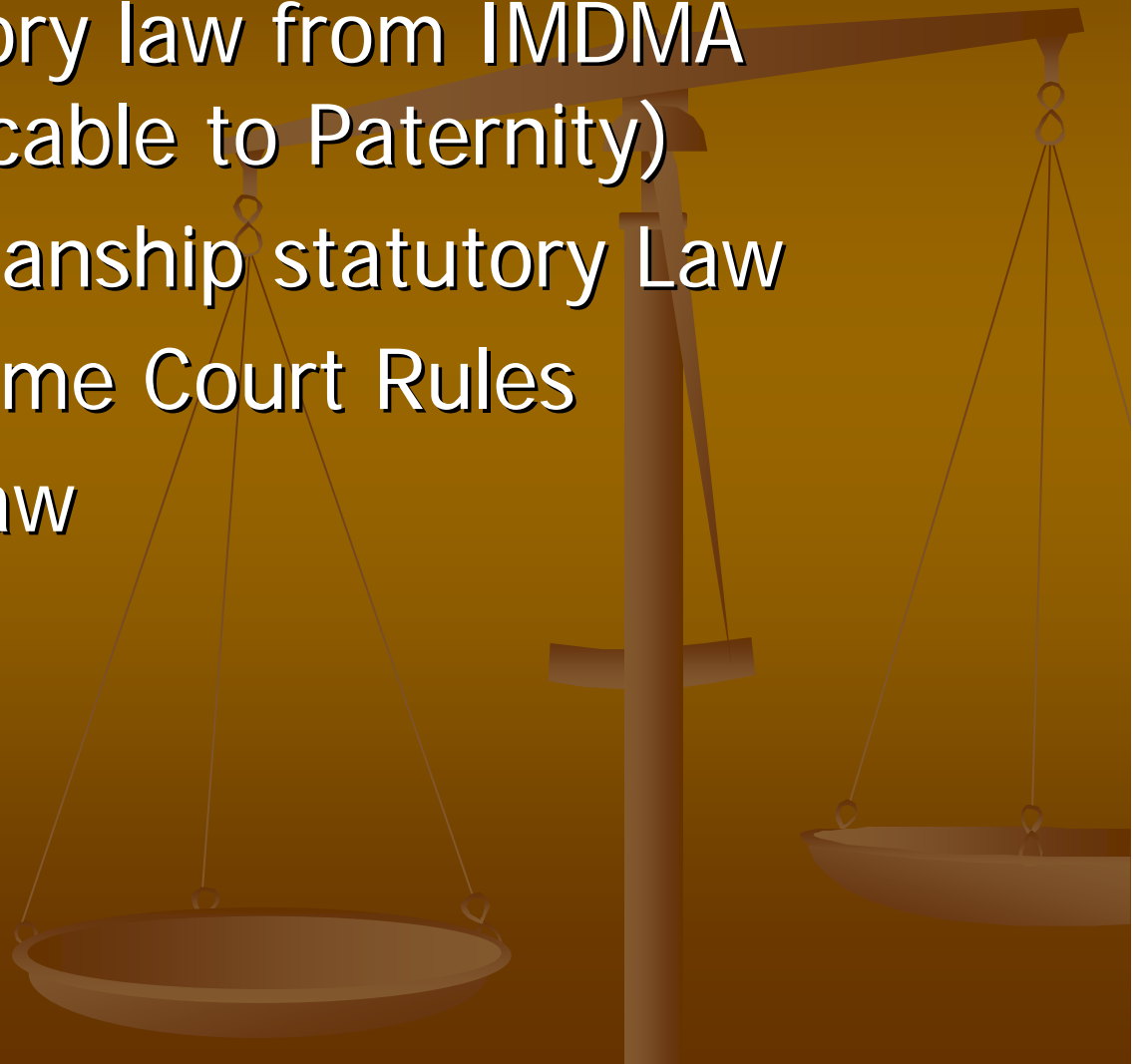
By

Judge Jerelyn Maher

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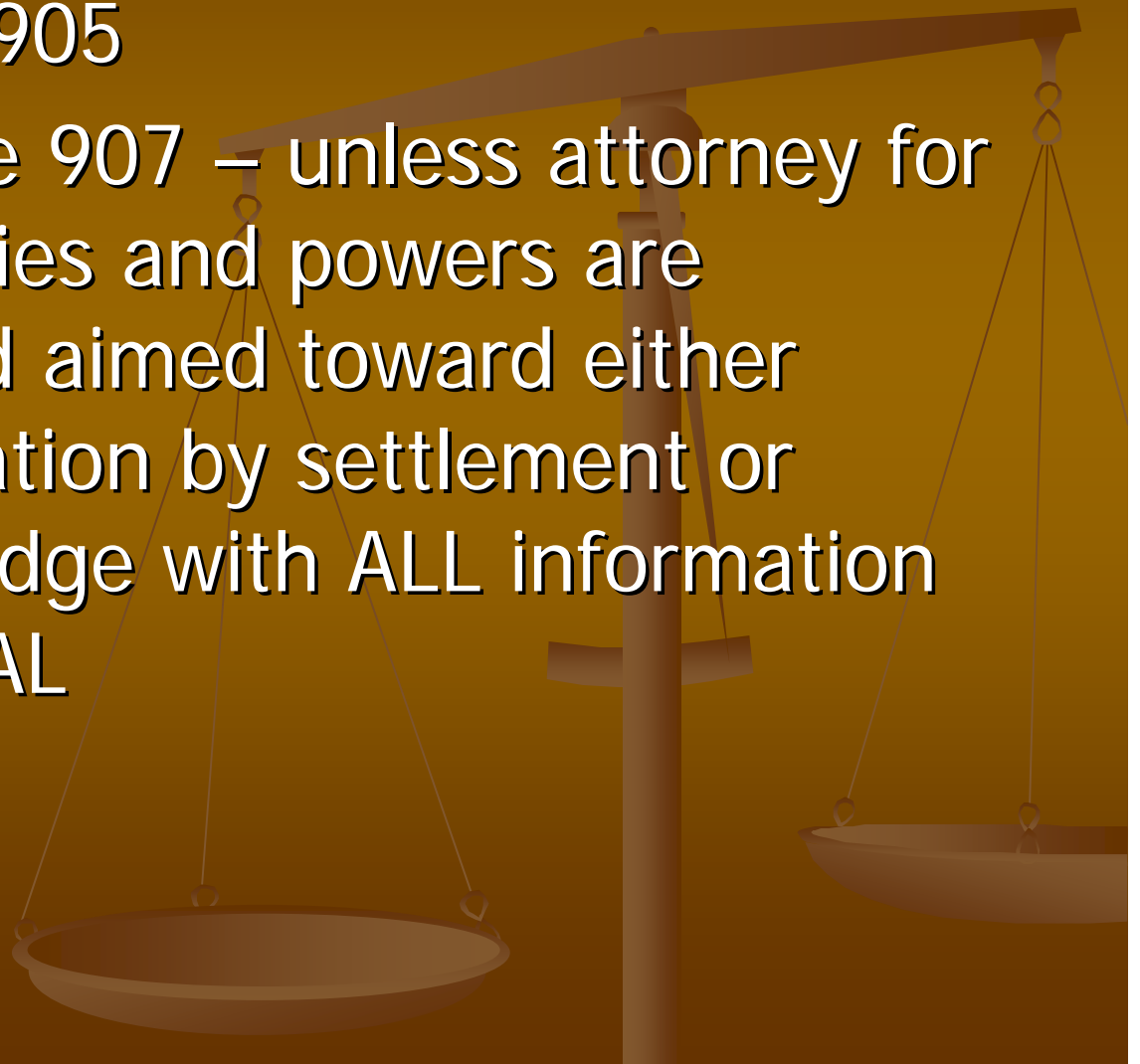
# Scope

- Relevant statutory law from IMDMA (generally applicable to Paternity)
- Relevant Guardianship statutory Law
- Relevant Supreme Court Rules
- Relevant case law



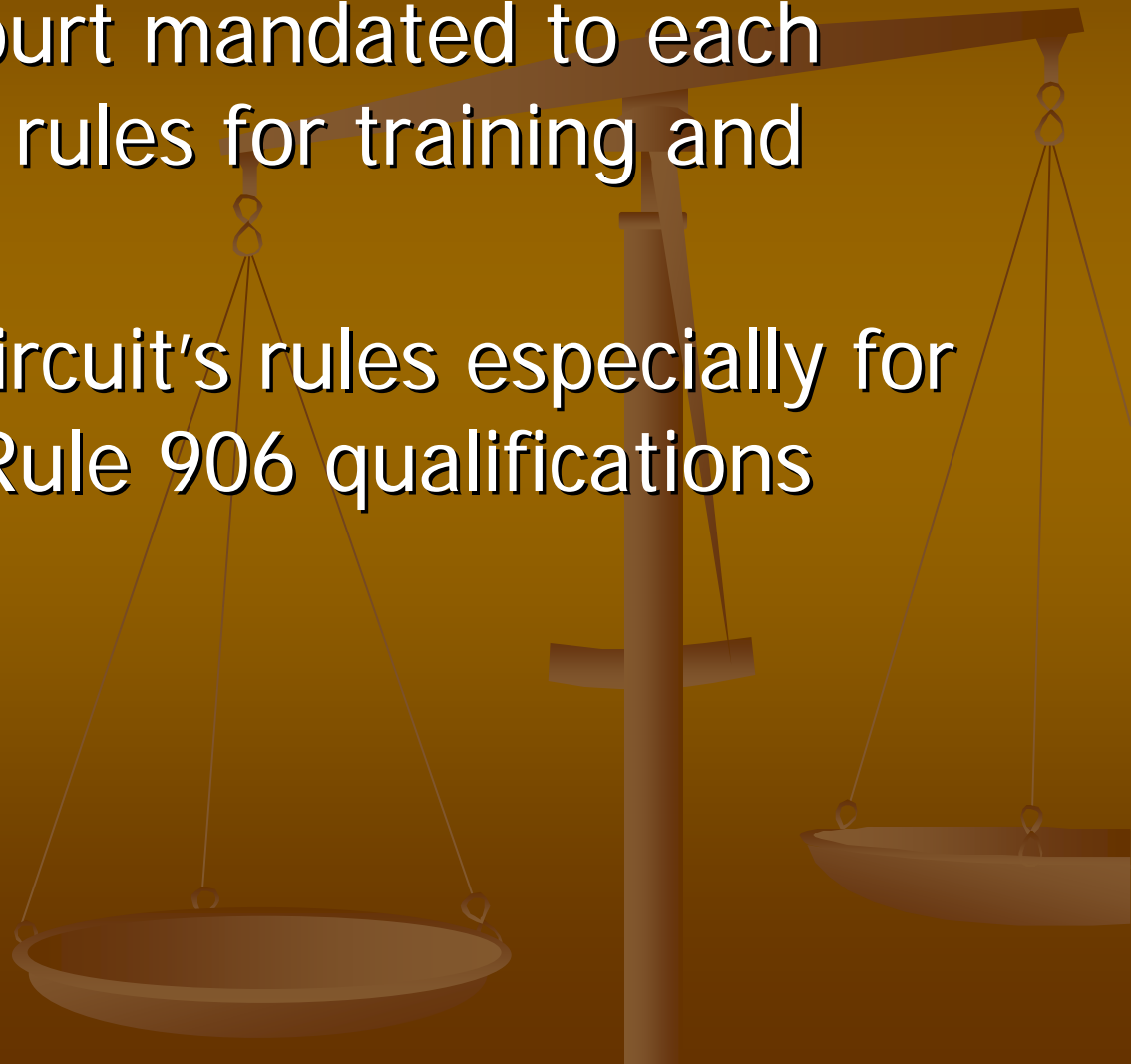
# Effective July 1, 2006, Supreme Court Rule 900 Series

- Mediation Rule 905
- Your duties Rule 907 – unless attorney for child – your duties and powers are tremendous and aimed toward either ending the litigation by settlement or providing the judge with ALL information particularly if GAL



# Local rules

- The supreme court mandated to each circuit to create rules for training and implementing
- Must read the circuit's rules especially for mediation and Rule 906 qualifications

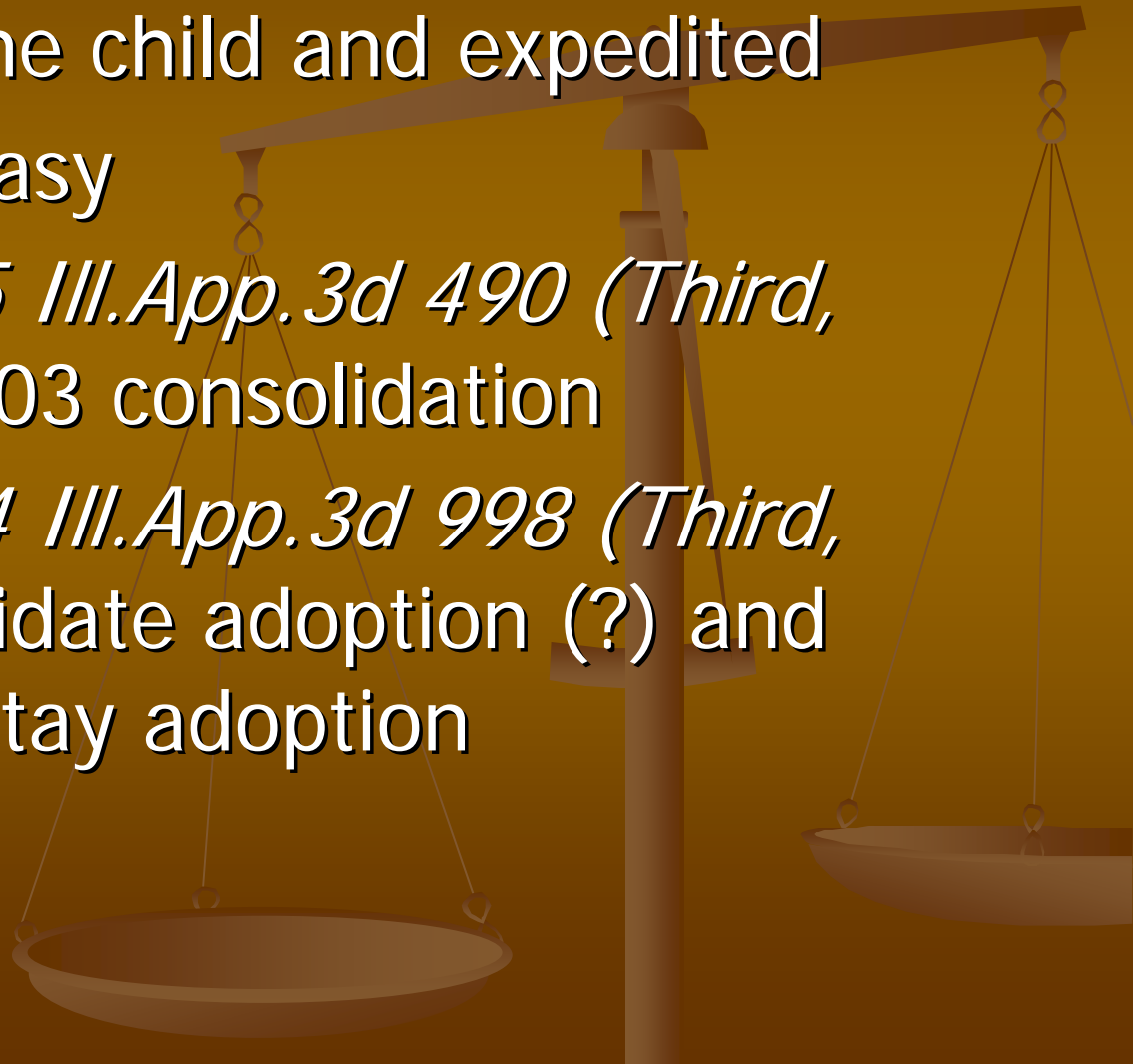


# Supreme Courts goal

- One judge – one child and expedited

But not always easy

- ✓ *IN RE G.P. 385 Ill.App.3d 490 (Third, 2008)* – Rule 903 consolidation
- ✓ *JSA v M.H. 384 Ill.App.3d 998 (Third, 2008)* – consolidate adoption (?) and paternity and stay adoption



# IMDMA Statutes you basically need 750 ILCS 5/

- 506
- 602
- 602.1
- 604
- 604.5
- 607
- 610
- 608
- 609



# Paternity Statutes basically need the IMDMA alongside

Since your role is in assisting in helping the court decide custody and visitation you will find the IMDMA applicable. The only difference is the removal statute being 750 ILCS 45/13.5

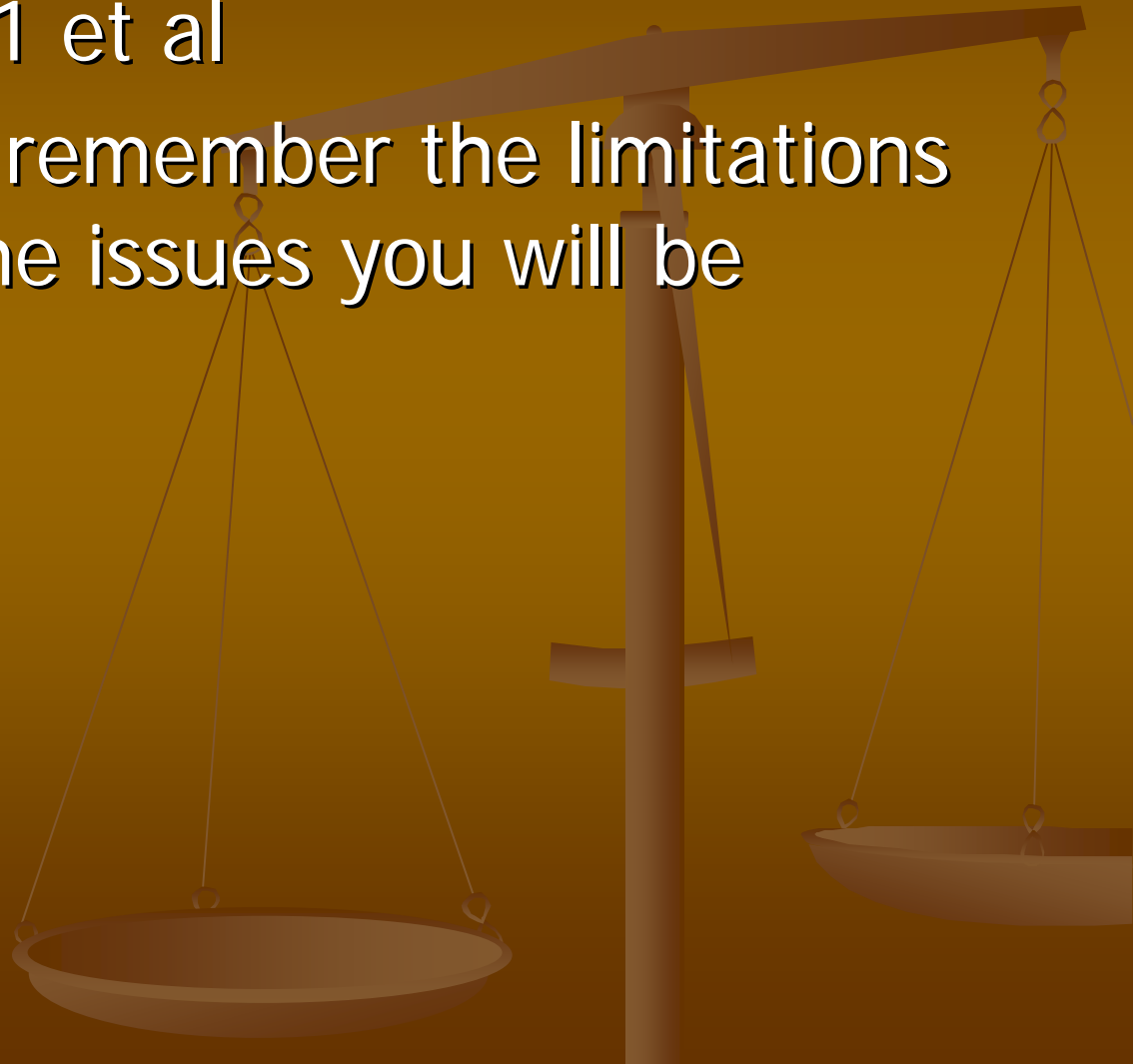
Frankly, your major issues under paternity will be dealing with the results of the judge's rulings on some difficult legal issues

And the problems created by lack of the institution of marriage

# The Domestic Violence Statute

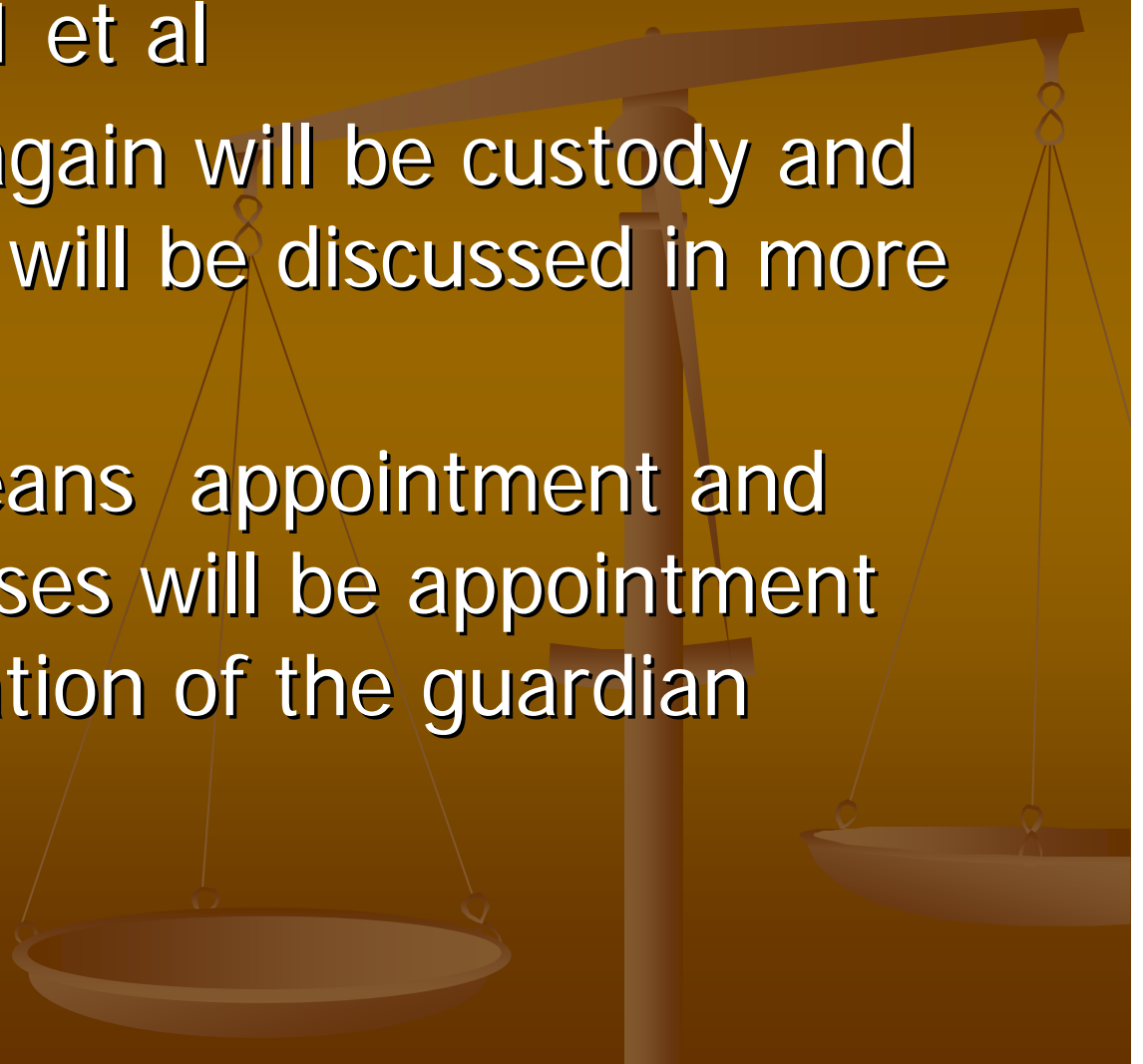
- 750 ILCS 60/101 et al

Frankly you must remember the limitations of that act on the issues you will be addressing



# Guardianship statute you need to know

- 755 ILCS 5/11-1 et al
- Your concerns again will be custody and visitation which will be discussed in more detail
- Which really means appointment and most of your cases will be appointment and the termination of the guardian



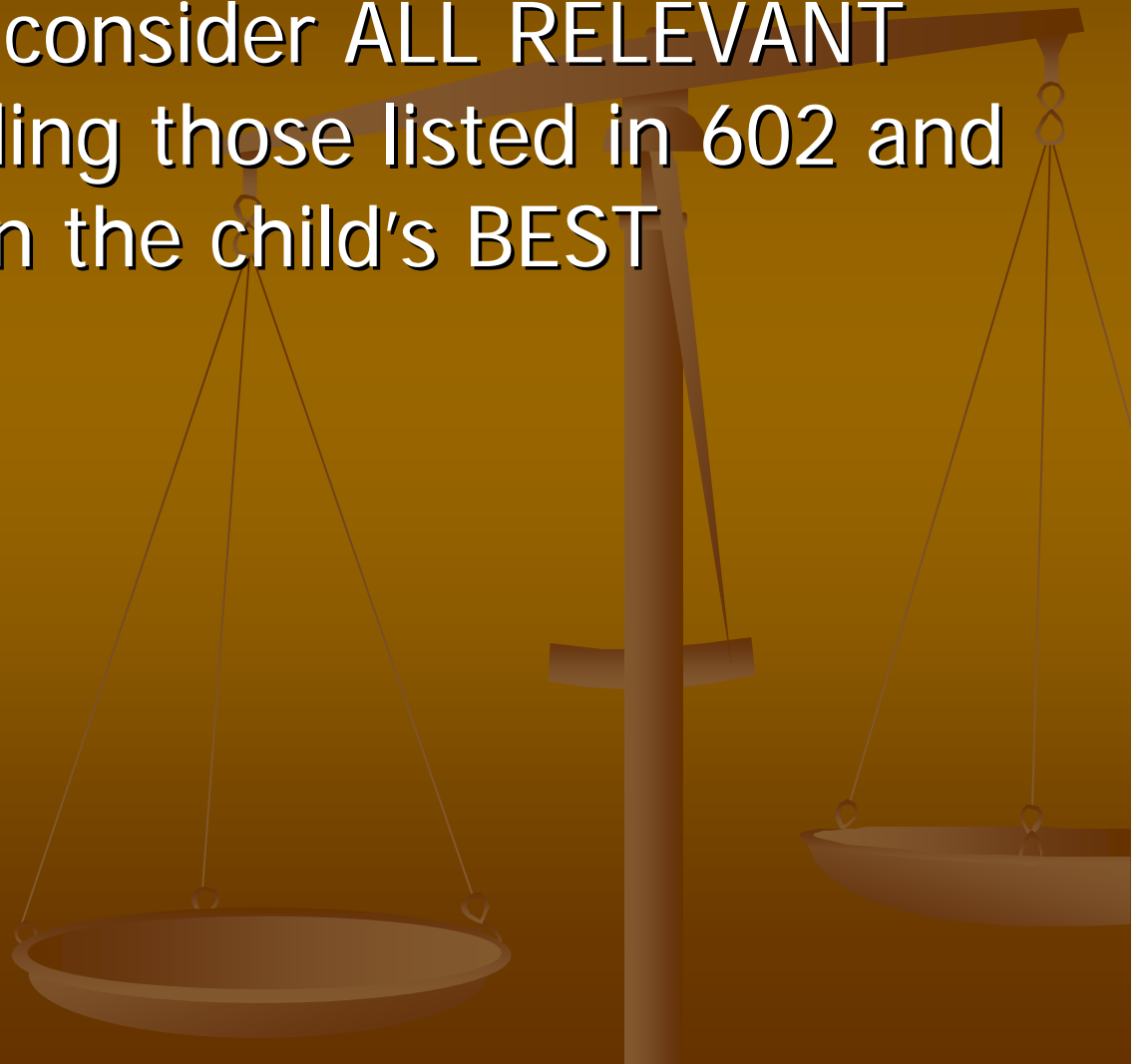
# Juvenile Court Act

- Refer to Judge Kelley



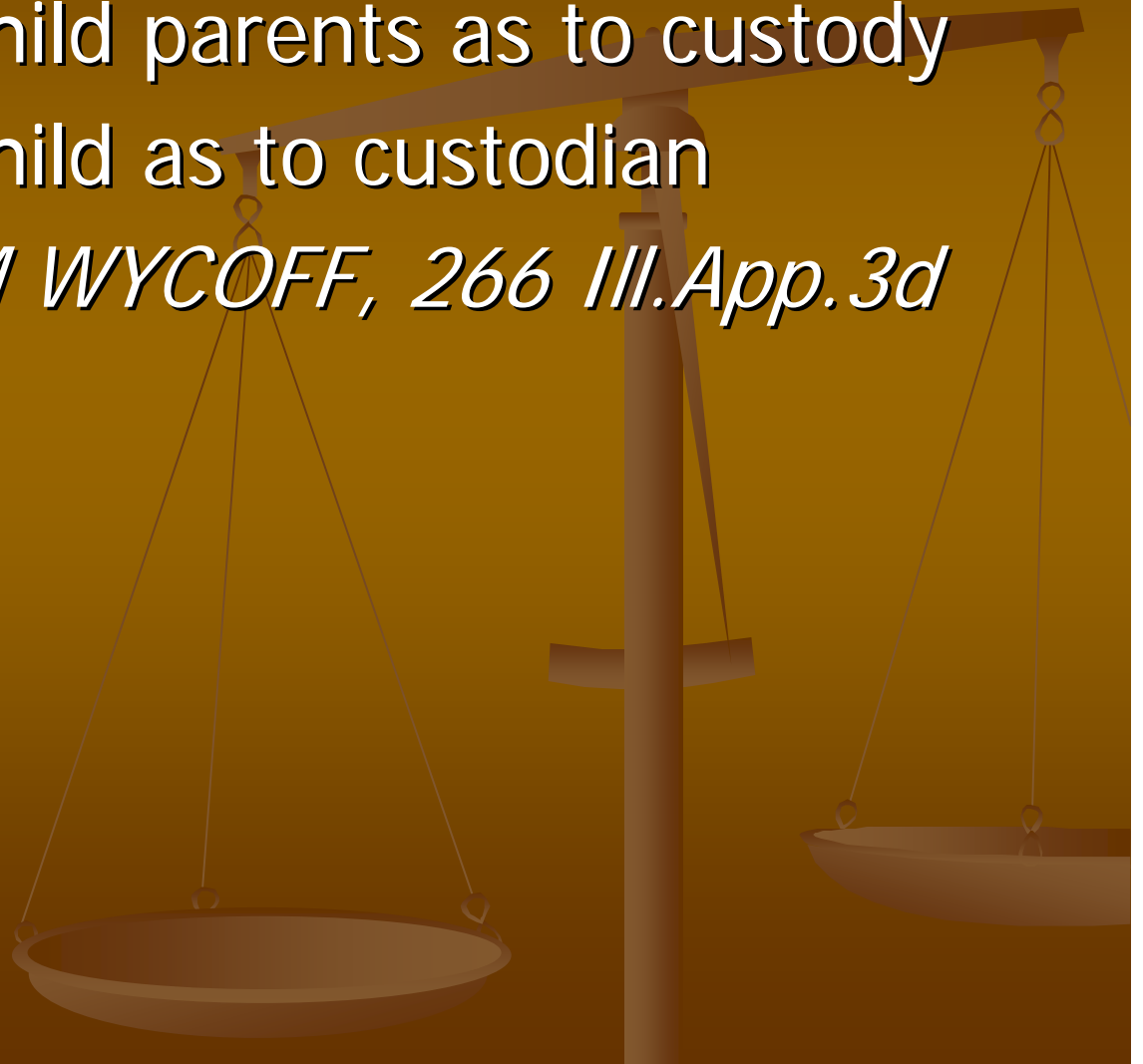
# Initial Custody 602

The Court should consider **ALL RELEVANT FACTORS** including those listed in 602 and decide what is in the child's **BEST INTEREST**



# 602(1)(2) Wishes

- Wishes of the child parents as to custody
- Wishes of the child as to custodian
- Good case: *IRM WYCOFF, 266 Ill.App.3d 408 (1994)*



602(3)

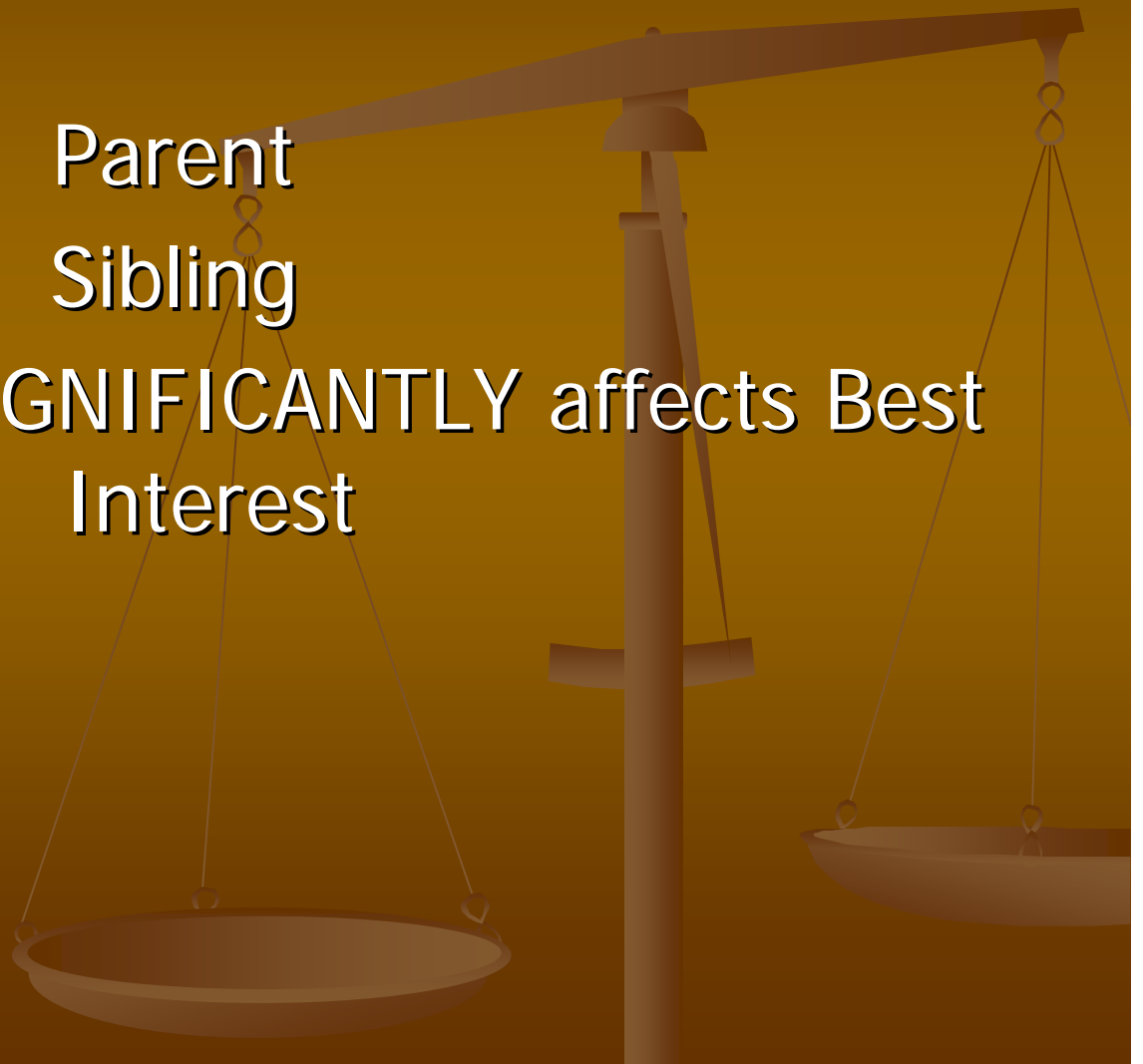
## Interaction and interrelationships

Of the child with:

Parent

Sibling

And any other SIGNIFICANTLY affects Best  
Interest



# 602(4) Stability

Child's adjustment to

Home  
School  
Community



# 602(5) Health

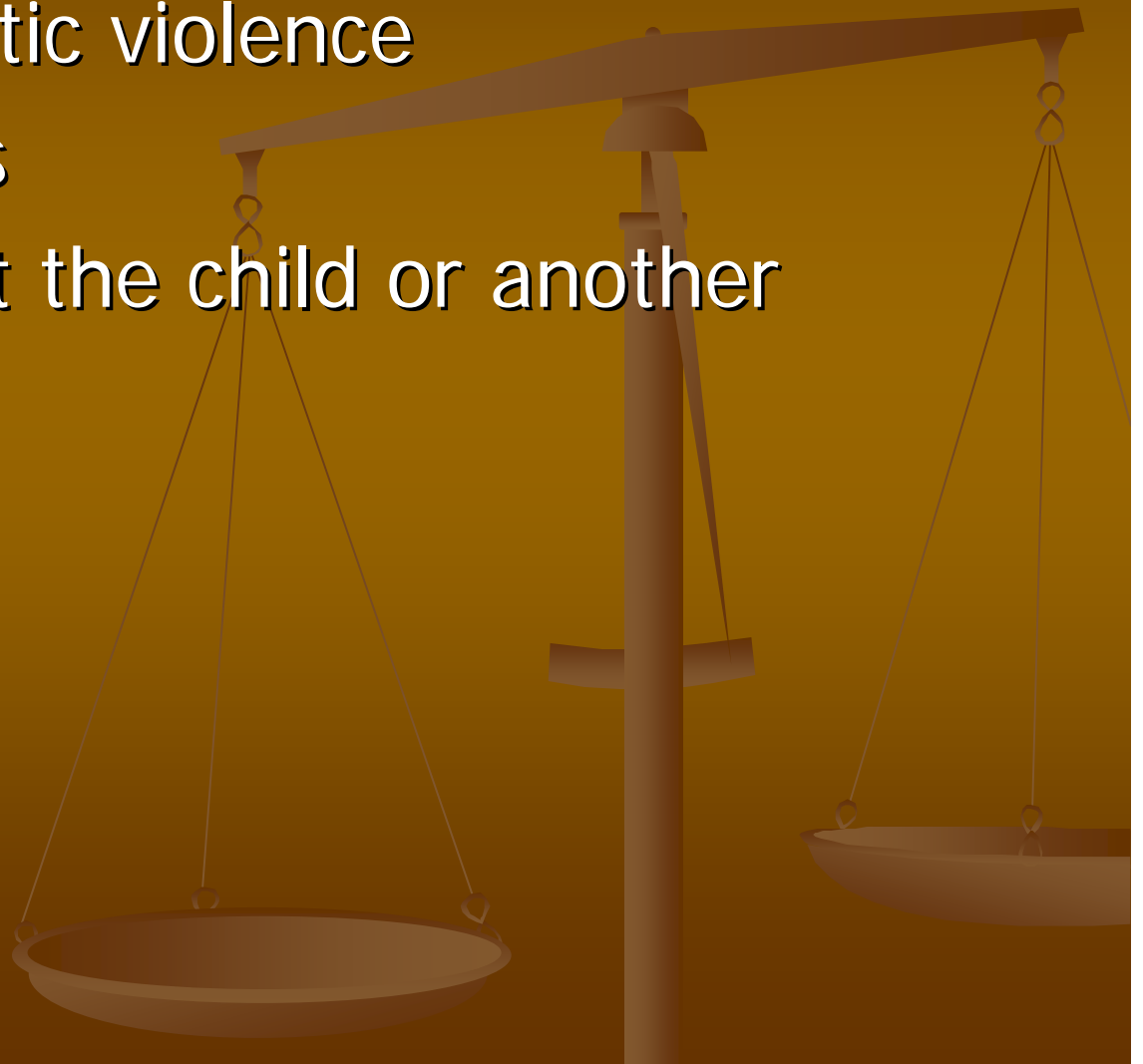
- Mental and physical
- Of ALL individuals involved



# 602(6)(7)

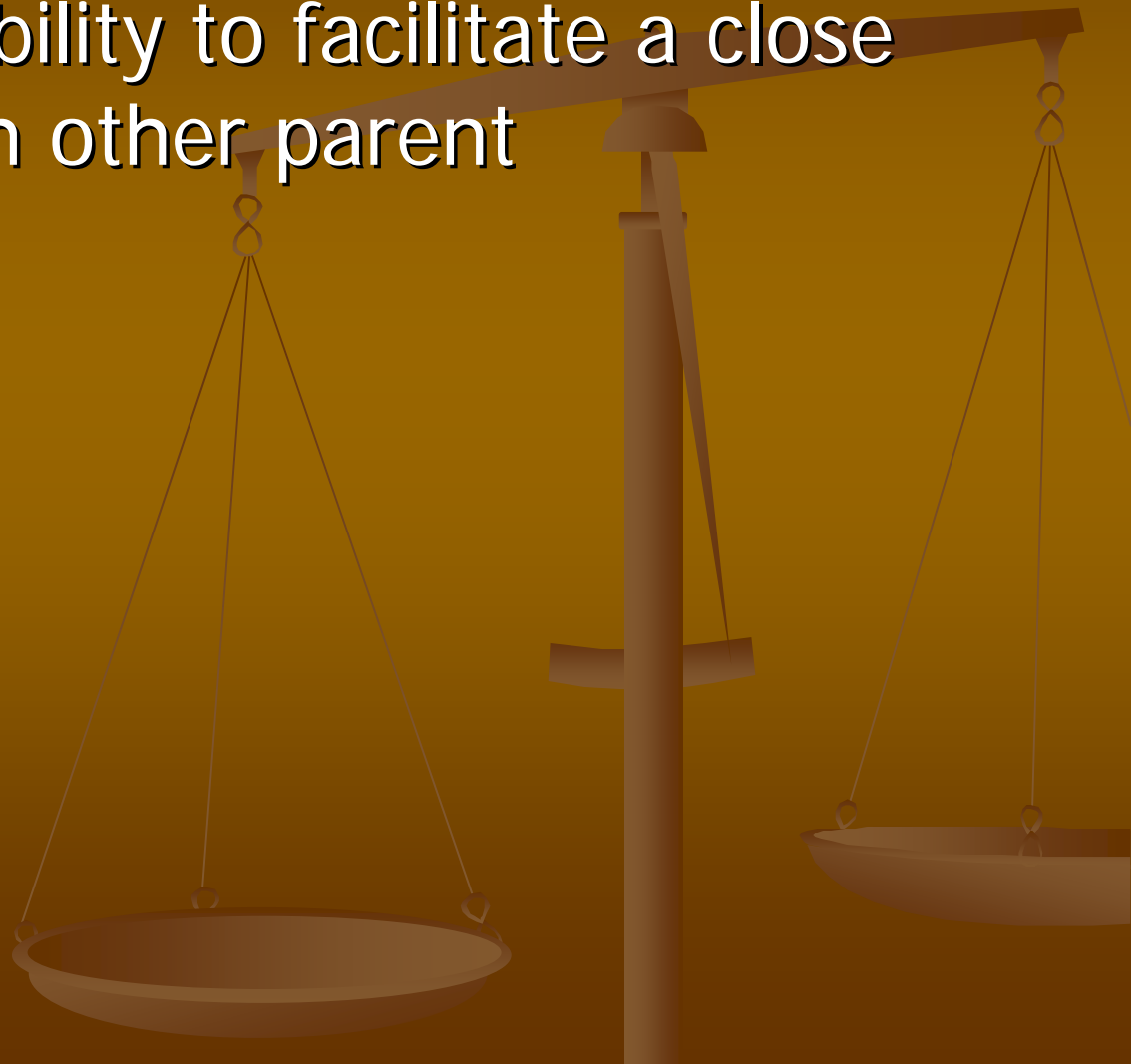
## Abuse and neglect

- Basically domestic violence
- Includes threats
- Directed against the child or another person



# 602(8) Cooperate

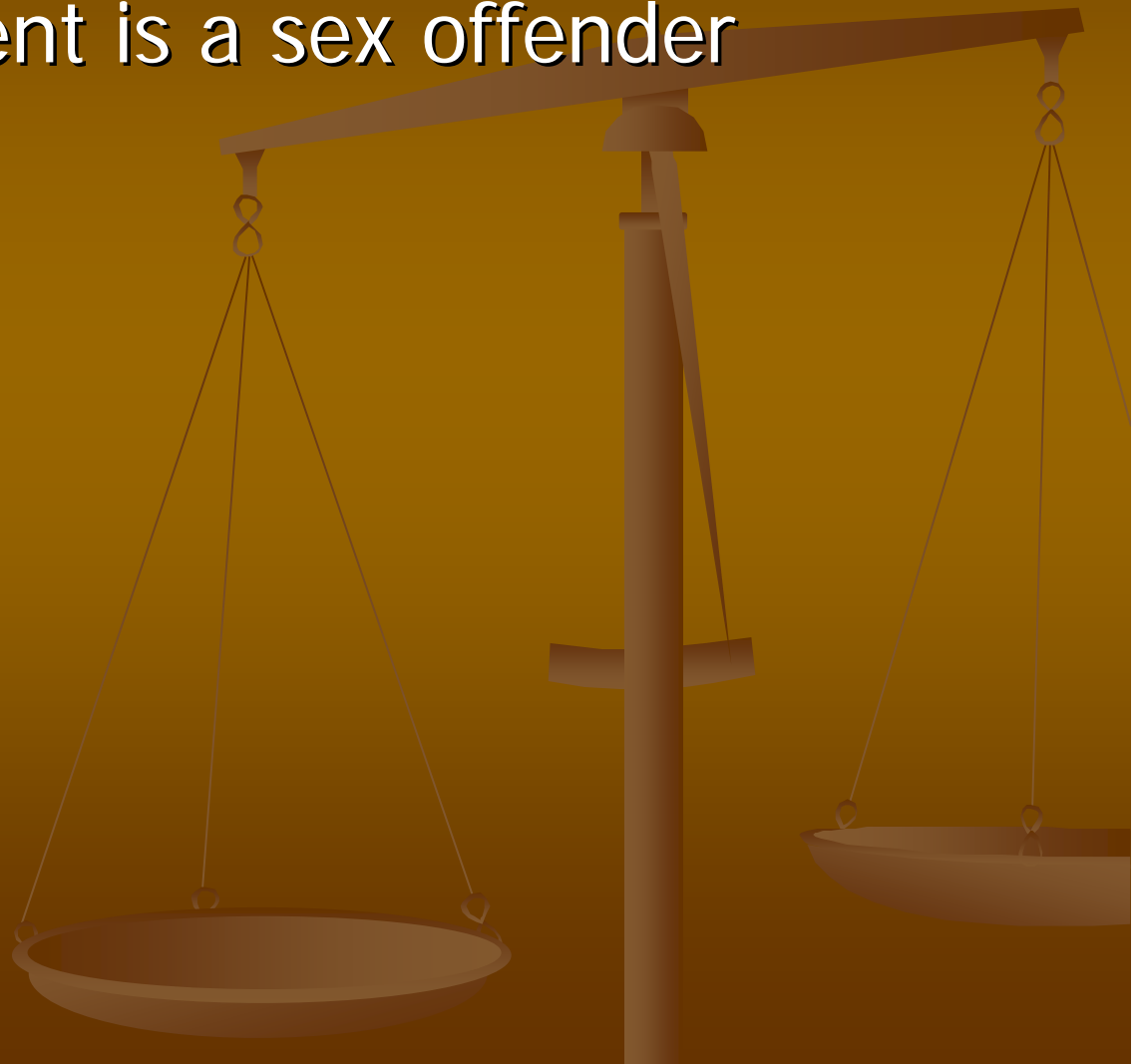
Willingness and ability to facilitate a close relationship with other parent



602(9)

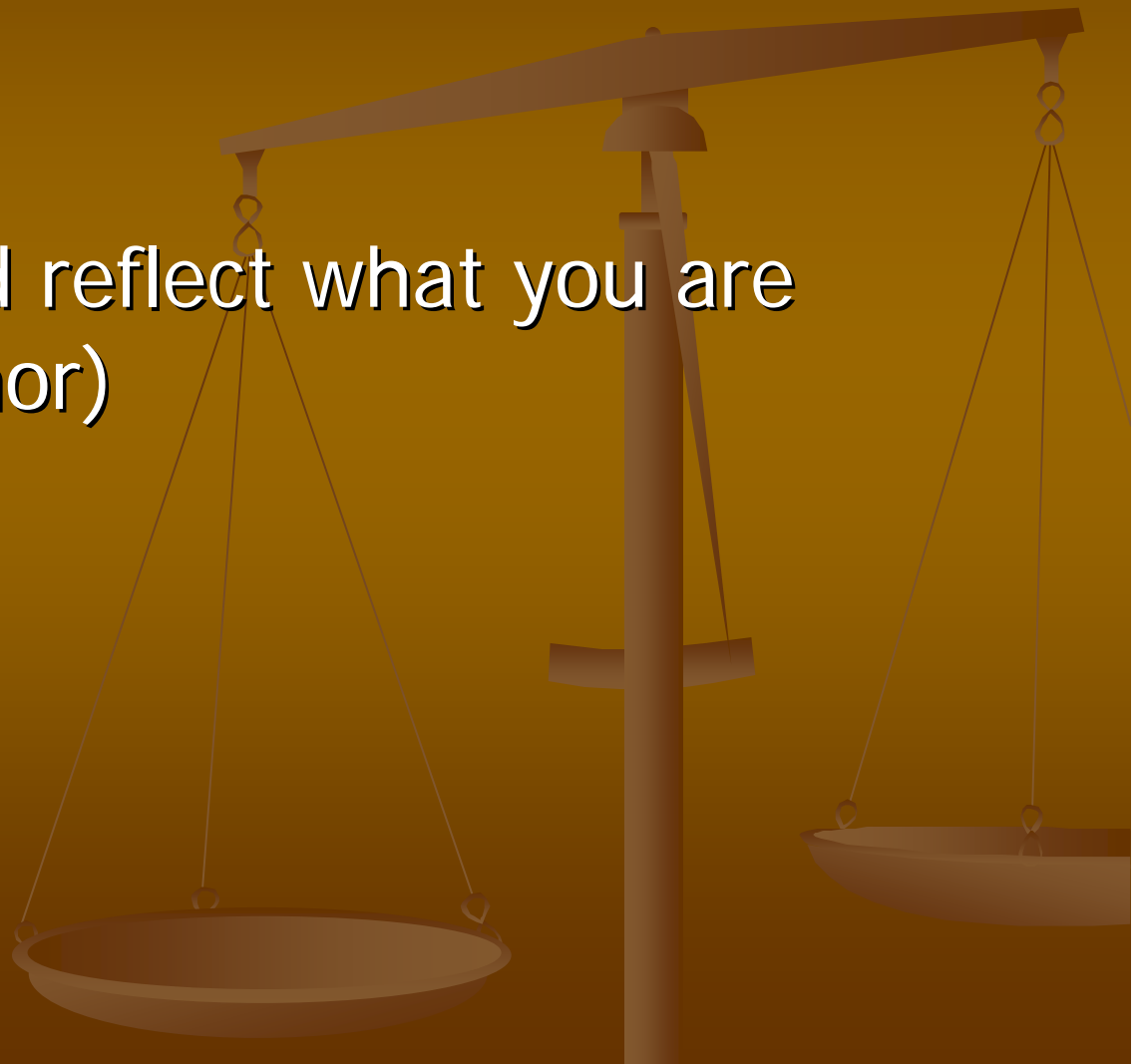
Duh!

Whether one parent is a sex offender



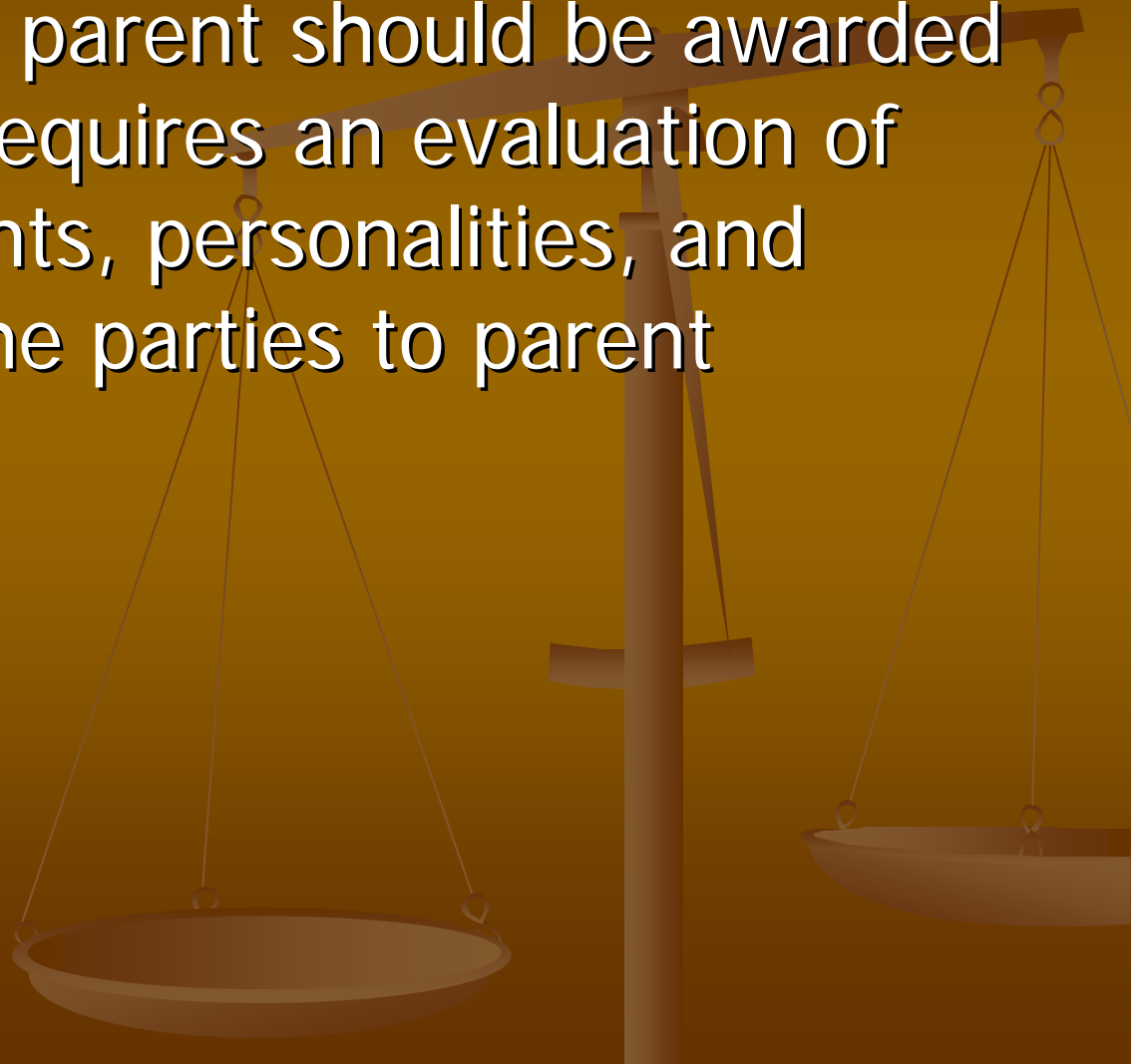
# Your job re: 602

- Determine
- Report
- Make the record reflect what you are seeing (demeanor)



# What is judge looking for? i.e. your report

In deciding which parent should be awarded custody which requires an evaluation of the temperaments, personalities, and capabilities of the parties to parent



# DIRTY LAUNDRY CAUTION

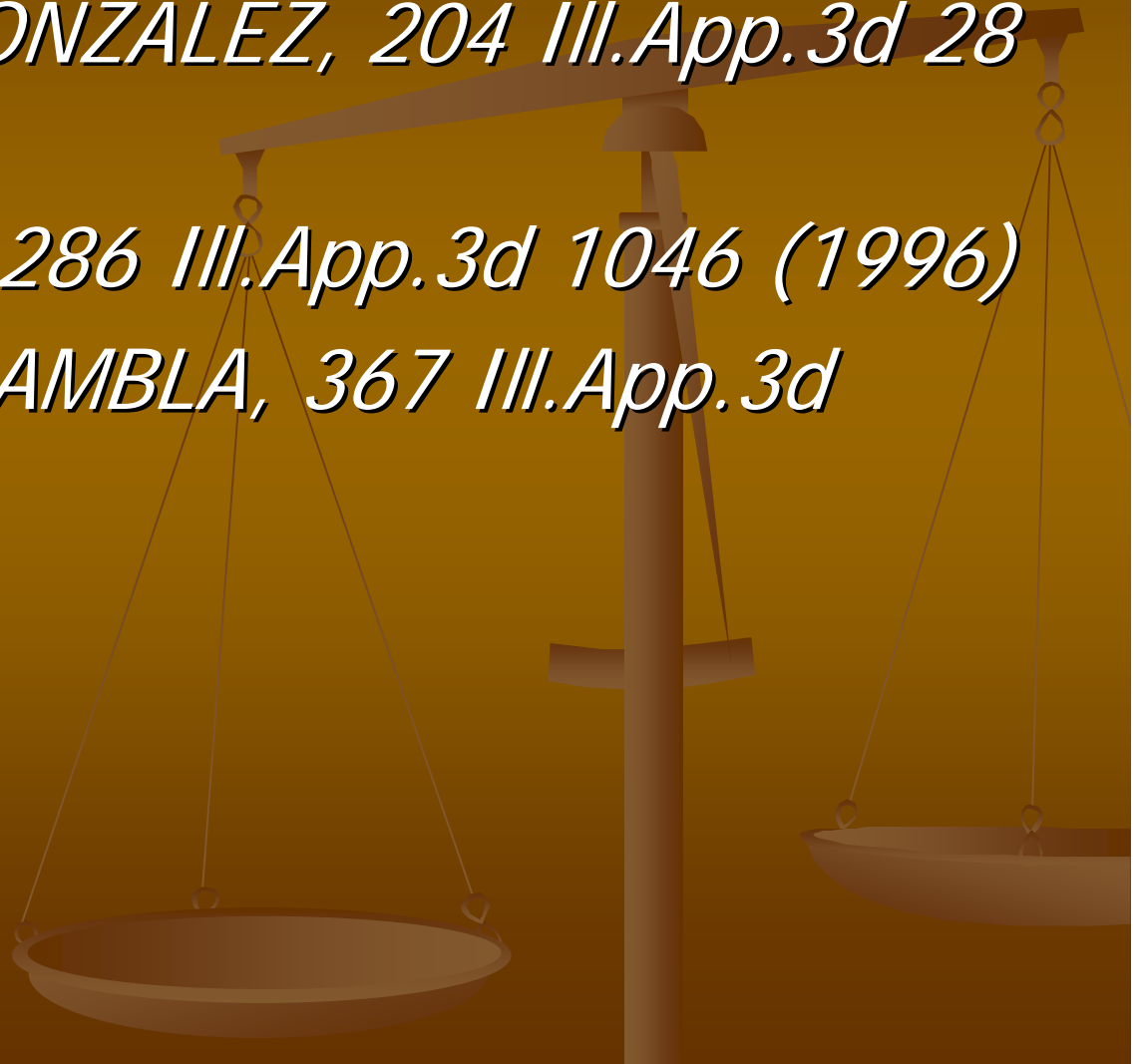
Learn to ask

SO WHAT?!



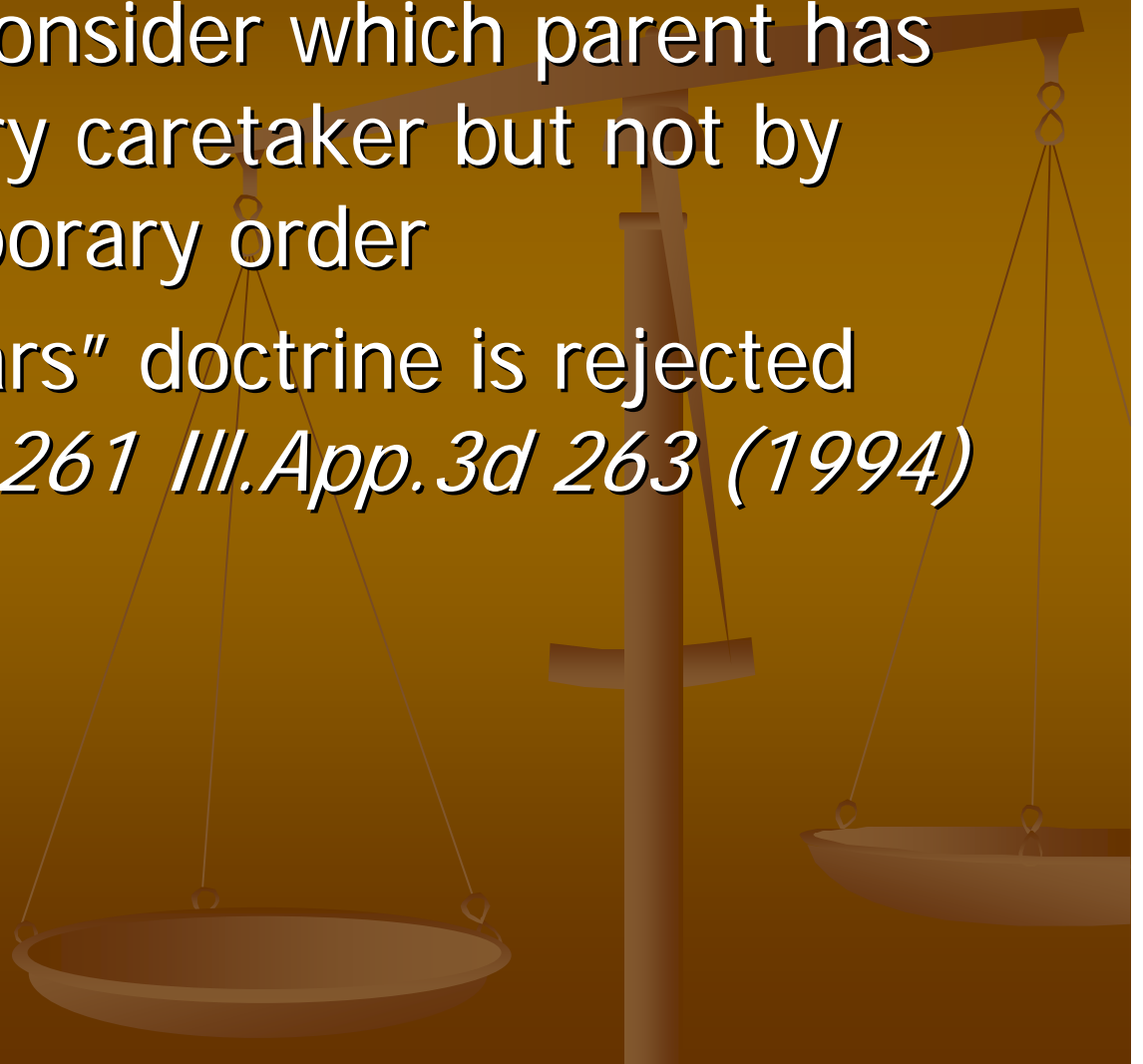
# Cases to help analyze “so what”

- Drugs – *IRM GONZALEZ*, 204 Ill.App.3d 28 (1990)
- Sex – *IRM R.S. 286* Ill.App.3d 1046 (1996)
- Race – *IN RE GAMBLA*, 367 Ill.App.3d 441(2006)



# Temporary order and tender age myth

- It is proper to consider which parent has been the primary caretaker but not by virtue of a temporary order
- The “tender years” doctrine is rejected  
*IRM ARCAUTE, 261 Ill.App.3d 263 (1994)*





## 602.1 Joint Custody

- Cooperation
- Residential circumstances
- Ability to follow the joint parenting agreement
- Placebo?
- Mediation no longer distinguishes

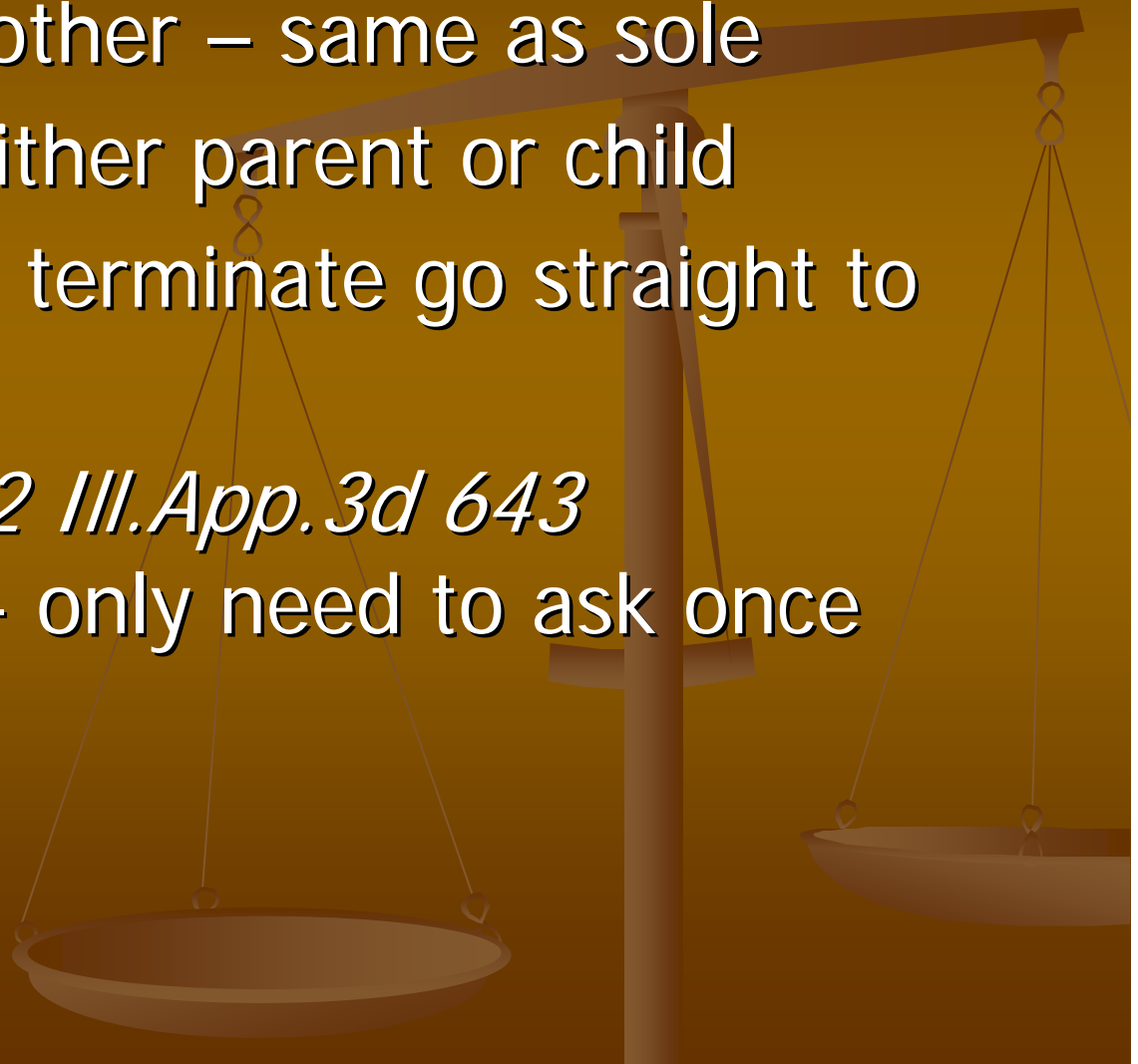
# 610 Modification (sole)



- Time requirement
- Less than 2 years need affidavit of endangerment
- Unless sex offender
- By clear and convincing evid
- Facts not known or arisen
- Change in child or custodian
- Necessary to serve the B.I.

# Modification joint

- From one to another – same as sole
- But change in either parent or child
- If both agree to terminate go straight to best interest
- *IRM SPENT, 342 Ill.App.3d 643 (Fourth,2003)* - only need to ask once

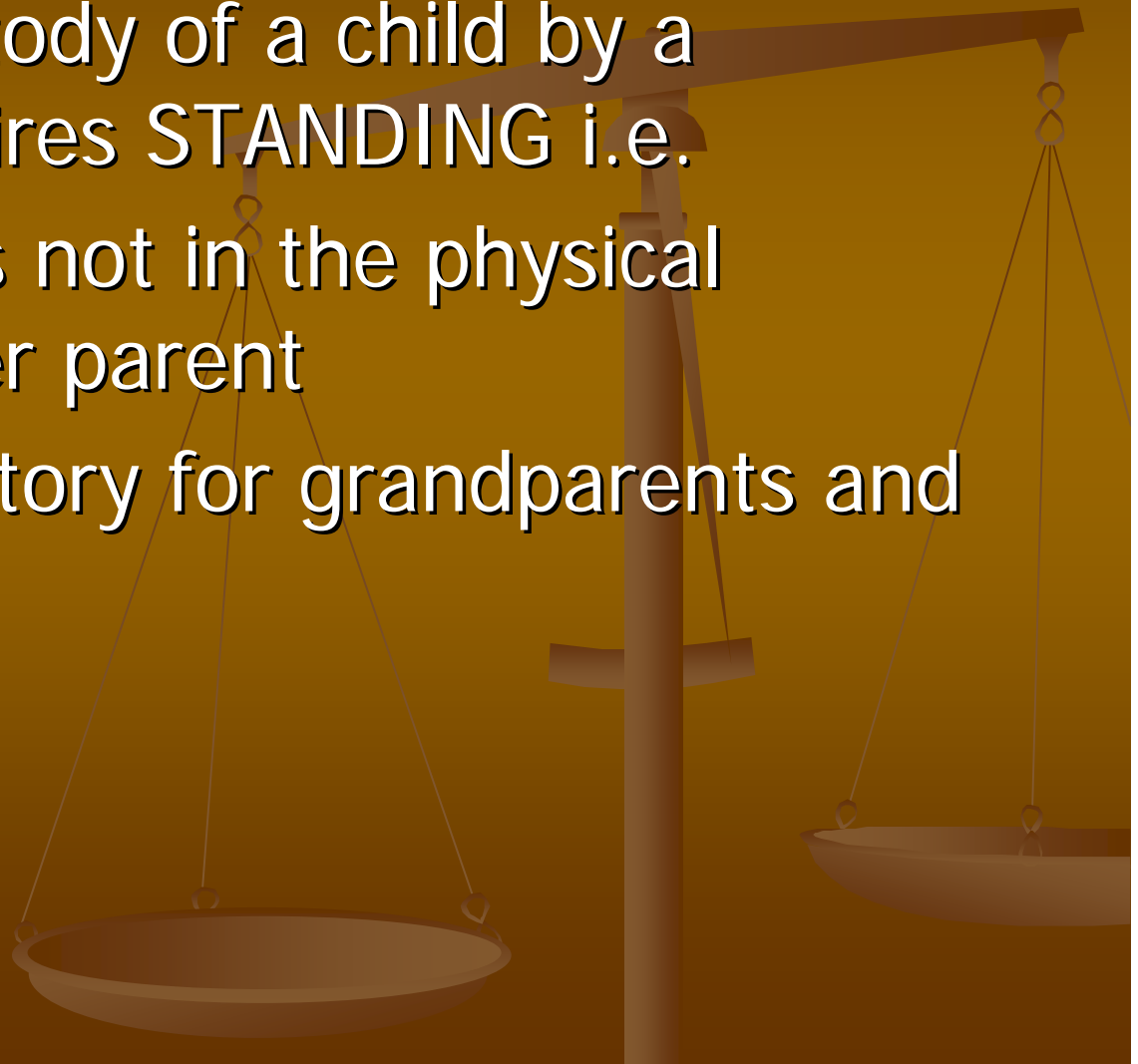


# 601(b)(2) nonparent custody

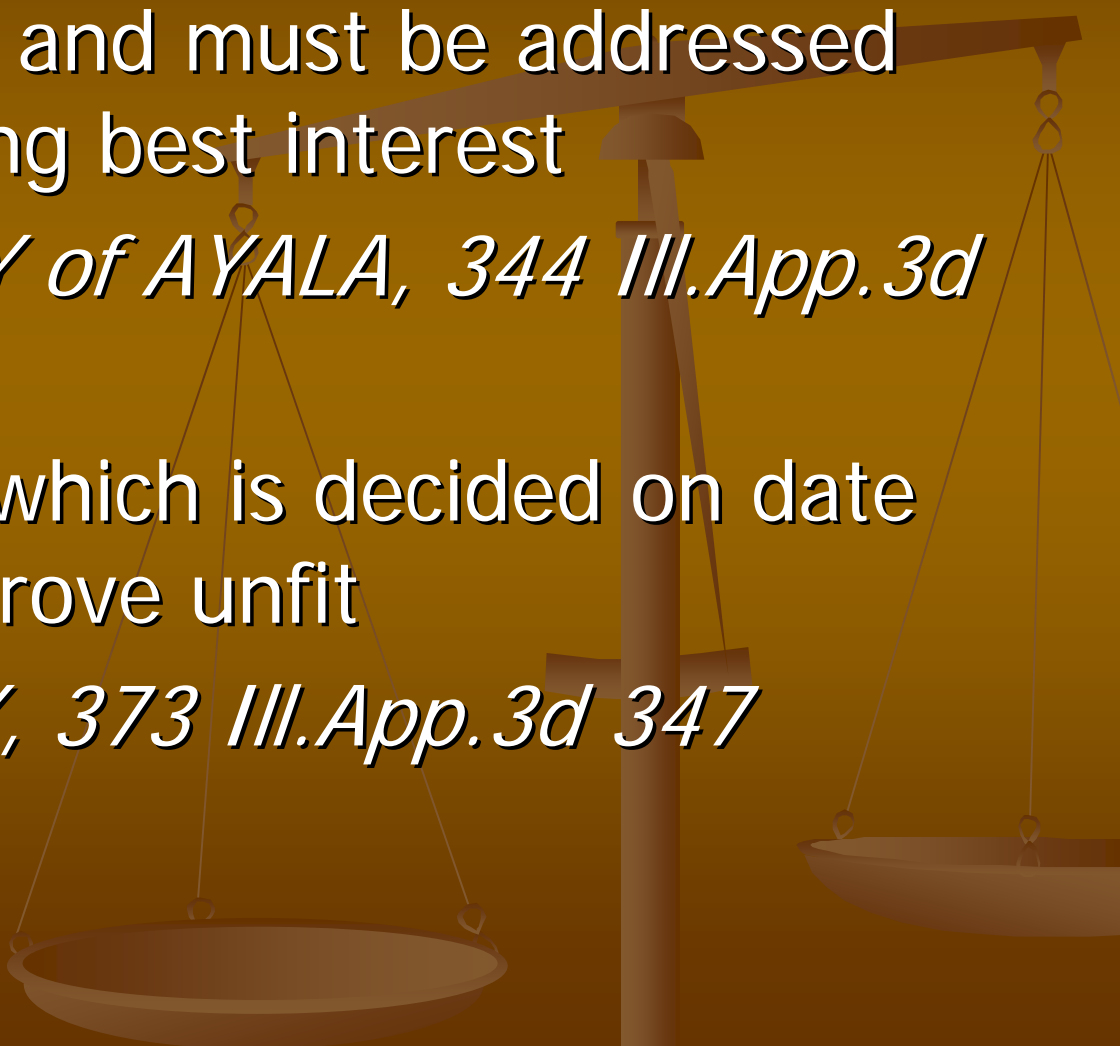
A petition for custody of a child by a nonparent requires **STANDING** i.e.

Only if the child is not in the physical custody of either parent

601(b)(4) is statutory for grandparents and step parents

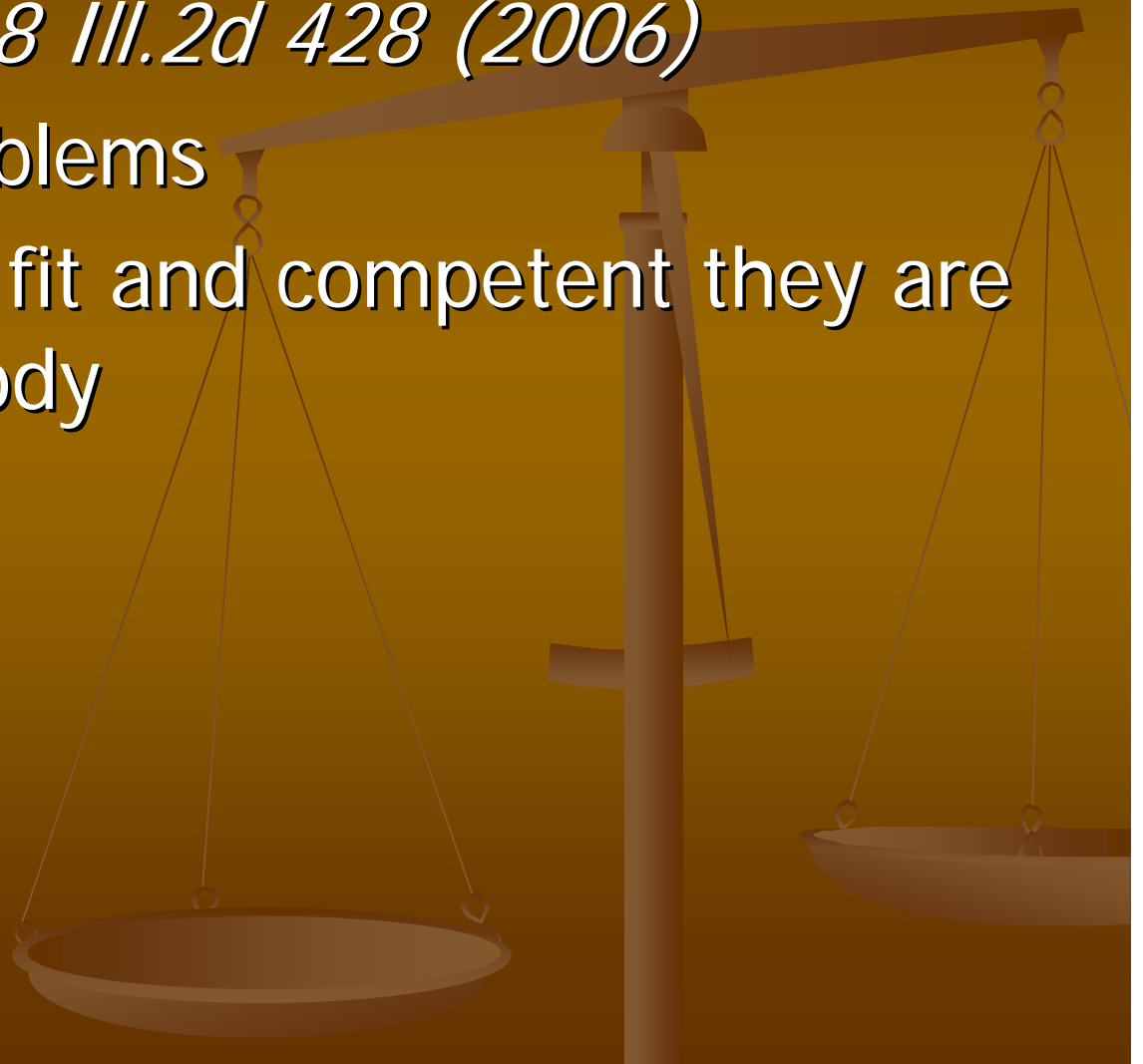


# Standing is not jurisdictional

- It is a threshold and must be addressed before addressing best interest
  - *IN RE CUSTODY of AYALA, 344 Ill.App.3d 489 (2003)*
  - If no standing (which is decided on date of filing) must prove unfit
  - *CASEY V CASEY, 373 Ill.App.3d 347 (2007)*
- 

# Probate Guardianship different analysis

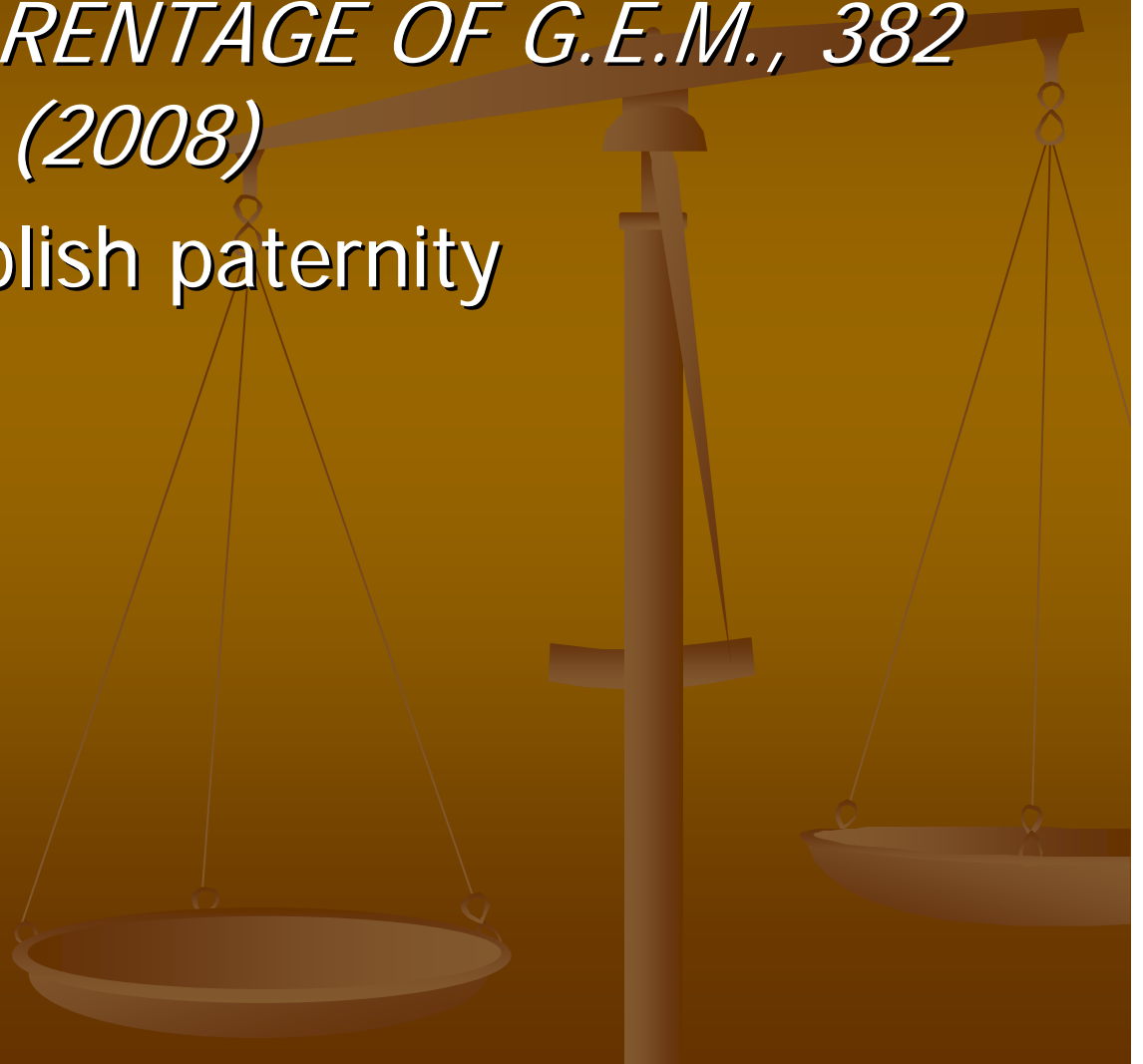
- *IN RE R.L.S. 218 Ill.2d 428 (2006)*
- No *TROXEL* problems
- If parent living, fit and competent they are entitled to custody



# Parentage

## two ways to be daddy

- VAP – *IN RE PARENTAGE OF G.E.M., 382 Ill.App.3d 1102 (2008)*
- Petition to establish paternity



# 607 visitation

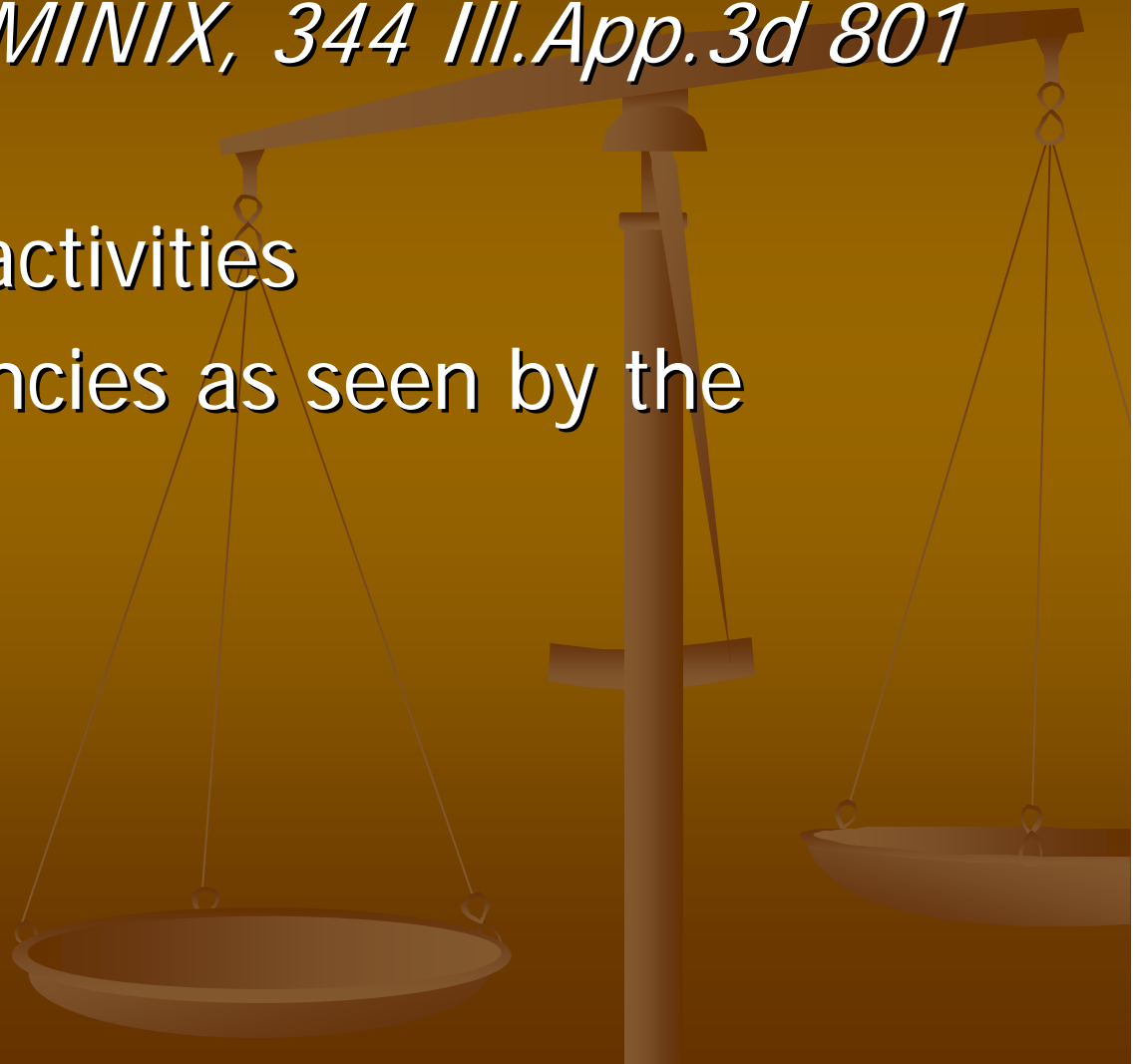
## 3 rules

1. Liberal is the rule; restriction exception
2. Restriction is endangerment proven by preponderance by custodian
3. Accommodation is proven by best interest by custodian

*IRM FIELDS, 283 Ill.App.3d 894 (1996)*

# “It’s my time, bug off!”

- Religion – *IRM MINIX, 344 Ill.App.3d 801 (2003)*
- Extracurricular activities
- Parental deficiencies as seen by the custodian



# Third party visitation

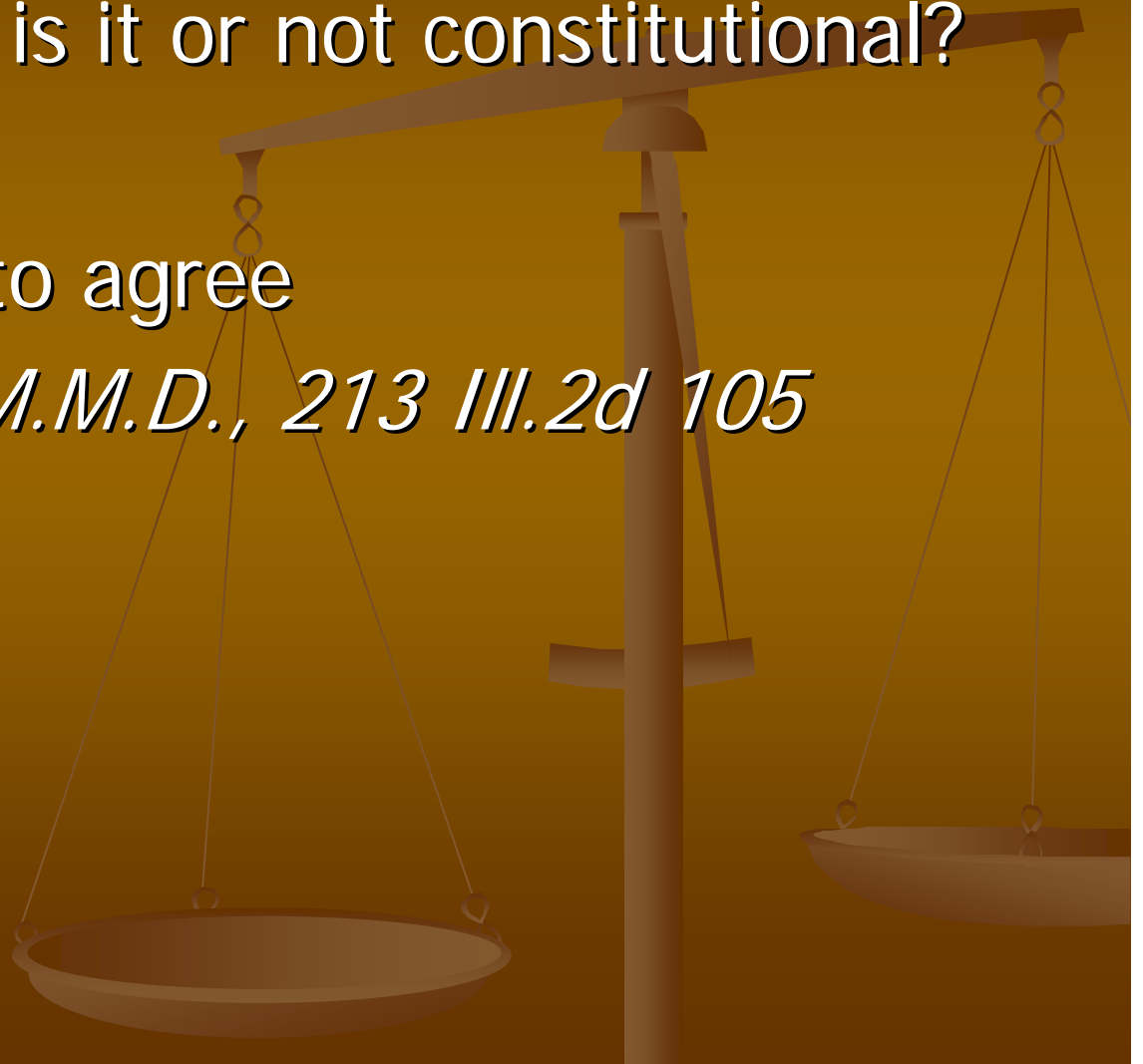
- Grandparents – is it or not constitutional?

607(b)(1)

but ok to agree

*IN RE M.M.D., 213 Ill.2d 105  
(2004)*

Common law?



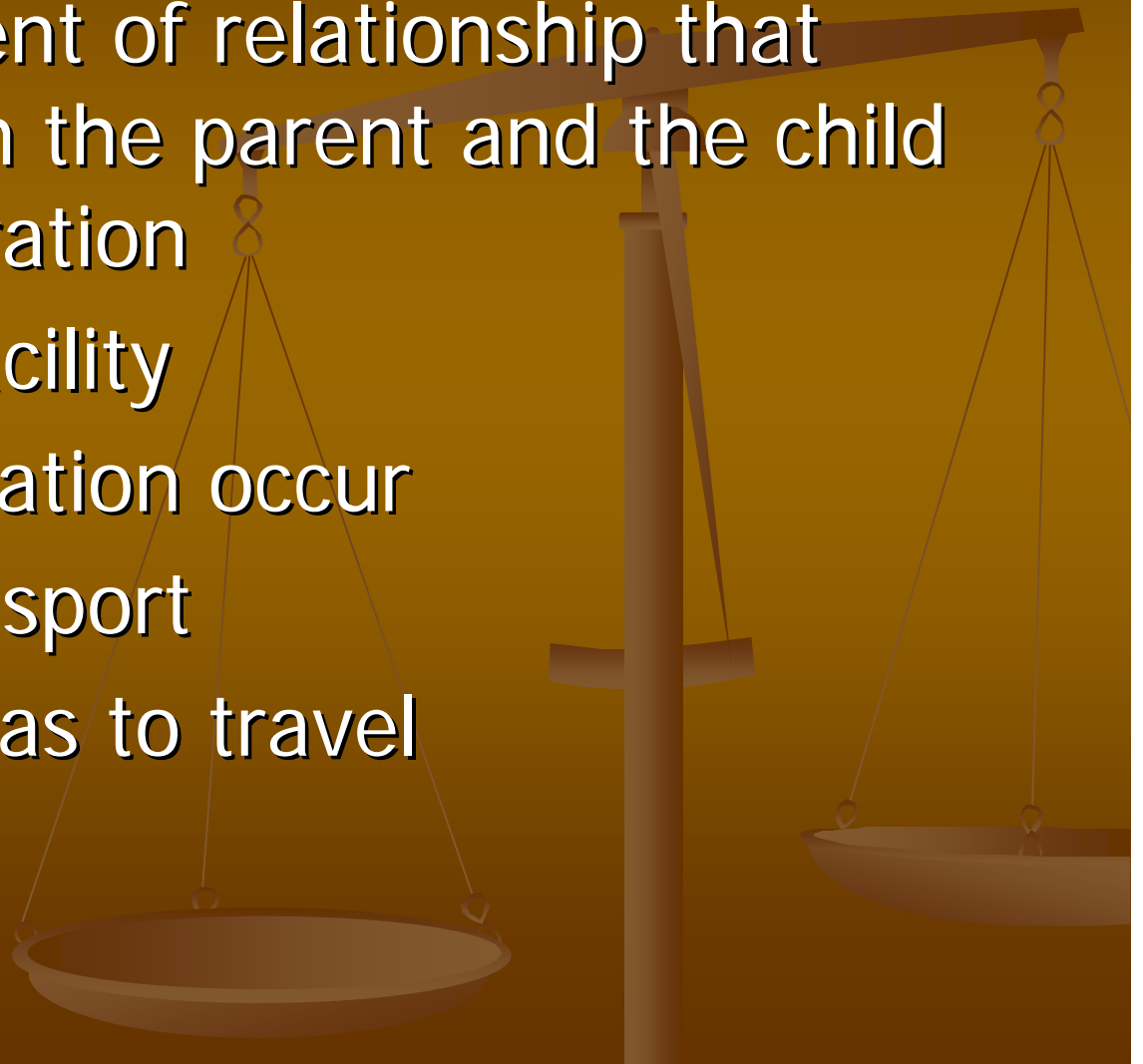


# You tell me how to “really” explain the consistency

- *KOELLE v ZWIREN*, 284 Ill.App.3d 778 (First, 1996)
- *IN RE VISITATION C.B.B.*, 309 Ill.App.3d 888 (First 1999)
- *IRM SULLIVAN*, 342 Ill.App.3d 560 (Second, 2003)
- *IN RE ADOPTION A.W.*, 343 Ill.App.3d 396 (Second, 2003)
- *Once a daddy – IRM SLAYTON*, 277 Ill.App.3d 574 (Third, 1996) and progeny

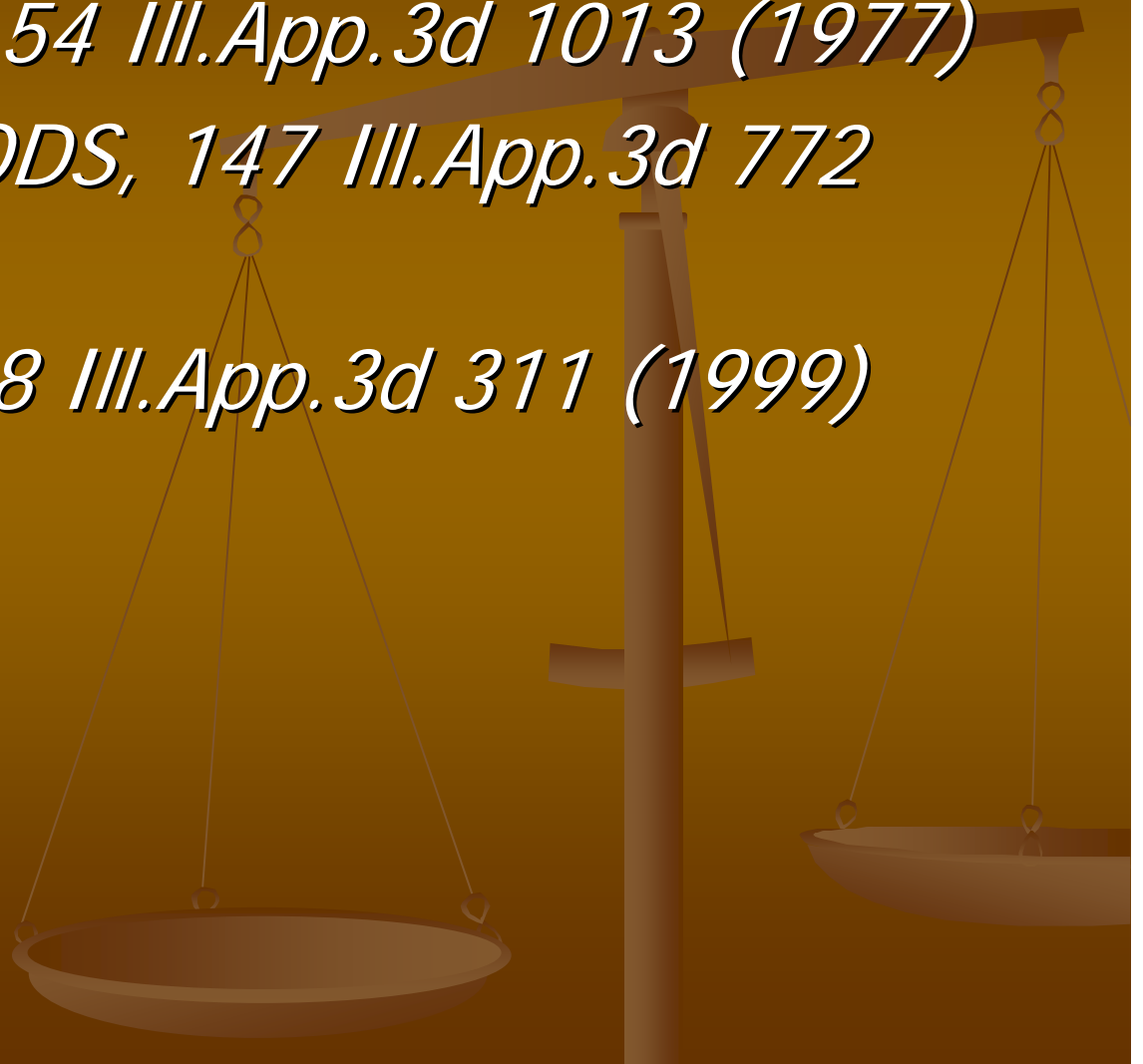
# Imprisonment

- Nature and extent of relationship that existed between the parent and the child prior to incarceration
- Nature of the facility
- How would visitation occur
- Who would transport
- Distance child has to travel



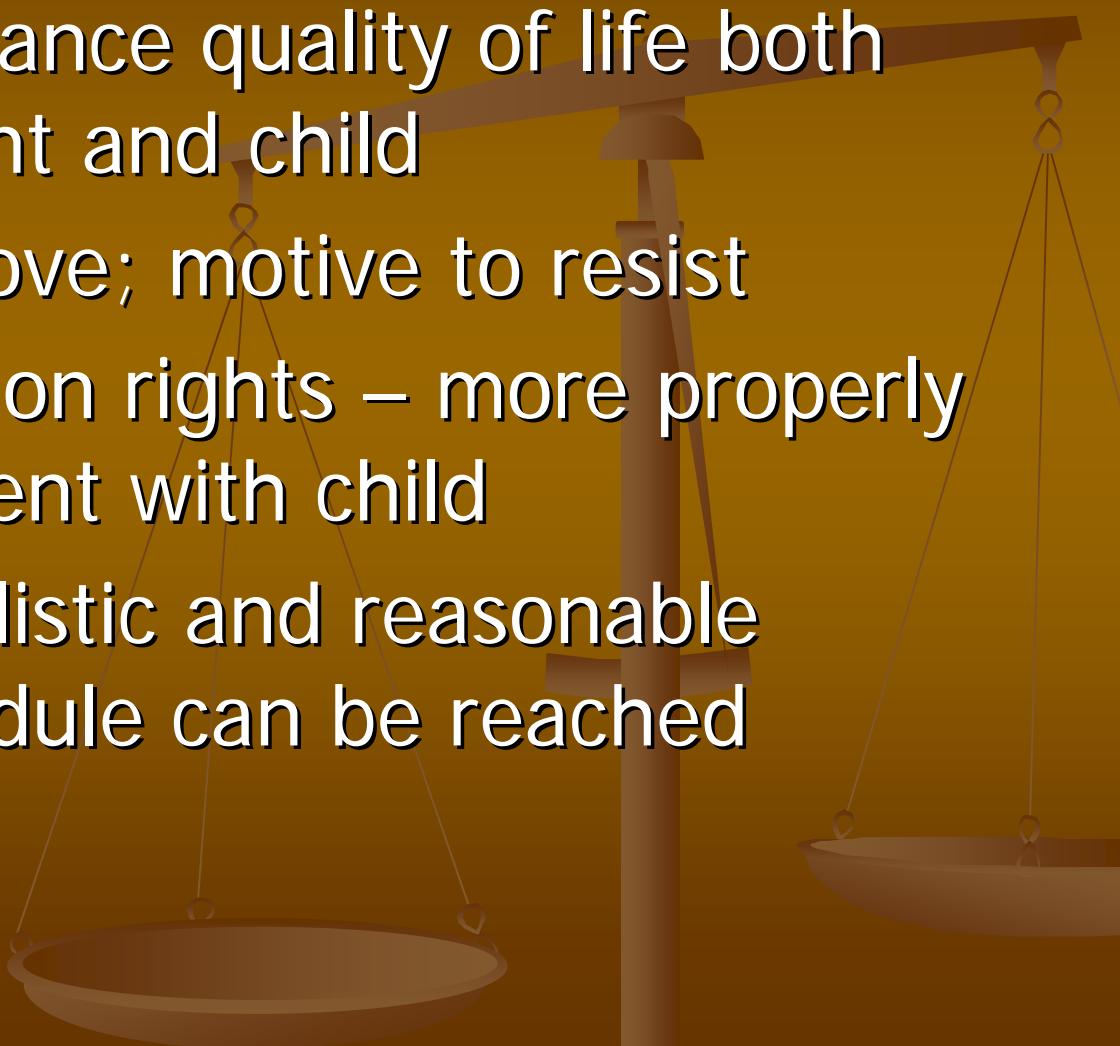
# Imprisonment cases

- *FRAIL v FRAIL*, 54 Ill.App.3d 1013 (1977)
- *WOODS V WOODS*, 147 Ill.App.3d 772 (1986)
- *IN RE SIMS*, 308 Ill.App.3d 311 (1999)



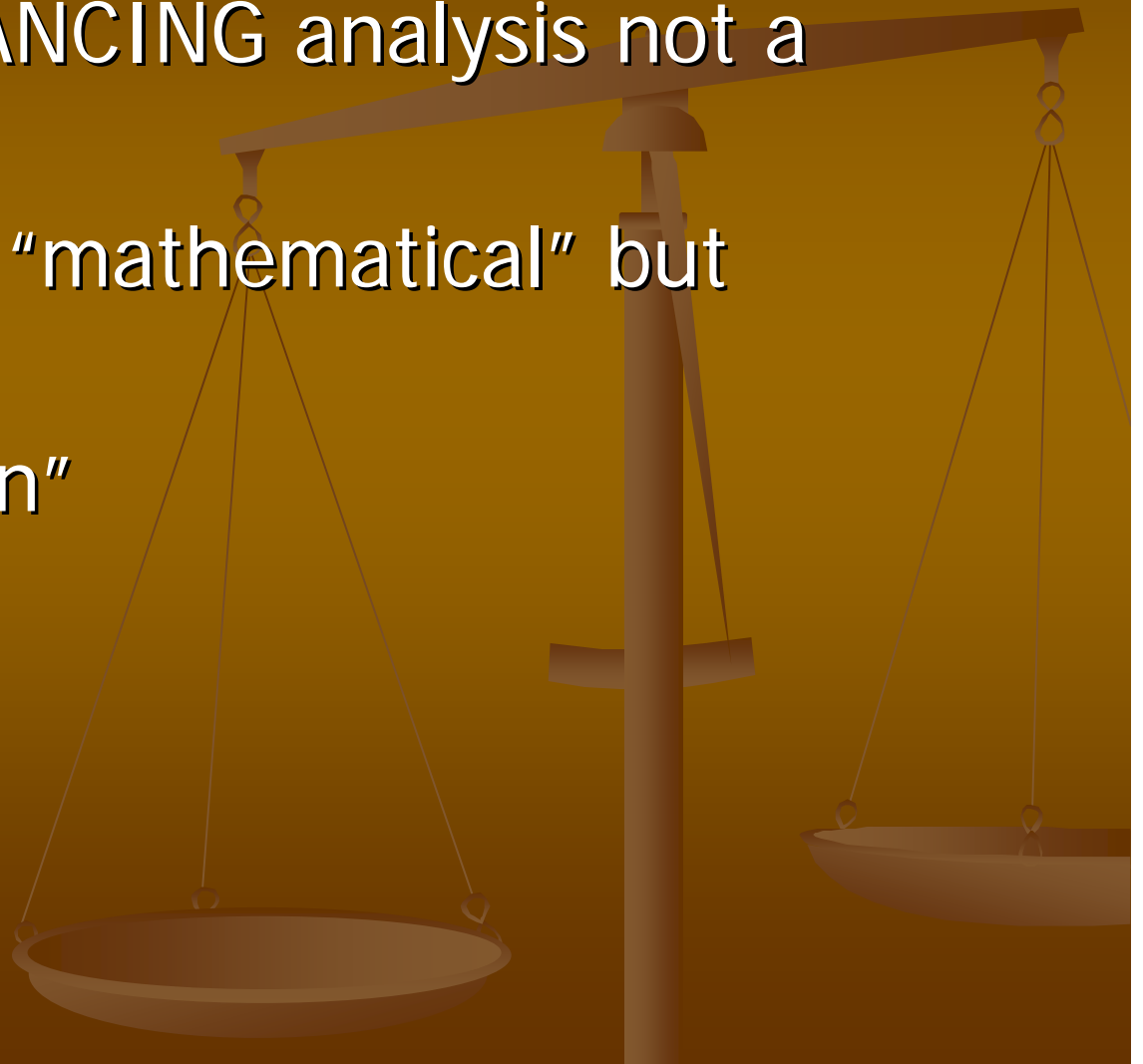
# Removal

## Eckert factors *119 Ill.2d 316 (1988)*

1. Likelihood enhance quality of life both custodial parent and child
  2. Motive to remove; motive to resist
  3. Current visitation rights – more properly actual time spent with child
  4. Whether a realistic and reasonable visitation schedule can be reached
- 

*IRM COLLINBOURNE*  
*204 ILL.2d 498 (2003)*

- Eckert is a BALANCING analysis not a checklist
- Visitation is not “mathematical” but qualitative
- “Virtual visitation”



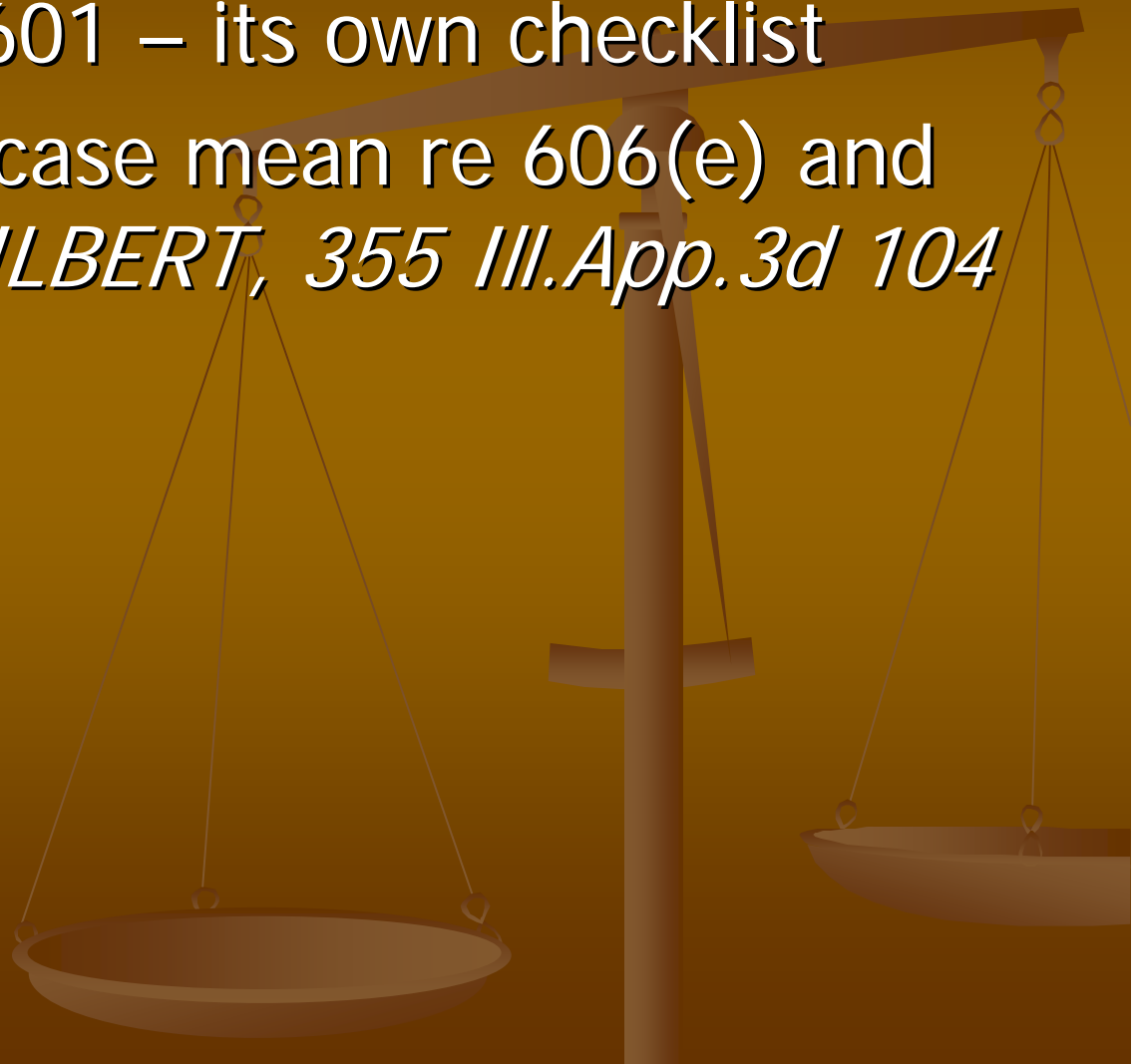
# Special evidentiary rules applies to all

It is really 705 ILCS 405/2-18(4)(c):

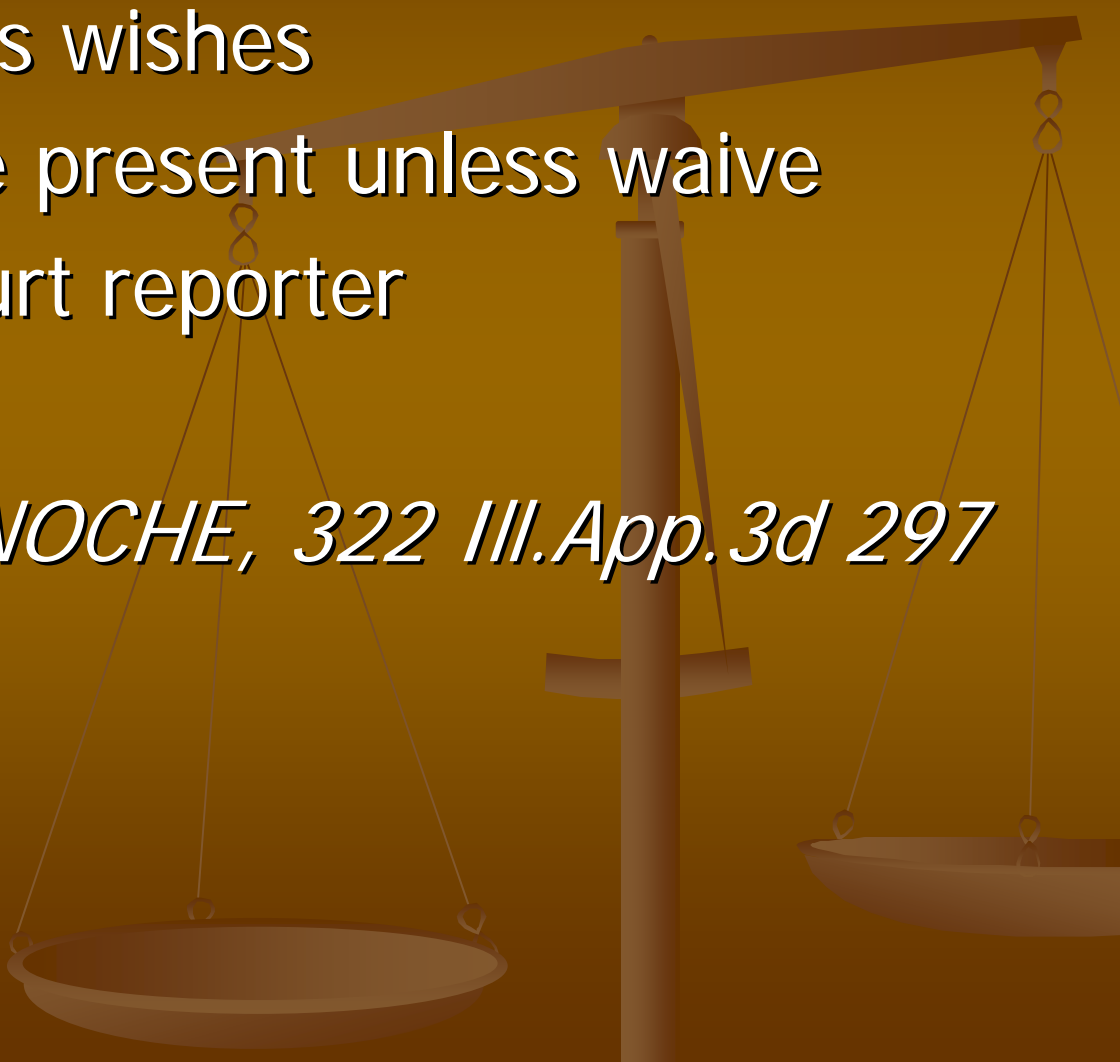
previous statement made by the child relating to any allegations that the child is abused or neglected SHALL be admissible in evidence concerning visitation and custody. No such statement without corroboration or cross examination in itself will support the finding of abuse and neglect

# Other evidentiary rules

- 735 ILCS 5/8-2601 – its own checklist
- What does this case mean re 606(e) and 8/2601? *IRM GILBERT, 355 Ill.App.3d 104 (First, 2004)*



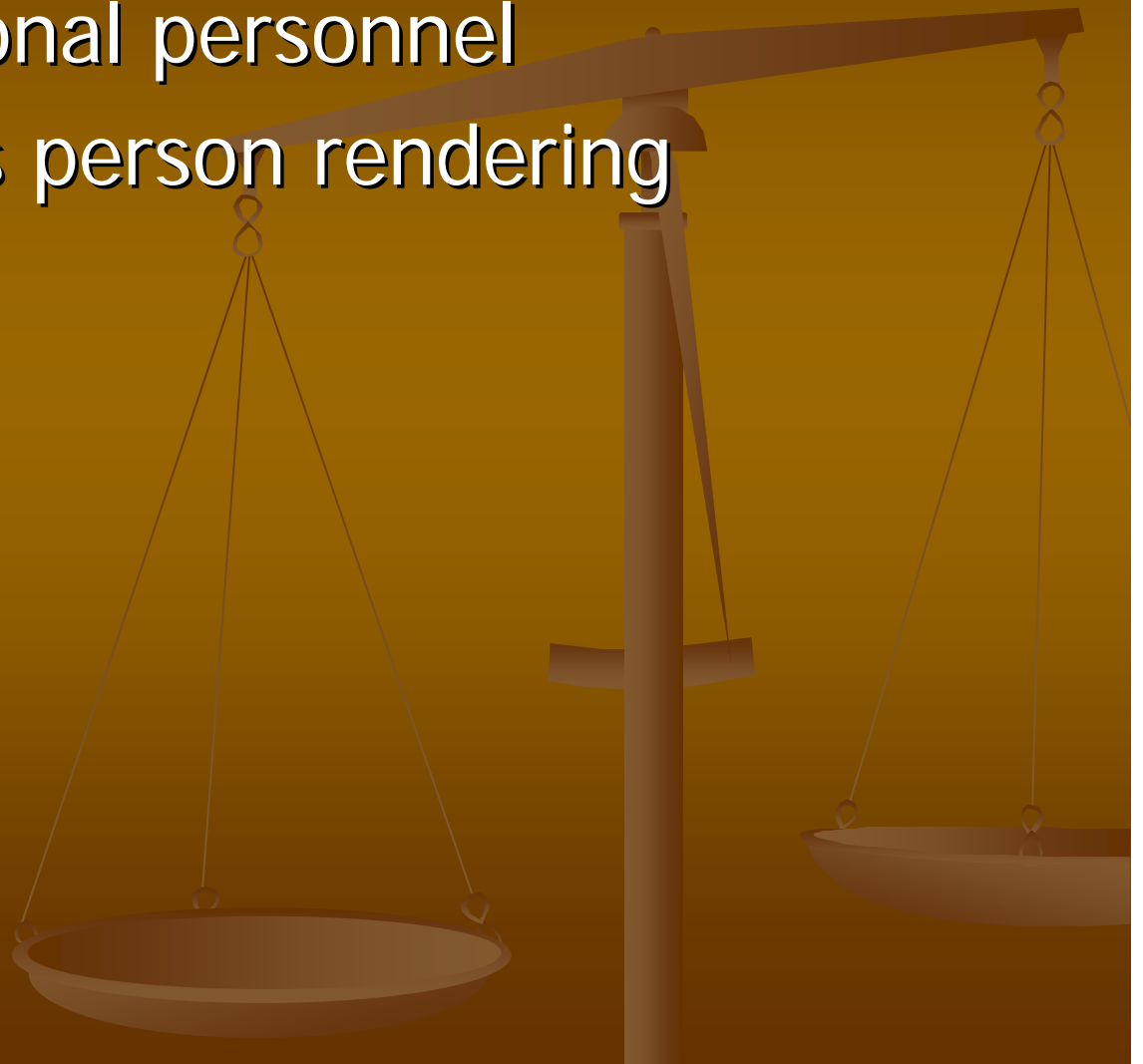
# 604 in camera

- Only as to child's wishes
  - Counsel shall be present unless waive
  - Must have a court reporter
  - Discretionary
  - Pro se – *IRM KNOCHE, 322 Ill.App.3d 297 (2001)*
  - discretionary
- 

# OUTSIDE ASSISTANCE

604(b);604.5

- Advice professional personnel
- Only as good as person rendering
- static

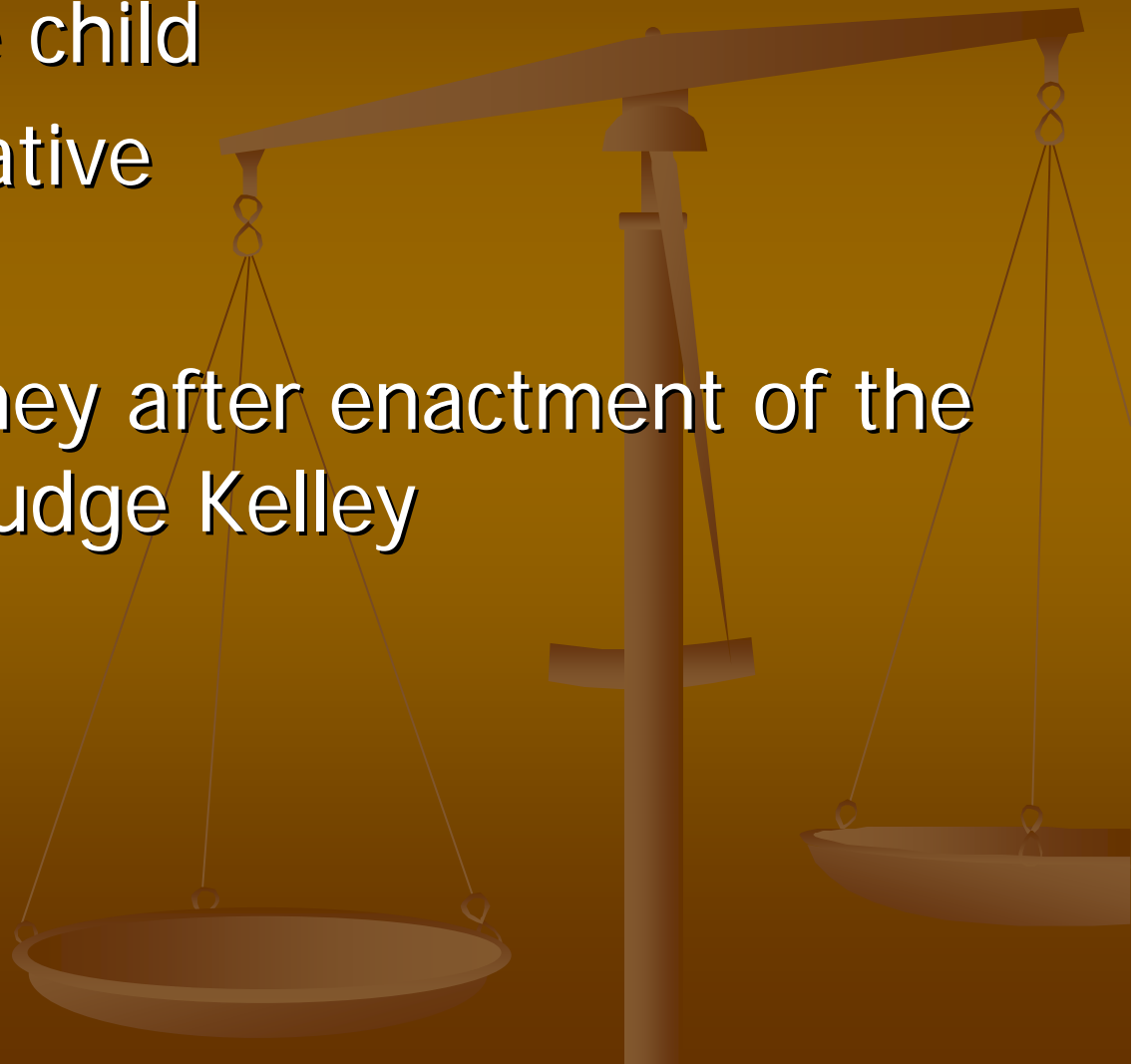


506

## Attorney representing child

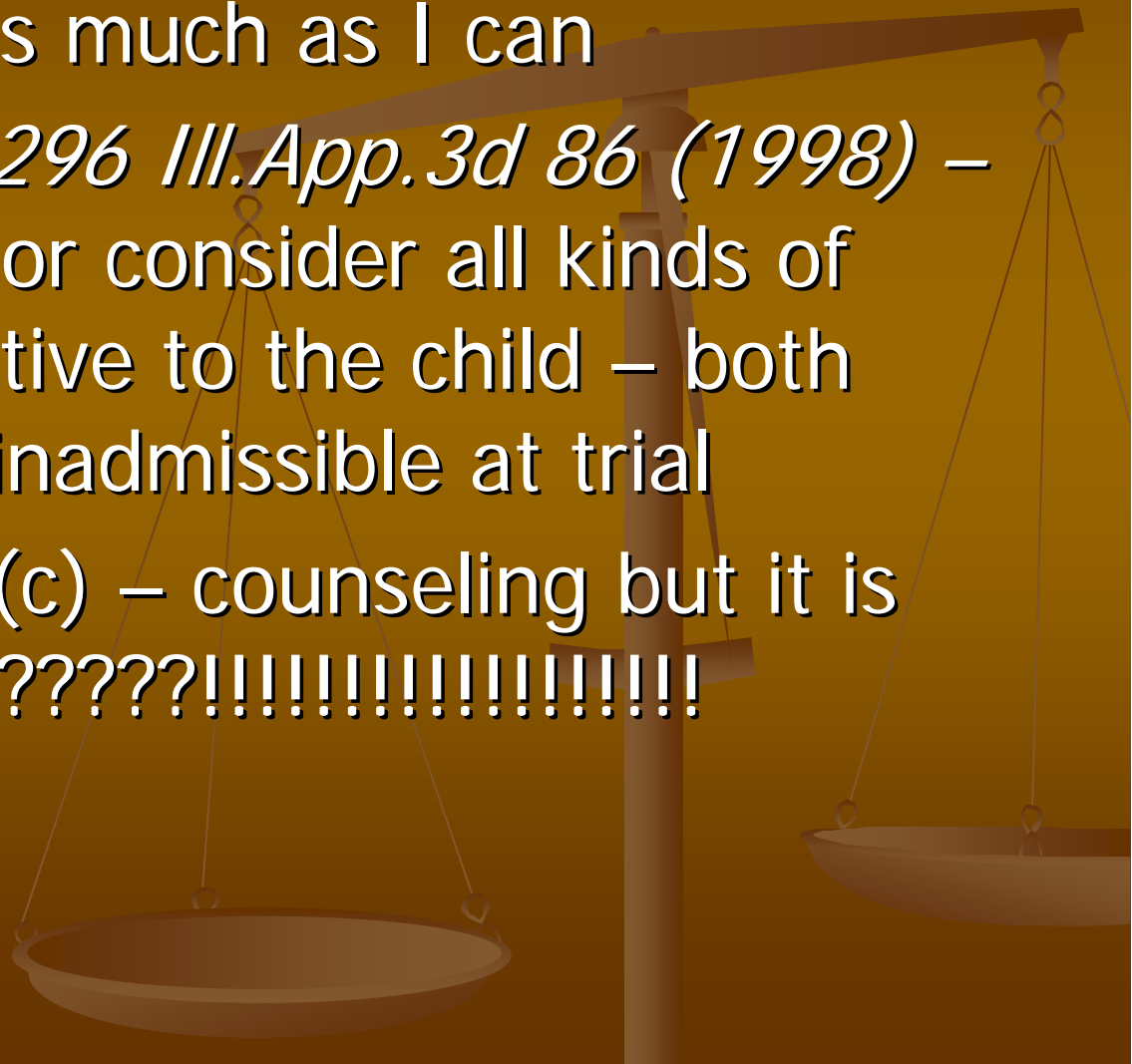
- Attorney for the child
- Child representative
- GAL

Different or are they after enactment of the rule? Defer to Judge Kelley



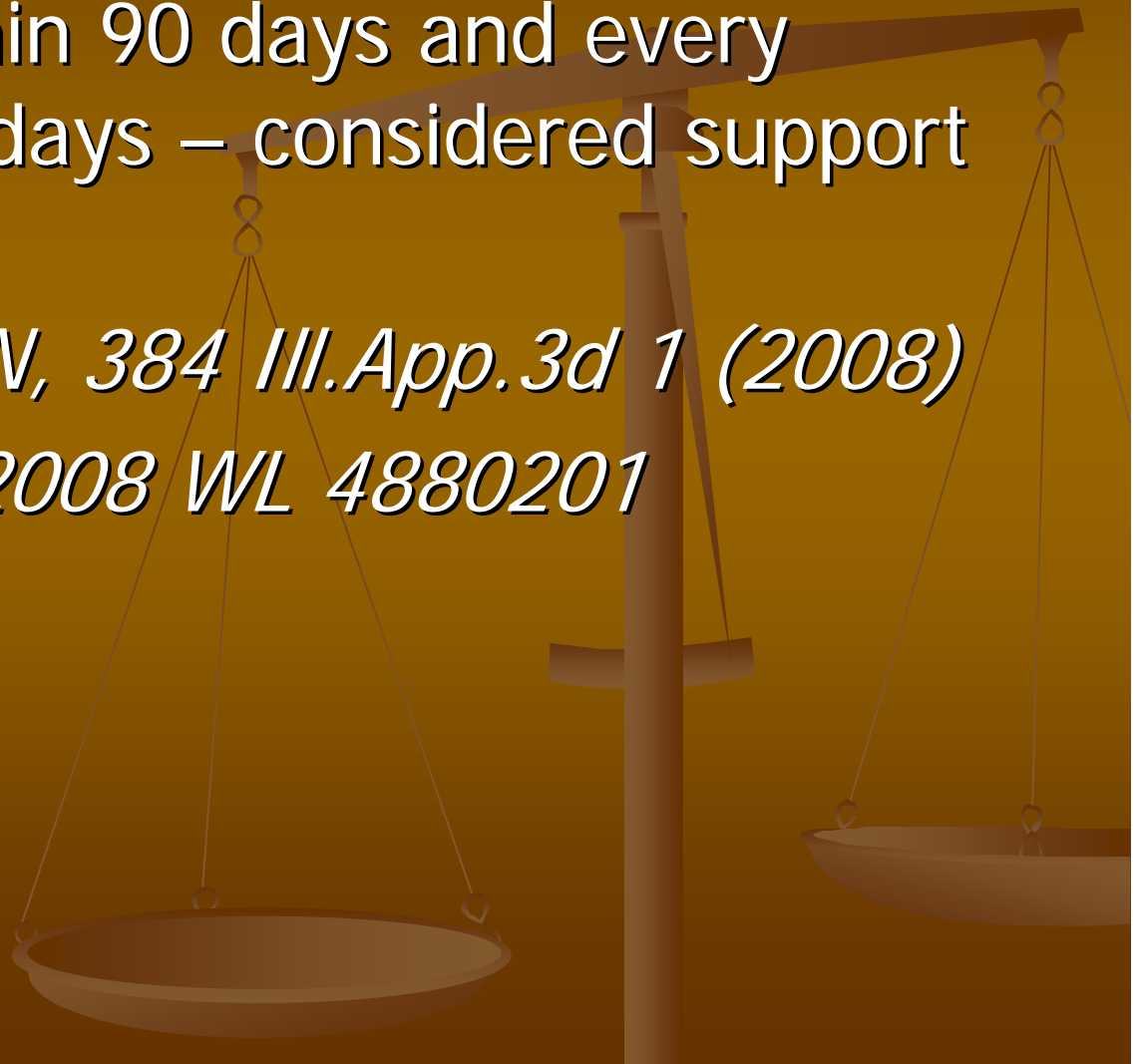
# My favorite: GAL

- Want to know as much as I can
- *IRM KARONIS, 296 Ill.App.3d 86 (1998)* – GAL will review or consider all kinds of information relative to the child – both admissible and inadmissible at trial
- 735 ILCS 5/608(c) – counseling but it is confidential????????????!!!!!!!!!!!!!!!!!!!!!!



# Don't forget to get paid

- 506 – a bill within 90 days and every subsequent 90 days – considered support so no BK
- *IRM THOMPSON, 384 Ill.App.3d 1 (2008)*
- *IRM COONEY, 2008 WL 4880201*



# Two other statutes

## UCCJEA and Fed Kidnapping

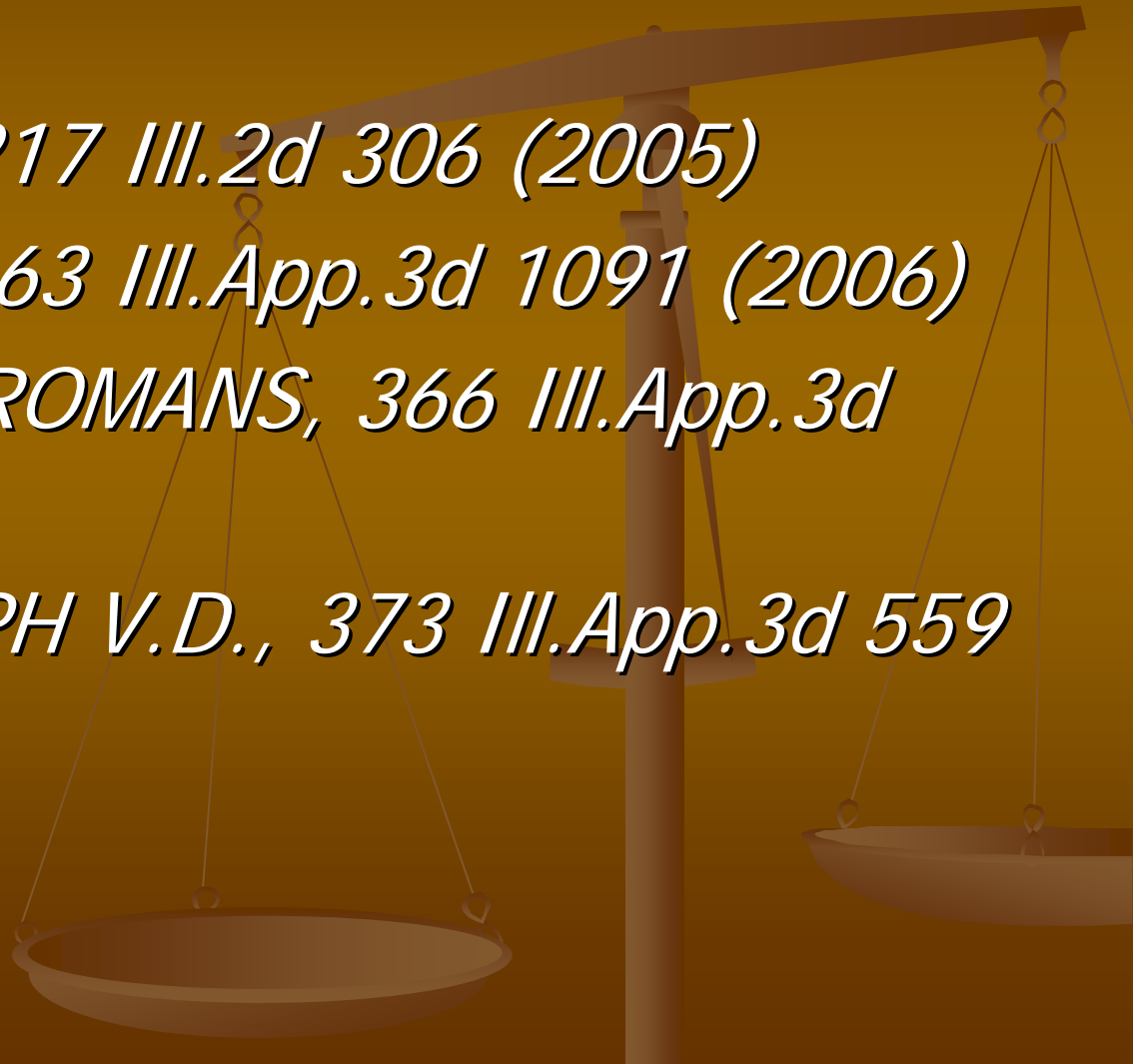
- UCCJEA

*IN RE D.S. 217 Ill.2d 306 (2005)*

*IRM DIAZ, 363 Ill.App.3d 1091 (2006)*

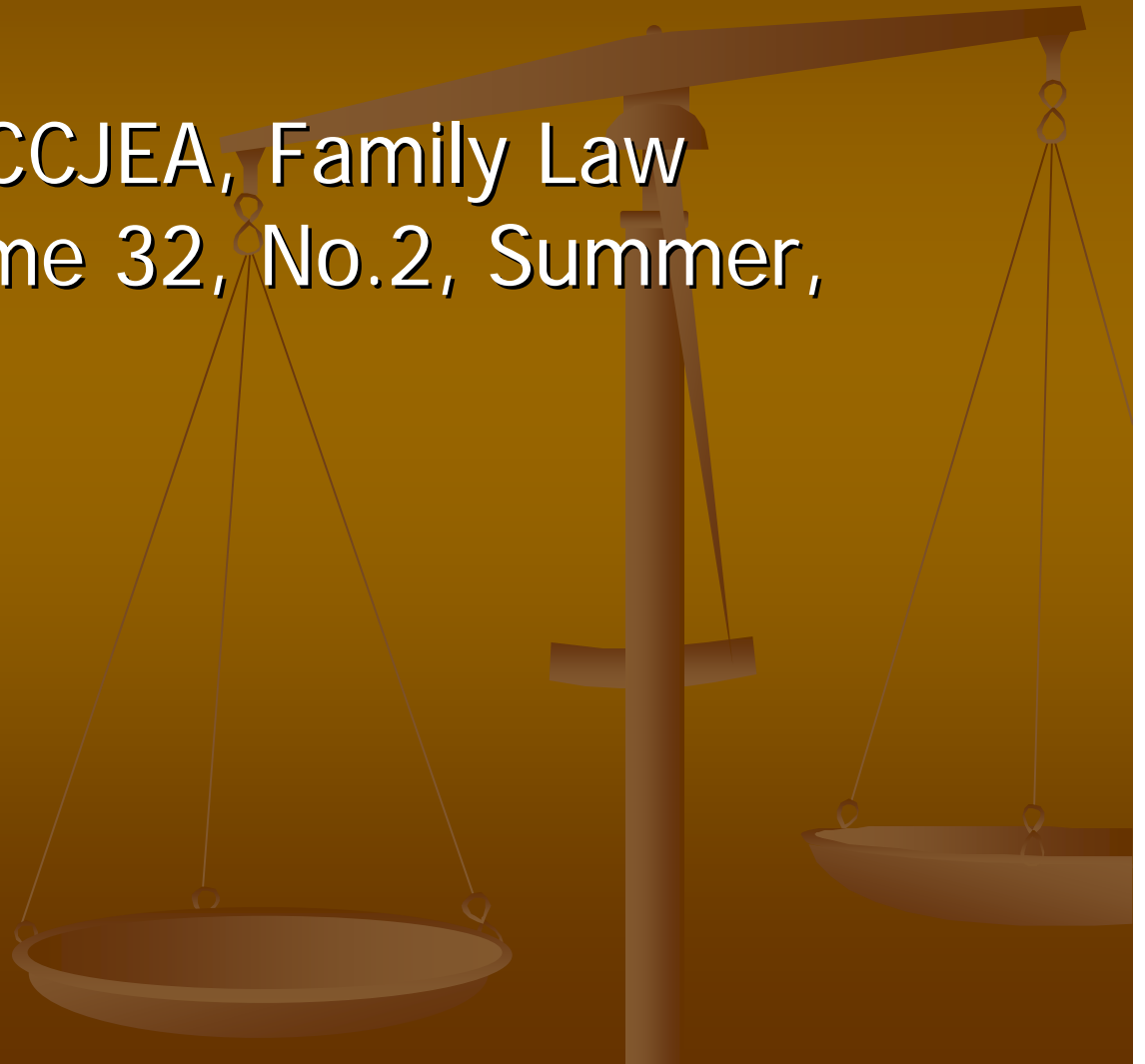
*HORGAN V ROMANS, 366 Ill.App.3d  
180 (2006)*

*IN RE JOSEPH V.D., 373 Ill.App.3d 559  
(2007)*



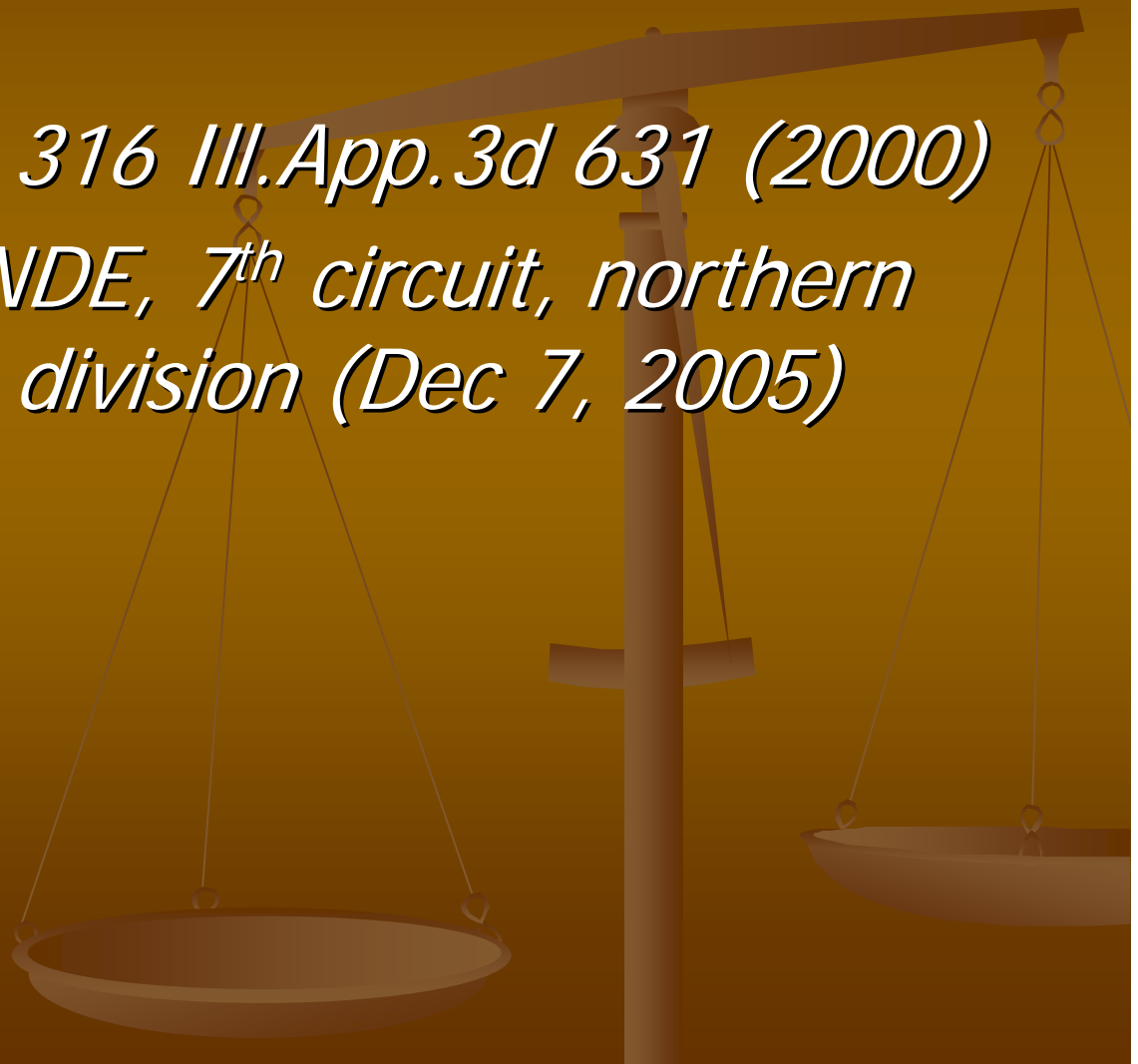
# Helpful aid for UCCJEA

- "ABC's of the UCCJEA, Family Law Quarterly, Volume 32, No.2, Summer, 1998



# Parental Kidnapping Prevention Act

- 28 USC 1738A
- *IRM WISEMAN, 316 Ill.App.3d 631 (2000)*
- *IRM VAN DeSANDE, 7<sup>th</sup> circuit, northern district, eastern division (Dec 7, 2005)*



# FINAL COMMENT

“Children have never been good at listening to their elders, but they have never failed to imitate them”

James Baldwin, *Nobody Knows My Name*

