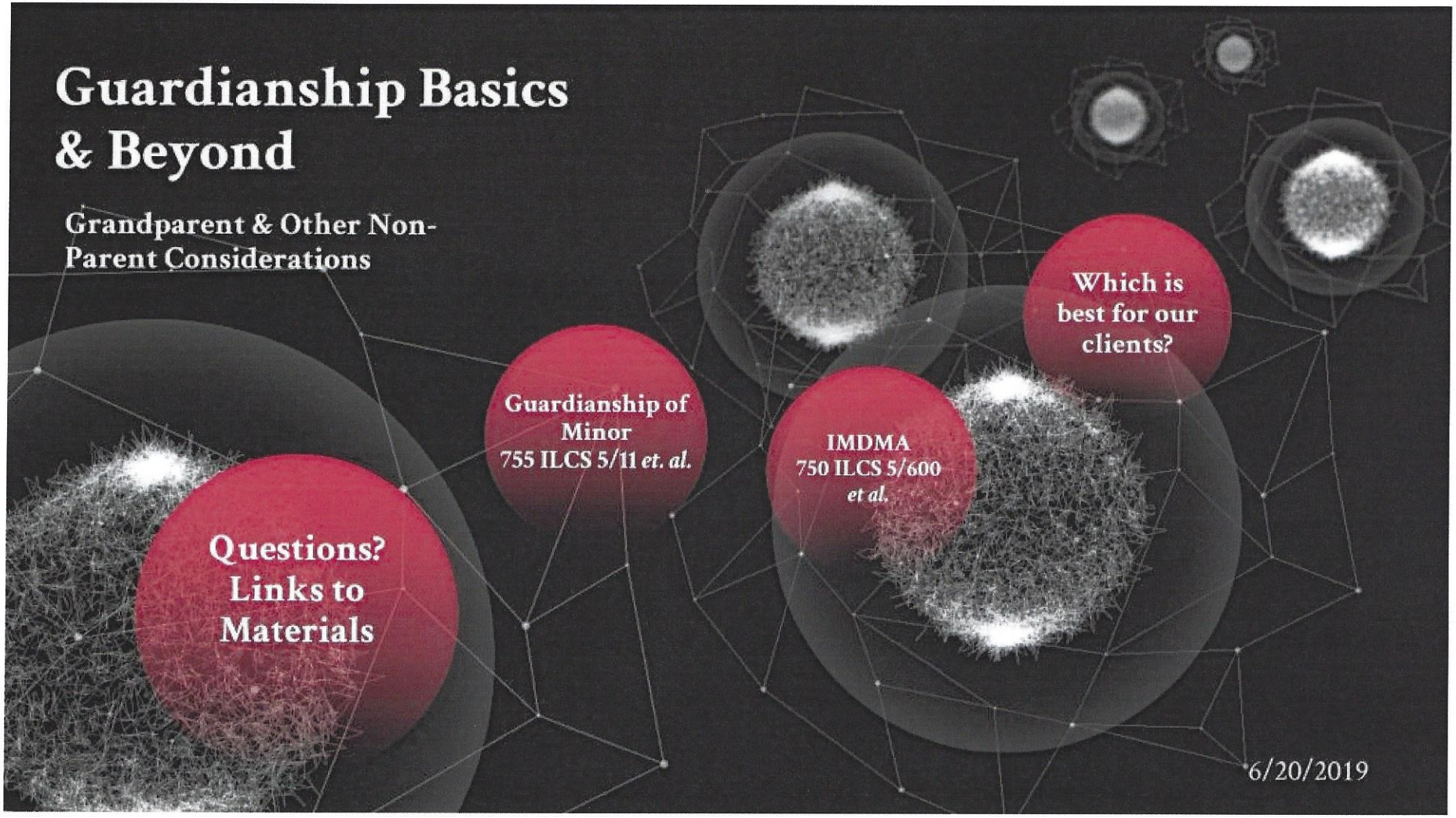
Guardianship Basics & Beyond
Grandparent & Other Non-Parent Considerations
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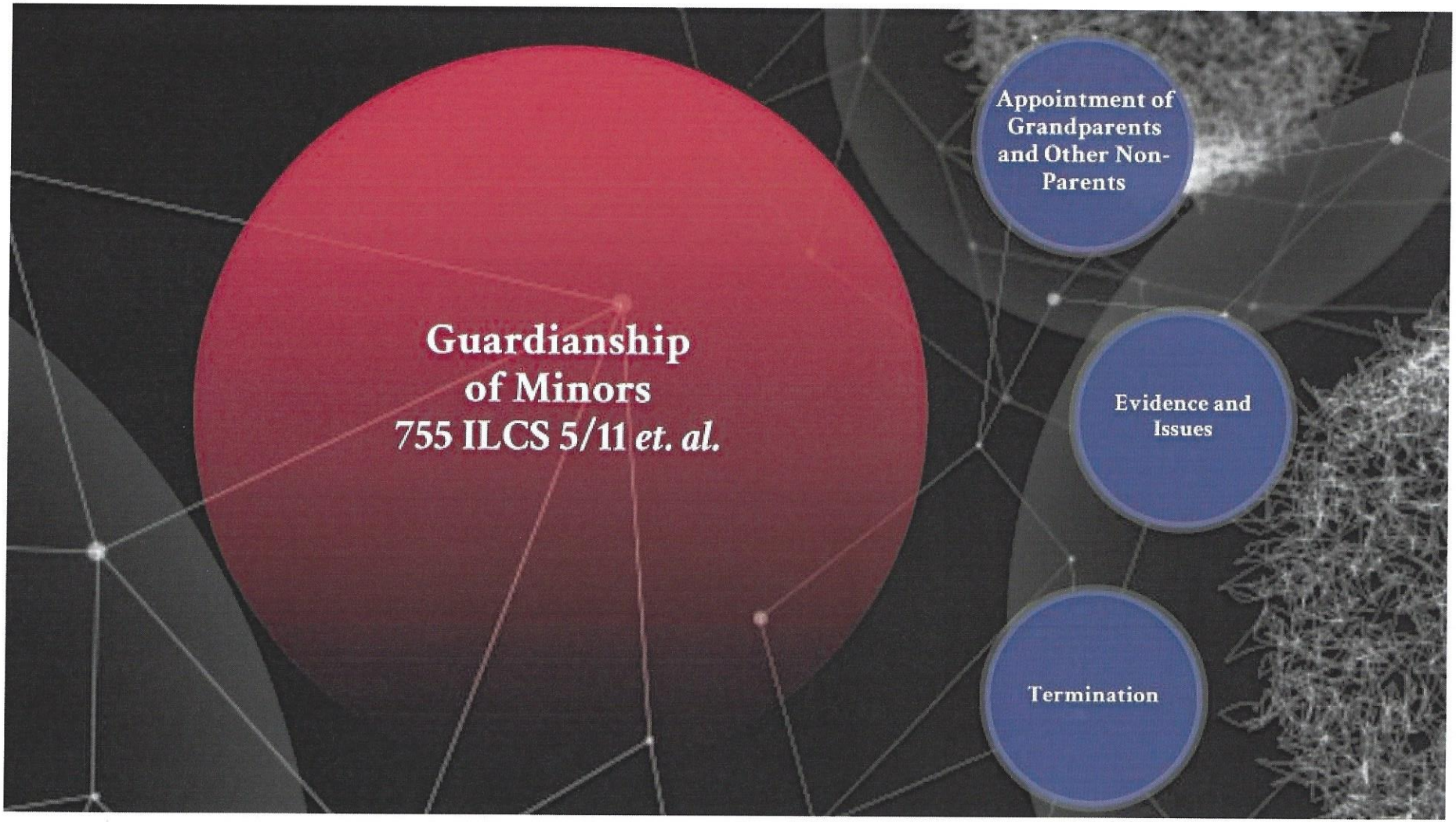
IMDMA 750 ILCS 5/600 et al.
Which is best for our clients?
Questions? Links to Materials
6/20/2019


Guardianship
of Minors
755 ILCS 5/11 et. al.
Appointment of Grandparents and Other Non-Parents
Evidence and Issues
Termination

# Appointment of Grandparent or Other Non-Parents

At least 18 years of age
Resident of United States
Not of unsound mind
Not an adjudged person with a disability
Not been convicted of a felony (unless Court makes a best interests finding

**755 ILCS 5/11-5(b)**

Most common scenario:

Parent(s) leave minor child in the care of family or friends and do not return. Family or friends have to enroll child in school, take child to doctor, etc.

**(b) The court lacks jurisdiction to proceed on a petition for the appointment of a guardian of a minor if it finds that**

**(i) the minor has a living parent, adoptive parent or adjudicated parent, whose parental rights have not been terminated, whose whereabouts are known, and who is willing and able to make and carry out day-to-day child care decisions concerning the minor, unless:**

**(1) the parent or parents voluntarily relinquished physical custody of the minor;**
**(2) after receiving notice of the hearing under Section 11-10.1, the parent or parents fail to object to the appointment at the hearing on the petition; or**
**(3) the parent or parents consent to the appointment as evidenced by a written document that has been notarized and dated, or by a personal appearance and consent in open court; or**

**(ii) there is a guardian for the minor appointed by a court of competent jurisdiction. There shall be a rebuttable presumption that a parent of a minor is willing and able to make and carry out day-to-day child care decisions concerning the minor, but the presumption may be rebutted by a preponderance of the evidence. If a short-term guardian has been appointed for the minor prior to the filing of the petition and the petitioner for guardianship is not the short-term guardian, there shall be a rebuttable presumption that it is in the best interest of the minor to remain in the care of the short-term guardian. The petitioner shall have the burden of proving by a preponderance of the evidence that it is not in the child's best interest to remain with the short-term guardian.**

## Rebuttable Presumption

755 ILCS 5/11(b) contains a presumption that parents are willing and able to care for their children

Presumption needs only be rebutted by:

PREPONDERANCE OF THE EVIDENCE

## Common Scenarios

Parent incarcerated
Prior DCFS involvement
Current drug abuse issues
Domestic violence issues

**ONLY APPLIES IF PARENT(S) APPEAR TO CONTEST PETITION**

If no parent(s) appear, after being served with summons of the hearing, Petitioner need only present evidence to show adequate standing (i.e. care, custody of children) and best interests.

## Termination/ Revocation of Letters

755 ILCS 5/11-14.1

Parent can file a petition to terminate guardianship/revoke letters of office by showing, by a PREPONDERANCE OF THE EVIDENCE, that a material change of circumstance of the minor or the parent has occurred.

The guardian can overcome by CLEAR AND CONVINCING EVIDENCE that the termination/revocation would not be in the BEST INTERESTS of the minor.

Statute sets out best interest factors.

### Best Interest Factors

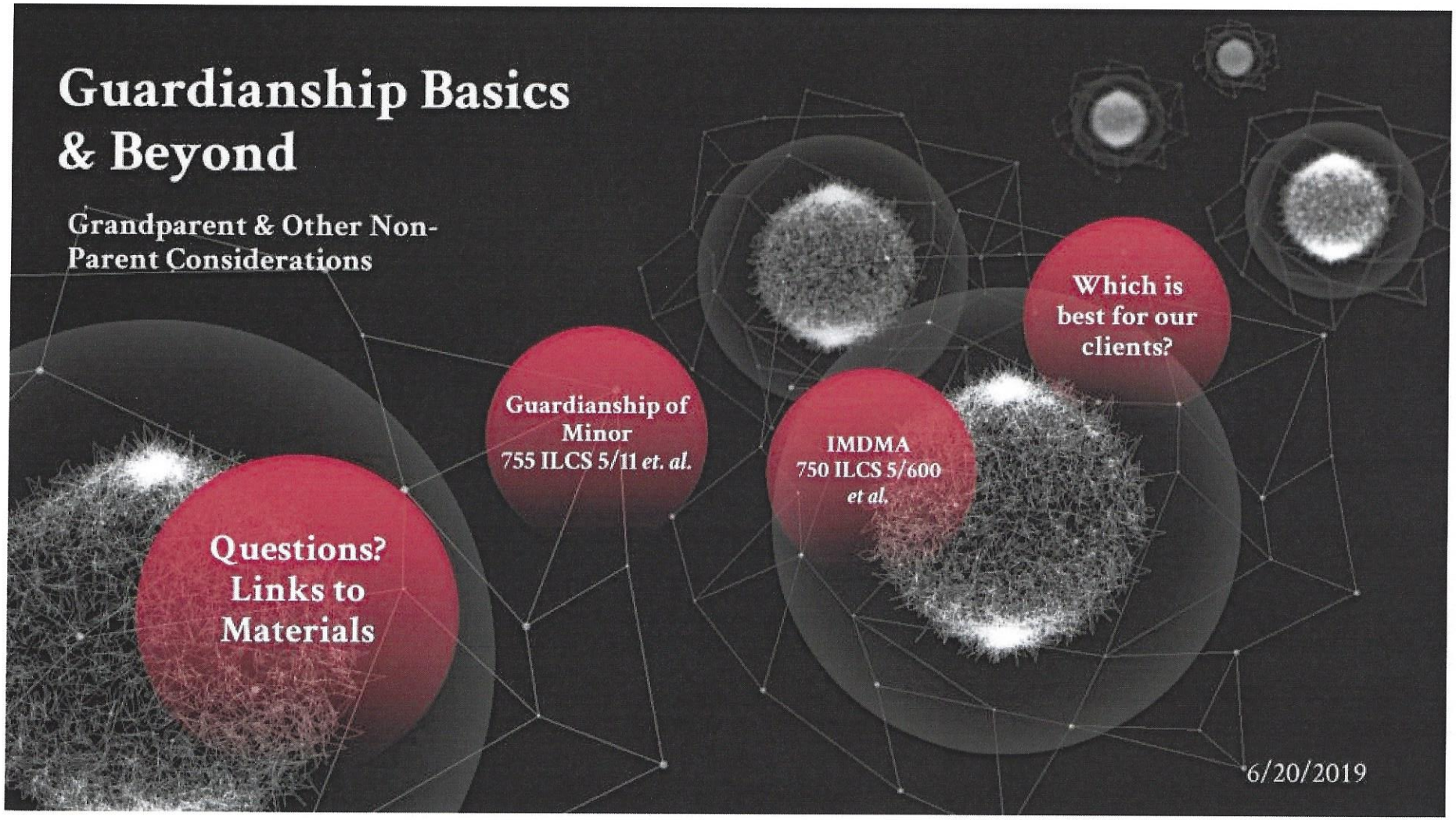
(1) The interaction and interrelationship of the minor with the parent and members of the parent's household.

(2) The ability of the parent to provide a safe, nurturing environment for the minor.

(3) The relative stability of the parties and the minor.

(4) The minor's adjustment to his or her home, school, and community, including the length of time that the minor has lived with the parent and the guardian.

(5) The nature and extent of visitation between the parent and the minor and the guardian's ability and willingness to facilitate visitation.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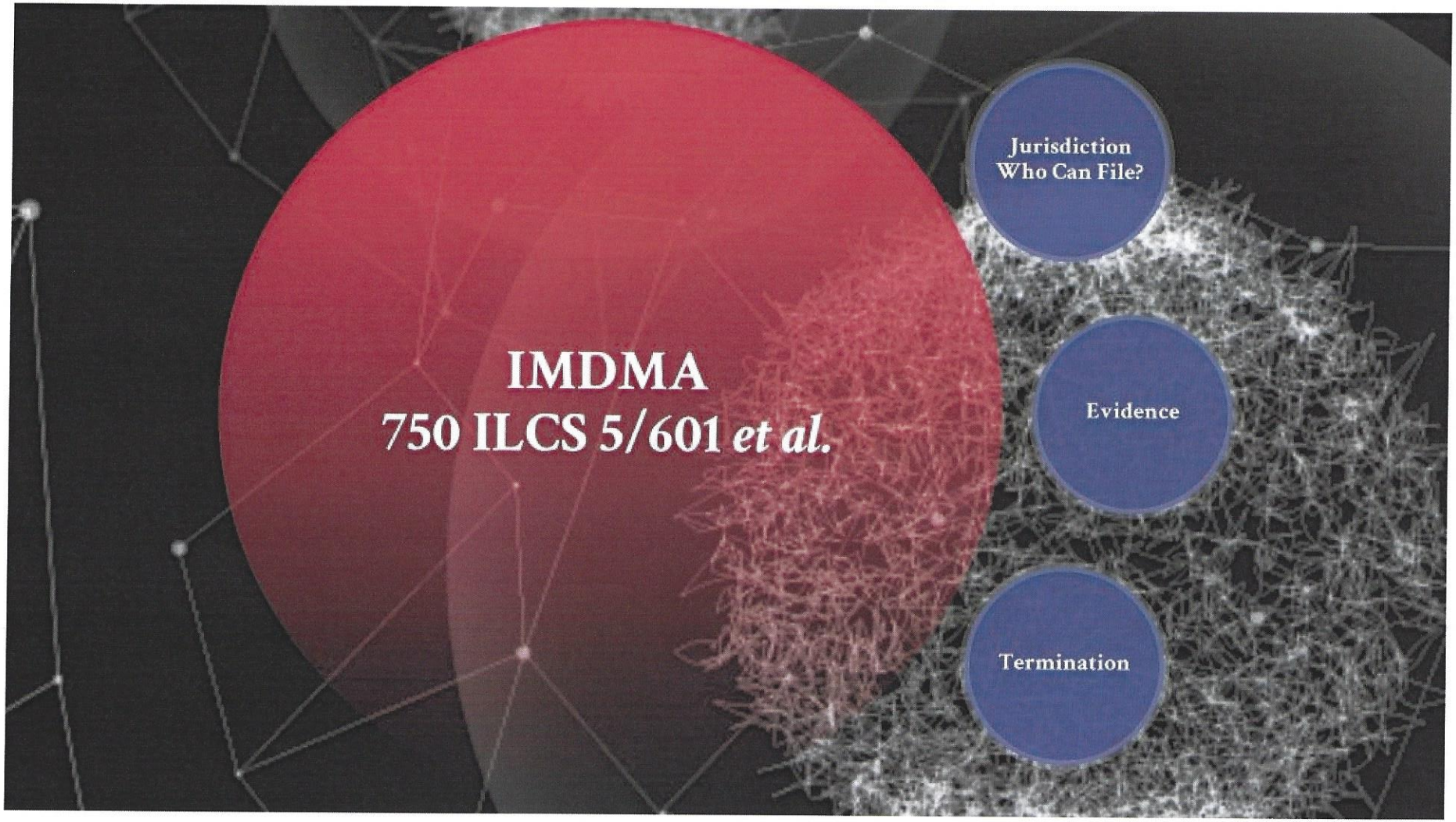

IMDMA
750 ILCS 5/601 et al.
Jurisdiction
Who Can File?
Evidence
Termination

## Jurisdiction
## Who Can File?

750 ILCS 5/601.2(b)(3)

(b) A proceeding for allocation of parental responsibilities with respect to a child is commenced in the court: . . .

(3) by a person OTHER THAN A PARENT, by filing a petition for allocation of parental responsibilities in the county in which the child is permanently resident or found, BUT ONLY IF HE OR SHE IS NOT IN THE PHYSICAL CUSTODY OF ONE OF HIS OR HER PARENTS.

## Common Scenarios

Parents leave child(ren) with a family member or friend and child resides with the family member or friend for a period of time, wherein their best interests may be impacted by removal and/or significant change.

## Evidence

1. Standing
   - -Physical custody of the child(ren);
   - -Care of the children;
   - -DCFS placement?
   - -Parents consent?

2. Best Interests under 750 ILCS 5/602.5(c)

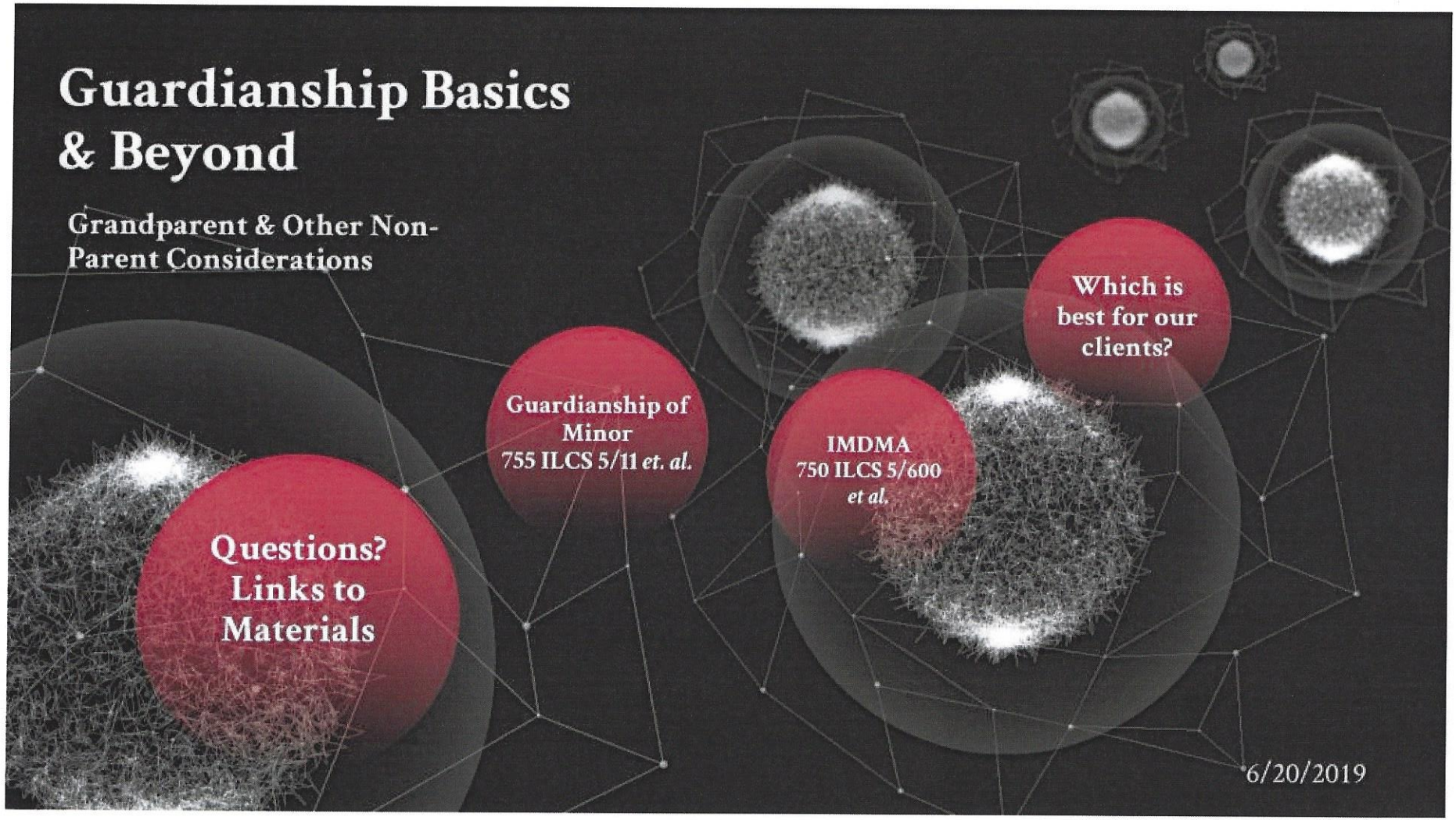
(1) the wishes of the child, taking into account the child's maturity and ability to express reasoned and independent preferences as to decision-making;
(2) the child's adjustment to his or her home, school, and community;
(3) the mental and physical health of all individuals involved;
(4) the ability of the parents 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 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;
(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 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 sex offender, and if so, the exact nature of the offense and what, if any, treatment in which the parent has successfully participated; and
(15) any other factor that the court expressly finds to be relevant.

# Modification

Pursuant to statute, substantial change in circumstance that bears on the best interests of the minors involved.

More difficult to modify/restrict, especially during first two (2) years after the entry of the original order, under this statute than terminating a minor guardianship.

If parties cannot agree to a modification prior to or during mediation, Court will appoint a GAL.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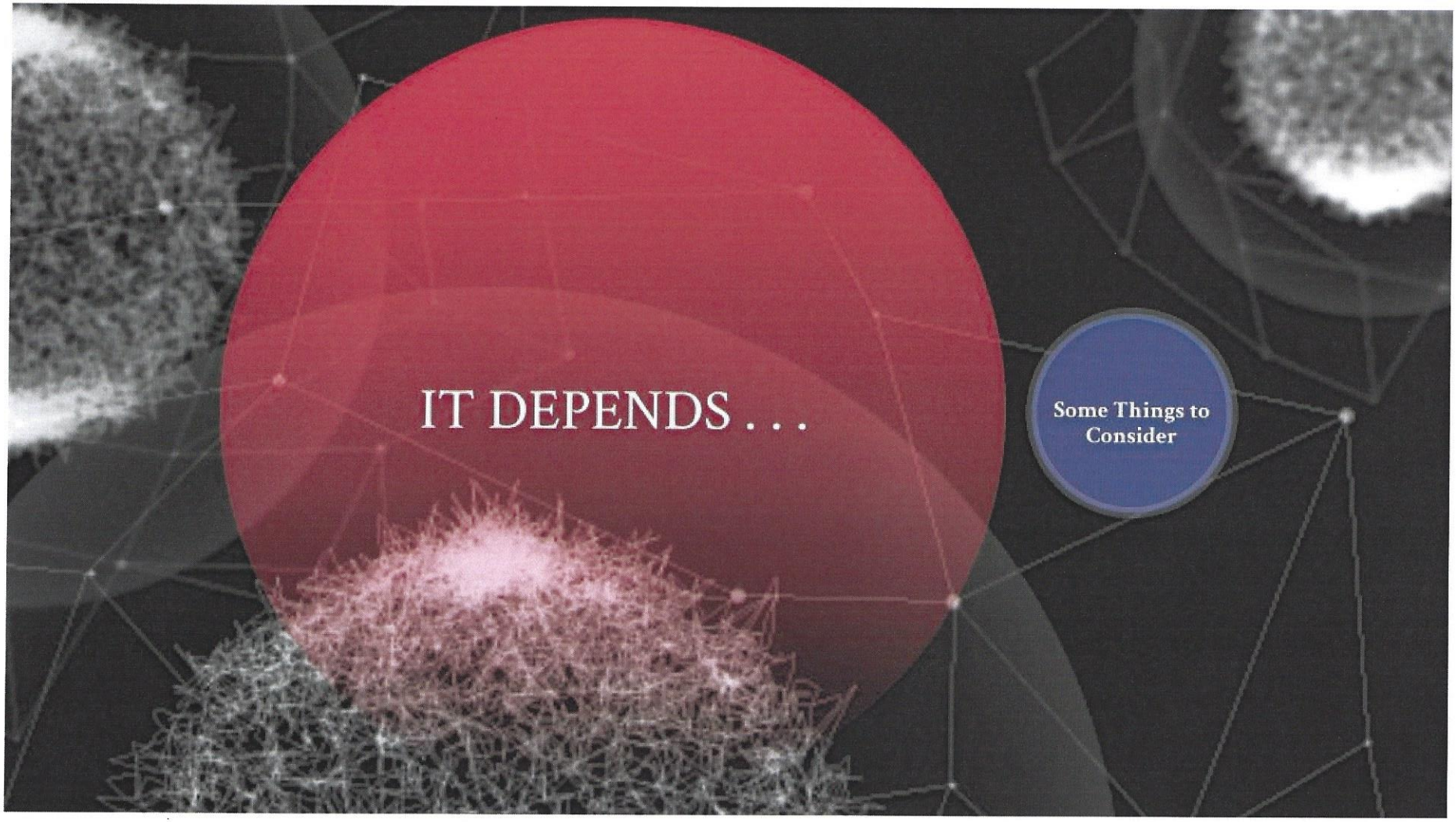
IT DEPENDS . . .
Some Things to Consider

# Considerations

Costs:

- Filing fees (probate vs. family)
- GAL expenses (depth of investigations)
- Mediation expenses (generally not required in probate matters)

Termination/modification requirements

Visitation arrangements

Client expectations

Adoption

https://www.illinoislegalaid.org/legal-information/helping-clients-minor-guardianship-cases
https://19thcircuitcourt.state.il.us/DocumentCenter/View/113/Guardianship-of-Minors-Handbook-PDF?bidId=
https://www.isba.org/sites/default/files/publications/pamphlets/Being%20a%20Guardian.pdf