

GRANDPARENTS HAVE A STATUTORY RIGHT TO SEEK VISITATION*

It is important to note that grandparents have the right to ask the court for visitation but not the right to visitation with their grandchildren. The court will complete a two-part test when any grandparent files a petition for visitation. First, the court must decide whether the grandparent has “standing.” Second, the court must determine whether the visits are in the best interests of the child.

A grandparent has “standing” to continue in court with a request for visitation when either 1) one or both of the parents has died or 2) when “equity would see fit to intervene.” Courts have interpreted “equity would see fit to intervene” to mean when grandparents have previously had a relationship with their grandchildren or have been prevented by the parents from having such a relationship.

The court may look at many factors, including: (1) the strength of the family and the nature and bias of the parents' objection to visitation, (2) the nature and extent of the grandparent-grandchild relationship, (3) whether the grandparents have a “sufficient existing relationship” with the child (or have at least made a sufficient effort to establish one).

Grandparents may seek visitation even when both parents are against the grandparent visiting. Animosity is not enough; it must also include “family dysfunction.” In other words, just because the parents don't like the grandparent, that doesn't mean they will succeed in court. The statute exists because of animosity between parents and grandparents, and more must be shown in order to justify the denial of visitation. Termination of parental rights of a grandparent to her child does not act as an absolute bar to seeking visitation with a grandchild.

If the grandparent has “standing,” then the court must decide whether it is in the child's best interests to have visits with the grandparent. There is not a set list of what the court will consider when determining the best interests of the child. However, the court may look at the reasons the parent objects to visitation, the child's wishes, the previous relationship the grandparent had with the child, the benefit to the child by visiting, and the grandparent's feelings towards the parent.

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