

## LEGAL FACT SHEET

### Grandparents Seeking Visitation or Custody

#### Grandparent Visitation

Under Domestic Relations Law Section 72, grandparents have a right to petition for visitation with grandchildren. Grandparents do not have a right to visitation.

If you are a grandparent and the parent or parents will not permit you to visit your grandchild, you have the right to petition for court-ordered visitation. Also, if your grandchild is under the care and control of the Department of Social Services, you have a right to petition for court-ordered visitation. If you already have a visitation order, you have a right to its enforcement.

If one of the parents is deceased, then you have standing to proceed in court. If both parents are alive, then standing is not automatic. Your petition for visitation must show that certain circumstances exist. For example, if you had a relationship with your grandchild, or if you have tried to have a relationship but have been stopped by the parents, then the judge may decide that you have standing to proceed.

Once you have standing, the judge can order a trial to decide whether visitation is in the best interests of your grandchild. Visitation is not automatic, it depends on what the judge decides is in the best interests of your grandchild.

#### Grandparent Custody

Grandparents and other non-parents who seek to become legal custodians of children must have the consent of the parents or show the existence of an extraordinary circumstance. Extraordinary circumstances are abuse, persistent neglect, abandonment, an extended disruption of custody, or other similar circumstances.

One extraordinary circumstance applies only to grandparents. Under Domestic Relations Law Section 72, when a grandchild resides in the grandparent's home for two or more years, that is an "extended disruption of custody" and will be considered an extraordinary circumstance. Like the other extraordinary circumstances, the court will first hold a hearing to find out for certain that your grandchild resided for two or more years in your home. Again, only when the judge finds an extraordinary circumstance will there be a trial to decide custody based on a child's best interests.

For grandparents and other non-parents who have been primary caregivers, the court has the discretion to find that less than two years is an "extended disruption of custody."

The above information is not legal advice. It is not a substitute for consulting an attorney. Up-to-date legal advice and legal information can only be obtained by consulting with an attorney. Any opinions, legal opinions, findings, conclusions or recommendations expressed in this publication or on the NYS Kinship Navigator website or by any person or entity to whom you may be referred are those of the Kinship Navigator, Catholic Charities Family and Community Services and/or the person or entity you are referred to and do not necessarily represent the official views, opinions, legal opinions or policy of the State of New York and/or the New York State Office of Children and Family Services (OCFS). NYS Kinship Navigator is a Catholic Charities Family and Community Services program, funded by the New York State Office of Children and Family Services. Catholic Charities Family and Community Services is the only agency authorized by New York State to provide a statewide information and referral service to kinship caregivers. The information herein is published by the NYS Kinship Navigator.