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MEMBER



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## GRANDPARENT VISITATION RIGHTS BY ANDREW HOOK

The relationship between a grandparent and a grandchild can be one of great joy and importance for both grandparent and youngster. But sometimes an event such as a parent's death, divorce or estrangement can tear families apart, and alter or sever relationships. After such events, the child's parents or guardian may block any further contact with grandparents, who may then take legal steps to maintain contact with the grandchildren they love.

As such situations became increasingly common, in the 1970s state legislatures began enacting "grandparent visitation" statutes to protect the visitation rights of grandparents and other caretakers. Today, all 50 states have some type of grandparent visitation law. These statutes allow grandparents to ask a court to give them the legal right to maintain their relationships with their children's children. Visitation statutes, however, do not give a grandparent an absolute right to visitation, and the laws vary widely from state to state on crucial details such as who may petition for visitation rights, under what circumstances a grandparent may file such a petition, and on what legal grounds the petition will be granted.

States differ on the extent to which parents have a right to control their children's upbringing. Some states have viewed visitation by grandparents as only a small infringement on the right of a parent to raise a child. These states focus on what is in the "best interest of the child" in making decisions about whether or not to allow grandparents to visit. In these "permissive" states, even unrelated caretakers can often petition for visitation rights, and grandparents can seek visitation even in cases where the family is intact (i.e., there has not been a divorce or a death in the family). In these states, courts may award grandparents visitation rights even if the parents object. Other states are more protective of a parent's right to decide what is best for the child. These states have "restrictive" visitation statutes, meaning that generally only grandparents, not other caretakers, have visitation rights, and

these rights may be pursued only if the child's parents are divorcing, one or both parents have died, or the child was born out of wedlock. In other words, in these states the parents in intact families have the final word on whether or not grandparents are allowed to visit. Still, the "best interest of the child" is the legal standard in most states for determining whether grandparents should be granted visitation.

There are no firm rules for determining when a court will grant visitation; every case is decided on its own facts and merits. Grandparents, however, can take steps to improve their chances of gaining visitation rights. In deciding visitation cases, courts often consider the previous relationship between the grandparent and grandchild, and they look favorably on evidence of a consistent and caring relationship. For this reason, a grandparent should try to build a meaningful relationship with a child from the outset. If the child's parent rejects the grandparent's efforts to visit, the grandparent should keep a record of the grandparent's attempted contacts and continue to make a reasonable effort to preserve the relationship with the grandchild, like sending gifts and cards. When it comes time to meet with an attorney, grandparents should have documentary evidence and names of witnesses to support their claim that visitation is in the best interest of the child.

The Virginia Code specifically names grandparents as persons with a "legitimate interest" in custody and visitation cases. The Virginia Code requires the court to give "primary consideration to the best interests of the child," and sets a higher standard of proof for persons other than parents, by providing that: "the Court shall give due regard to the primacy of the parent/child relationship but may upon a showing by clear and convincing evidence that the best interests of the child would be served thereby award custody and/or visitation to any other person with a legitimate interest." The Virginia Code sets out ten factors that the court must consider in determining custody and visitation, and does not give grandparents a legal right to visit a grandchild, but a right to petition for visitation.

In June 1998, the Supreme Court of Virginia, in the decision of *Williams v. Williams*, denied parental grandparents' visitation with their granddaughter that was opposed by both of the child's parents. The court affirmed the decision of the lower court that the right of parents in raising their children is a fundamental right protected by the United States Constitution. The court held that "...before visitation can be ordered over the objection of the child's parents, a court must find an actual harm to the child's health or welfare without such visitation. A court reaches consideration of the best interests standard in determining visitation only after it finds harm if visitation is not ordered."

In May 1999, the Court of Appeals of Virginia, in the decision of *Dotson v. Hylton*, granted the paternal grandmother visitation with her granddaughter. The visitation was favored by the child's father, but was objected to her by her mother. The significant difference in facts between the *Williams* decision and the *Dotson* decision was that in the *Dotson* decision one of the parents favored the visitation. Where both of the living parents of a child object to visitation, the Virginia courts require that a grandparent show actual harm to the child without visitation. This is a restrictive standard.

One way to avoid a court battle is to try professional mediation. In mediation, the disputing parties engage the services of a neutral third party to help them hammer out a legally binding agreement that all concerned can live with. The disputing parties can control the process, and they have a chance to explain their perspectives and feelings. In a court, on the other hand, the judge will ultimately make a decision based on laws that may seem unfair to one or both sides.

The attorneys at Oast & Hook can assist clients with their financial, estate, insurance, long-term care, veterans' benefits and special needs planning issues.

### **Ask Allie**

O&H: Allie, with the new First Dog, Bo, taking up residence at the White House, Malia and Sasha Obama may want to write about their new pet and preserve memories. What tips can you provide them and other kids who want to write about their pets?

Allie: In her award-winning new book, "Saved: Rescued Animals and the Lives They Transform," journalist Karin Winegar writes that "the most natural thing in the world for kids to write about is their pets." Here are some of her writing tips for young animal fans. First, encourage children to write about their pets; ask them to tell you about their pets' eyes, nose, fur or feathers, and tails. Animals have a history; trigger those memories with questions about the pet's arrival or birth. Was the pet little or big, and what did he eat? Some children like to create fantasy stories about horses or ponies. Ask them questions about the breed of the animal, its name, where it lives, and what to feed it. Ask where the child rides the animal, and whether the child rides with other people. If your children or grandchildren are too young to write, then encourage them to draw pictures of their favorite pets. They will be following in the tradition of our ancestors, who drew pictures of animals on the walls of caves 30,000 years ago.



Please feel free to e-mail your pet- and animal-related questions to Allie at: [allie@oasthook.com](mailto:allie@oasthook.com).

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