INTRODUCTORY GUIDE TO GRANDPARENTS’ VISITATION RIGHTS
(A 50-State Survey, plus Washington, D.C.)

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For

TAPS
Tragedy Assistance Program for Survivors
NOTES

State-specific guides to grandparents’ rights appear in this compilation in alphabetical order. This document had been published as an electronic document only and does not use page numbers.

Each state guide is accurate only as of the date indicated in its respective footnotes, and where not indicated, is accurate as of the date of publication.

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THANKS

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INTRODUCTION
by Catherine Stanton

The concept of grandparents’ rights to visitation with grandchildren has gained attention and traction over the past 50 years as we, as a society, move further away from the multi-generational family structure that was the norm at the beginning of the century. Grandparents’ rights can become especially important in the context of a military family whose members are often geographically separated and exposed to a heightened risk of loss of a parent. Though grandparents may seek visitation rights more often now than ever before, courts today generally decide visitation cases with a focus on the integrity of the nuclear family and emphasize the sanctity of parental determination regarding the best interests of the children.

All 50 states have adopted legislation governing if and when grandparents may seek court-ordered visitation with their grandchildren, and each state defines the principles guiding such decisions differently. However, all of the state laws regarding grandparent visitation continue to be affected by the 2000 U.S. Supreme Court decision in Troxel v. Granville.¹ The Court in Troxel established the principle that courts shall presume that fit parents act in the best interests of their children, even when those parents limit or prohibit grandparent visitation with grandchildren.² In several states where grandparents’ rights had already been established by state law prior to Troxel, this new precedent severely limited the applicability of some existing state statutes imparting rights to grandparents and, to a large degree, prohibited courts from questioning parental decisions. In the wake of Troxel, many states revised their grandparents’ rights statutes, strengthening the rights of parents to exclude grandparents in order to align with the standard of constitutionality set by the U.S. Supreme Court.

In general, grandparents seeking visitation rights with grandchildren will need the following three elements:

1. **Standing.** Courts only entertain requests for visitation by certain grandparents who “have standing” to seek enforcement of their rights. In most states, this means that a court will only hear a grandparent’s request for visitation if there has been a death, divorce, or other disruptive circumstance occurring within the nuclear family of the grandchild. As a result, grandparents of grandchildren whose parents are still alive, still married, and fit to parent are often not allowed to seek visitation rights, and any attempt to do so would be dismissed immediately by the court. Most grandparents seeking the assistance of T.A.P.S. in pursuing visitation rights, however, do so after the death of the grandparent’s servicemember child (and parent to the grandchild), which would generally give them standing in all 50 states.

2. **Proof.** Even when agrandparent has standing to seek visitation rights in a court, the court will not award grandparent visitation rights without adequate proof provided by the grandparent. Some courts require grandparents to prove that visitation with a grandchild is in the best interests of the grandchild, and some states impose a stricter
requirement that the grandparent provide proof that denial of visitation would actually be detrimental to the grandchild. Additionally, courts favor the decision of a living, fit parent to exclude the grandparent from a grandchild’s life, presuming it to be in the best interests of the child. For court-ordered visitation to be granted, a grandparent must overcome that presumption, and courts will require extensive evidence in favor of the grandparent to do so. The “burden of proof” on the grandparent, or the degree to which the evidence must prove the grandparent’s case, varies from court to court, but in all states falls squarely on the grandparent. Often, grandparents will need to have an established history of frequent visitation or care of the grandchild prior to seeking court-ordered visitation. It may even be necessary to present to the court the opinion of a qualified psychologist that grandparent visitation is sufficiently necessary to the grandchild’s well-being. The cost and time burden of adequately proving a grandparent’s case may be significant.

3. **Court Determination.** While a grandparent may believe that his or her case for visitation with a grandchild is persuasive, the ultimate decision regarding whether to award visitation rests with the court. The final step before grandparents can expect to begin receiving visitation rights is for the court to make an official determination that the grandparent is entitled to visitation under the statutes of that state, as interpreted by precedent case law. Each court, and each judge in each court, may take a different view of what constitutes convincing evidence. Therefore, a grandparent can never be sure that a given judge in a given court in a given state will award visitation rights, even when other judges in the same court have awarded visitation in the past.

The state in which the grandchild resides is generally the state in which a grandparent should file to seek visitation. Please refer to the appropriate state guide to discover the nuances applicable to the principles and processes in each state. Because the road to obtaining visitation rights is likely to be complex and arduous, no matter the state in which rights are sought, grandparents should seriously consider consulting a qualified family law attorney licensed in the applicable state.

While we hope that this guide serves as a useful reference for grandparents in determining the dynamic of and how to file for grandparents’ visitation rights in the United States, grandparents are encouraged to explore the non-litigation options for procuring visitation prior to filing for a determination in any court. Even where grandparents have legal rights to visit with a grandchild, it may be more beneficial to the continuing family dynamic, to the plight of the grandparents, and to the interests of the grandchild for the grandparent and the surviving parent to privately negotiate visitation through counseling or mediation.

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1 530 U.S. 57 (2000).
2 *Id.*
Alabama
By Tara Said

1. What are my rights to visitation?

Grandparents in Alabama do not have automatic rights to visit their grandchildren. Alabama courts presume that the decisions regarding grandparent visitation by a “fit” parent are in the child’s best interest. Recent amendments to the Alabama Grandparent Visitation Act were made in 2011 and are not as favorable to grandparents as prior versions of the Act (which were ruled unconstitutional by the Alabama Supreme Court). In the case of a grandparent whose child is deceased, Alabama law provides standing for that grandparent to seek visitation with a grandchild, if the grandparent can prove that it is in the best interest of the grandchild and certain other conditions are met. Grandparents’ rights to visitation are limited, as well, by the rights of the deceased parent; if the parent’s rights were terminated or abandoned prior to his or her death, the grandparents lose standing to file a petition for visitation.

2. Where do I start?

If the surviving or custodial parent will not allow visitation, the law provides that any legally established grandparent may file an original action for visitation rights to a minor grandchild if it is in the minor grandchild’s best interest. The court also allows any grandparent to intervene in an action concerning the custody of a minor grandchild or a termination of the deceased service member’s parental rights for the purpose of adoption. In fact, if such an action already exists, the grandparent must intervene in that action rather than filing a new action for visitation.

Once an action is filed seeking visitation, the court then will make a determination as to what is in the best interest of the child. In order to overcome the presumption that the surviving parent denying visitation is acting in the child’s best interests, the grandparent must prove by clear and convincing evidence that visitation is actually in the child’s best interests and that the grandparent has previously established a “significant and viable relationship” with the grandchild.

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3. *What things will the judge consider when deciding my case?*

Factors considered include the following:

- The willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents.
- The preference of the child, if the child is determined to be of sufficient maturity to express a preference.
- The mental and physical health of the child.
- The mental and physical health of the grandparent or grandparents.
- Evidence of domestic violence by either parent.
- The wishes of any living parent.

The court may consider other factors as well, as each case is fact specific. After due consideration, the court will make a determination and issue a written finding of fact to support its ruling.

Grandparents are allowed to file an original action for visitation rights not more than once during any two-year period, and an independent filing is not allowed during any year in which another custody action has been filed concerning the grandchild. As always, it is best to seek the advice of a family lawyer when petitioning for grandparent visitation.

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1. Ala. Code 30-3-4.1(b)(1)
2. Ala. Code 30-3-4.1(g)
3. Ala. Code 30-3-4.1(c)
4. Ala. Code 30-3-4.1(d)
5. Ala. Code 30-3-4.1(e)
1. **What are my rights to visitation?**

   In Alaska, a grandparent may seek court-ordered reasonable visitation with a grandchild if (1) the grandparent has established or attempted to establish ongoing personal contact with the child, and (2) visitation by the grandparent is in the child’s best interest. However, if the grandparent has previously sought court-ordered visitation with the grandchild in the context of a custody dispute, the grandparent is barred from seeking court-ordered visitation unless there are changed circumstances justifying the reconsideration of the grandparent’s visitation rights.

2. **Where do I start?**

   In Alaska, assuming the grandparent meets the requirements stated in paragraph 1 above, he or she may seek court-ordered visitation by filing a motion in the proper court. This motion is the grandparent’s primary opportunity to explain the reasons, as listed in paragraph 3 below, why visitation should be granted. Both the proper motion and the proper court in which to file the motion will depend on whether a prior or ongoing custody case involving the child exists. As such, and particularly in the case where no prior or pending custody case exists, the grandparent should consult a qualified attorney to ensure that the correct course is followed.

   If a final order in a custody case involving the child has been previously issued, the grandparent should file a “Motion & Affidavit for Grandparent Visitation (post-judgment), SHC-1144,” and a “Proposed Order on Motion for Grandparent Visitation, SHC-1143” with the court that issued the final custody order.

   If there is a pending custody case, the grandparent must file a request to join the case, which is the “Motion & Affidavit to Join for Purpose of Grandparent Visitation, SHC-1140” and a “Proposed Order on Motion to Join for Purpose of Grandparent Visitation, SHC-1141” with the court hearing the custody case. The grandparent can then file the paperwork requesting visitation either at the same time or after the court has made a decision as to whether the grandparent can intervene in the case. Neither method is faster. The paperwork requesting visitation in this scenario includes, the “Motion & Affidavit for Grandparent Visitation, SHC-1142” and the “Proposed Order on Motion for Grandparent Visitation, SHC-1143.” Each of these forms can be found on the Alaska Court System’s Self-Help: Family Law webpage.

3. **What things will the judge consider when deciding my case?**

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   * This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 1, 2015.
For an Alaska court to grant visitation rights, the grandparent must prove by “clear and convincing evidence” that:

- Visitation between the grandparent and child is in the best interest of the child,
- The grandparent has had or has attempted to have ongoing contact with the child, and
- It would be harmful to the child to limit the grandparent’s visitation to what the child’s otherwise fit parent has determined to be reasonable.\(^7\)

Additionally, when determining whether to grant visitation and the terms and conditions of such visitation, the court will consider whether the grandparent’s son or daughter who was the parent of the grandchild had a history of abuse or domestic violence toward the child.\(^8\)

\(^1\) Alaska Stat. § 25.20.065(a).
\(^2\) Alaska Stat. § 25.20.065(a), (b).
\(^8\) Alaska Stat. § 25.20.065(c).
1. **What are my rights to visitation?**

   Arizona courts provide grandparents an opportunity to request court-ordered visitation in limited situations. For instance, grandparents can request visitation after the death of one of the child’s legal parents. Arizona courts will grant grandparent visitation if it is in the best interests of the child. It is important to note that Arizona courts give “special weight” to what the legal parent believes to be in the best interest of the child.\(^1\)

2. **Where do I start?**

   In Arizona, visitation time may be sought by the grandparents or great-grandparents of a child. This discussion is oriented towards visitation sought by a grandparent, but it may be assumed to be equally applicable to a great-grandparent.

   A grandparent may seek visitation by filing a petition in the county of the child’s home state. If a family court has previously issued an order regarding custody and parenting time, then the grandparent must file a petition in that same legal proceeding.\(^2\)

   There are few recent cases regarding Arizona’s revised visitation statute. At least one court has held that Arizona courts have authority to grant temporary grandparent visitation orders in appropriate cases if necessary to the court’s “exercise of its jurisdiction over child custody and visitation issues.”\(^3\)

   The Arizona superior court may grant visitation rights to a minor child if they find that visitation is in the best interests of the child and that any of the following items is true:\(^4\)

   1. One of the legal parents is deceased or has been missing for at least 3 months;
   2. The child was born out of wedlock and the child’s parents are not married at the time the petition is filed;
   3. For grandparent visitation, the marriage of the child’s parents has been dissolved for at least 3 months; or
   4. For *in loco parentis*\(^5\) visitation, a proceeding for dissolution of marriage or legal separation is pending at the time the petition is filed.

3. **What things will the judge consider when deciding my case?**

   The court is obligated to give “special weight to the legal parents’ opinion of what serves their child’s best interest” and consider all relevant factors. Additionally, if “logistically possible and appropriate”, the Arizona court must grant visitation by a

\(^{*}\) This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information is current as of December 12, 2015.
grandparent if “the child is residing or spending time with the parent through whom the
grandparent or great grandparent claims a right of access to the child.” To determine the
best interests of the child, the court may look at factors such as:

1. The historical relationship, if any, between the child and the grandparent
   seeking visitation;
2. The motivation of the grandparent seeking visitation;
3. The motivation of the parent objecting to visitation;
4. The quality of visitation time requested and the potential adverse impact
   that visitation will have on the child’s customary activities; and
5. If one or both of the child’s parents are deceased, the benefit in
   maintaining an extended family relationship.

Because an Arizona court must give special weight to the legal parent’s opinions,
it can be difficult for grandparents to obtain a favorable ruling. The outcome will heavily
rely on the specific circumstances of the case. A grandparent seeking court-ordered
visitation with a grandchild under Arizona law should be aware of the requirements to
obtain such a visitation order. Navigating this process can be complicated, and
grandparents should consult with a qualified attorney to determine when, where, and how
to file a proper petition for visitation.

1 ARIZ. REV. STAT. § 25-409(C), (E) (LexisNexis 2015).
2 ARIZ. REV. STAT. § 25-409(G) (LexisNexis 2015).
3 See Lambertus v. Porter, 235 Ariz. 382, 384 (Ariz. Ct. App., Division 1) (The case
concerned a grandmother filing a motion to intervene in a paternity action filed by the
child’s mother.)
4 ARIZ. REV. STAT. § 25-409(C) (1-4) (LexisNexis 2015).
5 Defined by Black’s Law Dictionary, Ninth Edition, as “of, relating to, or acting as a
temporary guardian or caretaker of a child, taking on all or some of the responsibilities of
a parent.”
6 ARIZ. REV. STAT. § 25-409(F) (LexisNexis 2015).
7 ARIZ. REV. STAT. § 25-409(E) (1-5) (LexisNexis 2015).
1. **What are my rights to visitation?**

Arkansas law provides “reasonable” visitation rights to grandparents (and great-grandparents) under several circumstances, including when one of the child’s parents is deceased.¹ In Arkansas, however, there is a rebuttable presumption that the living custodial parent’s decision to deny the grandparents’ visitation is in the best interest of the child. This presumption is difficult to overcome.²

A grandparent may overcome the presumption, however, if he or she proves by a preponderance of the evidence that (a) the grandparent has “established a significant and viable relationship” with the grandchild; and (b) such visitation is in the best interest of the child.³ Further explanation of these factors is provided under paragraph 3 below.

2. **Where do I start?**

In Arkansas, a grandparent seeking court-ordered visitation with their grandchild may seek a remedy in an Arkansas court.⁴ To begin this process, a grandparent may file a “Petition to Establish Grandparent Visitation” with a “Cover Sheet”⁵ with the circuit court of Arkansas responsible for the county where the grandchild resides.⁶ If the grandchild is in the custody or under the guardianship of a person other than one or both of his/her legal parents, a grandparent must petition the circuit court that granted the guardianship or custody of a child.⁷ It’s important to note that, in Arkansas, a grandparent can only file such a petition if the surviving parent has denied all, and not just limited, their visitation with their grandchild.⁸ Grandparents should consult a qualified attorney to ensure that the proper petitions are prepared and filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

As stated above, under Arkansas law, to rebut the presumption that the surviving parent opposing visitation acts in the best interest of the child, a grandparent must show that (a) they have established a significant and viable relationship with the grandchild; and (b) visitation with the grandparent is in the best interest of the child.

To show that they have established a significant and viable relationship with the child, the grandparent must prove by a preponderance of the evidence that:

a. The child resided with the grandparent for at least six consecutive months with or without the current custodial present;

b. The grandparent was the caregiver to the child on a regular basis for at least six (6) consecutive months;

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¹This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information is current as of October 27, 2015.
c. The grandparent had frequent or regular contact with the child for at least twelve (12) consecutive months; or
d. Any other facts that establish that the loss of the relationship between the grandparent and the child is likely to harm the child.⁹

To establish that visitation with the grandparent is in the best interest of the child, the grandparent must prove by a preponderance of the evidence the following:

a. The grandparent has the capacity to give the child love, affection, and guidance;
b. The loss of the relationship between the grandparent and the child is likely to harm the child; and
c. The grandparent is willing to cooperate with the custodian if visitation with the child is allowed.¹⁰

¹ Ark. Code Ann. §§ 9-13-103 and 107; see also http://www.arlegalservices.org/files/FSGrandparentVisitation.pdf. The standard by which a court makes a determination is based on whether the grandchild is in the custody of a parent or not. If the grandchild is not in the custody of the parent, the standard is simply whether the visitation is “the best interest and welfare of the child.” Ark. Code Ann. § 9-13-107(c).
³ Ark. Code Ann. § 9-13-103(c)(2)(A) and (B).
⁵ While the Arkansas courts do not provide a template for the petition, see the following link for a template “Cover Sheet” at https://courts.arkansas.gov/forms-and-publications/court-forms/domestic-relations-division.
⁸ See Pippinger v. Benson (In re Adoption of J.P.), 2011 Ark. 535, 12 (Ark. 2011) (“In order to establish the loss of a relationship...evidence must be presented demonstrating that the relationship between the grandparents and the grandchild had been lost or would be lost.”); see also Morris v. Dickerson, 2012 Ark. App. 129, 8 (Ark. Ct. App. 2012) (holding that the grandparents need to prove by preponderance of the evidence that their relationship with their grandchildren has been or would be lost without court-ordered visitation because otherwise their petition would be premature).
1. **What are my rights to visitation?**

   In California, a court has discretion to grant reasonable visitation rights to any person having an interest in a particular child’s well-being. These parties include stepparents, former legal guardians, and close relatives of either of the child’s parents. In particular, grandparents may petition for visitation rights for their grandchild under several circumstances, including the death of one of the child’s parents. The court’s decision to grant visitation rights will be based on whether the visitation is in the best interest of the child. Other considerations include the agreement of the parents against visitation, the pre-existing relationship with the child, and whether there is a protective order in place.

2. **Where do I start?**

   While it’s always best for grandparents to work directly with the surviving parent when seeking visitation with their grandchild, it is sometimes necessary to petition the courts. The petition procedure will vary depending on the unique circumstances of each case, so it would be prudent to consult an attorney to facilitate the process. In general, when a grandparent is petitioning for visitation rights to a minor child following the death of the child’s parent, she will begin by filing a petition for visitation rights in a California superior court. In addition, the grandparent will also want to file form FL-300, Request for Order and form FL-311, Child Custody and Visitation Application. Upon this filing, she will need to provide notice of the petition to the parent or current guardian of the child through personal service of process. If the judge determines that the visitation will be in the best interest of the child, then an order for visitation will be issued.

3. **What things will the judge consider when deciding my case?**

   When considering a grandparent’s visitation rights, the court will consider whether the visitation is in the best interest of the child. While not determinative, the court will consider the preexisting relationship between the grandchild and the grandparent. California courts will also presume that a parent is acting in the best interest of his or her child. Therefore, if a parent opposes the visitation, the petitioning grandparent will need to present evidence that denial of the visitation will be detrimental to the child.

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*Sally Reddy is a military spouse and licensed attorney in California and the District of Columbia. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of March 30, 2015.*
1 CAL. FAMILY CODE § 3100(a).
2 CAL. FAMILY CODE §§ 3102-3104.
3 CAL. FAMILY CODE §§ 3103(d), 3102(b), 3104(a)(1), and 3100(b).
4 See CAL. FAMILY CODE § 3102(a).
5 CAL. FAMILY CODE § 3104(c).
6 When both parents are still alive, a preexisting relationship is required in order for a judge to find that visitation is in the best interest of the grandchild. CAL. FAMILY CODE § 3103(d).
1. What are my rights to visitation?

Colorado courts provide grandparents the opportunity to request court-ordered visitation time with grandchildren in limited situations, including in the case of the death of the parent related to the grandparent (even if the child has been or is in the process of being adopted by a step-parent). Colorado courts will always order what they believe to be “in the best interests” of a child when deciding upon grandparent visitation issues.

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child, the following issues will be important to consider. Also, it is important to note that, in Colorado, visitation time may be sought by the grandparents or great-grandparents of a minor child. This discussion is oriented towards visitation sought by a grandparent, but it may be assumed to be equally applicable to a great-grandparent.

In Colorado, a grandparent has “standing” to pursue visitation time with a grandchild in limited circumstances, including when the parent related to the grandparent has died, by filing a petition seeking visitation time with the grandchild. This does not mean that the grandparent’s request will be granted, only that the court will be willing to hear the grandparent’s argument in favor of granting such a request.

In addition, a grandparent must file for visitation time at a particular time following the death of the related parent. Grandparents may only file a petition for visitation time if a case involving the child already exists. To do so, the grandparent must “intervene” in the existing case by filing a Motion to Intervene. Usually, in the case of a deceased parent, the grandparent will be intervening in a probate estate or guardianship case following the death of the parent related to the grandparent. Once the court grants a court order allowing the grandparent to intervene, the grandparent will file a Pleading Affidavit for Grandparent or Great-Grandparent Visitation to describe the visitation arrangements being requested. The Pleading Affidavit is the grandparent’s primary opportunity to set forth for the court all of the reasons that visitation with the child should be granted. Grandparents should consult a qualified attorney at this time to ensure that the motions are filed in the proper courts.

* As of publication, Catherine R. Stanton is an attorney currently practicing law in Colorado and has been admitted in Colorado, New York (inactive), and Ohio (inactive). Catherine owns Stanton Law Firm LLC, providing divorce and business mediation and counsel on startup and small business law. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of January 15, 2015.
Specific instructions and fill-in-the-blank type forms for pro se parties seeking grandparent visitation time can be found on the website of the Colorado State Courts.\(^3\)

3. **What things will the judge consider when deciding my case?**

Colorado courts may consider *any factors that they deem relevant* in determining what is in the best interests of the grandchild. In doing so, the court will generally operate under a presumption in favor of the decision of the (living) parent regarding grandparent visitation.\(^4\) If the living parent is allowing grandparent visitation without a court order, the court will generally not order additional or different visitation. If the living parent objects to visitation, the grandparents must show by “clear and convincing” evidence\(^5\) that the parent’s decision is not in the child’s best interests.

“Clear and convincing” evidence should convince the judge that, in contrast to the opposing evidence, there seems to be a high probability that the grandparent’s request for visitation time, including the scope and logistics of the request, are in the best interest of the grandchild. Factors that can contribute to clear and convincing evidence may include:

- The amount of time the child has spent in the grandparent’s physical care
- The relationship of the grandparent with the child’s parent(s)
- The history of the grandparent’s involvement in the child’s life
- The reasonableness of the requested visitation arrangement (times, days/dates, locations, means of transportation, etc.)

As a result of the burden of proof required to grant grandparent visitation time in opposition to the preference of the living parent, it can be very difficult for grandparents to obtain a ruling in their favor. However, the ultimate outcome depends heavily on the specific circumstances of the request and the particular judge before which the petition is brought. In the case of a request for visitation with children by grandparents after the death of the parent related to the grandparent, there may be a compelling argument in favor of maintaining connections with the family of the deceased parent despite the objections of the living parent, if any.

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1 C.R.S. 19-1-117
2 In which case, the grandparent’s filing would create a new juvenile action in conjunction with the probate case.
3 The Judicial Branch of the State of Colorado provides a comprehensive collection of instructions and forms for pro se parties at [http://www.courts.state.co.us/Forms/Index.cfm](http://www.courts.state.co.us/Forms/Index.cfm).
4 *In re: Adoption of C.A.*, 137 P.3d 318 (Colo. 2006)(“a dispute between parents and grandparents regarding grandparent visitation is not a contest between equals”); *Troxel v. Granville*, 530 U.S. 57 (2000)
5 “Clear and convincing” evidence can generally be described as less than “beyond a reasonable doubt” but more than “a preponderance of the evidence,” meaning it should convince the judge that, in contrast to the opposing evidence, there seems to be a high probability that the fact that the evidence is offered to prove is true.
Connecticut
by Squire Patton Boggs (US) LLP

1. What are my rights to visitation?

Connecticut courts provide grandparents the opportunity to request court-ordered visitation in several situations, including in the case of the death of a parent. Connecticut law provides that in the event of the death of a parent, the court may award visitation rights to a grandparent if it is determined by clear and convincing evidence that (1) the grandparent has a pre-existing parent-like relationship with the child and (2) substantial harm to the child would result if visitation is not permitted.¹

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child, the following issues will be important to consider. First of all, it is important to note that court-ordered “grandparent” visitation time in Connecticut is a bit of a misnomer; by statute, any person may request such visitation if she or he can meet the statutory requirements with respect to the minor child. In Connecticut, for a grandparent to petition the court for visitation, the grandparent must allege “in good faith” that (1) the grandparent has a parent-like relationship with the child and (2) that the child would suffer harm akin to abuse or neglect if the relationship is not permitted to continue. If the grandparent cannot make these allegations, then the grandparent lacks standing to file for visitation rights and the court cannot hear their petition. If, on the other hand, the grandparent can make these allegations in good faith, it does not mean that the grandparent’s request will be granted, only that the court will have the authority to hear the grandparent’s argument in favor of granting such a request.

Both the proper petition and the proper court in which to file a petition for visitation will depend on whether a prior or ongoing custody case involving the child exists. If no custody proceeding currently exists, a grandparent may file a “Verified Petition for Visitation — Grandparents & Third Parties,” with the Connecticut Superior Court in the judicial district in which the child or the grandparent resides.² The petition must be served on the surviving parent. The court provides a form for such a petition on its website.³ If a custody case for the child already exists, the usual local practice, although not required, is for the grandparent to seek to become involved in that case, such as by filing a motion to intervene. The grandparent should consult a qualified attorney to ensure that the correct course is followed.

* This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 14, 2015.
3. What things will the judge consider when deciding my case?

Connecticut courts will look at several statutory factors to determine whether, by clear and convincing evidence, a parent-like relationship exists that would permit the court to allow visitation, including the following:

- The existence and length of a relationship between the grandparent and the minor child prior to the submission of a petition;
- The length of time that the relationship between the grandparent and the minor child has been disrupted;
- The specific parent-like activities of the grandparent seeking visitation toward the minor child;
- Any evidence that the grandparent seeking visitation has unreasonably undermined the authority and discretion of the custodial parent;
- The significant absence of a parent from the life of a minor child;
- The death of one of the minor child’s parents;
- The physical separation of the parents of the minor child;
- The fitness of the person seeking visitation;
- The fitness of the custodial parent;
- The history of regular contact and proof of a close and substantial relationship between the grandparent and the minor child.  

In addition, the grandparent must also be able to prove by clear and convincing evidence that real and substantial harm to the child will result if the visitation is not permitted. Such harm might result, for example, if the grandparent has provided a stabilizing relationship to the child through a series of traumatic events—such as a parent’s premature death or a custodial parent’s struggle with mental illness.

4 See Conn. Gen. Stat. § 46b-59(c), (d).
5 See id.; DiGiovanna v. St. George, 12 A.3d 900, 905, 909 (Conn. 2011).
1. **What are my rights to visitation?**

   Delaware law provides grandparents the opportunity to request court-ordered visitation with their grandchildren. If one parent is deceased and the surviving parent objects to visitation, the court may grant the grandparents the right to visitation with the child if the court determines that such visitation is in the best interests of the child.\(^1\)

2. **Where do I start?**

   A grandparent who wishes to pursue court-ordered visitation in Delaware must first file a Petition for Third Party Visitation (referred to in this summary as the “Petition”) with the Family Court in the county in which either the custodial parent resides or the child resides.\(^2\) The custodial parent has 20 days after being served with the Petition to respond by filing an Answer with the court.\(^3\)

   In all visitation proceedings, an informal mediation conference with the parties is held by a staff mediator unless there is an active “No Contact Order” between the grandparent and custodial parent or there has previously been a finding of domestic violence between the grandparent and custodial parent. Provided that the parties qualify for mediation, the mediation conference will identify the specific areas at issue and attempt amicable settlement or, in the alternative, limit the issues submitted to the court.\(^4\) If the mediation does not result in a permanent, temporary or interim agreement between the parties, the mediator gives the court a recommended interim contact schedule based on the available information and the best interest of the children.\(^5\) The mediator’s recommendation is then reviewed by a judge. If the mediator’s recommendation is approved by the court, it becomes an interim order of contact until the full hearing.\(^6\) If the mediator’s recommendation is not approved, the court will enter an appropriate interim order.\(^7\)

   If a full hearing is required, the court will determine the visitation rights that are in the best interests of the children subject of the Petition.\(^8\) The grandparents have the burden of proving that either (1) child is neglected or abused in the parent’s care, or (2), by clear and convincing evidence, that the custodial parent’s objection is unreasonable and, by a preponderance of evidence, that the visitation will not substantially interfere with the parent/child relationship.\(^9\)

3. **What things will the judge consider when deciding my case?**

   The court will consider the following factors in determining whether grandparents’ visitation rights are in the best interest of the children subject of the Petition\(^10\):  

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\(^1\) This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 6, 2015.
• The wishes of the child’s parent or parents as to his or her custody and residential arrangements;
• The wishes of the child as to his or her custodian or custodians and residential arrangements;
• The interaction and interrelationship of the child with his or her parents, grandparents, siblings, persons cohabiting in the relationship of husband and wife with a parent of the child, any other residents of the household or persons who may significantly affect the child’s best interests;
• The child’s adjustment to his or her home, school and community;
• The mental and physical health of all individuals involved;
• Past and present compliance by both parents with their rights and responsibilities to their child under Delaware law;
• Evidence of domestic violence; and
• The criminal history of any party or any other resident of the household including whether the criminal history contains pleas of guilty or no contest or a conviction of a criminal offense.

Additionally, if the surviving parent originally objected to visitation, but during the course of the proceedings the parties are able to reach an agreement as to visitation, the court will accept such an agreement and find that visitation is in the best interest of the child.  

1 13 Del. C. § 2410, 2412(a).
2 13 Del. C. § 2403.
8 13 Del. C. § 2412(b).
9 13 Del. C. § 2412(a)(2)(b), (d).
10 13 Del. C. § 722.
11 13 Del. C. § 2412(b).
District of Columbia
by Squire Patton Boggs (US) LLP

1. What are my rights to visitation?

The District of Columbia (referred to in this summary as “DC”) has no law that provides visitation rights to grandparents. A parent with physical custody of a child is responsible for that child’s living arrangements, including the child’s visitation schedule. DC courts have held that visitation rights derive from custody rights. The courts therefore will not encroach on a parent’s vested custody right unless it can be shown that the parent is unfit and the child’s best interests support such a decision. It is presumed that the parent will act in the child’s best interests, even if the parent is prohibiting grandparent visitation.

2. Where do I start?

In DC, assuming the grandparent meets the requirement stated in paragraph 1 above, a grandparent must file a lawsuit in the DC family court for visitation rights when the child’s custodian objects to the visitation. As mentioned above, because DC views visitation rights as being derived from the custody rights, the grandparent seeking visitation must allege that custody with the parent is not in the child's best interests.

3. What things will the judge consider when deciding my case?

For a DC court to grant visitation rights, the court must find that (a) the presumption in favor of parental custody has been rebutted; and (b) the visitation by the third party is in the child’s best interests. The third party seeking visitation bears the burden of rebutting the parental presumption by clear and convincing evidence. Again, note that the DC legal standards are viewed through the lens of custody, so the legal thresholds discussed below generally have a higher standard than jurisdictions that have laws providing for grandparent visitation rights.

To determine that the presumption favoring parental custody has been rebutted, the court must find, by clear and convincing evidence, one or more of the following factors:

- That the parents have abandoned the child or are unwilling or unable to care for the child;
- That custody with a parent is or would be detrimental to the physical or emotional well-being of the child; or
- That exceptional circumstances, detailed in writing by the court, support rebuttal of the presumption favoring parental custody.

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Note that the court is not permitted to consider a parent’s lack of financial resources in analyzing the presumption favoring parental custody. If the court concludes that the parental presumption has not been rebutted by clear and convincing evidence, the court must dismiss the third-party complaint and enter any appropriate judgment in favor of the parent.

Only if the presumption favoring parental custody has been rebutted can the court then examine whether the following non-exhaustive factors support a finding that grandparent visitation rights are in the best interests of the child:\(^7\):

- The child’s need for continuity of care and caretakers, and for timely integration into a stable and permanent home, taking into account the differences in the development and the concept of time of children of different ages;
- The physical, mental, and emotional health of all individuals involved to the degree that each affects the welfare of the child, the decisive consideration being the physical, mental, and emotional needs of the child;
- The quality of the interaction and interrelationship of the child with his or her parent, siblings, relatives, and caretakers, including the third-party seeking visitation; and
- To the extent feasible, the child’s opinion of his or her own best interests in the matter.

In addition, there is a rebuttable presumption that granting custody to a third party who has committed an intra-family offense is not in the best interest of the child.\(^8\)

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5. D.C. Code § 16-831.06(b).
8. D.C. Code § 16-831.08(b).
1. **What are my rights to visitation?**

   Florida courts allow for parents who are activated, deployed, or temporarily assigned to the military for service, the right to designate to grandparents their timesharing rights to visitation of a child over the objection of a fit parent. However, grandparents with grandchildren in Florida may not have standing to request visitation, even if the grandparents’ service-member child has died, if the living parent is fit to parent.

2. **Where do I start?**

   If a grandparent wishes to pursue court ordered visitation with a grandchild in Florida, the procedure will depend on what is currently in place. Under Florida statute §61.13002, it notes that if a parent is activated, deployed, or temporarily assigned to military service on orders in excess of 90 days and the parent’s ability to comply with time-sharing is materially affected as a result, the parent may designate a person or persons (such as the grandparents) to exercise time-sharing with the child on the parent’s behalf. The designation shall be limited to a family member, a stepparent, or a relative of the child by marriage. The designation shall be made in writing and provided to the other parent at least 10 working days before the court-ordered period of time-sharing commences. The other parent may only object to the appointment of the designee on the basis that the designee’s time-sharing visitation is not in the best interests of the child. When unable to reach agreement on the delegation, either parent may request an expedited court hearing for a determination on the designation. This only applies if it is not a permanent change of station.

   General grandparent visitation rights are outlined in Florida Statute §752.11, which allows grandparents to petition for visitation with grandchildren only if (1) both of the grandchild’s parents are deceased, missing, or in a persistent vegetative state, or (2) one of the parents is deceased, missing, or in a persistent vegetative state and the other has been convicted of a felony or other crime indicative of a threat of harm to the child. This means that a grandparent whose service-member child has died may not petition the court for visitation with grandchildren if the grandchild’s other parent is alive and fit.
to parent. In addition, Florida Statute §752.071, states that, if a grandchild may petition the court to cancel any existing grandparent visitation rights if the child is no longer in the situation where grandparent visitation would be available under §752.011.

Grandparents may start the process of seeking visitation right by filing a petition. The court will then decide if the grandparents have standing to seek visitation under the applicable statutes. If the families or parties involved cannot resolve the issues amongst themselves, the courts will then refer the parties to mediation.

3. *What things will the judge consider when deciding my case?*

The court may award “reasonable” visitation to a grandparent, if it finds that the grandparent provides clear and convincing evidence that (1) the living parent is unfit or that there is a threat of significant harm to the child, (2) that visitation is in the best interest of the minor child, and (3) that the visitation will not materially harm the parent-child relationship. A judge will consider many factors when deciding grandparent visitation and what is in the best interest of the child. The factors all consider the “mental and emotional well-being” of the grandchild. The factors include but are not limited to:

- The willingness of the grandparent to encourage a close relationship between the child and the parent;
- The length and quality of the prior relationship between the child and the grandparent;
- The preference of the child if they are of a mature age to be able to express a preference; and
- The mental and physical health of the child and the grandparents.

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1 Please note that all statutory references may be accessed at [www.leg.state.fl.us/Statutes](http://www.leg.state.fl.us/Statutes)
Georgia
By Kirsten Gough*

1. What are my rights to visitation?

Georgia provides grandparents with greater opportunity to obtain rights with relation to a grandchild than most other states. Under Georgia law, a grandparent does not automatically have the right to visit a minor grandchild but may petition the court for visitation rights.¹ Notably, a grandparent of a grandchild whose related parent is a deceased servicemember has standing to petition the court for visitation whether or not the servicemember’s legal rights to the child were previously terminated (i.e. grandparents may request visitation where, for example, they are the parents of the grandchild’s father, who is not married to the mother and has not assumed legal responsibility for the grandchild).

A judge may grant reasonable visitation rights that do not interfere with the child’s school or regularly scheduled extracurricular activities and are not less than 24 hours in any one-month period.² Whether or not visitation is awarded, the court may direct a custodial parent to notify the grandparent of every public performance of the minor child, such as musical concerts, graduations, recitals, and sporting events or games.³

2. Where do I start?

To obtain visitation rights, a grandparent may either file “an original action” requesting visitation rights, or the grandparent may join an existing case for custody, visitation, divorce, or termination of parental rights.⁴ The grandparent of a grandchild whose related parent is a deceased servicemember has standing to file an original action with the court at most once every two years and only if there is no other case regarding custody or visitation of the child pending.⁵ If another case is pending, the grandparent must file to “intervene” in the existing case. A court may order that the grandparents and custodial parent (and any other parties to the case) attempt mediation to reach a settlement agreement regarding visitation prior to the court deciding the case.

3. What things will the judge consider when deciding my case?

In Georgia, while the court may show deference to the preference of the custodial parent,⁶ the court may choose to presume that a child who is denied an opportunity for contact with his or her grandparents may suffer a harmful emotional injury.⁷ Normally, to receive visitation rights, a grandparent must show the court clear and convincing evidence that 1) the grandchild’s health or welfare would be harmed if the grandparent could not visit the child, and 2) visitation is in the grandchild's best interests.⁸ However,

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* Kirsten Gough is a military spouse attorney licensed to practice law in Illinois and Missouri. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of June 11, 2015.
when a parent of the child has died, a grandparent need only show that visitation would be in the child’s best interest and does not need to prove that the child would be harmed if visitation is not granted.  

Other factors that the court may consider in favor of the grandparents are if:

- The grandchild previously lived with the grandparents for six months or more;
- The grandparent provided financial support for the grandchild’s basic needs for at least one year;
- There is a previously existing pattern of regular visitation with the grandparent;
- Any other circumstances exist that indicate that emotional or physical harm may come to the grandchild if visitation is not granted.

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2. O.G.C.A. §19-7-3(c)(4)
3. See O.G.C.A. §19-7-3(g)
4. Id.
5. See O.G.C.A. §19-7-3(c)(2)
6. O.G.C.A. §19-7-3(d) (2014)
7. O.G.C.A. §19-7-3(c)(3) (such a presumption is rebuttable)
8. O.G.C.A. §19-7-3(c)(1)
9. O.G.C.A. §19-7-3(c)
1. **What are my rights to visitation?**

   In Hawaii, a grandparent may petition for “reasonable” visitation with a grandchild.⁴ However, the Hawaii Supreme Court declared the statute granting grandparents that right unconstitutional in 2007, and no replacement statute has successfully been passed. So, the ability of grandparents to petition for, and the likelihood of their success in obtaining, visitation with grandchildren remains uncertain in Hawaii.

   Pursuant to the existing statute, the court may award reasonable visitation if the grandchild lives in Hawaii and visitation with the grandparent is in the grandchild’s best interest.³ However, the Hawaii Supreme Court has ruled that this standard is not consistent with U.S Supreme Court decisions regarding the constitutionality of grandparent visitation rights. Therefore, any court considering the issue may decline to grant grandparent visitation rights based on this standard. At a minimum, according to the decision of the Hawaii Supreme Court, this principle will be subject to the “special weight” the court must give to the visitation decisions of a fit custodial parent.⁴ And, the statutory standard for grandparent visitation may be changed if new legislation is passed.

2. **Where do I start?**

   Grandparents of a minor must file a petition with the Family Court for an order of visitation rights.⁵ The petition includes completing a “Custody/Visitation Statement.”⁶ The court will then set a date for a hearing and notify all parties involved.

3. **What things will the judge consider when deciding my case?**

   In determining the best interest of the child, the court must give preference to a fit parent’s decisions regarding visitation with grandparents.⁷ The court may also consider the effect of the grandparent’s visitation rights on the visitation rights of the noncustodial parent.⁸ Other specific factors for consideration by the court are not set forth in the grandparent visitation rights statute, but generally, in custody and visitation cases:

   - If the child is of a sufficient age, the child’s wishes shall be considered.⁹
   - The court may require an investigation by a child custody evaluator to determine the care, welfare, and custody of the child.¹⁰

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• The court can hear the testimony of any person whose knowledge or insight is relevant to what is best for the physical, mental, and spiritual well-being of the child at issue.¹¹

¹ Haw. Rev. Stat. § 571-46.3 (ruled unconstitutional by Hawaii Supreme Court)
² See Doe v. Doe, 172 P.3d 1067, 1080 (Haw. 2007). Although legislation is pending, there is currently no recourse for grandparents who are denied visitation with their minor grandchildren. See 2015 HI S.B. 643.
³ Haw. Rev. Stat. § 571-46.3
⁴ Doe v. Doe, 172 P.3d 1067, 1080 (Haw. 2007)
⁵ Haw. Rev. Stat. § 571-21 (a) (West 2015)
⁶ Available at http://www.courts.state.hi.us/docs/1FP/1FP704.pdf.
⁷ See Doe v. Doe, 172 P.3d 1067, 1080 (Haw. 2007).
Idaho
By Squire Patton Boggs (US) LLP

1. What are my rights to visitation?

Idaho courts provide grandparents the opportunity to request reasonable court-ordered visitation time with grandchildren in several situations, including in the case of the death of the parent related to the grandparent. Idaho law provides that the court may grant visitation rights to grandparents upon a showing that visitation would be in the “best interests of the child.”

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with his or her grandchild, the following issues will be important to consider. Also, it is important to note that, in Idaho, visitation time may be sought by the grandparents or great-grandparents of a child. This discussion is oriented towards visitation sought by a grandparent, but it may be assumed to be equally applicable to a great-grandparent.

In Idaho, if the surviving parent objects to visitation, a grandparent related to the deceased parent may seek visitation by filing a petition for visitation with the appropriate district court if no custody agreement regarding the child exists. If, however, a custody agreement already exists regarding the child, the grandparent must first seek to intervene in the prior or concurrent proceeding before requesting visitation rights.

A request for court-ordered visitation time in Idaho should include the following information: (1) a proposed plan specifically stating the visitation requested by the grandparent; and (2) relevant facts of the case, including the name and date of birth of the child, the nature and extent of any special needs of the child, and a description of the manner in which the parents are currently caring for the child. While no form exists specifically for requesting grandparent visitation, a grandparent may refer to the form for a “Complaint for Paternity, Custody, Visitation and Support.” Grandparents should consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts.

3. What things will the judge consider when deciding my case?

In determining whether grandparent visitation is in the best interests of the child, an Idaho court will place significant weight on any living parent’s fundamental right to determine with whom his or her child may associate. If a living parent objects to visitation, the grandparent must show by “clear and convincing” evidence that the parent’s decision is not in the child’s best interests.

* This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 8, 2015.
“Clear and convincing” evidence is that which should convince the judge that, in contrast to the opposing evidence, there is a high probability that the grandparent’s request for visitation time is in the best interests of the child. Idaho courts have considered several factors in determining whether visitation rights are in the best interests of the child, including:

- The wishes of the child’s living parent,
- The interaction and interrelationship of the child and the grandparent, and
- The need to promote continuity and stability in the life of the child.\(^6\)

As a result of the burden of proof required to grant grandparent visitation time in opposition to the preference of the living parent, it can be very difficult for grandparents to obtain a ruling in their favor. However, the ultimate outcome depends heavily on the specific circumstances of the request and the particular judge before whom the petition is brought.

\(^1\) IDAHO CODE ANN. § 32-719 (2006).
\(^2\) See Idaho Rules of Family Law Procedure, Rule 211.
\(^3\) Idaho Rules of Family Procedure, Rule 504.
\(^6\) IDAHO CODE ANN. § 32-717(1) (these factors were applied to grandparents’ visitation rights in *Leavitt*, above).
Illinois
by Justine Digeronimo*

1. What are my rights to visitation?

Illinois law allows grandparents to petition a court for grandparent visitation. However, a court is not required to grant grandparent visitation, but may do so in certain circumstances, including when the grandparent’s son or daughter has passed. If a grandparent’s child is deceased and the grandparent has been unreasonably denied visitation by the child’s surviving parent, the grandparent has a right to petition for visitation with his or her grandchild.

Furthermore, if visitation rights are granted, and then the child is subsequently adopted or parental rights are terminated, the visitation order automatically terminates. The only exception is where someone related to the child adopts the child. In that case, anyone who qualified as a grandparent before the adoption will continue to have standing to request visitation with the child after the adoption.

2. Where do I start?

A grandparent’s petition for visitation must be filed in the county in which the grandchild resides. When petitioning, the grandparent must meet basic pleading requirements, establish their familial relationship with the child, and state that the child is over one year old. Additionally, the grandparent must show there was an unreasonable denial of visitation, that the parent denying the visitation is either unfit, and/or that the child suffered mental, physical, or emotional harm from the unreasonable denial of visitation. Furthermore, the grandparent should state any special circumstances that exist, such as the death of the parent related to the grandparent and that the denial of visitation is not in the child’s best interests.

3. What things will the judge consider when deciding my case?

The court places a high burden of proof on the petitioning grandparent when determining whether to award grandparent visitation. The grandparent’s argument for visitation must be strong enough to overcome the court’s presumption that the living parent’s decisions regarding grandparent visitation are not harmful to the child’s mental, physical, or emotional health.

The court will consider several factors in determining whether to grant grandparent visitation, including:

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the preference of older children;
mental and physical health of the child and the grandparent;
the length and quality of the prior relationship between the child and grandparent;
the good faith of the grandparent in filing the request;
the good faith of the parent denying visitation;
the amount of visitation time requested;
the potential adverse impact visitation could have on the child’s regular activities;
whether the child lived with the grandparent or the grandparent was the child’s primary caretaker for at least six consecutive months;
whether the grandparent had frequent or regular contact or visitation with the child for at least one year; and
any other fact that establishes that the loss of the relationship between the child and grandparent is likely to harm the child’s mental, physical, or emotional health.\(^8\)


\(^2\) Illinois is a pro-parent/anti-grandparent visitation state. For example, Justice Fitzgerald stated in Wickham v. Byrne, 199 Ill. 2d 309, 322, 769 N.E.2d 1(2002), “In most cases, the relationship between a child and his or her grandparents is a nurturing, loving relationship that provides a vital connection to the family's history and roots…Conflicts may arise between a child's parents and grandparents…Yet, this human conflict has no place in the courtroom. This is true even where the intrusion is made in good conscience, such as the request for visitation to preserve the child's only connection to a deceased parent's family.” After the Illinois Supreme Court struck down the former grandparent visitation statute in Wickham v. Byrne, the Illinois Legislature enacted section 607(a-5)(3), placing the burden heavily on the petitioning grandparent.

\(^3\) For a grandparent to be granted visitation, there must be an unreasonable denial of visitation by a parent in addition to one of the other enumerated conditions. 750 Ill. Comp. Stat. § 5/607(a-5)(1). One of those conditions is that “the child’s other parent is deceased or has been missing for at least 3 months.” 750 Ill. Comp. Stat. § 5/607(a-5)(1)(A-5).


\(^7\) 750 Ill. Comp. Stat. § 5/607(a-5)(3).

1. What are my rights to visitation?

Indiana courts provide the opportunity for grandparents to request court-ordered visitation time with children only in certain situations, including in the event of the death of a parent.\(^1\) If a child is born outside of a marriage, the paternal grandparents may only request visitation if paternity has been established.\(^2\) Otherwise, the paternal grandparents lack standing. It is important to note that these rights to request visitation survive adoption of the child by any of the following persons: a stepparent, person who is biologically related to the child such as a grandparent, sibling, aunt, uncle, niece or nephew.\(^3\)

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child in Indiana, the grandparent should file a petition requesting reasonable visitation rights. That petition should be filed in the circuit, superior or probate court located in the county where the child resides or in the court having jurisdiction over any pending divorce proceedings.\(^4\) It is important to note that, in Indiana, great-grandparents do not have a right to petition for court-ordered visitation for great-grandchildren.

In Indiana, the petition that must be filed is entitled “In Re the visitation of __________.” That petition must meet the following requirements:

- Be filed by a grandparent entitled to receive visitation rights;
- Be verified\(^5\);
- Include the name and relationship of the grandparents, each child with whom visitation is sought, and the custodial parent or guardian of each child;
- Include the present address of each person identified above;
- The date of birth of each child with whom visitation is sought;
- The status through which the grandparent seeks visitation (i.e., child’s parent has died); and
- What visitation rights the grandparent is seeking.\(^6\)

Grandparents should consult a qualified attorney to ensure that the proper petition is prepared and filed in the proper courts.

3. What things will the judge consider when deciding my case?

Indiana courts will look at several statutory factors to determine whether granting visitation time to grandparents is in the best interests of the child. Provided the

\[^1\] This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 7, 2015.
grandparent has standing to request visitation as discussed in paragraph 1, the court will consider the following factors:

- Whether the court believes the visitation would be in the best interests of the child;
- Whether a grandparent had or has attempted to have meaningful contact with the child; and
- The court may interview the child to determine the child’s perception of whether visitation is in the best interests of the child. As a note, the court may permit counsel to be present at the interview, and if counsel is present, a record may be made of the interview and the interview may be made part of the court record for purposes of appeal of any decision that is given.  

Additionally, the court may modify any current order or decision granting or denying visitation rights whenever changes to the current order would serve the best interests of the child.  

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1 I.C. §31-17-5-1.
2 Id.
3 I.C. §31-17-5-9.
4 I.C. §31-17-5-4.
5 Verification is a formal written request to a court for an order of the court (1) under oath taken before a notary public or other officer authorized to take affidavits and to administer oaths or (2) under a declaration stating in substance "I declare under penalty of perjury that the foregoing is true and correct" and further stating the date and place of execution.
6 I.C. §31-17-5-3.
7 I.C. §31-17-5-2.
8 I.C. §31-17-5-7.
Iowa
by Squire Patton Boggs (US) LLP*

1. *What are my rights to visitation?*

Iowa courts provide the opportunity for grandparents to request visitation rights in the event of the death of the parent related to the grandparents.¹ A significant hurdle to obtaining such court-ordered visitation is that, in Iowa, there is a rebuttable presumption that a fit parent’s decision to deny a grandparent visitation to a grandchild is in the best interest of the child.² The court may still grant visitation rights, however, if the grandparent is able to demonstrate each of the three elements listed in paragraph 3 below through clear and convincing evidence.³ Iowa law also extends this right to seek visitation to great-grandparents. While this discussion focuses on the rights of a grandparent, it is equally applicable to those of a great-grandparent.

2. *Where do I start?*

If the surviving parent objects to the grandparent’s request for visitation, the grandparent may file a petition for visitation, in which the grandparent should provide an explanation, including concrete examples and evidence, of the three elements listed in paragraph 3 below. Additionally, the petition must include the information set forth in Section 598B.209 of the Iowa Code.⁴

The court where the grandparents should file their petition will depend on the specific facts of the case. If there is neither a pending action nor final custody order, the grandparent should file a petition in the district court of the county where the child resides. Otherwise, the grandparent should file in the juvenile or district court in the county having jurisdiction over the prior or pending case.⁵

Additionally, the grandparent must serve personal notice of the proceedings on the surviving parent, and any other grandparents or great-grandparents who have previously obtained a final order or commenced a visitation proceeding.⁶

3. *What things will the judge consider when deciding my case?*

To prevail in a petition for visitation rights, the grandparent must establish the following three elements by clear and convincing evidence:

a. It is in the best interest of the child to grant such visitation;
b. The grandparent has established a substantial relationship with the child prior to filing the petition for visitation; and
c. The parent is unfit to make the decision regarding visitation.⁷

*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 5, 2015.*
When determining the best interest of the child, the court will consider the following factors: (a) the prior interaction and interrelationships of the child with the child’s parents, siblings, and other family members, compared to the child’s relationship with the grandparent; (b) the distance between the grandparent’s and the child’s residences; (c) the child’s and parent’s available time, including but not limited to the parent’s employment schedule, the child’s school schedule, the child’s available time to spend with siblings, and the child’s and the parent’s holiday and vacation schedules; (d) the age of the child; (e) the wishes and concerns of the child, as expressed to the court; (f) the health and safety of the child; (g) the mental and physical health of all parties; (h) whether the grandparent has been previously convicted of or pleaded guilty to any criminal offense involving child abuse or neglect; whether the grandparent previously has been convicted of or pleaded guilty to a crime involving a victim who at the time of the offense was a member of the family or household that is the subject of the current proceeding; and whether there is reason to believe that the grandparent has acted in a manner resulting in a child having ever been found to be abused or neglected; and (i) the wishes and concerns of the child’s parent, as expressed to the court.  

With regard to the second element of the grandparent’s petition, the Iowa Code sets forth three scenarios that exemplify what the court may deem to be a “substantial relationship”: (a) the child has lived with the grandparent for at least six months; (b) the grandparent has voluntarily and in good faith supported the child financially in whole or in part for a period of not less than six months; and (c) the grandparent had frequent visitation including occasional overnight visitation with the child for a period of not less than one year.

Finally, in determining whether the grandparent has overcome the rebuttable presumption that the parent’s decision regarding visitation is in the best interest of the child, the grandparent will need to show that either the parent is unfit to make such decision, or the parent’s judgment has been impaired and the relative benefit to the child of granting visitation greatly outweighs any effect on the parent-child relationship. In determining whether the parent’s judgment is impaired, the court will consider evidence of the following, among other things: neglect of the child, abuse of the child, violence toward the child, indifference or absence of feeling toward the child, demonstrated unwillingness and inability to promote the emotional and physical well-being of the child, drug abuse, and a diagnosis of mental illness.

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1 Iowa Code § 600c.1(1); see Clausen v. Clausen, 860 N.W. 2d 925 (Iowa 2014).
2 Iowa Code § 600c.1(2).
3 Id. 600c.1(3).
4 Id. 600c.1(11); 598B.209.
5 Id. 600c.1(7)-(8).
6 Id. 600c.1(9).
7 Id. 600c.1(3)(a)-(c).
8 Id. 600c.1(4).
9 Id. 600c.1(5).
10 Id. 600c.1(3)(c).
Kansas
by Natalie Washington*

1. **What are my rights to visitation?**

Under Kansas law\(^1\), a court may grant grandparents visitation rights after a divorce or after the death of a parent. Following the death of a child’s parent, a Kansas court may grant visitation rights to grandparents even if the surviving spouse has remarried and the new spouse has adopted the child.\(^2\)

2. **Where do I start?**

First, a grandparent must file a petition for visitation in the court located in the county where the child lives. The court will then set a time and date for a hearing to decide whether the grandparent should have visitation rights. The court will also decide how the grandparent is required to notify the other interested parties of the hearing.\(^3\)

3. **What things will the judge consider when deciding my case?**

Under Kansas law, a court must find visitation with the grandparents is in the child’s best interest and that a substantial relationship between the child and the grandparent has been established in order to grant the grandparent visitation rights. Basically, a grandparent must prove there was a relationship with the child and it is best for the child that the relationship continues.\(^4\) A grandparent may prove this by telling the court about time the grandparent has spent with the child, how often the two spent time together, activities they participated in together, and any information that would prove the court that there was a relationship between the grandparent and the grandchild.

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\(^1\) See Kansas Statutes Annotated § 23-3301.
\(^2\) See Kansas Statutes Annotated § 23-3301(c).
\(^3\) See Kansas Statutes Annotated § 23-3303.

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* Natalie Washington is a military spouse attorney licensed in Tennessee and Kansas. Ms. Washington also works as for the Kansas Legislature. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of January 25, 2015.
**Kentucky**

By Christopher J. Martens *

1. *What are my rights to visitation?*

   Kentucky courts may grant reasonable visitation rights to a grandparent if the court determines visitation is in the best interest of the child. In Kentucky, a grandparent has standing to petition for reasonable visitation with a grandchild as long as the grandparent never terminated his or her parental rights relating to the deceased service member¹ and the deceased service member did not terminate parental rights to the grandchild prior to his or her passing².

   If the court does chose to grant visitation rights to a grandparent, the grandparent will usually retain those rights even if the parental rights of the grandparent’s son or daughter are later terminated, unless the court decides that termination is in the best interest of the child.³ So, if a step-parent adopts the grandchild after the passing of the servicemember, the grandparents related to the deceased service member may still petition the court for visitation⁴ and should retain any visitation rights granted prior to the adoption.

   Kentucky law also states that, in cases where a grandparent has assumed the financial obligation of child support owed by a deceased son or daughter, the court may grant non-custodial visitation to the grandparent if the court determines it is in the best interest of the child. (”Non-custodial visitation” is the type of visitation commonly associated with divorced parents sharing custody of a child.) However, simply accepting the financial obligation of child support does not guarantee visitation will be granted. But, if visitation is not granted, a grandparent that has assumed this financial obligation may no longer be responsible for child support.⁵

2. *Where do I start?*

   To request visitation rights, a grandparent must file a petition with the circuit court in the county where the grandchild resides. Once the petition is filed, the court will schedule a hearing that will generally occur within 60 days of filing. The court may require several additional actions before making a decision regarding the petition for visitation. These actions may include: family counseling, mediation, psychological

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evaluation, or any other action deemed necessary by the court. These actions may be ordered at the expense of the parties involved.

3. **What things will the judge consider when deciding my case?**

Under Kentucky law, before ordering visitation, the court must find that visitation is in the best interest of the child. The court begins with the presumption that a fit custodial parent has made decisions that are in the best interest of the grandchild. So, the grandparent must overcome this presumption by showing clear and convincing evidence that visitation is in the best interest of the child. In other words, the grandparent must show that the custodial parent is either unfit or mistaken in their belief that visitation is not in the best interest of the child.  

The court may look at several factors to determine if visitation is in the best interest of the child. These factors include:

- The nature and stability of the relationship between the child and grandparent seeking visitation
- The amount of time the grandparent and child spent together
- The potential detriments and benefits to the child from granting visitation
- The effect of granting visitation would have on the child’s relationship with the parents
- The physical and emotional health of all the adults involved, parents and grandparents alike
- The stability of the child’s living and schooling arrangements
- The wishes and preferences of the child
- The motivation of the adults participating in the grandparent visitation proceedings

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1 *Palmer v. Burnett*, 384 S.W.3d 204 (Ky. Ct. App. 2012) (Finding that biological grandmother who voluntarily terminated her parental rights to grandchild’s mother lacked standing to request grandparent visitation.)

2 *Hicks v. Enlow*, 764 S.W.2d 68, 71 (Ky. 1989) (Determining that litigation by the grandparents related to a parent whose parental rights have previously been terminated would frustrate and circumvent the termination decree)

4 *Hicks*, 724 S.W.2d at 72 (Determining that the considerations expressed through the termination and adoption statutes do not apply in cases where there has only been a stepparent adoption with no prior legal severance of the bond to the grandparents.)


6 *Kentucky Family Court Rules of Procedure and Practice*

7 *Walker*, 764 S.W.3d at 871
Louisiana
by Tiffany Tomsik

1. What are my rights to visitation?

Three statutes govern grandparent visitation rights in Louisiana.1 Visitation, where it is found to be in the best interest of the grandchild,2 is most likely to be granted if your child (i.e. grandchild’s parent) has died, is imprisoned, or declared legally incompetent, and any of the following situations apply:3

a. A divorce petition is pending between the grandchildren’s parents,
b. Where there is no pending divorce, but parents are married and have lived separately for more than six months,
c. Where parents were never married, but lived together, or
d. Where there grandchild has been placed in foster care by the state because of abuse or neglect by the remaining parent.

Generally, adoption cuts off your grandparent visitation rights except where you are the parent of a deceased party to the marriage, or if your child has forfeited his or her rights to object to your grandchild's adoption.4

Note that visitation rights under Louisiana’s statutes do not give you a right to significantly intrude upon your grandchild’s relationship with the other parent or to interfere with the that parent’s fundamental right to make childrearing decisions.5

2. Where do I start?

If your grandchild is not in custody of the state, and you have been unreasonably denied visitation rights, you, or an attorney, may file a pleading in court to petition for visitation under Louisiana Civil Code art. 136.

If your grandchild is in foster care of the state (i.e. parents have been deemed unfit):6

a. Contact the parish office in which the grandchild is in custody.
b. Inform the relevant foster care worker of your relationship with the children, and your position of interest.
c. The foster care worker will incorporate the information that you provide into existing court proceedings.

3. What things will the judge consider when deciding my case?

* Tiffany Tomsik is a military spouse and foreign-licensed attorney from Singapore. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of September 14, 2015.
It is typically difficult to obtain court-ordered visitation rights under Article 136\(^7\), as you will have to prove both "extraordinary circumstances" (e.g. where parent is addicted to controlled dangerous substances)\(^8\) to the judge, and that visitation with the grandparent is in the "best interest" of the grandchild.

In determining the “best interest” of the grandchild, the court must consider: \(^9\)

a. length and quality of the prior and existing relationship between the grandchild and grandparent,

b. Whether the grandparent can uniquely provide guidance and support to the grandchild that the parent cannot,

c. The grandchild’s wishes, if he or she is old enough to express preferences,

d. The mental and physical health of both the grandchild and the grandparents,

e. The willingness of the grandparents to encourage a good relationship between parent and child.

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1 The three applicable statutes are: Louisiana (LA) R.S. 9:344, Article 136 of the La. Civil Code, and Article 1264 of the La. Children's Code. Should the statutes conflict, the provisions of R.S. 9:344 would supersede that of Art. 136. Art. 1264 focuses narrowly on the exceptions to the general rule of grandparent visitation rights when their grandchildren are adopted.

2 La. Civil Code art 136A

3 La. R.S. 9:344

4 La. Children’s Code art 1264

5 *Galjour v. Harris*, 00-2696 (La.App. 1 Cir. 3/28/01) at p.11, 795 So.2d at 358

6 Note that it is not recommended that you obtain a court order from the family court as the jurisdiction of the juvenile court supersedes that of the family court.

7 Louisiana’s First Circuit Court of Appeal has upheld the constitutionality of LA’s grandparental visitation statutes. See, *Barry v. McDaniel*, 05-2455 (La.App. 1 Cir. 3/24/06), 934 So.2d 69. See also, *Galjour v. Harris*, where the court found the *Troxel* opinion inapplicable to the Louisiana statutory provisions for grandparental visitation.

8 La. Civil Code art 136C

Maine
by Squire Patton Boggs (US) LLP*

1. What are my rights to visitation?

In Maine, a grandparent of a minor child may seek court-ordered visitation on the basis of (a) the death of the minor child’s parents or legal guardian or (b) a sufficient existing relationship between the grandparent and the child. If neither (a) nor (b) are applicable, then a grandparent may still seek visitation if the grandparent has made a “sufficient effort” to establish such a relationship.¹

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child in Maine, the following issues will be important to consider. A grandparent can petition the court for visitation in certain situations, including when the parent of the child is deceased. If this or any other qualifying circumstance exists², a grandparent has “standing” to file for visitation rights. Having standing does not mean that the grandparent’s request will be granted, but only that the court will be willing to hear the grandparent’s argument in favor of granting such a request. Please note that, under Maine law, a grandparent may request visitation rights even if the living parent objects to visitation.

To request court-ordered visitation time in Maine, a grandparent will need to file certain petition papers, in the court of the county where the child resides. If there is a pending case (e.g., the parents are divorcing or custody is being decided), then the grandparent must file the petition papers with the court hearing that case. If a grandparent needs to show a “sufficient existing relationship” with the grandchild or that “sufficient efforts” have been made to establish a relationship, then the grandparent must also file an affidavit. The affidavit must describe the grandparent-grandchild relationship (or efforts to establish such a relationship) and state that the grandparent meets the applicable legal standard.³

The courts in some Maine counties provide required petition forms and other filings that grandparents will need to submit to the court in connection with a visitation request. Grandparents seeking visitation in Maine should check the website of the applicable county court system to identify if such forms are available online. Grandparents should also consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts.

3. What things will the judge consider when deciding my case?

*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of December 10, 2015.
The court may grant a grandparent visitation rights upon finding that such visitation rights are in the best interest of the child and would not significantly interfere with any parent-child relationship or with the parent’s rightful authority over the child. In applying this standard, the court shall consider the following factors:

- the age of the child;
- the relationship of the child with the child's grandparents, including the amount of previous contact;
- the preference of the child, if old enough to express a meaningful preference;
- the duration and adequacy of the child's current living arrangements and the desirability of maintaining continuity;
- the stability of any proposed living arrangements for the child;
- the motivation of the parties involved and their capacities to give the child love, affection and guidance;
- the child's adjustment to the child's present home, school and community;
- the capacity of the parent and grandparent to cooperate or to learn to cooperate in child care;
- methods of assisting cooperation and resolving disputes and each person's willingness to use those methods;
- any other factor having a reasonable bearing on the physical and psychological well-being of the child; and
- the existence of a grandparent's conviction for a sex offense or a sexually violent offense.\(^4\)

\(^1\) 19-A M.R.S. § 1803(1).
\(^2\) See 19-A M.R.S. § 1803 (stating that grandparents may have visitation rights if a sufficient existing relationship exists between the grandparent and the child, or if a “sufficient effort” for such a relationship has been made by the grandparent). See also Robichaud v. Pariseau, 2003 ME 54, 820 (requiring petitioning grandparents to show urgent reasons for the need for access).
\(^3\) 19-A M.R.S. § 1803(2).
\(^4\) 19-A M.R.S. § 1803(3).
1. **What are my rights to visitation?**

Maryland laws allow a court to grant visitation rights to a grandparent if the court finds it to be in the best interests of the child. However, Maryland courts honor the wishes of the custodial parent and will presume that these wishes are in the best interest of the child unless the grandparents demonstrate that (1) the surviving parent is unfit (i.e. substance abuse, neglect, etc.) or (2) exceptional circumstances exist. The death of a servicemember parent may constitute “exceptional circumstances” under which a court may decide to override the surviving parent’s wishes, especially if those wishes deny grandparents visitation. If a grandparent successfully demonstrates either unfitness or exceptional circumstances, the court may determine what reasonable grandparent visitation schedule will be in the grandchild’s best interest.

2. **Where do I start?**

Grandparents who are parents of a deceased servicemember may seek visitation of a grandchild by filing a petition with the court. This may be done by either joining an existing case involving custody of the grandchild or filing a new case for visitation rights. The process for properly filing any petition or action may be complicated, and the grandparents should seek the advice of an attorney. If a court decides to consider a grandparent’s petition for visitation, the parties to the case may be required to attempt to resolve the issues and come to a settlement agreement in mediation before the court will proceed with hearing the case.

3. **What things will the judge consider when deciding my case?**

A Maryland court will first consider evidence presented by the grandparents to determine if the surviving parent is unfit or if exceptional circumstances exist. If the grandparent succeeds in proving either of those circumstances, then the court will determine what reasonable visitation schedule is in the best interest of the child. There is no exhaustive list of factors that the court will use when determining visitation rights for a grandparent. Instead, the court considers the totality of circumstances surrounding the care of the child. Generally, in Maryland, grandparents petitioning the court for visitation against the wishes of the biological or legal parents are unlikely to succeed.

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3 If there is already a court order for visitation in place, please use Form DR7, Petition to Modify Custody/Visitation. If there is no court ordered visitation, you should complete Form CCDR5, Compaint for Visitation. Forms and corresponding directions may be found at: http://www.courts.state.md.us/family/formsindex.html.
Massachusetts
by Eliza M. Scheibel

1. What are my rights to visitation?

Massachusetts courts allow grandparents to request court-ordered visitation time with grandchildren in several situations, including the death of one of the parents. The court may order visitation time with the grandchild if the grandparent proves that a denial of visitation rights will significantly harm the child’s health, safety, or welfare. Grandparents may not bring suit for visitation if the child has been adopted by a third party other than a stepparent.

2. Where do I start?

In order to seek visitation rights following the death of a child, the grandparent should file a petition for grandparent visitation in the Massachusetts county where the child resides unless there has been a prior court action involving the child in another county. If there was a previous complaint to establish paternity in Massachusetts, then the petition for visitation should be filed in the same county where the paternity suit was filed.

A grandparent filing a petition for visitation must complete an Affidavit of Care and Custody. The form is available in Massachusetts courthouses, or on the court system’s website. The Massachusetts courts website also contains instructions related to filing a petition for grandparent visitation.

3. What things will the judge consider when deciding my case?

Grandparents face a heightened burden to prove that a denial of visitation rights would cause significant harm to the child by adversely affecting the child’s health, safety, or welfare. This requires that the grandparent’s petition include a detailed description of the justification for visitation and the source of the information supporting the justification. The grandparent’s argument must be strong enough to overcome the court’s presumption that the surviving parent’s decision not to allow the requested visitation is in the best interests of the child.

The most important factor considered by the courts is the extent of any pre-existing relationship between the grandparent and the grandchild. If there is a close

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relationship, then disruption of that relationship could cause the type of harm necessary to order visitation. If the grandparent does not have a pre-existing relationship with the child, the grandparent must prove that visitation is necessary to protect the child from significant harm (for example, abuse by the custodial parent).

Generally, a judge may consider the following factors in deciding whether to grant visitation:

- The pre-existing relationship between the grandparent and child;
- Frequency of preexisting contact and communication between the grandparent and child;
- Whether the parent is deceased;
- Whether the parents are unfit, including any physical or emotional abuse by the parent against the child or another family member;\(^6\)
- The status of the children in the absence of visitation, i.e. are the children happy and healthy despite a lack of grandparent visitation;\(^7\) and/or
- The potential for exposure to harm while with the grandparent.

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2. M.A.G.L. c. 119 § 39D.
6. *Sher v. Desmond*, 70 Mass. App. Ct. 270, 283-284 (2007) (finding that grandmother’s allegations that father had abused mother, who had disappeared, and that father was trying to isolate child from others were sufficient to allege significant harm without visitation).
7. *Dearborn v. Deausault*, 61 Mass. App. Ct. 234 (2004) (denying grandparent visitation where children were “doing extremely well, are happy, smart and healthy,” and there was a risk that children would be exposed to addict father while visiting the paternal grandparents).
1. **What are my rights to visitation?**

   Michigan law permits a grandparent to seek visitation with his or her grandchild under several circumstances, including when the child’s parent, who is a child of the grandparent, is deceased.\(^1\) If, however, a child has been adopted or placed for adoption, a grandparent’s right to commence an action for visitation time with that child is terminated.\(^2\)

2. **Where do I start?**

   If a grandparent is eligible, as indicated above, to seek visitation time, which in Michigan is known as a “grandparenting time order,” the grandparent may file a petition in the appropriate court. A grandparent may file a petition in the form of a motion for a grandparenting time order in the circuit court that has continuing jurisdiction over the grandchild. Grandparents should consult a qualified attorney to ensure that the proper petition is filed in the proper courts. A court has continuing jurisdiction over a child if the child (1) resides in the state where the court is located or (2) has a significant connection to the state where the court is located.\(^3\) The child has a significant connection to the state if “one parent resides in the state, maintains a meaningful relationship with the child, and, in maintaining the relationship, exercises parenting time in the state.”\(^4\)

   If the circuit court lacks continuing jurisdiction over the grandchild, a grandparent may seek visitation rights by filing a complaint in the circuit court for the county where the child resides.\(^5\) The complaint must include an affidavit (a written declaration) setting forth the facts supporting the request for a grandparenting time order. A grandparent must notify each person who has legal custody or has an order for parenting time with the child, that a complaint seeking a grandparenting time order has been filed with the court.\(^6\)

   There is a rebuttable presumption that a fit parent’s decision to deny a grandparent visitation time is not harmful to the child’s mental, physical, or emotional health. To rebut this presumption, a grandparent seeking visitation rights must prove to the court by a “preponderance of the evidence that the parent’s decision to deny grandparenting time creates a substantial risk of harm to the child’s mental, physical or emotional health.”\(^7\)

3. **What things will the judge consider when deciding my case?**

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\(^1\) This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of November 2, 2015.
A Michigan court will only grant grandparent visitation rights if the grandparent is able to show that the requested visitation is in the best interest of the child.\textsuperscript{8} In determining the best interests of the child, the court considers the following factors:

- The love, affection, and emotional ties between the child and grandparent;
- The length and quality of relationship between the child and grandparent;
- The grandparent’s moral character;
- The grandparent’s mental and physical health;
- The child’s reasonable preference, if the child is of sufficient age to express a preference;
- The willingness of the grandparent to encourage a close relationship between the child and the child’s parent(s), except in the case of abuse or neglect;
- Any history of abuse of any child by the grandparent; and
- Any other factor relevant to the physical and psychological well-being of the child.\textsuperscript{9}

\begin{footnotes}
\textsuperscript{1} Mich. Comp. Laws § 722.27b(1)(c).
\textsuperscript{2} Mich. Comp. Laws § 722.27b(13).
\textsuperscript{3} See Mich. Comp. Laws § 722.1202(1).
\textsuperscript{5} Mich. Comp. Laws § 722.27b(3)(b).
\textsuperscript{6} Mich. Comp. Laws § 722.27b(4)(a).
\textsuperscript{7} Mich. Comp. Laws § 722.27b(4)(b).
\textsuperscript{8} Mich. Comp. Laws § 722.27b(6).
\textsuperscript{9} Id.
\end{footnotes}
1. **What are my rights to visitation?**

In Minnesota, a grandparent may petition the court for visitation of a grandchild if one of the child’s parents is deceased. The grandparent may obtain reasonable visitation rights through the courts if he or she can prove that: (1) visitation rights would be in the best interests of the child; and (2) such visitation would not interfere with the parent-child relationship. The court will also consider the amount of personal contact between the grandparents and the child prior to the application.

2. **Where do I start?**

In Minnesota, visitation time may be sought by the grandparents or great-grandparents of a child. This discussion is oriented towards visitation sought by a grandparent, but it may be assumed to be equally applicable to a great-grandparent.

A grandparent of a child whose parent is deceased may petition the district court for visitation. Grandparents should consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts. Note that if a motion for grandparent visitation has been heard and denied within the last six months, no subsequent motion may be filed unless agreed to in writing by the parties.

3. **What things will the judge consider when deciding my case?**

For a Minnesota court to grant grandparent visitation, the grandparent must show that the visitation rights would be in the best interests of the child, and would not interfere with the parent-child relationship. The court considers the amount of personal contact between the grandparents and the child prior to the application. The court also considers the amount of contact between the grandparents and the child between the time the grandparent was able to petition for visitation (i.e. the death of a parent) and the time the grandparent files the petition. For instance, one Minnesota court found there to be insufficient contact between the grandparents and their grandchildren to support the petition because the grandparents waited four years from the custody proceeding to contact their grandchildren, and waited seven years after the custody proceeding to file a visitation petition with the court. In rejecting the grandparents’ visitation petition, the court emphasized that “[o]ne of the strongest justifications for grandparent visitation is to encourage the continuation of lasting bonds and a sense of security for the children.”

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If the court deems the child to be of sufficient age, the court will also consider the child’s reasonable preference in the matter. Trial courts in Minnesota “have considered the preferences of children as young as 11 years old in determining visitation.”

Finally, the trial court will also give special weight to a parent’s child-rearing decisions, saying that “[a] parent has the fundamental right to make parenting decisions, including deciding who spends time with the child.” As a result, “the grandparent must prove by clear and convincing evidence that visitation would not interfere with the parent-child relationship.”

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1 Minn. Stat. § 257C.08, subd. 2(a) (2010).
2 Id.
3 Minn. Stat. § 257C.08, subd. 1.
4 Minn. Stat. § 257C.08, subd. 2(b).
5 Minn. Stat. § 257C.08, subd. 1; see also C.D.G.D. v. Darst, 800 N.W.2d 652, 656 (Minn. Ct. App. 2011).
6 Minn. Stat. § 257C.08, subd. 1.
7 In re Petition of Santoro for Visitation Pursuant to Minn. Statute 257.022, 594 N.W.2d 174, 177-178 (Minn. 1999).
8 Id. at 178.
9 Id. at 177-178, citing Minn. Stat. § 518.17(2) (1998).
10 Id. at 178; see State ex. Rel. Rys v. Vorlicek, 229 Minn. 497, 40 N.W.2d 250 (1949) (respecting the wishes of 11-year-old child to remain in the third party’s home rather than to return to the father); see also LaBelle v. LaBelle, 296 Minn. 173, 174-176 (crediting 13-year-old child’s preference to modify placement order and grant father custody).
11 C.D.G.D., 800 N.W.2d at 655.
12 Id. at 656.
Mississippi
by Squire Patton Boggs (US) LLP

1. What are my rights to visitation?

Mississippi courts provide grandparent(s) an opportunity to request court-ordered visitation under several circumstances, including in the event of the death of a grandchild’s parent.1

2. Where do I start?

If the grandparent wishes to pursue court-ordered visitation time with a grandchild in Mississippi, the grandparent must file a petition using the following procedure. It is important to note that the grandparents' visitation request must be reasonable. For example, Mississippi courts have held that a request for grandparent visitation every other weekend and four weeks in the summer, including public holidays, was excessive and not awarded.2

To file a request for visitation, the grandparent may file a petition with the chancery court in the county in which the child resides. Alternatively, if there is a custody decree in place with regard to the grandchild, the grandparent may petition the court in which the custody decree was entered.3 Depending on whether a prior or concurrent case involving the child exists, the grandparent will either file a Motion to Intervene or a Motion to Establish Visitaton Rights.4 Grandparents should consult a qualified attorney to ensure that the proper motions are filed in the proper courts. Finally, it is important to note that on motion from the parent of the child, the court may direct the grandparent to pay reasonable attorney’s fees to the parent unless the court finds that no financial hardship will be imposed on the parent.5

3. What things will the judge consider when deciding my case?

Mississippi courts will look at several factors set out by the court to determine whether granting visitation to the grandparent(s) is in the "best interests" of the child. Provided the grandparent has followed the procedure to request visitation, the court will consider the following:

• The disruption that extensive visitation will have on the child's life;
• The suitability of the grandparent's home with respect to the amount of supervision received by the child;
• The age, and physical and mental health of the grandparent and of the child;
• The emotional ties between the grandparent and the child;
• The moral fitness of the grandparent;

* This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 6, 2015.
• The distance of the grandparent's home from the child's home;
• Any undermining of the parent's general discipline of the child;
• Employment of the grandparent and the responsibilities associated with that employment; and
• The willingness of the grandparent to accept that the rearing of the child is solely the parent’s responsibility.  

In addition, it is important to note that grandparent visitation in Mississippi is not the equivalent of non-custodial parent visitation.

1 Miss. Code Ann. § 93-16-3(1); see Dearman v. Dearman, 811 So. 2d 308 (Miss. Ct. App. 2001).
2 Smith v. Wilson, 90 So. 3d 51 (Miss. 2012) (upholding factors set out to establish the definition of "best interests" in Martin v. Coop to allow grandparent visitation rights).
3 Miss. Code Ann. § 93-16-3(1).
4 While the following sample documents are intended for the use of a non-custodial parent, they may serve as samples for a grandparent seeking visitation: Mississippi Department of Human Services, "Pro Se Packet," available at http://www.mdhs.state.ms.us/media/265067/pro-se-packet.pdf
5 Miss. Code Ann. § 93-16-3(4).
6 Martin v. Coop, 693 So. 2d 912, 916 (Miss. 1997) (setting out factors for "best interest").
Missouri
By Katherine L. Goyette*

1. What are my rights to visitation?

The Missouri Supreme Court has acknowledged that grandparents are members of a child’s extended family, and play an important role in their upbringing. However, Missouri courts have been consistent in ruling that while grandparents are entitled to spend time with their grandchildren, visitation with them cannot be excessive or overly intrusive on the family. Thus, it is important to keep in mind that while a grandparent has no guaranteed right to have contact with their grandchildren, there are limited circumstances in which a grandparent can petition the court for grandchild visitation privileges. Note, however, that step-grandparents are not entitled to visitation.

2. Where do I start?

In Missouri, there are limited situations in which a court may grant grandparent visitation, including the situation in which the servicemember has died and the surviving parent denies reasonable visitation to a parent of the servicemember. In such limited situations, the grandparent has “standing” to petition for visitation rights with the grandchild.

A grandparent can file a Motion to Establish Visitation (“Motion”) with the court to request visitation time. Often, an order for visitation will be part of another court proceeding that involves the child, though this is not always the case. Some courts in Missouri provide forms for motions and other filings that may be helpful to a grandparent seeking court-ordered visitation. The applicable county court system may have these forms available online. The Missouri judicial branch website also has court forms, court rules and other information available at www.courts.mo.gov.

3. What things will the judge consider when deciding my case?

If a grandparent has standing to petition the court for visitation rights, the court will first determine whether the visitation would be in the child’s best interests. In determining the best interests of the child, the court has the discretion of consulting with the child regarding the child’s wishes and can also order a “home study”, or an

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investigation and report concerning the current custodial arrangements for the child by an independent third party.\textsuperscript{5} This investigation will often include a visit by the independent third party to the child’s current residence as well as the grandparent’s home.

Factors that the court may take into consideration when determining the best interests of the child include the age of the child; whether allowing visitation would physically endanger the child or cause impairment to the child’s emotional development; the mental and physical health of all parties involved; the interaction and interrelationship of the child with persons who may significantly affect the child’s best interests; the previous relationship between the child and the grandparent; and the criminal history of anyone seeking visitation with the child.

If the court finds that grandparent visitation is in the best interests of the child, the court has the option to appoint a \textit{guardian ad litem} for the child, or an attorney to represent the child. The guardian ad litem can participate throughout the grandparent visitation proceedings. The court can also impose reasonable conditions or restrictions on any order for grandparent visitation.\textsuperscript{6}

Although decisions of parents are given material weight, the court can examine the reasonableness of such decisions, based on evidence that is presented. The trial court must consider the parent’s right to make parental decisions about their children’s upbringing, the reasonableness of the decisions made by that parent, and then balance the parent’s interests with those of the child and the grandparent.\textsuperscript{7} Thus, the court does not have to “accept blindly” the reasons provided by a parent for denying visitation to a grandparent.\textsuperscript{8}

\textsuperscript{1} Herndon v. Tuhey, 857 S.W.2d 203 (Mo, 1993).
\textsuperscript{2} \textit{Id}. at 209.
\textsuperscript{3} V.A.M.S. §452.402.
\textsuperscript{5} V.A.M.S. §452.402 and §452.390.
\textsuperscript{6} V.A.M.S. §452.402.
\textsuperscript{7} Barker v. Barker, 98 S.W.3d 532, 535-36 (Mo. 2003).
\textsuperscript{8} \textit{Id}..
Montana
By Squire Patton Boggs (US) LLP*

1. What are my rights to visitation?

Montana law provides grandparents the opportunity to request reasonable contact rights ordered by the court and does not limit its application to specific circumstances. This means that grandparents may request court-ordered contact in the case of the death of the parent related to the grandparent. In determining whether contact is appropriate, Montana courts will initially determine whether the objecting parent is a fit parent, and what is in the “best interests of the child.”

2. Where do I start?

If a grandparent wishes to pursue court-ordered contact with a child under Montana law, the following issues will be important to consider. It is important to note that under the Montana contact statute, the term grandparent also includes great-grandparents. While this guide is directed at grandparent’s rights, it is also applicable to great-grandparents as well.

Grandparents seeking contact only and not seeking a parental role such as a guardianship are limited to the grandparent-grandchild contact statute. In Montana, a grandparent can request grandparent-grandchild contact by filing a petition with the court that must be entitled “In re the grandparent-grandchild contact of . . .” to request court ordered contact. The Department of Public Health and Human Services must be given notice of a petition for grandparent contact where the grandchild is the subject of an administrative or court proceeding related to child custody, divorce, or child neglect.

3. What things will the judge consider when deciding my case?

Before a court may act on a contact petition over the objection of a parent whose rights have not been terminated, the court must first rule on whether the objecting parent is a fit parent with notice and a hearing. This finding of fitness is based on whether the parent adequately cares for the child. If the court finds the parent to be unfit, it may grant the grandparent contact only if the court also finds by clear and convincing evidence that such contact is in the best interest of the child. If, however, the parent is found to be fit, there is a presumption that a fit parent’s wishes are in the best interest of the child. The court may still award the grandparent contact, even if the parent is determined to be fit, if the contact is determined to be in the best interest of the child and the fit parent presumption is rebutted. Montana

*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information is current as of October 1, 2015.
courts may utilize *any relevant factors* in determining the best interest of the child including, but not limited to:

- the wishes of the child’s parent and the wishes of the child;
- the existing relationship between the grandparent and grandchild;
- the mental and physical health of all individuals involved;
- physical abuse or threat of physical abuse by one parent against the child; and
- developmental needs of the child.

As there is a strong presumption that a parent’s wishes are in the best interests of the child, it can be difficult for grandparents to obtain a favorable ruling. The outcome will heavily rely on the specific circumstances of the case. A grandparent seeking court-ordered contact with a grandchild under Montana law should be aware of the high evidentiary burden.

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3 Grandparent-Grandchild Contact of Pamela Stewart v. Evans, 2006 MT 102, P24, 332 Mont. 148, 155-156 (Mont. 2006) (“The UCCJEA does not govern Chapter 9 proceedings; thus, its processes are not available for grandparent-grandchild contact disputes”).
5 “Clear and convincing” evidence means less than “beyond a reasonable doubt.” It means that there is a high probability that the evidence offered to prove a fact is true.
Nebraska
by Justine Digeronimo *

1. What are my rights to visitation?

Nebraska was the last state to enact a grandparent visitation statute in 1986. The Nebraska grandparent visitation statutes provide for grandparents to seek visitation with their grandchildren in three different circumstances, including when their son or daughter has passed.¹ The Nebraska Supreme Court has stated that Nebraska’s grandparent visitation statutes do not violate a parent’s substantive due process rights.² The term “Grandparent” includes “the biological or adoptive parent of a minor child’s biological or adoptive parent.”³ A grandparent has a right to seek visitation of their grandchild if “the child’s parent or parents are deceased.”⁴ Once parental rights are terminated, the grandparent no longer has a right to petition for visitation.⁵

2. Where do I start?

In order to seek visitation rights following the death of a child, the grandparent must file a petition in the district court where the grandchild resides.⁶ Each county’s district court rules differ. Therefore, check with the local court for rules, as well as any pro se forms that may be available to petition for grandparent visitation. The form of the pleadings are prescribed by Supreme Court rules which state that a petition for grandparent visitation must contain information required by statute.⁷ Usually, this means that, at a minimum, the petition must include the name and address of all parties (grandparents, parents, and any other person with custody rights to the grandchild), the relationship between the petitioner and the minor, and a statement that the parties have attempted to reconcile their differences prior to filing the petition. The petition must specifically request that the court order visitation rights for the petitioner.⁸ After filing the petition, the grandparent must serve a copy of the petition on the parent or any party having custody of the child.⁹

3. What things will the judge consider when deciding my case?

There is a high burden of proof required of the petitioning grandparent when a court is determining whether grandparent visitation should be awarded. Initially, the grandparent must meet the statutory definition described above.¹⁰ Next, the grandparent must present evidence of the beneficial relationship between the grandparent and grandchild, showing that a significant beneficial relationship either currently exists or

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existed in the past. Then, the grandparent must demonstrate that it would be in the best interests of the child to continue the beneficial relationship with the grandparent. Finally, the grandparent must establish that the visitation will not adversely interfere with the parent-child relationship. This evidence can be presented by the petitioning grandparent through an affidavit.\(^1\) If all of the above can be established by the petitioning grandparent through clear and convincing evidence, then a court may grant reasonable rights of visitation with the grandchild.\(^2\)

Some of the other factors considered by Nebraska courts include age and health of the child, character of the grandparent, where visitation will take place, frequency and duration of visits, emotional relationship between the child and grandparent, likely effect of visitation on the child, availability of the child for visitation, likelihood of disrupting an established lifestyle, wishes of the child, etc.\(^3\) A grandparent requesting visitation should be prepared to discuss factors pertinent to their situation.

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7 Neb. S. Ct. R. §4-301.
12 \textit{Eberspacher v. Hulme}, 533 N.W.2d 103, 248 Neb. 202, 206 (1995) (holding that the grandparent visitation statute gives the trial court discretion to make the determination).\(^4\)
1. **What are my rights to visitation?**

   In Nevada, if a parent of an unmarried minor child is deceased, a court may grant reasonable visitation rights to grandparents.\(^1\) A court will only become involved, however, if a parent of the child has denied or unreasonably restricted the Grandparent’s visits with the minor grandchild.\(^2\)

2. **Where do I start?**

   The party who is seeking visitation should begin by simultaneously filing both a “Petition for Non-Parent Visitation,” and a “Motion for Visitation,” with the district court in the county where the child resides. The Petition opens the case and informs the judge what visitation the grandparents are seeking. The Motion should explain the legal reasons visitation should be granted to the grandparents.\(^3\)

   After filing the petition and motion, the court will set a date for a hearing. At the hearing you should be prepared to explain to the judge why visitation with the grandparents is in the best interests of the child. A court’s decision regarding visitation is based on the factors listed in Section (3) below. At the hearing, the court may order mediation, may set the case for trial, or may grant visitation.

   Grandparents pursuing visitation rights pro se may find online resources helpful.\(^4\) However, the procedures involved in pursuing a case for visitation can be complex, and the assistance of a qualified attorney is advisable.

3. **What things will the judge consider when deciding my case?**

   If the custodial parent has denied or unreasonably restricted visitation, the court will presume that visitation is not in the best interest of the child.\(^5\) However, grandparents may rebut this presumption by demonstrating by clear and convincing evidence that it is in fact in the best interest of the child to grant visitation.\(^6\)

   In determining whether grandparent visitation is in the best interests of the child, the court must consider:\(^7\)

   - The love, affection and other emotional ties existing between the grandparent and the child.

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* Amy Rose is a military spouse attorney. She currently advocates for the civil rights and liberties of all Nevada citizens as Legal Director of the ACLU of Nevada. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of June 14, 2015.
• The capacity and disposition of the grandparent to:
  o Give the child love, affection and guidance and serve as a role model to the child;
  o Cooperate in providing the child with food, clothing and other material needs during visitation; and
  o Cooperate in providing the child with health care or alternative care recognized and permitted under the laws of Nevada in lieu of health care.
• The prior relationship between the child and the grandparent, including, without limitation, whether the child resided with the grandparent and whether the child was included in holidays and family gatherings with the grandparent.
• The moral fitness of the grandparent.
• The mental and physical health of the grandparent.
• The reasonable preference of the child, if the child has a preference, and if the child is determined to be of sufficient maturity to express a preference.
• The willingness and ability of the grandparent to facilitate and encourage a close and continuing relationship between the child and the parent or parents of the child as well as with other relatives of the child.
• The medical and other needs of the child related to health as affected by the visitation.
• The support provided by the grandparent, including, without limitation, whether the grandparent has contributed to the financial support of the child.
• Any other factor arising solely from the facts and circumstances of the particular dispute that specifically pertains to the need for granting a right to visitation against the wishes of a parent of the child.

Once a grandparent is granted visitation rights, any modification or termination of those rights may only be made if there is a substantial change in circumstances affecting the grandchild's welfare and it is in best interest of the grandchild to modify the existing visitation arrangement.\(^8\)

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1 N.R.S. § 125C.050(1)
2 N.R.S. §125C.050(3)
3 This guide does not include the specific steps to serve the petition and motion, including issuance of a summons, filing fees etc.
4 For those filing in Clark County (Nevada’s largest and most populous county) the Legal Aid Center of Southern Nevada has many helpful resources and sample documents, including a sample petition and sample motion. Those filing in other counties may also find these to be helpful resources. See http://www.familylawselfhelpcenter.org/2014-04-18-17-50-13/visitation-for-non-parents
5 N.R.S. § 125C.050(4)
6 Id; see also Steward v. Steward, 111 Nev. 295, 300 (1995)(discussing parental presumption).
7 N.R.S. § 125C.050(6); see also Wallace v. Wallace, 112 Nev. 1015, 1022 (1996)(finding that it was error by the trial court to not receive evidence on and consider all these factors before ordering grandparent visitation).
8 Rennels v. Rennels, 257 P.3d 396, 398 (2011)
1. What are my rights to visitation?

In New Hampshire, a natural or adoptive grandparent may request court-ordered visitation with a grandchild in the event of the death of a parent, but only if the grandparent’s access to the grandchild has not been previously or contemporaneously restricted, by either the court or the parent, for any reason. As in most other states, the court will grant grandparent visitation if it is in the best interests of the child.

2. Where do I start?

In New Hampshire, when a parent dies, provided that such parent did not restrict the petitioning grandparent’s ability to visit the grandchild prior to his or her death, the death of that parent confers standing upon the grandparent to file for visitation. Importantly, a grandparent will not lose the right to file for visitation even if the child is subsequently adopted following the death of a parent.

Provided that the grandparent’s circumstances meet the above requirements, the grandparents must file a petition to request visitation rights in the court that has jurisdiction to hear divorce cases in the town where the child resides. Grandparents should consult a qualified attorney to ensure that the proper petition is prepared and filed in the proper courts.

3. What things will the judge consider when deciding my case?

New Hampshire trial courts consider several statutory factors in making an order relative to a grandparent’s visitation rights:

- The best interests of the child;
- Whether visitation would interfere with any parent-child relationship or with a parent’s authority over the child;
- The nature of the relationship between the grandparent and child—frequency of contact, whether the child has lived with the grandparent, whether any reasonable cause exists to believe the child’s physical and emotional health would be endangered by such visitation or lack thereof;
- The nature of the relationship between the grandparent and the parent;
- The circumstances which resulted in the absence of a nuclear family, i.e., in this case, the death of a parent;
- The recommendation regarding visitation made by any guardian ad litem appointed for the child;

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• Any preference or wishes expressed by the child;
• Any other factors the court finds appropriate or relevant to the petition for visitation. ⁵

In applying the above factors, the trial court must weigh the first two more heavily than the remaining listed factors. ⁶ In doing so, New Hampshire courts must presume that a fit parent (either natural or adoptive) is acting in the best interests of the child. ⁷

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² In re P.B., 117 A.3d 711, 713 (N.H. 2015) (“C.W.’s parents did not restrict the petitioner’s ability to visit C.W. ‘prior to or contemporaneous with’ their deaths, their deaths conferred standing upon the petitioners to file for grandparent visitation.”).
⁵ Id.
⁶ In re P.B., 117 A.3d at 715.
⁷ Id. (“Trial courts must presume that fit parents naturally act in the best interests of their children. Thus, trial courts must accord deference to the parents’ determinations with respect to the first factor. A trial court cannot simply substitute its judgment for that of fit parents, regardless of whether those parents are natural or adoptive.”); see also In the Matter of Rupa & Rupa, 161 N.H. 311, 316 (N.H. 2010) (“the legislature has made clear that the best interests of the child are paramount when the court considers an award of grandparent visitation”).
1. What are my rights to visitation?

New Jersey courts provide grandparents the opportunity to request court-ordered visitation at any time, including when a parent has died. New Jersey law provides that in the event of the death of a parent, the court may award visitation rights to a grandparent if the grandparent is able to show by a preponderance of evidence that (1) the child would be harmed if such visitation is not permitted; and that (2) such visitation is in the child’s best interests.¹

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child, the grandparent may file a complaint seeking to establish visitation at any time. To begin, a grandparent files a “Verified Complaint,” with the Superior Court’s Family Division in the county where the child resides, seeking to establish a grandparent visitation order. The complaint must be served on all living parents. The court provides a form for such a complaint on its website.² If the grandparent has already been involved in a case involving the custody or parenting time of the child, the grandparent should file an application for visitation in that case. Grandparents should consult a qualified attorney to ensure that the proper application and documents are prepared and filed in the proper courts.

The grandparent must give evidence to show that visitation is in the best interest of the child, and that harm would befall the child if visitation is not granted. At this time, the surviving parent must propose a visitation schedule. If the schedule is acceptable to the grandparents, then the court will adopt that schedule. If the grandparent disputes the proposed schedule, then the court will approve a schedule that it considers to be in the child’s best interest, based on the factors listed in paragraph 3 below and the specific facts of the case.³

3. What things will the judge consider when deciding my case?

To determine whether, by a preponderance of the evidence, the visitation would be in the child’s best interests, New Jersey courts will consider the following factors:

- The relationship between the child and the grandparent;
- The relationship between each of the child’s parents or the person with whom the child is residing and the grandparent;
- The time which has elapsed since the child last had contact with the grandparent;

¹ This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 9, 2015.
• The effect that such visitation will have on the relationship between the child and the child’s parent or the person with whom the child is residing;
• The good faith of the grandparent in filing the application;
• Any history of physical, emotional or sexual abuse or neglect by the grandparent; and
• Any other factor relevant to the best interests of the child.4

If, however, the grandparent previously served as a full-time caretaker for the child, the court will treat this fact as “prima facie evidence” that the requested visitation is in the best interest of the child.5

As discussed in paragraph 1, the grandparents will also bear the burden of establishing that visitation is necessary to avoid harm to the child, based on either expert or factual evidence. It is important to note that the grandparent must establish that a specific harm to the child will result from a lack of visitation. New Jersey courts have held that “loss of potential happy memories” is not enough to meet this burden.6 Facts that may establish harm to the child if visitation is not permitted include, but are not limited to, the following: the death of a parent, the breakup of the child’s home through divorce or separation, the termination of a long-standing relationship between the grandparents and the child which involved significant emotional ties, and expert testimony that the child would suffer specific psychological harm.

1 N.J. Stat. § 9:2-7.1 (2014); Moriarty v. Bradt, 827 A.2d 203 (N.J. 2003) (holding that before a court can order visitation in accordance with the statute, the grandparent must show that the child’s health or welfare will be harmed without such visitation).
2 See Family Division Initial Application Kit, available at http://www.judiciary.state.nj.us/prose/11492_fd_initial_appl_kit.pdf. Many other forms are also available on the court’s website.
1. *What are my rights to visitation?*

   New Mexico courts allow grandparents the opportunity to request court-ordered visitation time with grandchildren in several situations, including the death of one or both parents of a minor child. The court has broad discretion in granting grandparent visitation, but the primary consideration of the court is whether the grandparent can show that an award of visitation is in the best interest and welfare of the child.

   In New Mexico, visitation time may be sought by the grandparents or great-grandparents of a minor child. This discussion is oriented toward visitation sought by a grandparent but it is equally applicable to great-grandparents.

2. *Where do I start?*

   In New Mexico, a grandparent can file a petition with the court asking it to grant visitation privileges in several situations, including when one or both parents of a minor child are deceased. This does not mean that the grandparent’s request will be granted, only that the court will be willing to hear the grandparent’s argument in favor of granting such a request.

   To request court-ordered visitation time in New Mexico, grandparents must file a Petition for Grandparent Visitation (“Petition”). The courts in some New Mexico counties provide forms of the Petition and other filings grandparents will need to submit to the court. Grandparents should consult a qualified attorney to ensure that the proper petition and filings are prepared and filed in the proper courts. Absent a showing of good cause, no grandparent or parent can file a Petition more often than once a year.

3. *What things will the judge consider when deciding my case?*

   A New Mexico court will consider the following factors when deciding whether to grant visitation privileges to a grandparent: (1) any factors relevant to the best interest of the child; (2) the prior interaction between the grandparent and the child; (3) the prior interaction and the present relationship between the grandparent and each parent; (4) time-sharing or visitation arrangements that were in place prior to requesting visitation; (5) the effect such visitation will have on the child; (6) whether the grandparent has any prior convictions for physical, emotional or sexual abuse or neglect; and (7) whether the grandparent has previously been the child’s full-time caretaker for a significant period.

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*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 6, 2015.*
While the court has broad discretion in awarding visitation, the grandparents should satisfy as many of the above factors as possible for courts to justify granting visitation.  

Above all, the court’s primary concern is whether the grandparent can show that an award of visitation is in the best interest and welfare of the child.

In addition to the factors listed above, the court may also consider the following factors: (1) the love, affection, and other emotional ties which may exist between the grandparent and child; (2) the nature and quality of the grandparent-child relationship and the length of time it has existed; (3) whether visitation will promote or disrupt the child’s development; (4) the physical, emotional, mental, and social needs of the child; (5) the wishes and opinion of the parents; and (6) the willingness and ability of the grandparent to facilitate and encourage a close relationship among the parent and the child.

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8 Gutierrez v. Connick, 87 P.3d 552, 557 (N.M. Ct. App. 2003) (“In the present case, to support the district court’s grant of grandparent visitation, Grandparents must at a minimum have presented, ‘evidence specifically showing that [they] satisfied the factors enumerated in Section 40-9-2(G),’ to an extent that would permit the district court, exercising reasonable discretion, to ultimately determine the presence of enough factors to allow visitation under the statute.”).
New York
By Kari K. Fahrenbach, Esq.*

1. What are my rights to visitation?

New York Courts allow for grandparents to request court ordered visitation. There is a two-part test the Court considers when reviewing a grandparent visitation case. The first step is to establish whether the grandparent has standing, in other words, a reason to be heard by the Court. Once standing is established, the Court will then decide whether visitation is in the best interest of the grandchild.

2. Where do I start?

In order to have the Court intervene and order visitation, a grandparent must file a petition with the Court in the County in which the child resides. Visitation petitions can be filed either in the Supreme Court or the Family Court. However, there are fees to file in Supreme Court and filing in Family Court is free, therefore most visitation petitions are filed in Family Court.

Once the petition is filed, whether in person or by mail, you will receive an initial Court date to arraign the petition either at the window when you file or by mail, depending on the County. The child(ren) will be assigned an Attorney for Child by the Judge. This attorney may or may not be in the courtroom the first time you appear in front of the Judge. This is an attorney specially trained to speak for the child. They will express the child’s wishes if the child is old enough to express his or her self and will speak in the child’s best interests if the child is too young to speak for his or her self.

3. What things will the judge consider when deciding my case?

There are two ways for a grandparent to have standing in New York. The first is when there has been a death of one or both parents of the child. This is automatic standing and will not be questioned by the Court.

The second way to have standing is to have equitable circumstances. In this instance the Court will look at all the relevant facts, including, whether the family is intact, the nature and basis of the parents objection to the visitation, and the nature and extent of the grandparent/grandchild relationship, before exercising its discretion to confer standing. It will not be sufficient that grandparents allege love and affection for

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the grandchild, they must establish a sufficient existing relationship or that there have been efforts to establish a relationship that have been frustrated by the parents.\(^5\)

Once the Court has conferred standing and the first step is complete, the Court must then decide the second part of the test, whether or not visitation is in the best interests of the grandchild.

With all visitation a Judge will consider many things when deciding whether it is in a child’s best interests to grant visitation, among these are: the child’s age; distance to and location where the visitation is to occur; mental, physical, and emotional health of all parties involved, wishes of the child and safety of the child.

With grandparent visitation, there are more specific factors to consider. It is strongly presumed that a fit parent’s decisions are in the best interests of the child and that the Court should not intrude upon the parent’s wishes lightly. Some of the factors the Court will consider are whether the grandparent and grandchild have a preexisting relationship, whether the grandparent supports or undermines the grandchild’s relationship with his/her parents (this would include a new step-parent in a death situation), and whether there is any animosity between the parents and the grandparents, but animosity alone is insufficient to deny visitation.\(^6\)

\(^1\) NY Domestic Relations Law §72
\(^3\) Visitation petition forms for Family Court can be obtained at any Family Court Clerk’s Office and also on-line at the New York State Unified Court System website: http://www.courts.state.ny.us/forms/familycourt/custodyvisitation.shtml. Form GF-17 is a general petition for visitation.
\(^4\) Domestic Relations Law §72; Family Court Act §651
\(^5\) Matter of Emanuel S., supra.
1. **What are my rights to visitation?**

Traditionally, grandparents have no automatic legal right to visitation with their grandchildren in North Carolina. However, North Carolina law grants grandparents the opportunity to seek visitation under certain circumstances.\(^1\) Grandparents of grandchildren whose related parent is a deceased servicemember have standing to petition the court for visitation of any grandchild,\(^2\) even if the grandchild has been adopted by a stepparent.\(^3\)

2. **Where do I start?**

Timing is an important consideration when seeking visitation rights in North Carolina. Grandparents may not initiate their own lawsuit for visitation rights. Instead, visitation may only be sought by intervening in an ongoing custody case and requesting visitation from the court.\(^4\) Because visitation can only be granted when the court issues a custody order, it may be best for grandparents to request visitation at the first opportunity, even if visitation is not contested by the child’s parent(s) at the time. Once a custody case is closed by the court, it becomes much more difficult for a grandparent to step in and request court-ordered visitation. In order to re-open the case and change an order, the grandparent has the additional burden of showing that there has been a significant change in circumstances.\(^5\)

In other words, if there is no ongoing custody suit and the family is stable, grandparents have no opportunity to petition for visitation rights.\(^6\)

When visitation is in dispute, the court may require families to work with the state’s Custody and Visitation Mediation Program to develop a custody and visitation agreement that will work best for the grandchild. The program is meant to bring families together to cooperate outside of court and reach long-term solutions rather than bring disputes to court again and again.\(^7\)

3. **What things will the judge consider when deciding my case?**

Visitation is granted as the court, in its discretion, deems appropriate and in the best interests of the child.\(^8\) Importantly, a North Carolina court will only grant visitation if a grandparent already has a substantial relationship with the grandchild.\(^9\) In other words, grandparents must show that visitation is necessary to protect an existing relationship with the child, not to begin a relationship in the first place.

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\(*\) Kristen Reeves Jones is a military spouse attorney currently practicing insurance defense law in Colorado. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of June 1, 2015.
Exactly what the grandparent has to prove in a case for visitation depends on when the case is brought. If grandparents are asking for visitation during an ongoing custody dispute, the court is free to exercise its own discretion and decide what is best for the child. However, if a grandparent chooses to go to court after a custody order has been entered, the grandparent must prove that something has changed – either the custodial parent is unfit or the family is no longer intact.

If grandparents receive an order granting visitation, North Carolina law also permits electronic visitation (by phone, email, instant messenger, or teleconference, for example) if the court finds this would be in the best interest of the child. The court will consider whatever factors it “deems appropriate,” including whether equipment is available and affordable for the parents. The court may set guidelines as to how and when electronic visitation can be used, but it cannot allow electronic visitation as a complete substitute for face-to-face visits. This option may benefit grandparents who live far away, but grandparents still have to show the court that they plan to see the child in person on occasion.

2 Hill v. Newman
4 N.C. Gen. Stat. § 50-13.2(b1) (2013); and see Quesinberry v. Quesinberry, 196 N.C.App. 118, 122, 674 S.E.2d 775, 778 (2009); Wellons v. White, 748 S.E.2d 709, 720 (2013) (“Since there was a predicate ongoing dispute, the Grandparents had standing to seek visitation”).
5 N.C. Gen. Stat. § 50-13.5(j) (1999). These procedures come from North Carolina’s “intact family rule”—because parents have a constitutional right to raise their children as they see fit, a non-parent may not intervene “unless there is already some strain on the family relationship, such as an adoption or an ongoing custody battle.” Eakett v. Eakett, 157 N.C.App. 550, 554, 579 S.E.2d 486, 489 (2003); Sharp v. Sharp, 124 N.C.App. 357, 360, 477 S.E.2d 258, 260 (1996). The courts have said that an “intact family” isn’t limited to two biological parents living together, but can also include a single (or widowed) parent raising a child alone. Fisher v. Fisher, 124 N.C.App. 442, 445, 477 S.E.2d 251, 253 (1996).
North Dakota courts provide grandparents the opportunity to request court-ordered visitation in most situations, irrespective of whether the parents are deceased. North Dakota law provides that visitation rights may be granted upon a finding that visitation would be in the best interest of the child and would not interfere with the parent-child relationship.\(^1\)

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child, the following issues will be important to consider. It is important to note that “grandparent” visitation time is a bit of a misnomer in North Dakota because visitation may also be sought by great-grandparents of a minor child. This discussion is oriented to visitations sought by grandparents, but may be assumed to be equally applicable to great-grandparents.

In North Dakota, a grandparent can petition the court for reasonable visitation by filing a motion.\(^2\) The motion will often be part of another court proceeding involving the child. A court hearing a divorce proceeding of the parents may consider an application for grandparent visitation rights. If any court has jurisdiction over the residential placement of the minor grandchild the grandparent may file a motion for visitation in that court. If no court otherwise has jurisdiction, the grandparent may file a motion for visitation in the court located in the county where the grandchild resides.\(^3\)

Nonprofits provide forms for filings that grandparents will need to submit to the court in connection with a visitation request.\(^4\) While forms may also be available for pro-se applicants through the courts’ websites, grandparents should consult a qualified attorney to ensure that the proper motions and filings are prepared and filed in the proper courts.

3. What things will the judge consider when deciding my case?

When determining whether to grant visitation rights, a North Dakota court will consider (1) the best interest of the child and (2) whether visitation would interfere with the parent-child relationship. The judge will also consider the amount of personal contact between the grandparents and the child and the child’s parents\(^5\) and whether the child has developed a psychological bond with the grandparent.\(^6\)

\(^{*}\) This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of September 30, 2015.
For parental rights, and presumably, for grandparent visitations by analogy, the “best interests” of the child standard is based on all factors affecting the best interests and welfare of the child, and includes the following factors when applicable:

- Love, affection, and emotional ties to the child, and the ability to provide these;
- Ability to assure that the child receives food, clothing, shelter, medical care, and a safe environment;
- The child’s developmental needs and the ability to meet those needs;
- The sufficiency and stability of the home environment;
- Willingness and ability to facilitate and encourage a close relationship with the child;
- Moral fitness of the parent;
- Mental and physical health of the parent;
- Home, school, and community records of the child, and the potential effect of change;
- The child’s preference (when the child is of sufficient maturity);
- Evidence of domestic violence;
- Interactions the child may have with others in the household; and
- False, bad faith allegations by the grandparent against the parent.\(^7\)

It is important to note that grandparents do not have the same rights as parents to visitation or custody of a child. There is a presumption that a parent is acting in the best interests of the child when the parent decides to limit a child’s visitation with the grandparent.\(^8\) As a result of the presumption in favor of the parents, it may be difficult for grandparents to obtain a visitation ruling if the parents oppose it.

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Ohio
By Catherine R. Stanton*

1. **What are my rights to visitation?**

Ohio courts provide the opportunity for grandparents to request court-ordered visitation time with children in several situations, including in the case of the death of the parent related to the grandparent. Ohio law provides that if the parent related to the grandparent is deceased, the court may grant grandparents the right to visitation time with the child provided it determines such visitation to be in the best interests of the child.¹

2. **Where do I start?**

If a grandparent wishes to pursue court-ordered visitation time with a child in Ohio, the following issues will be important to consider. Also, it is important to note that “grandparent” visitation time in Ohio is a bit of a misnomer, in that, upon the death of the parent of a minor child, the court may grant the related grandparents or any other relative of the deceased parent “reasonable companionship or visitation rights” with respect to the minor child if the court determines such an arrangement to be in the best interest of the child.

In Ohio, a grandparent can petition the court for visitation time in several situations, including when the servicemember parent of the child is deceased.² If this or any other qualifying circumstance exists, a grandparent has “standing” to file for visitation rights. This does not mean that the grandparent’s request will be granted, only that the court will be willing to hear the grandparent’s argument in favor of granting such a request. Also, in Ohio, a grandparent related to a deceased parent may request visitation rights even if the living parent objects to visitation or if the grandchild is being adopted by a stepparent.

To request court-ordered visitation time in Ohio, grandparents will file a Motion to Establish Visitation (“Motion”). Usually, the order for visitation will be part of another court proceeding involving the child, but this is not always the case. If a prior case involving the child exists, the grandparent must file the Motion in the same court where the prior case was filed, and some additional motions may be necessary, such as a Motion to Intervene. If there is no prior case, the grandparent should file the Motion with the court in the county in which the child resides.

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The courts in some Ohio counties provide forms of the various Motions and other filings grandparents will need to submit to the court in connection with a visitation request case. Check with the website of the applicable county court system to identify if such forms are available online.

3. **What things will the judge consider when deciding my case?**

Ohio courts will look at several statutory factors to determine if granting visitation time to grandparents is in the best interests of the child. Provided the grandparent has standing to request visitation, the court will also consider the following factors:

- The wishes and concerns of the child's parent(s);
- The prior interaction and interrelationships of the child with parents and other relatives;
- The location of the grandparent’s residence and the distance between it and the child’s residence;
- The child's and parents' available time;
- The child's age;
- The child's adjustment to home, school, and community;
- The wishes of the child if the court has interviewed the child in chambers;
- The health and safety of the child;
- The amount of time that a child has available to spend with siblings;
- The mental and physical health of all parties;
- Whether the person seeking visitation has been convicted of or pleaded guilty to any criminal offense involving an act that resulted in a child being abused or neglected.

In addition, it is unlikely that the court will order mandatory grandparent visitation if the living parent of the child is allowing the grandparent reasonable visitation time without a court order. In the case of a request for visitation by grandparents after the death of the related parent, the Ohio Supreme Court has upheld grandparent visitation rights over the objection of the living parent where the grandparents were able to prove that such visitation would be in the best interests of the child.\(^3\)

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1. O.R.C. 3109.11; *Harrold v. Collier*, 107 Ohio St.3d 44 (2005) (determining that Ohio’s standards and procedure for determining grandparent visitation is constitutional)
2. O.R.C. 3109.11. *See Also* O.R.C. 3109.051 and O.R.C. 3109.12 (other scenarios that allow for grandparent visitation include when the parents divorce or if the grandchild is born to an unmarried woman)
3. *Harrold*, 107 Ohio St.3d 44 (2005) (where the grandchildren had lived with the mother and the grandparents until the mother’s death)
1. **What are my rights to visitation?**

   Oklahoma courts provide the opportunity for grandparents to request visitation with a grandchild in limited circumstances. Oklahoma law provides that if the parent related to the grandparent is deceased, and the surviving parent is unfit or the child would suffer harm or potential harm without visitation, the court may grant grandparents court-compelled “reasonable visitation” provided it is in the best interests of the child.¹

2. **Where do I start?**

   In order to pursue court-compelled visitation with a child, a grandparent is required to file a verified petition in district court. The proper location of grandparent visitation cases is in the county where there is an ongoing proceeding involving the child. If there is no ongoing proceeding, the proper location is the county in which the child or parent resides.

   If a petition is filed, the court may grant visitation, but only if all of the following are shown: (1) the child’s nuclear family has been disrupted; (2) the parent is unfit or the child will suffer harm or potential harm without visitation; and (3) the visitation is in the best interest of the child. The burden of proof is on the petitioning grandparent.²

   A judge is strictly prohibited from granting visitation rights to any grandparent if the child is a member of an “intact nuclear family” (a family consisting of a married father and mother of the child). There are several ways the nuclear family may be disrupted, including when the parent related to the grandparent is deceased and the grandparent had a preexisting relationship with the child that predates the death of the deceased parent, unless the death of the mother was due to complications related to the birth of the child.³

   The death of one parent does not change the surviving parent’s fitness.⁴ The surviving parent is presumed to make decisions in the child’s best interests. The court will not even look at best interests until after it finds that the surviving parent is unfit or that the child will suffer harm or potential harm without visitation.

3. **What things will the judge consider when deciding my case?**

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Parental unfitness includes, but is not limited to, a showing that a parent of the child or a person residing with the parent:

- has a chemical or alcohol dependency,
- has a history of violent behavior or domestic abuse,
- has an emotional or mental illness that demonstrably impairs judgment or capacity to recognize reality or to control behavior,
- has been shown to have failed to provide the child with proper care, guidance and support to the actual detriment of the child, or
- demonstrates conduct or conditions which renders the parent unable or unwilling to give a child reasonable parental care. Reasonable parental care requires, at a minimum, that the parent provides nurturing and protection adequate to meet the child’s physical, emotional and mental health.

To determine what is in the best interests of the child, the court must consider the following:

- the needs of and importance to the child for a continuing preexisting relationship with the grandparent and the age and reasonable preference of the child,
- the willingness of the grandparent to encourage a close relationship between the child and parent,
- the length, quality and intimacy of the preexisting relationship between the child and grandparent,
- the love, affection and emotional ties existing between the parent and child,
- the motivation and efforts of the grandparent to continue the preexisting relationship with the grandchild,
- the motivation of the parent(s) denying visitation,
- the mental and physical health of the grandparent(s), child & parents(s),
- whether the child is in a permanent, stable, satisfactory family unit and environment,
- the moral fitness of the parties,
- the character and behavior of any other person who resides in or frequents the homes of the parties and such person’s interactions with the child, and
- if both parents are deceased, the benefit in maintaining the preexisting relationship.

1 See OKLA. STAT. tit 43, § 109.4
1. **What are my rights to visitation?**

   Oregon courts provide grandparents the opportunity to request court-ordered visitation in many situations, irrespective of whether the parents are deceased. Oregon law provides that visitation rights may be sought by any person who has established emotional ties with the child, creating a parent-child or ongoing relationship. It’s important to note, however, that if the parent objects to visitation, Oregon courts apply a rebuttable presumption that the parent’s decision is in the best interest of the child.¹

2. **Where do I start?**

   In Oregon, a grandparent can petition the court for visitation by filing a motion for visitation. The motion should be filed with the court having jurisdiction over the custody, placement or guardianship of that child. However, if no such proceedings are pending, the grandparent may petition the court in the county in which the child resides.² Grandparents should consult a qualified attorney to ensure that the proper petitions and motions are prepared and filed in the proper courts.

   It is important to note that “grandparent” visitation time is a bit of a misnomer in Oregon because visitation may also be sought by any person, including but not limited to any person related by blood or marriage to the child who has established emotional ties creating a parent-child relationship or an ongoing relationship with the child. Although this discussion is oriented to visitation sought by grandparents, it may be assumed to be equally applicable to others seeking visitation rights.

3. **What things will the judge consider when deciding my case?**

   The judge will look at several factors to determine whether to grant visitation rights. The court will examine the evidence presented by the grandparent to find whether it overcomes the presumption that the surviving parent is acting in the best interest of the child by denying or limiting the grandparent’s visitation. An Oregon court may consider the following factors to determine whether to rebut the presumption that the parent’s denial or limitation of visitation is in the best interest of the child:

   1. Whether the grandparent is or recently has been the child’s primary caretaker;
   2. Circumstances detrimental to the child if relief is denied;
   3. The parent has fostered, encouraged or consented to the relationship between the child and the grandparent;

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¹ This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 02, 2015.
4. Granting visitation would not substantially interfere with the custodial relationship; or
5. The parent has unreasonably denied or limited contact between the child and the grandparent.³

The standard of review for examining this evidence depends on the type of relationship between the grandparent and the child. In cases where a grandparent has a child-parent relationship with the child, the court will apply a “preponderance of the evidence” standard to rebut the presumption that the parent acts in the best interest of the child. Alternatively, in cases where the grandparent has only an ongoing personal relationship with the child, the court will apply a higher “clear and convincing evidence” standard to rebut the presumption.⁴

In Oregon, a “child-parent relationship” is defined by statute and may be summarized as a relationship that existed within the prior six months where an adult having custody or residing with a child provided for that child’s physical and psychological needs on a daily basis. An “ongoing personal relationship” means “a relationship with substantial continuity for at least one year, through interaction, companionship, interplay and mutuality.”⁵

As a result of the presumption in favor of the parents, it may be difficult for grandparents to obtain a visitation ruling if the parents oppose it.⁶ However, visitation or other rights may be awarded in appropriate cases.⁷

² ORS § 109.119(1).
³ ORS § 109.119(4)(a).
⁴ ORS § 109.119(3).
⁷ See, e.g. In re Marriage of O’Donnell-Lamont, 91 P.3d 721 (Or. 2004) (a leading case interpreting ORS § 109 where custody was granted to grandparents); In re Marriage of Austin, 62 P.3d 413 (Or. Ct. App. 2003) (in custody case, stepfather living with child rebutted presumption in favor of biological mother).
Pennsylvania
by Christine M. Long *

1. What are my rights to visitation?

Pennsylvania courts provide the opportunity for grandparents to obtain visitation or partial custody rights in certain circumstances, including when one of the birth parents is deceased.

2. Where do I start?

An action for visitation or custody should typically be brought in the county in which the minor child resides. The party seeking visitation should file a verified complaint with an order directing the surviving parent to appear before the court at a certain time. The law requires the grandparent to specifically plead facts establishing “standing,” such as the death of a birth parent.

Multiple appearances before the court may be required. First, the parties will appear for an Office Conference at which time a conference officer will review the situation and make recommendations in an attempt to get the parties to come to an agreement. If the Office Conference fails to produce an agreement, the parties will have to appear before a hearing officer who will make custody and visitation recommendations in writing to the parties and the court. The court will enter a final order outlining the custody or visitation arrangement if the parties do not object to the recommendation within twenty days and the court finds the proposed arrangement appropriate. In the event an objection is filed, the court will hold a hearing within forty-five days and will enter a final order within fifteen days of the hearing.

3. What things will the judge consider when deciding my case?

The court’s inquiry will focus on the best interest of the child. Parents, grandparents, and minor children may be subject to evaluation by professionals regarding physical and mental health. These evaluations may include home studies and interviews.

There are many factors that contribute to whether the visitation is in the best interest of the child. These factors include present of past abuse committed by the party seeking visitation, parental duties performed by the party, the need for stability and continuity in the child’s family life, and the proximity of the residences of the parties. If

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the child is mature and capable of good judgment, the court will also consider the preference of the child.

Additionally, the court will look at the amount of personal contact between the grandparent and child as well as whether granting grandparent visitation or custody will interfere with the parent-child relationship.\(^8\)

\(^1\) Pa Code 1915.2(a).
\(^2\) Pa Code 1915.3(a), (b).
\(^3\) Pa Code 1915.3(e).
\(^4\) Pa Code 1915.4-2.
\(^5\) 23 Pa C.S.A. §5328.
\(^6\) Pa Code 1915.8.
\(^7\) 23 Pa C.S.A. §5328(a).
\(^8\) 23 Pa C.S.A. §5328(c).
1. **What are my rights to visitation?**

   Rhode Island courts provide the opportunity for grandparents to request court-ordered visitation time with unmarried minor children in several situations, including in the case of the death of the parent related to the grandparent. Under Rhode Island law, the court may grant reasonable visitation rights to the grandparent if it is shown that the visitation is in the best interests of the child. However, in the case where the child is adopted and no visitation rights have been granted to the grandparent before the adoption, then any future rights might be extinguished by the adoption.

2. **Where do I start?**

   If a grandparent wishes to pursue court-ordered visitation time with a child in Rhode Island, the grandparent may file a petition in family court for visitation rights. Notice must be given to the surviving parent and to the child.

   The following must be specifically set out in the petition with evidence provided to support each of the required elements:

   - why the visitation is in the best interests of the child;
   - why the grandparent is a fit and proper person to have visitation rights;
   - how the grandparent has repeatedly attempted to visit the grandchild during the 30 days immediately preceding the date the petition was filed and was not allowed to visit the grandchild during that time as a direct result of the actions of the surviving parent of the grandchild;
   - why court intervention is the only way for the grandparent to visit the grandchild;
   - why the parent’s refusal of visitation was unreasonable.

3. **What things will the judge consider when deciding my case?**

   While there are no set factors which the judge will consider when determining what is in the best interest of the child, the following may be considered:

   - the grandchild’s wishes;
   - the surviving parent’s wishes;
   - the peace and sense of security of the child;
   - the relationship between the grandparent and grandchild;
   - an evaluation by a psychologist, and
   - whether the visits are confusing for the child’s routine.

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*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of October 5, 2015.*
In order to grant visitation rights, the judge must find and set forth in writing findings of fact for each of the required elements described above. Even where visitation rights are granted, they may be revoked if they are no longer in the best interests of the grandchild.  

2 See Puleo v. Forgue, 610 A.2d 124 (Rhode Island 1992) which held that existing visitation rights are not extinguished by adoption. With respect to future visitation rights, see In re Nicholas, 457 A.2d 1359 at 1360, which held that “… those claiming under or through the parents whose rights are terminated (by adoption where the child of the grandparent is not deceased) shall have no further legal rights in respect to the adopted child” (“Adoption Statute”); however the court went on to state in dicta that the Rhode Island General Assembly has authorized visitation by grandparents in the event of the death of the child of the grandparent (“Grandparent Visitation Statute”). It is not clear whether the Grandparent Visitation Statute or the Adoption Statue will control when the child of the grandparent is deceased.
3 R.I. G. L. § 15-5-24.3;
4 See Puleo v. Forgue, 634 A.2d 857 (Rhode Island 1993) which held that where it is clear that the grandchild expressed a desire not to have visitation with the grandparents and the peace and sense of security of the child would be preserved best without visitation, visitation rights may be denied.
5 Id.
6 Puleo v. Forgue (1993) at 858.
1. **What are my rights to visitation?**

   In South Carolina, if a child’s surviving parent is unreasonably depriving a grandparent of an opportunity to visit their grandchild, a court may order such visitation as long as (1) awarding visitation would not interfere with the parent-child relationship and (2) either (a) there is a compelling reason to overcome the parent’s decision to deny visitation or (b) the parents are unfit to make such decision.¹ The term “grandparent”, in South Carolina, means the natural or adoptive parent of a natural or adoptive parent of a minor child.²

2. **Where do I start?**

   If a parent of a minor child is deceased and the surviving parent is unreasonably depriving the grandparent of the opportunity to visit with the child, a grandparent seeking visitation may file a “Motion to Establish Grandparent Visitation” with the circuit family court in the county where the child resides.³ Grandparents should consult a qualified attorney to ensure that the proper motion is prepared and filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

   A South Carolina court will grant a grandparent visitation rights if the court finds that:

   (1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the child to the grandparent for a period exceeding ninety days; and

   (2) awarding such visitation would not interfere with the parent-child relationship.

   Additionally, the grandparent will have to overcome the presumption in South Carolina that a fit parent’s decision is in the child’s best interest. A fit parent is one who adequately cares for his or her child. As long as a parent is fit, the state of South Carolina will not question that parent’s decisions concerning how they raise their child.

   As a result, for the court to award grandparent visitation rights, it must find by clear and convincing evidence that either (a) the child's parents or guardians are unfit, or (b) there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.⁴

   To determine what constitutes compelling circumstances, the South Carolina Supreme Court has said that it includes, for example, the risk of significant harm to the

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¹ *This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information is current as of October 2, 2015.*

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child if visitation is not granted. However, “the fact that a child might benefit from contact with the grandparent, or that the parent’s refusal is simply not reasonable in the court’s view, does not justify government interference in the parental decision.”

It also held that “[t]he bond of love and affection existing between grandparents and a child does not, in and of itself, justify carving out of the custody and visitation rights of the natural parents another visitation right and vesting it in the grandparents.” However, “that a biological parent’s death and an attempt to maintain ties with that deceased parent’s family may be compelling circumstances justifying ordering [grandparent] visitation over a fit parent’s objection.”

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1 S.C. Code Ann. § 63-3-530(33).
4 Id.
6 Brown, 302 S.C. at 377.
7 Id. at 259.
1. **What are my rights to visitation?**

   South Dakota courts provide grandparents the opportunity to request court-ordered visitation in certain cases. In South Dakota, a circuit court may grant grandparents reasonable rights of visitation with their grandchild(ren) if: (1) the visitation is in the best interests of the grandchild and (2) either (a) the visitation will not significantly interfere with the parent-child relationship, or (b) the parent or custodian of the grandchild has denied or prevented the grandparent reasonable opportunity to visit the grandchild.1 Under the South Dakota visitation statute, grandparent visitation rights are equally applicable to great-grandparents.

2. **Where do I start?**

   If a grandparent wishes to pursue court-ordered visitation time with a grandchild, the grandparent should file a petition with the appropriate South Dakota circuit court.2 Grandparents should consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

   As stated above, a grandparent is required to make two showings to be successful in petitioning for visitation. First, the grandparent must prove that visitation is in the grandchild’s best interests.3 In South Dakota, however, there is a rebuttable presumption that a parent acts in the best interest of the child.4 In order for a court to grant a grandparent visitation, the grandparent must demonstrate, by clear and convincing evidence, the presence of “special factors” showing that visitation is in the child’s best interest.5 These “[s]pecial factors might include, but are not limited to, such matters as physical or emotional harm to the grandchild if visitation is denied or limited, preference for grandparent visitation expressed by a child of sufficient age, or some other compelling circumstances warranting state interference in parental decision making.”6 However, the court has held that it is not enough for a grandparent to assert that they believe visitation will benefit the grandchild, stating that, “Generalities about the positive influence grandparents have on their children fall short of the necessary showing for government interference with parental decisions.”7

   Second, if visitation is found to be in the best interests of the child, the grandparent must prove that visitation will not significantly interfere with the parent/child

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relationship or, in the alternative, prove that the parent has denied or prevented the grandparent a reasonable opportunity to visit their grandchild. 8

1 S.D. Codified Laws § 25-4-52.
2 Id.
5 Id.
6 Id. at P24.
7 Id. at P24.
8 Medearis, 2005 SD at 42.
1. What are my rights to visitation?

The Tennessee grandparent visitation statute allows a grandparent to petition the court for visitation under several circumstances including when one parent is deceased. Only biological or adoptive grandparents or the spouse of a biological grandparent is authorized to petition the court for visitation. Further, the Tennessee grandparent visitation statute only applies to grandparents who are being denied visitation by the child’s custodial parent. If a grandparent is being granted any visitation time by the grandchild’s surviving parent, the grandparent will not be eligible for a different visitation determination by the court.

2. Where do I start?

The procedure for requesting court-ordered visitation in Tennessee starts by the grandparent petitioning the court for visitation rights in the county where the child resides. Before seeking grandparent visitation in Tennessee, it is important to confirm that the grandparent has standing by ensuring the grandparent’s situation falls into one of the several specific categories allowing the grandparent to petition for visitation. Parents of deceased servicemember parents fall into one of the categories of grandparents with standing to petition the court for visitation with grandchildren.

3. What things will the judge consider when deciding my case?

First, the courts will determine if not granting grandparent visitation will create a danger of substantial harm. The showing of a danger of substantial harm if visitation is not allowed can be based on the following factors:

- The child lived with the grandparent for at least 6 consecutive months;
- The grandparent took care of the child full time for at least 6 months consecutively; or
- The grandparent visited the child frequently for at least one year.

Second, if there is a finding of substantial harm if visitation is not allowed, then the court determines whether or not granting visitation is in the best interest of the child. The court considers the following factors to determine the best interest of the child in regards to grandparent visitation:

* Sharonna Washington is a military spouse with a JD from Case Western Reserve University School of Law. Mrs. Washington plans to take the bar exam and look for employment in Louisiana where her husband is stationed. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of June 15, 2015.
• The length and quality of relationship between the child and the grandparent;
• The existing emotional ties the child has with the grandparent;
• The preference of the child if the child is of sufficient maturity to express a preference;
• The effect of hostility between the grandparent and the parent of the child manifested before the child, and the willingness of the grandparent, except in case of abuse, to encourage a close relationship between the child and the parent or parents, and grandparents, or guardians or guardians of the child;
• The good faith in the grandparent in filing the petition;
• If the parents are divorced or separated, the time sharing arrangement that exists between the parent and the child;
• If one parent is deceased or missing, the fact that the grandparents requesting visitation are the parents of the deceased or missing parent;
• Any unreasonable deprivation of the grandparent’s opportunity to visit with the child by the child’s parents or guardians;
• Whether the grandparent is seeking to maintain an existing relationship with the child;
• Whether awarding grandparent visitation would interfere with the parent-child relationship; and
• Any court finding that the child’s parent or guardian is unfit.

1 Tenn. Code Ann. §36-6-306(a)(1).
2 Tenn. Code Ann. §36-6-306 (e)(1-3).
3 Tenn. Code Ann. §36-6-306(a).
4 Tenn. Code Ann. §36-6-306 (a).
5 Tenn. Code Ann. §36-6-306(a) (1-6).
7 The court in Ray v. Ray, explains that substantial harm “connotes hazard or danger that is not minor, trivial, or insignificant.” 83 S.W.3d 726, 732 (Tenn. Ct. App. 2001). In addition, the court states that this harm cannot be theoretical and “it must be sufficiently probable to prompt a reasonable person to believe that the harm will occur more likely than not.” Id.
Texas
by Eileen L. Morrison*

1. What are my rights to visitation?

A biological or adoptive grandparent may request “access” to a grandchild in certain circumstances, including when the grandparent’s child (i.e., the parent of the grandchild) has died or if the court has terminated his or her parental rights.1 Step-grandparents do not have the ability to request visitation.2

2. Where do I start?

A biological or adoptive grandparent may request visitation rights to a grandchild by filing a lawsuit.3 The grandparent requesting visitation must submit an affidavit.4 In the affidavit, a grandparent must describe, with specific facts, how the parent’s refusal to allow the grandparent to see the grandchild significantly impairs the grandchild’s physical health or emotional well-being.5

3. What things will the judge consider when deciding my case?

Judges presume that parents act in the best interests of their children. In the eyes of judges, grandparents who ask for an order to enable them to see their grandchildren are asking the judge to go against the parent’s wishes. Therefore, it is difficult for grandparents to prove that the judge should go against the parent’s wishes.6 There are two main things that a judge considers: (1) the grandchild’s physical health and emotional well-being; and (2) the grandchild’s best interests.7

First, grandparents must prove to the judge that a court order allowing the grandparents to visit the grandchild is needed to protect the grandchild’s physical health and emotional well-being.8 For example, it is not enough that the grandchild would be sad and miss the grandparents.9 The Supreme Court of Texas ruled that a grandparent did not have a right to visitation even though the grandchildren displayed anger and experienced bedwetting and nightmares.10 The Supreme Court of Texas thought it was important that the parent in that case ensured that his children were able to cope with their grief, including sending his older child to counseling and grief groups.11 Perhaps most importantly, the parent was willing to let the grandparent see the grandchildren under certain circumstances.12 Judges are more likely to award visitation to grandparents in cases where the parent refuses to let the grandparents visit their grandchild under any circumstances.13

* Eileen L. Morrison is a military spouse. She received her Juris Doctor from Boston University School of Law. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations.
In addition to looking at the grandchild’s physical health and emotional well-being, the judge will also consider the best interests of the grandchild. To determine the grandchild’s best interests, the judge will consider many factors, including the grandchild’s wishes and the parent’s acts or failures to act.

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1. Tex. Fam. Code Ann. §§ 153.432, 153.433 (West 2013). The Texas Attorney General has a website that provides information for grandparents: https://www.texasattorneygeneral.gov/seniors/grandparents-page On this page, the Attorney General provides a list of legal service providers that can help grandparents. The Legal Hotline for Texans provides services to Texas residents age sixty and older: 1-800-622-2520.


5. Id. (emphasis added).


8. Grandparents must overcome the court’s presumption that parents act in the best interests of their children by a “preponderance of the evidence” that denial of visitation would “significantly impair the child’s physical health or emotional well-being.” Tex. Fam. Code Ann. § 153.433(2) (West 2013).


10. Id.

11. Id. at 644.

12. Id.


14. Id. at *1.

1. What are my rights to visitation?

Utah law provides grandparents an opportunity to request court-ordered visitation in limited situations, including the death of the parent related to the grandparent, so long as the deceased parent did not have their parental rights terminated, such as through adoption of the child after the parent’s death. However, Utah law provides that a child’s parents hold the fundamental right and duty to exercise primary control over the care and upbringing of their children. As such, it can be difficult for a grandparent to obtain court-ordered visitation, unless they can show that, despite the parent’s objection, such visitation is in the best interest of the child. Please note that while this article focuses on Utah’s Grandparent Visitation statute, there is an additional visitation statute in Utah that also applies to grandparents as well as other third parties; however, that statute may be less helpful to grandparents due to its strict requirements.

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a grandchild, the following issues will be important to consider. Under the recent 2015 Utah Supreme Court decision Jones v. Jones, the court held that a parent has a fundamental right to regulate the visitation of a child. As a result, a grandparent seeking to override a parent’s visitation decisions must present “concrete proof” that a visitation order is narrowly tailored to advance a compelling state interest. The added difficulty is that the Utah Supreme Court has declined to define what it considers to be a compelling state interest.

Under the Grandparent Visitation statute, a grandparent may bring an action by petition in district court, and may also file a petition for visitation rights in a pending divorce proceeding or other proceeding involving custody and visitation issues related to the grandchild. While there is some helpful information online at https://www.utcourts.gov/selfhelp/ that may with filing a petition, grandparents should consult with a qualified attorney to determine when, where, and how to file a proper petition for visitation.

3. What things will the judge consider when deciding my case?

Since the recent September 2015 Jones v. Jones decision, a grandparent must overcome significant hurdles to receive court-ordered visitation with their grandchild. The first hurdle is that a grandparent may only be granted reasonable visitation rights if he or she successfully rebuts the parental presumption that a parent’s visitation decisions are in the child’s best interest.

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the best interest of the child. The parental presumption may be rebutted by factors the
法院认为相关，例如是否：

- 拟请的祖父母是合适且得当的人选来行使探视权；
- 探视权是否被否决或不合理地限制；
- 父母是否不适宜或无能；
- 拟请的祖父母曾作为孙子女的监护人或照顾人，或者曾与孙子女有实质关系，且失去或终止关系会伤害到孙子女；
- 请求人的孩子，即祖父母的父母，可能已死亡，成为非监护人，或者已失踪很长一段时间；或
- 探视权是否对孙子女的福祉有利。

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The second hurdle is that a grandparent must offer “concrete proof” that a
visitation order is narrowly tailored to advance a compelling state interest. The presence of
this hurdle creates some uncertainty, as the only factor from the statute the court has held
to be sufficiently compelling is the fourth listed factor above, the “custodian or caregiver”
factor. The court has declined to hold whether the other factors could arguably qualify as
compelling.

6

In the wake of Jones v. Jones, it has become more difficult for a grandparent to
obtain a favorable ruling. The ultimate result will heavily weigh on the specific facts and
circumstances of the case.

2 Utah Code §30-5a-103(1).
3 For more information, see Utah Code §30-5a-103(1).
4 Utah Code §30-5-2(1).
5 Utah Code §30-5-2(2).
(Utah 2015) (Opinion subject to revision before publication).
1. **What are my rights to visitation?**

   Vermont law provides grandparents the opportunity to request court-ordered visitation time with grandchildren in limited situations, including in the case of the death of a parent related to the grandparent. Vermont courts will grant a grandparent visitation if doing so would be in the best interests of the child. However, in determining whether grandparent visitation would be in the best interests of a child, Vermont courts give strong deference to the parent’s wishes, and, thus, it may be difficult to obtain visitation if the surviving parent objects.

2. **Where do I start?**

   There are two situations in which a grandparent may seek court-ordered visitation rights— if neither situation exists a court may not consider a grandparent’s request for visitation.

   First, if there is a case already pending regarding the custody or visitation of the grandchild, the grandparent can file a written request for visitation rights with the court hearing such case. In such a situation, the grandparent’s ability to participate further in the proceeding is somewhat limited because the grandparent is not considered a party and cannot appeal the court’s decision on the grandparent’s visitation rights. However, if the court grants the grandparent visitation rights and the child’s parent or custodian interferes with visitation, the grandparent may ask the court to enforce his or her visitation rights.

   The second situation where a grandparent may seek visitation rights is if the child’s parent is deceased, physically or mentally incapable of making a decision, or has abandoned the child. If any of those circumstances exist, the grandparent may file a petition seeking visitation. Unlike the first type of proceeding, the grandparent is able to participate fully in the litigation as a party and may appeal the court’s decision on visitation. Grandparents should consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

   In determining whether grandparent visitation would be in the best interests of the child, Vermont courts will consider the following factors:

   - The love, affection and other emotional ties between the grandparent and the child;

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*This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of December 10, 2015.*
• The capacity and disposition of the parties involved to give the child love, affection, and guidance;
• The nature of the relationship between the grandparent and the child and the desirability of maintaining that relationship;
• The moral fitness of the parties;
• The mental and physical health of the parties;
• The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference;
• The willingness and ability of the grandparent to facilitate and encourage a close and continuing relationship between the child and the other parties; and
• Any other factor which the court considers to be relevant to a just determination regarding visitation or access.9

In addition to these factors, the court will give weight to the parent’s views regarding visitation. The court will only interfere with the parent’s decision if there are “compelling circumstances.” To meet such a standard, the grandparent must establish that the parent is “unfit”—meaning that the child will suffer significant harm (comparable to child abuse or neglect) without grandparent visitation.10

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1 15 V.S.A. § 1011(a); 15 V.S.A. § 1013(a).
4 15 V.S.A. § 1011(a).
5 15 V.S.A. § 1011(b)-(c).
6 15 V.S.A. § 1011(d).
7 15 V.S.A. § 1012.
8 In re S.B.L., 150 Vt. 294 (Vt. 1988).
9 15 V.S.A. § 1013(b).
1. **What are my rights to visitation?**

Virginia law provides any person with a legitimate interest the opportunity to request court-ordered visitation time with minor children in limited situations. The Virginia law construes a person of legitimate interest broadly to accommodate the best interest of the child, and may be grandparents, step-grandparents, stepparents, former stepparents, blood relatives and other family members. Virginia courts will grant a grandparent visitation if doing so would be in the best interests of the child.

2. **Where do I start?**

To pursue visitation rights, the grandparent must first file a petition for visitation with the court that has jurisdiction to hear the case. The appropriate county court would be the Court Services Unit of the Juvenile and Domestic Relations Court in the county where the child has lived for six months or more. If an existing visitation order exists, the grandparent must file a motion with the court where the visitation order was issued, which may be the Juvenile and Domestic Relations Court or Circuit Court. The petition and required documents may vary by county. For this reason, it is recommended that the grandparent consult with an attorney familiar with the procedures in the child’s county of residence.

3. **What things will the judge consider when deciding my case?**

First, the court must give “due regard to the primacy of the parent-child relationship”, and the grandparent must show by clear and convincing evidence that the best interest of the child would be to award visitation rights. In determining whether grandparent visitation would be in the best interests of the child, Virginia courts will consider the following factors:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
2. The age and physical and mental condition of each living parent;
3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;

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4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;

5. The role that a parent has played and will play in the future, in the upbringing and care of the child;

6. The propensity of a parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;

7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;

8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;

9. Any history of family abuse or sexual abuse.

10. Such other factors as the court deems necessary and proper to the determination.4

Sometimes, the court will appoint a Guardian ad litem, a licensed attorney that represents the child and make a recommendation to the court. If the parent is against grandparent visitation, there must generally be a showing of actual harm to a child if visitation is denied.5 This is a high threshold to meet, and in this situation grandparents are often denied visitation.

1 20 VA§ 124.1.
2 20 VA § 124.2(a); 124.3.
3 20 VA § 124.2(b).
4 20 VA§ 124.3.
5 Williams v. Williams, 24 Va. App. at 784-5, 485 S.E.2d at 645.
Washington
by Sarah E. Gruwell*

1. What are my rights to visitation?

Washington State has had two statutes that provide for persons other than a parent to petition for visitation with a minor child. However, the U.S. Supreme Court ruled that the first statute was unconstitutional in Troxel v. Granville, the landmark grandparents’ rights case that set the national standard for grandparents’ rights in every state, as that case is discussed in the Introduction to this TAPS Grandparents’ Rights Guide. Then, the Washington State Supreme Court ruled the subsequently amended statute unconstitutional as well. While there have been numerous bills introduced into the Washington State Legislature to replace the unconstitutional statutes, none of the bills have been enacted into laws. So, the state of grandparents’ rights in Washington remains uncertain, and there is no operational statute governing grandparent visitation.

Until viable laws are enacted in Washington, the only recourse that a grandparent may have is: (1) petitioning the court for non-parental custody (not a request for visitation with a minor child, but actual physical and legal custody of the minor child) or (2) petitioning for visitation as part of an existing domestic case, such as divorce, modification of parenting plans, adoption, etc. Unfortunately, these grounds are not helpful to a grandparent whose child, and parent of the grandchild, has passed away, as it is unlikely that a family law proceeding would commence as a result of such a loss. However, such a grandparent may be able to intervene and petition for visitation if the grandchild were to become the subject of a step-parent adoption proceeding.

2. Where do I start?

As stated above, Washington does not allow for a third party, including a grandparent, to petition for visitation with a minor child without an existing family law proceeding in which the grandparent may intervene. In fact, due to the inoperability of the current statutes, many attorneys are reluctant to take on cases where grandparents seek visitation, as grandparents of grandchildren in Washington do not have any enforceable rights.

However, if a grandparent believes that the surviving parent is “unfit” to care for the minor grandchild, the grandparent may petition the court for custody of the minor. Grandparents may commence an action for non-parental custody by filing a petition in the Superior Court of the county of the child’s residence or where the child is found.

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grandparent seeking custody of a minor grandchild should seek the advice of an attorney to ensure all jurisdictional and subject-matter qualifications are met before proceeding. Prior to moving forward with the petition for non-parental custody, the court will hold an adequate cause hearing to determine the validity of the petition. If adequate cause is found the court will permit, if requested, temporary orders be entered modifying the custodial arrangement for the child.

3. What things will the judge consider when deciding my case?

Because of the uncertainty around the existence and enforcement of grandparents’ rights in Washington, it is unclear what, if anything, might convince a court to grant visitation. If a grandparent successfully intervenes in an existing proceeding, as described above, the court may consider the following:

- the child’s relationship with the grandparent;
- the grandparent’s relationship with each of the child’s parents;
- the nature and reason for either parent’s objection to grandparent visitation;
- the effects grandparent visitation will have on the parent-child relationship;
- the parents’ custody arrangement;
- any past criminal history or history of emotional, physical or sexual abuse or neglect by the grandparent; and
- any other factor the court deems relevant.

If a grandparent elects to petition the court for non-parental custody, the grandparent must present evidence that the surviving parent is “unfit or placement with the parent would result in actual detriment to the child's growth and development.” Because of the constitutional considerations at play, this is a very high standard to meet, and grandparents seeking non-parental custody should seek the advice of an attorney.

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1 Revised Code of Washington (“RCW”) 26.10.160(3) and 26.09.240.
2 530 U.S. 57 (2000)
4 RCW 26.10, et seq.
5 RCW 26.10.030
6 RCW 26.10.032
7 Id.
1. **What are my rights to visitation?**

West Virginia courts provide grandparents the opportunity to request court-ordered visitation in certain situations. West Virginia law provides that a grandparent may obtain visitation rights if a court determines by a preponderance of the evidence that such visitation (1) is in the best interests of the child and (2) would not substantially interfere with the parent-child relationship.¹

2. **Where do I start?**

If a grandparent wishes to pursue court-ordered visitation time with a child, the following issues will be important to consider. Grandparents may file a petition seeking to establish visitation at any time; however, the grandparents will have a significant burden in overcoming a fit parent’s decision regarding visitation time.

To begin, a grandparent may file a petition in the county where the grandchild lives, ordinarily in the Family Court. The petition with the court asks that an order be issued granting grandparent visitation. The grandparent must show by a preponderance of the evidence that the visitation is in the best interest of the child.²

If there is already a case filed with the Family Court by a parent regarding custody or divorce, the grandparent must file a motion requesting visitation in that specific case. The grandparent must show by a preponderance of the evidence that visitation is in the best interest of the child, and that either (1) the parent through whom the grandparent is related to the child has failed to answer or otherwise appear and defend the case; or (2) the whereabouts of that parent are unknown to the party bringing the action and to the grandparent who filed the motion for visitation.³

In either case, the court may appoint a legal representative to protect the child’s interest independent of both the grandparent and custodial parent.⁴ Grandparents should consult a qualified attorney to ensure that the proper complaint and documents are prepared and filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

As stated above, a grandparent must show by a preponderance of the evidence that the requested visitation (1) is in the best interests of the child and (2) would not substantially interfere with the parent-child relationship.⁵ West Virginia courts will consider the following factors when determining whether to award grandparent visitation:

- the age of the child;
- the relationship between the child and the grandparent;

¹ *This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of December 11, 2015.*
the relationship between each of the child’s parents or the person with whom the child is residing and the grandparent;
• the time elapsed since the child last had contact with the grandparent;
• the effect that such visitation will have on the relationship between the child and the child’s parents with whom the child is residing;
• the current custody and visitation arrangement which exists between divorced or separated parents of the child;
• the child and custodial parents’ schedules, including employment, school, home, community, and vacation activities;
• the good faith of the grandparent in filing the motion or petition;
• any history of physical, emotional, or sexual abuse or neglect being performed, procured, assisted, or condoned by the grandparent;
• whether the child resided with the grandparent in the past for significant periods of time, with or without the child’s parent or parents;
• whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent’s residence;
• the preference of the parents with regard to the requested visitation; and
• any other factor relevant to the best interests of the child.6

If the parent through whom the grandparent is related to the child is the one refusing visitation, a rebuttable presumption exists that visitation need not be granted. To overcome that presumption, grandparents must demonstrate by clear and convincing evidence (rather than by a preponderance of the evidence) that visitation is in the child’s best interests.7

**Wisconsin**
by Squire Patton Boggs (US) LLP*

1. **What are my rights to visitation?**

   If one or both parents of a minor child are deceased, and the minor is in the custody of the surviving parent or any other person, a grandparent of the minor may petition for visitation privileges with respect to the minor. The adoption of a child of a deceased parent does not terminate the decedent’s parents’ grandparental visitation rights under Wisconsin law.

   Note that the process and standards applicable to grandparents’ visitation rights when both parents are alive, whether or not those parents are married, differs from the process and standards applicable when one or both parents are deceased. This summary only discusses the process and standards applicable when one of the parents of a minor child is deceased.

2. **Where do I start?**

   In Wisconsin, a grandparent who wishes to pursue court-ordered visitation with a minor whose parent is deceased may petition the circuit court in the county where the child resides or the county where the child is physically present in an independent action or within an existing guardianship or temporary guardianship proceeding that affects the child. Grandparents should consult a qualified attorney to ensure that the proper petitions are filed in the proper courts.

3. **What things will the judge consider when deciding my case?**

   Case law in Wisconsin dictates that the surviving parent’s decision regarding grandparent visitation is entitled to special weight by applying a rebuttable presumption that a fit parent’s decision regarding visitation is in the best interests of the child. Although the factors set forth in the Wisconsin statute for determining the best interests of the child are in the chapter related to custody and physical placement, Wisconsin courts apply these factors to grandparent visitation cases as well. The following non-exhaustive list of factors is used by the court in determining the best interests of the child:

   - The wishes of the child’s parent, as shown by any stipulation between the parties, any proposed parenting plan or any legal custody or physical placement proposal submitted to the court at trial;
   - The wishes of the child, which may be communicated by the child or through the child’s guardian ad litem or other appropriate professional;

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• The interaction and interrelationship of the child with his or her parent, siblings, and any other person who may significantly affect the child’s best interest;
• The child’s adjustment to the home, school, religion and community;
• The age of the child and the child’s developmental and educational needs at different ages;
• The need for regularly occurring and meaningful periods of physical placement to provide predictability and stability for the child;
• The cooperation and communication between the parties and whether either party unreasonably refuses to cooperate or communicate with the other party;
• Whether each party can support the other party’s relationship with the child, including encouraging and facilitating frequent and continuing contact with the child, or whether one party is likely to unreasonably interfere with the child’s continuing relationship with the other party;
• Whether there is evidence that a party engaged in abuse of the child;
• Whether there is evidence of domestic abuse;
• Whether either party has or had a significant problem with alcohol or drug abuse;
• The reports of appropriate professionals if admitted into evidence; and
• Such other factors as the court may, in each individual case, determine to be relevant.

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1 Wis. Stat. § 54.56(2).
2 In re C.G.F., 168 Wis. 2d 62, 71 (Wis. 1992).
3 Wis. Stat. § 54.30(2); Wis. Stat. § 54.56(2).
6 Wis. Stat. § 767.41(5).
Wyoming
By Catherine R. Stanton *

1. What are my rights to visitation?

In Wyoming, grandparents seem to be afforded a broad opportunity to seek visitation with grandchildren (and great-grandparents with great-grandchildren) as a result of the Wyoming statute that provides any grandparent with standing to request visitation with grandchildren from any person in custody of the grandchildren, including the grandparent’s own living child. In the case of a grandparent whose servicemember child has died, the grandparent would certainly have standing to seek visitation from the remaining parent or custodian. The statute directs that the court should grant visitation where it is in the best interests of the child and the living parent’s rights are not substantially impaired.

Grandparents in Wyoming may also be able to seek visitation under a Wyoming statute providing standing to anyone, including grandparents, who have been a child’s primary caregiver for six out of the last 18 months. This may be an additional option for grandparents who have cared for grandchildren in the absence of a servicemember parent. Whether pursued through the traditional grandparents’ rights statute or the alternate caregiver statute, Wyoming clearly believes in the importance of visitation and the preservation of bonds between grandparents and grandchildren.

2. Where do I start?

If a grandparent wishes to pursue court-ordered visitation time with a child in Wyoming, the grandparent should file a Petition for Grandparent Visitation, setting forth the reasons that the grandparent should be granted visitation, with the court in the jurisdiction in which the grandchild resides. Along with the Petition, the grandparent will request a hearing on the issue, at which both the grandparent and the grandchild’s parent or custodian will be present. The court will hear the arguments of both sides as to the reasons that visitation should or should not be granted. Legal Aid of Wyoming provides some templates for the documents that must be filed by the grandparent. If the court appoints a guardian ad litem as a result of any Petition filed by the grandparent, the grandparent will bear the costs.

* As of publication, Catherine R. Stanton is an attorney currently practicing law in Colorado and Washington, D.C. She has been admitted in Colorado, New York (inactive), and Ohio (inactive, and her admission to the D.C. bar is currently pending. Catherine owns Stanton Law Firm LLC, providing divorce and business mediation and counsel on startup and small business law. This article was prepared for informational purposes only and not for the purpose of providing legal advice. Please consult with an attorney to obtain advice with respect to individual situations. Information current as of January 16, 2016.
Note that grandparents may not seek visitation with grandchildren who have been adopted, if neither of the adoptive parents is related by blood to the grandchild. However, a grandparent may still proceed with a Petition if the grandchild is adopted by a stepparent but does retain a biological parent. Additionally, a parent or custodian may petition the court at any time, and the court may grant the request, to revoke or amend grandparent visitation rights if the parent believes such a change to be in the best interest of the child.

3. What things will the judge consider when deciding my case?

The Wyoming grandparent visitation statute does not set forth any specific factors for the court to consider in determining whether grandparent visitation is in the best interest of the child and does not substantially impair the rights of the parent. However, Wyoming courts in custody cases have looked to factors like negative changes in the behavior, health, or happiness of children to determine what new visitation arrangement is in the best interest of children. As a result, in the case of a deceased servicemember parent, grandparents should generally be prepared to prove that they had a previous history or pattern of time spent visiting with or caring for grandchildren, that there is a strong emotional bond between the grandparents and grandchild (and/or their servicemember child and the grandchild), that lack of visitation has had a negative impact on the grandchildren, and that visitation is necessary to preserve the relationship between grandparent and grandchild.

In addition to proving that visitation is in the best interests of the grandchild, the grandparents should be careful to request visitation that does not substantially impair the rights of the parent or custodian. However, Wyoming courts have not provided substantial insight on what would constitute a “substantial impairment.”

1 W.S.A. §20-7-101(a).
2 Id.
3 W.S.A. §20-7-102.
4 http://www.lawyoming.org/legal_forms/family-law/grandparent-visitation/
5 W.S.A. §20-7-101(c).