

GRANDPARENT VISITATION

This handout is provided as a tool to start your research on how to ask for Grandparent Visitation. The Self Help Center does not assist with this issue. We recommend that you consult with a private attorney, especially if one or both parents are opposed to your visitation.

LEGAL BASIS FOR GRANDPARENT VISITATION

- Under California law, the court can grant a grandparent reasonable visitation with a grandchild, but only under certain circumstances.
- California law allows the court to grant reasonable visitation to a grandparent when the court finds:
 - a) There is a preexisting relationship between grandparent and grandchild that “has engendered a bond,” such that visitation is in the best interest of the child, and
 - b) The best interests of the child in having visitation with a grandparent are balanced against the rights of the parents to make decisions about their child.
- In general, grandparents cannot file for visitation rights while the grandchild’s parents are married with the following exceptions:
 - a) The parents are living separately and apart on a permanent or indefinite basis
 - b) A parent’s whereabouts are unknown (and have been for at least a month)
 - c) One of the parents joins the grandparent’s petition for visitation
 - d) The child does not live with either of his or her parents
 - e) The grandchild has been adopted by a stepparent, or
 - f) One of the parents is incarcerated or voluntarily institutionalized.
- California has a strong policy preference for the rights of parents over nonparents. Under California law there is a rebuttable presumption against grandparent visitation where the child’s parents agree the grandparent should not be granted visitation rights or if the parents are not united in their opposition, but grandparent visitation is contested by the custodial parent.
- To start a request for visitation with a grandchild through the court, the grandparent must know if there is a case open between the parents. If there is an open case, such as a divorce or parentage case, most likely the Grandparent will need to file a Joinder and Request for Order to obtain a court date. If there is no case filed between the parents, the grandparent will need to file a new case by creating their own unique Petition and Request for Order.

- It may be best for you and your family to try to resolve these issues out of court. Consider mediation between you and your grandchildren’s parents as a way to openly and safely discuss your needs and concerns and to try to reach an agreement that is in the best interests of your grandchildren and that preserves your relationship with them as well as their parents.

WHERE TO START

Legal advice:

- A good place to start is by obtaining legal advice from an attorney. You can find an attorney by calling the Lawyer Referral Service at 831-425-4755 or looking in the phone book. Some attorneys that assist with general family law issues also assist with grandparent visitation.

Research and Books:

- Read California Family Code sections 3100-3105. These code sections set forth the laws addressing a grandparent’s rights to visitation. These code sections also detail other situations that the court must consider before giving visitation to a grandparent.
- The Santa Cruz County Law Library is a place to start your legal research. They are located at 701 Ocean Street, Santa Cruz, Room 70 in the basement. They are open Monday – Thursday 8-4 and Friday 8-12. Their phone number is 831-420-2205 and their web site is www.lawlibrary.org. The Law Library has a packet that can be purchased that contains sample forms.
- The California Court’s web site has a self help section regarding Grandparent Visitation. Go to www.courts.ca.gov/selfhelp-custody under Visitation Rights of Grandparents .
- Sacramento Law Library has a guide to Grandparents Visitation on their web site. Their process may not be the same as Santa Cruz County, but it is a good overview of the process. The web site is www.saclaw.lib.ca.us/pages/grandparent-visitacion.

Forms:

- Some of the forms you will need to file will be unique to you and will have to be created using pleading paper. Sample pleading paper can be found at www.saclaw.lib.ca.us/pages/forms-page.aspx
- State court forms can be found at www.courts.ca.gov/forms.htm.