



Grandparents Requesting Grandchild Custody and Visitation

A fundamental element of many children's rearing is their relationship with their grandparents. This relationship is often encouraged by parents who seek to develop that vital connection. It is not highly uncommon that a situation arises in which the bond of grandparent and grandchild is not desired by a custodial parent. In such cases grandparents may petition for a court order granting child custody and visitation.

Grandparents' rights to court-ordered visitation with their grandchildren are generally outlined in the California Family Code. More specific principles regarding grandparents' rights to child custody and visitation are discussed in California and United States Supreme Court decisions: *Butler v. Harris* (2004) 34 Cal.4th 210, 17 Cal.Rptr.3d 842 and *Troxel v. Granville* (2000) 530 U.S. 57, 120 S.Ct. 2054.

In an effort to make an appropriate and fair determination, the court may grant reasonable visitation to grandparents if it finds that there is a preexisting relationship between the grandparent and the grandchild that has engendered a bond such that visitation is in the best interest of the child. The court will balance the best interests of the child in having visitation with the grandparents against the right of the parents to exercise their fundamental parental authority concerning care, custody, and control of the child. *Butler, supra*, (2004) 34 Cal.4th 210, 17 Cal.Rptr.3d 842. Ordinarily, when a parent adequately cares for a child, and therefore is considered to be a fit parent, the court presumes that the parent acts in the best interest of the child, which shifts the burden onto the grandparents to prove otherwise. In the absence of evidence showing a parent to be unfit, or acting contrary to child's best interest, "[T]here will normally be no reason for the State to inject itself into the private realm of the family to further question the ability of that parent to make the best decisions concerning the rearing of his or her child." *Troxel, supra*, (2000) 530 U.S. 57 at pp. 68-69, 120 S.Ct. 2054. The judge will not simply substitute the parent's judgment with a judgment of his own, since a fit parent is presumed to properly care for a child and continually act in the child's best interest.

Although the issue of grandparents' child custody and visitation can be exceptionally complicated, in sum, if a child's best interests are genuinely and definitively at stake, the court will likely grant grandparents' request for child custody and visitation.