

FAMILY MATTERS "Q & A" NEWSLETTER

GRANDPARENTS LEGAL RIGHTS

ESTABLISHED 1976
**WISSELMAN, HAROUNIAN
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PROTECTING YOUR RIGHTS

Greetings to Mental Health Professionals:

We appreciate your involvement in our annual Legal Workshops for Mental Health Professionals conducted at the Port Washington Yacht Club. It has been our desire to provide an exchange of legal and mental health issues in the area of family and matrimonial law to help create a better understanding of the Court process, and to help MHP's assist your patients who are experiencing marital problems, or who are contemplating or going through litigation. At our workshops, we have been asking attendees what additional information you would like to learn about in the areas of family law that would be helpful to you and your patients. In response to your requests, we have established the following Family Matters "Q & A" Newsletter. We hope this information will be useful for your needs.

We are certainly open to receiving questions from you that we can answer in future newsletters.

Over the past twenty (20) years, our law firm has been actively involved with grandparent's issues. Grandparent and grandchildren have a special relationship – bringing enormous joy. Sometimes however, there is a disagreement within the family or the parents get divorced and grandparents suddenly find themselves unable to spend time with their grandchildren. As a result, grandparents may decide to seek visitation, and in extreme cases, custody of a grandchild.

Over the years, our attorneys have been guest speakers on grandparental issues and have been consultants to various grandparental organizations, and have participated in lobbying efforts and legislative efforts on behalf of grandparents.

Below are just some of the common questions asked by grandparents with regard to these issues.

QUESTION: What can I do if my children will not let me see my grandchildren?

ANSWER: Sometimes another family member can help work out the problem if the grandparent cannot work it out directly with the parent. You may want to try this first. Another option is to find an experienced family attorney to discuss bringing a petition (request) for visitation.

QUESTION: How are my visitation rights different from a non-custodial parents visitation rights?

ANSWER: The US Supreme Court has held that parents have a superior constitutional right to the care and control of their children over any other person, including the grandparents. A fit parent seeking visitation of his or her child has a far greater right to visitation than any other family member. A grandparent may or may not get an order of visitation. If a grandparent does get such an order, the periods of visitation will be much less than a parent in frequency and time.

QUESTION: What can I expect if a court gives me visitation?

ANSWER: If the judge directs visitation, the grandparents and the parents will get a signed order that describes in detail when and where the visits will take place. This signed document is known as a visitation order. The law requires that the grandparents and the parents do what the order states.

QUESTION: If I fight for custody of my grandchild, will the child have to testify in court against the parents?

ANSWER: In custody cases it is rare for the Courts to permit children to testify because they want to shield the child from any adversarial environment. Ordinarily, if the Judge wants to hear from the child, the Court will conduct an in camera review, otherwise, known as a Lincoln hearing. This interview is conducted in private in the Judge's chambers and must be recorded but will not be used in an open courtroom. Generally, the only other person permitted to be present at the interview besides the Judge and the child is the child's law guardian who is a lawyer assigned to represent the child, and the court reporter. Prior to the interview, the parties are most often permitted to submit proposed written questions for the Judge to use prior to the interview. After the interview, and the trial, the Judge will carefully consider all the testimony and the evidence, including the record of the interview, to make a custody decision.

QUESTION: What if there is a medical emergency before I am awarded custody?

ANSWER: If the grandparent has a medical emergency before he or she is awarded custody which prevents him or her from being able to adequately care for the child, then it is unlikely that he or she will be awarded custody until he

or she fully recovers.

QUESTION: If I get visitation rights, what will happen if my child moves out of state?

ANSWER: The grandparent may seek to stop the relocation in Court but this sort of request is rarely granted if a grandparent has an order of visitation and the parent wishes to relocate the child. The Order is entitled to be enforced, in some reasonable fashion, in the state to which the parent relocates.

QUESTION: What is the legal threshold to award visitation of a child to a grandparent?

ANSWER: There are two steps. One is to show the grandparent has "standing", which can result from death of a parent, or an established relationship between the grandchild and grandparent. Second, is to show it is in the grandchild's best interests for the visitation to be ordered.

QUESTION: What is the legal threshold to award custody of a child to a grandparent?

ANSWER: There are extremely limited circumstances for awarding custody to a grandparent. This is also a two step procedure. The first is to show that extraordinary circumstances such as extended disruption of custody by the parent (usually 24 months or longer) with the child living in the grandparent's home, or abandonment, persistent neglect and unfitness of the parent. The second step is to show that it would be in the best interests of the child to be in the custody of the grandparent.

The above "Q&A" Newsletter questions were answered by Jerome A. Wisselman, founder and senior law partner at Wisselman, Harounian & Associates, P.C. You can reach Jerry Wisselman at jerry@lawjaw.com if you have any questions or would like additional information.

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