



What Are My Rights As a Grandparent?

BY JOHN F. "BO" NICHOLS, JR.

Over the past 20 years, increased attention has been given to the importance of grandparents in grandchildren's lives. This newfound emphasis on grandparents is a reflection of the increased life span of our grandparents. Adults are living longer and four- and five-generation families are more common. It is also a reflection of the importance of grandparents to grandchildren.

Grandparents influence their grandchildren directly and indirectly. As young people explore their identities as adolescents, grandparents continue to play an important role in giving their grandchildren a sense of their past and their poten-

tial futures. Not to mention the fact that they often lend much-needed assistance to today's busy parents.

In short, grandparents continue to make an invaluable contribution to the lives of their grandchildren. These contributions and time spent with the grandchildren increase in value to the grandchildren as they grow older. This ever increasing role that grandparents play has often led to heated, emotional and landmark legal battles as grandparents struggle to retain their ties with their grandchildren.

The following questions and answers assume that at least one parent is living and that the living parent would contest

the grandparent's custody, possession, or access to his or her grandchildren.

Does my being a grandparent automatically give me the legal right (standing) to file suit for possession, access, or custody of my grandchildren?

No. Depending on the relief you are seeking, there are other requirements which must be met before you have the right to file suit (standing to file). For example, if a grandparent seeks to initiate a suit wherein he or she is requesting primary custody of the grandchildren (superior to that of the parents — "managing

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conservatorship”) against the will of the parents, it must be shown that the grandchild lived with the grandparent for at least six months (with the six-month period ending not more than 90 days before filing suit) or that the child’s present circumstances would significantly impair the child’s physical health or emotional development. This is just an example of the additional legal requirements which must be present before a grandparent has standing to file suit. It is important to note that the “standing” requirements may vary depending on the relief the grandparent is seeking and when in the lawsuit the grandparent seeks that relief.

If I am not interested in getting primary custody of my grandchildren, do I still have standing to initiate an original suit seeking possessory rights over the grandchildren (inferior to that of the parent named managing conservator)?

It depends. Assuming the suit is filed against the will of the parents, unless the grandchild has lived with the grandparent for at least six months (as mentioned above), an original suit requesting possessory conservatorship (visitation) may not be filed by a grandparent.

If I do not qualify to file an original suit, are there any other avenues available to me wherein I have standing to request possessory conservatorship of my grandchildren?

Yes. A grandparent may intervene (file suit under the same cause number of a pending suit), against the will of the children’s parents, seeking possessory conservatorship of the children if: 1) the grandchild has lived with the grandparent for at least six months (as mentioned previously), or 2) the grandparent is found by the court to have had substantial past contact with the grandchild and the fail-

ure to appoint the grandparent as possessory conservator would significantly impair the child’s physical health or emotional development.

Assuming I have the legal right (standing) to file suit, what must I prove to be awarded primary custody (managing conservatorship) of my grandchildren?

To be awarded managing conservatorship of one’s grandchildren, a grandparent must prove: 1) that the appointment of the parents as managing conservators (to the exclusion of the grandparents) would not be in the child’s best interest because the appointment would significantly impair the child’s physical health or emotional development, and 2) the parents are unfit.

Assuming I have the legal right (standing) to file suit, what must I prove to be awarded possessory conservatorship of my grandchildren?

To be awarded possessory conservatorship of one’s grandchildren, a grandparent must prove: 1) that the appointment of the parents as managing conservators (to the exclusion of the grandparents) would not be in the child’s best interest; 2) the parents having possession and access to the child would endanger the physical or emotional welfare of the child; and 3) the parents are unfit.

What if I am not concerned with participating in the important decisions made on behalf of the grandchildren (those made by “managing conservators” and “possessory conservators”) and I just want to see them regularly, do I have any legal right to the access of my grandchildren?

A grandparent can be granted access to his or her grandchildren, against the will of the grandchildren’s parents, if: 1) at the time of the request at least one of the par-

ent’s rights have not been terminated by court order; 2) access is in the grandchild’s best interest; 3) the grandparent’s own child (the mother or father of the grandchild at issue) has been in jail/prison for three months prior to filing or has been found by a court to be incompetent or dead or does not have court-ordered possession or access to the child; and 4) the parent is unfit or denial of access by the grandparent to the grandchild would significantly impair the child’s physical health or emotional development.

Are there any presumptions against a grandparent being granted custody of or having possession and access to his or her grandchildren?

Yes. There is a fundamental legal presumption that a parent, not extended family (including the grandparents), should raise his or her own child. The above is based on the presumption that a fit parent makes decisions in the best interest of his or her child.

Can the above presumption be rebutted? If so, how?

Yes. The presumption that a parent should be appointed sole managing conservator, or the parents appointed as joint managing conservators over the children (to the exclusion of the grandparents), holds true unless: 1) it would not be in the children’s best interest because it would significantly impair the child’s physical health or emotional development, or 2) there is a finding of a history of family violence involving the parents.

The presumption that a parent not appointed sole managing conservator or joint managing conservator should be appointed possessory conservator over the children (to the exclusion of the grandparents) holds true unless: 1) this would not be in the children’s best interest, and 2) it would endanger the physical or emotional welfare of the children.