

Why Can't I Visit Little Red Riding Hood?

[\(By Anju D. Jessani, MBA, APM – Accredited Professional Mediator\)](#)

The relationship between grandparents and their children has become increasingly complex. At one end of the spectrum is the statistic from the US Census bureau that 7% of children are being raised by their grandparents. At the other end of the spectrum, is the statistic that an even greater number of grandparents have sought the assistance of the courts to get regular visitation.

On a daily basis, grandparents (90% grandmothers) contact me, confused about their rights as grandparents, as well as the best way to resolve disputes with their children or more frequently, their child's former spouse, so that they can see their grandchildren. On occasion, I hear from the child or the child's former spouse, explaining why grandparent visitation is not in the grandchild's best interests. A few times a year, I mediate grandparent visitation disputes. These mediations work best when done in the early stages of a dispute, before the adversarial legal system has exacerbated the situation, and further polarized the viewpoints of the parties. The purpose of this article is to examine grandparents' rights in the state of New Jersey, and to also discuss the use of mediation in grandparent visitation disputes.

Richard Gardner, MD, in his book *Family Evaluations in Child Custody Disputes* (1981), provides this explanation of the importance of grandparents to grandchildren: "Although parents will on occasion idealize their children, grandparents are much more likely to do so. They have few of the irritating and frustrating experiences that compromise such idealization. The enhanced positive regard that grandparents have for their children contributes to building the children's self-esteem."

The laws vary from state-to-state regarding grandparent visitation. Traci Truly in her book *Grandparents' Rights*, summarizes the statutes of each state (Sphinx Publishing, Clearwater FL, 1995). However, some of the rules for your state may have been revised since the book's publication. Therefore, it would be wise to check the statute for your state through a local law library or attorney. Since 1965, all 50 states have enacted grandparent visitation statutes. The state where the child resides determines which state's laws should be used.

Truly caution grandparents that they should not realistically expect to approach the level of visitation given to the noncustodial parent. If you apply to the courts, you may get as little as a few hours every two or three months or as much as some time every month. The courts will give consideration to the age of the grandchildren and may be reluctant to send infants off for visitation periods in order to avoid trauma to the child. If there are allegations substantiated by evidence that you have been abusive either physically, emotionally, or sexually, to any child, the court can find that the visitation with you is not in the best interest of the grandchildren and deny your request.

Prior to 1993, in New Jersey, visitation to grandparents could be granted only if the parents were separated or divorced, and the visitation was best interests of the child. The statute, 9:2-7.1 was revised in 1993 to read as follows:

1.a. A grandparent (or any sibling) of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

- (1) The relationship between the child and the applicant;
- (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
- (3) The time which has elapsed since the child last had contact with the applicant;
- (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
- (6) The good faith of the applicant in filing the application;
- (7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
- (8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

L.1971,c.420,s.1; amended 1973,c.100; 1987,c.363,s.2; 1993,c.161,s.1.

Regarding the issue of an applicant having served in the past as a full-time caretaker for the child, prima facie evidence means that this fact would support the grandparents case, but not that visitation must be granted.

According to a brochure published by the NJ Department of Community Affairs on grandparent visitation, the New Jersey law was revised because grandchildren and grandparents need each other, that the severity and likelihood of harm to people (young and old) unjustly denied grandchild visitation outweighs the difficulty pursuing justice, and because sometimes, no other remedy exists.

In 1998, President Clinton signed into a law a bill that guarantees grandparents can

visit their grandchildren anywhere they live in the US, so long as any state court has provided for the grandparent's visitation. The bill, the Visitation Rights Enforcement Act, Public Law 105-374, requires states to recognize each other's visitation findings.

The NJ Department of Community Affairs offers this sage advice under the heading "Honey or Vinegar" regarding grandparents visitation in their grandparent visitation brochure: "Even though the legal rights exists for you, it is wiser to work out the grandparent visitation issue with the child's parents through private dialogue, counseling, or mediation. Experience shows that diplomacy (this is 'cool heads') practiced between the concerned parties, often brings about good and workable solutions to even more issues that of the grandchild visitation. A respectful straightforward letter may serve to introduce the recipient guardian to the law, and begin a private process, that will, hopefully, result in a less costly way to resolve things between adults."

By first trying mediation, the parties to the dispute lose nothing. If the parties cannot resolve the issue, the grandparent can apply to the New Jersey Superior Court (family court) for visitation. Much of the proofs are submitted by written documents sent to the court. However, in the event of a hearing, the child may be called upon to testify.

John Haynes, Ph.D., probably the leading expert on family and divorce mediation, discussed the problems of using the courts to resolve inter-generational family disputes in the ABA publication *Grandparent Visitation Disputes: A Legal Resource Manual*. He states "Families in which grandparents are pitted against parents over access to the grandchildren have usually taken years to become entrenched in the dispute and a single court hearing will rarely resolve the issue. The future is often obscured by the parties' present grudges and desires to be vindicated." Haynes also argues vigorously against asking grandchildren to express a choice regarding grandparent visitation. He states that if they are forced to choose, it is a choice they will regret forever because they will live with the feeling that they rejected one family member, not that they chose the other.

Haynes provides some case studies to illustrate how mediation, with its search for solutions with a neutral third party, rather than a search for who is right and who is wrong by a judge, is a more appropriate forum for addressing grandparent visitation disputes. One such case provided by Haynes is described below:

When John and Sue divorced, the divorce agreement made no mention of grandparents' visitation rights. A few years later, John died in an automobile accident. Following his death, Sue refused to allow John's parents any contact with the grandchildren. Two years later, John's parents consulted an attorney, who referred them to mediation. Sue, hearing that the grandparents were contemplating a court action, accepted mediation in preference to an expensive court battle. In mediation,

Sue complained that John's wealthy parents spoiled the children with expensive toys, complained that the parents had interfered in her marriage, and that she would not allow the grandparents to ruin her relationship with the children in the way they had ruined her relationship with John. The mediator worked with Sue to help her differentiate her anger at the grandparents as a daughter-in-law, and her anger at them in the way they related to the children. He also helped the grandparents to understand the mother's fear of their wealth, and the fact that they needed to be related to her as adult parent, not just John's ex-wife. The grandparents agreed to limit the money they spent on the children and to consult with Sue and get her agreement if they planned to spend more than \$25 on either child. In return, Sue made the children available initially on Saturday afternoons. Over the next two years, as trust developed, the children began to spend weekends with their grandparents, and Sue was able to accept the grandparents' offer to pay for the children's education at a private school of her choice. Mediation provided the family with the opportunity to find a permanent solution, and to ultimately reunite the extended family.

If you have an interest in grandparent issues, you can contact the New Jersey Division on Aging, Senior Citizens Information and Referral Service at 1-800-792-8820. Please feel free to contact me if you need more information on mediation at either 1-201-217-1090 or ajesani@dwdmediation.org. If you need a referral to a private mediator in your area, The Academy of Professional Family Mediators at <https://apfmnet.org/> and The New Jersey Association of Professional Mediators at www.njapm.org, maintain lists of accredited family mediators. Additionally, each of the New Jersey counties offers either a free or low-cost custody and parenting mediation services through Family Court. You should contact your county to establish the requirements for qualifying for this service. If you are considering using an attorney or need more information on your legal rights or need legal advice, many attorneys offer a free initial consultation. Some of the best referrals for attorneys come from satisfied friends; you can also contact your local bar association for referrals. Make sure that the attorney is knowledgeable about domestic relations cases and specifically, grandparents' issues. Lastly, grandparents can get information and support from the national organization, Grandparents United for Children's Rights at (608) 238-8751, or www.geocities.com/Heartland/Prairie/6866.

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