

# How To Win Grandparent Visitation Rights in California Family Law Court

## Four Basic Questions Asked on Behalf of A Typical Grandparent Denied Visitation:

1. Whether Grandparents with California grandchildren have a Visitation Case?
2. Which Pleadings to File?
3. What is the Best Proof to gather in a Grandparents' Rights case?
4. What to do if there is No Case?

## Answers:

### Question 1. Whether Grandparents have a case in California:

When Grandparents with grandchildren in California are able to prove that the following 6 Statements are TRUE, they probably have a case!

1. No current marriage between the parents, or the parents are already separated.
2. The grandparent had past regular contact with the grandchild, or the grandparent previously held a judicially-approved parental role such as guardian or ward (FC section 3105 a/o 7/2020).
3. The grandparent can show reasons, with proof, why continued or renewed contact would be in the grandchild's best interest.
4. One parent has refused grandparent visitation when the other parent is:
  - a) deceased or has been Missing for over a month - or
  - b) is known to be away somewhere, for example - enlisted or incarcerated - and the away parent agrees with the grandparent.

5. The grandparents can state a specific visitation schedule for how much time the grandchildren should spend with them.
6. The grandparents know about - and Don't Mind possibly having to pay for some support-related "costs related to visitation."

## Question 2. Which Pleadings Must be Filed in California

Lawyers should determine one of two acceptable methods in Family Law court for the basic Grandparents' case:

1. When there is a Pre-existing lawsuit:

If there is already a case on file between the parents, e.g., a Dissolution of Marriage (Divorce), a Parentage case (Paternity), another Custody case, or a Support case? If so, then a Grandparents' claim for California grandchildren should be filed using a "Request for Orders" under the existing case number, as per *Family Code section 3103*.

2. When the parents have never filed a lawsuit about the grandchildren before.

If there is no existing lawsuit, the grandparents must file a New lawsuit AND a "Request for Orders," under *Family Code section 3104*.

## Question 3. What are the Best Categories of Proof to Overcome Presumptions Against Grandparents?

1. **Show** that a basic relationship with the grandchildren EXISTS or EXISTED.
2. **Prove** that Visitation has been or will be cut off by the objecting parent.  
For both #1 and #2, a Grandparent could use Calendars, Texts, Photos, Notes, social media, or Witnesses.
3. **Demonstrate** WHY it is in the best interests of the grandchildren to have their grandparents in their lives using TWO TYPES of proof:

A. Examples of QUANTIFIABLE pre-existing acts indicating a relationship that should continue (e.g., the act and the number of times in a year):

- School pickups,
- Doctor's appointments,
- Therapy,
- Childcare provided,
- Overnights,
- Extra-Curricular Activities or
- Vacations, etc.

B. Examples of QUALITATIVE aspects of the relationship worth preserving:

- Comfort given over losing a parent that is still needed,
  - Family traditions to be passed on,
  - Loving gestures by grandchildren toward grandparents,
  - Other Best Interests factors.
4. **Produce Documents** proving one parent is deceased or incompetent using official records. -OR-
  5. **Obtain a Declaration** from a parent who is Away but supports the grandparents' request.
  6. **Use** the grandparents' past offers of cooperation,
    - Help (monetary and non-monetary) AND
    - Attempts to resolve without court - All to show the grandparents are reasonable.
  7. **Provide** a specific grandparent visitation schedule . This may be anything from one holiday per year to a visitation that occurs every week, all based on past performance and the current situation with the children.

#### Question 4. NON-LITIGATION HELPS WHEN THERE IS NO CASE:

IF Grandparents have no legal case, mitigating techniques are the last resort and should be planned to soften the anger/grief/determination of the objecting parent so that a future relationship between grandparents and grandchildren may be built:

1. Sincere Apology and Conversation Starter,
2. Attempt a Peace-Offering,
3. Send Presents and Cards, and
4. Take a Burden of Time or Finances off the Other Parent.

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This outline has presented the basics in pursuing a client's grandparent visitation rights case when the grandchildren live in California. There are nuances, and obviously no case is like any other, but we hope you find this to be a helpful starting point. Please watch our YouTube Video for several additional litigator's tips you may find useful in your client's case.

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