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Grandparent Visitation

In New York State, grandparents have the **right** to ask, by a petition, for visitation with their grandchildren. However, **while a grandparent has the right to ask the court for an order granting them visitation, it does not mean that grandparent visitation will be granted.**

So, before you petition the court you might try other avenues to gain visitation. Under U.S. law, parents generally have a strong constitutional right to raise their children as they see fit. Perhaps the best way to achieve visitation is to talk with the biological parents. Or, if that sort of conversation is difficult, you might try mediation. Every county in New York has a Court approved mediation program, and in many counties, this is a free service.

If those avenues do not work, here is some information about how to petition the court for Grandparent Visitation;

To be successful, a Grandparent Visitation Petition is written as a two step process.

STEP ONE: The first step is to show that the grandparent has "standing" to petition the court. Standing means that the court recognizes that a person has met the criteria to go forward with an action. Without "standing" the petition will be dismissed. There are a few ways to show "standing":

- If one of the parents is deceased, then a grandparent automatically has standing, and the case can go forward; or
- If the grandparent has an existing good relationship with the grandchild; or
- Despite your efforts to try and have a positive relationship with your grandchild, the natural parents have blocked your efforts.

STEP TWO: Only after you have shown, with proof to support it, that you have standing, the second step is to show that it is in the child's "best interest" to have visitation with you.

Some of the ways for your petition to demonstrate this "best interest" requirement are

- To have the petition point out the positive ways that you have, or will have, connections with your grandchild. For example, you might write about what you activities you do or

will do with your grandchild. In this part of the petition you want to show the positive relationship you have or will have. Generally, you should not take the opportunity to bring up negative qualities of the parents.

Following here is a SAMPLE of a New York Petition for Grandparent Visitation that shows the 2 step process. This is just a sample that has incorporated fictional facts.

- Note that in Paragraph 5, the Petition shows that the Grandmother has standing (STEP ONE), by showing that she had an ongoing relationship with her granddaughter, and that for the past several months, after the parents separated, the grandmother has been trying to visit her Grandchild, without success.
- Then note that in Paragraph 6, the Grandmother shows that it would be in the best interest of the child (STEP TWO) to have visitation with her grandmother. Use it as an example of how you draft a petition as a two step process.
- Finally, when completed, your Petition must be filed with the Family Court in the county where the child resides.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF *(put name of County here)*

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IN THE Matter of Visitation Proceeding
Granny Smith,
Grandparent/Petitioner

Verified
GRANDPARENT
VISITATION PETITION
File #
Docket#

-against-

Mary Macintosh and
John Macintosh, Parents/Respondents

.....
TO THE FAMILY COURT:

The Petitioner respectfully alleges upon information and belief that

- 1) The child subject of this petition is Madeline Macintosh, female, born 1/5/08, residing with the Father/Respondent, John Macintosh, at 123 Appleseed Lane, Happy Valley, New York;
- 2) The Petitioner, Granny Smith, resides at 80 Cortland St., Happy Valley, New York, and Petitioner is the maternal grandparent of Madeline Macintosh,
- 3) The Father/Respondent John Macintosh resides at 123 Appleseed Lane, Happy Valley, New York; and the Mother/Respondent, Mary Macintosh, resides at 29 Sunnybrook Lane, Tampa, Florida, where she is attending nursing school; and
- 4) The Parents of Madeline Macintosh are living apart, pursuant to a Separation Agreement, signed by both of the parents on October 7, 2013, where the parties agreed to joint legal custody, with primary physical custody to the father, John Macintosh, with custodial periods with the mother, to be reasonable and liberal, as agreed upon by the parties.
- 5) Prior to the parent's separation, the Petitioner spent frequent, substantial time with her granddaughter, to wit:
 - a. Mary, visited with the Grandmother/Petitioner, on average, twice a week since she was an infant.
 - b. Madeline frequently had overnight visitation with her grandmother, at least twice a month, often spending from Friday night until Sunday evening.
 - c. Every year, Madeline spent a week with her grandmother, and the grandmother took Madeline on special trips to Disneyworld and Dollywood. The above mentioned

visitations took place from when the child was less than one year old, until October of 2013.

Since the parents separated, the Petitioner has made countless attempts to see her granddaughter; and the grandmother has called the Father/Respondent's house, and even dropped by, however the father has not allowed the child to see her grandmother.

The Grandmother/Petitioner has contacted her daughter in Florida, to ask the daughter to intervene with the father so that the child can visit her grandmother. However, the Daughter/Respondent has said that there was "nothing she can do" to make the father allow the child to see her grandmother.

6) Therefore it would be in the Madeline's best interest to have visitation with her grandmother because:

- a. There is a strong, established bond between the Petitioner and Madeline; and
- b. Since the mother, Mary Macintosh has relocated to Florida to attend school, the child has experienced a substantial change in her home life, and she would benefit from spending time with a grandmother who loves her; and
- c. The grandmother lives on a farm with chickens, goats and ponies, and Madeline loves to spend time with the animals, and helping her grandmother garden.
- d. The grandmother has always taken, and paid for, Madeline to attend dance classes, which she loves, and since the parents' separation, Madeline has not been able to attend those classes.
- e. The Father/Respondent places the child in a group child care program after school until 9:00 p.m. while the father is "out" and not able to take care of his daughter.
- f. The Grandmother respects Madeline's relationship with each of her parents, and she would always conduct herself in a way that would be supportive to both parents.

7) Therefore, the Grandmother/Petitioner is seeking a court order granting:

- a. The Grandmother weekly visitation with Mary, on Wednesdays, from after school until 9:00 p.m.; and
- b. The Grandmother/Petitioner visitation and the first Saturday of each month, from 7:00 a.m. until 9:00 p.m.
- c. Any other visitation with Mary, as agreed upon by the parties.

8) The child, Madeline Macintosh is not a Native American child, subject to the Native American Child Welfare Act.

9) No previous application has been made in any court, including a Native American Tribunal.

Wherefore, the Petition requests a Temporary order of visitation as outlined in Paragraph 7, and a final order of visitation with the terms outlined in Paragraph 7, and for such other and further relief as the Court may determine.

