

# THE MORLEY LAW FIRM, PLC

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## Grandparent Visitation

Are grandparents legally entitled to visitation with their grandchildren?

Grandparents often play a very significant role in the lives of their grandchildren. And the bond that develops between grandparents and grandchildren is second only to that between parents and their children. When grandparents are denied visitation with their grandchildren, it can be devastating. So what can grandparents do if they find themselves in this unfortunate situation?

In general, parents have the right to raise their children as they see fit. This right is so important that it is protected by the Fourteenth Amendment of the United States Constitution. Although the parents' right to custody and control is constitutionally protected, this right is not without limitation. States have a wide range of power to regulate the well-being of children that may restrict the parents' control.

Under common law, grandparents had no legal right to visit their grandchildren. Today, however, all 50 states have adopted grandparent visitation statutes. Arizona enacted such

legislation nearly 30 years ago based upon the State's interest in promoting healthy family relationships that enable children to become well-adjusted, responsible adults. *See* A.R.S. § 25-409.<sup>1</sup>

Pursuant to Section 25-409, Arizona Courts may permit visitation when it is in the best interest of the grandchildren and when one of the following circumstances are present: (1) the marriage of the parents of the child has been dissolved for at least three months, (2) a parent of the child has been deceased or has been missing for at least three months, or (3) the child was born out of wedlock.

Under the statute, Grandparent visitation is not automatic. Indeed, court-ordered grandparent visitation is not permitted if the grandchildren's biological family is intact. Moreover, the

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<sup>1</sup> While Section 25-409 applies to both grandparents and great-grandparents, it does not apply to step-grandparents. Rights of step-grandparents are beyond the scope of this article.

Court must actually determine that visitation is in the “best interest” of the grandchildren. The statute directs the Court to consider five factors in making this determination: (1) the historical relationship, if any, between the child and the person seeking visitation; (2) the motivation of the requesting party in seeking visitation; (3) the motivation of the person denying visitation; (4) the quantity of visitation time requested and the potential adverse impact that visitation will have on the child's customary activities; and (5) if one or both of the child's parents are dead, the benefit in maintaining an extended family relationship. If none of these factors are present, the Court will not order visitation.

If grandparents have been denied visitation, they should make every effort to resolve the issue directly with their grandchildren’s parent or parents. If such efforts are unfruitful and at least one of the three circumstances apply showing the grandchildren’s biological family is not intact, the grandparents may petition the court for an order of visitation. If the court finds that visitation is in the best interest of the grandchildren, it will enter an order requiring the parents to permit visitation.

THE MORLEY LAW FIRM, PLC can assist you in evaluating your particular circumstances and negotiating or litigating your rights.