

Wisconsin's Legal Guide For Grandparents & Other Relatives Raising Children

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Wisconsin's Legal Guide
For Grandparents and Other
Relatives Raising Children
2008

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What this booklet is about

This booklet, or guide, is meant to serve as a resource for adults other than parents who take care of children. Such “nonparental caregivers” include grandparents, other relatives and even nonrelatives who serve as a child’s primary, or main, caregiver.

The guide lists advantages and disadvantages, as well as legal aspects, of various caregiving arrangements, including informal agreements, guardianships, licensed foster homes and adoption. It also describes Wisconsin programs that can help grandparents and other caregivers give children the support they need.

This booklet does not cover all laws or resources, nor does it replace an attorney who can analyze your unique family situation and recommend the best legal protections to pursue. (To find out if your county offers free or reduced-cost legal services, see the Resource Section.) What it does is help you understand your rights and responsibilities, and guide your discussions with attorneys and social workers.

Caregivers growing in number

If you’re caring for a child but are not the child’s parent, you’re not alone. In the United States, nonparental caregivers provide primary care for millions of children. In Wisconsin, more than 70,000 children live in homes headed by people other than their parents, most often a grandparent, according to 2000 Census data. The actual number of children who spend most of their time in nonparental homes is probably much higher.

Children live with adults other than their parents for many reasons. A child’s parents may be in jail, sick, out of a job, having problems with alcohol or other drugs, or in treatment for drug or alcohol abuse. Parents may have mental or emotional problems. Or they may have to relocate temporarily for a job and not want a child in the new location.

Caring for a child can be difficult and, at times, overwhelming. The good news is that Wisconsin has programs that you, as a nonparental caregiver, may find helpful. Some offer financial or emotional support. Others help families cope with the issues that led to a child living outside a parent's home.

Wisconsin also offers some legal protections when a child must be placed outside a parent's home. For example, nonparental caregivers may be given legal rights to make some decisions for a child through guardianship or as licensed foster parents. Nonparental caregivers, including grandparents, may have rights to visitation with a grandchild. (See the section on grandparent visitation rights toward the end of this booklet.)

Though Wisconsin has a long way to go to improve the status of nonparental caregivers, knowing your rights and responsibilities under the law can reduce stress and misunderstanding, and is an important step to ensuring the best outcome for your family.

We cannot emphasize enough that the first step for almost any family problem is for family members to come together to talk about the problem to find common ground in the best interest of children. This booklet is designed to help start such conversations and guide families toward helpful legal services and resources.

Check to make sure laws haven't changed

Laws change often. This booklet describes laws in effect as of January 1, 2008. To find out if laws have changed since then, check with a legal library in or near your county courthouse, or at one of Wisconsin's two law schools (see the Resource Section).

Three sections, or chapters, of Wisconsin law address family situations. Chapter 48 deals with abuse, neglect, adoption and other topics. Chapter 767 deals with family

law issues such as divorce, separation and visitation. Chapter 54 deals with guardianships.

This booklet does not address federal laws, but such laws may apply in some situations. If a child is, or could be, a member of an Indian tribe, special laws, called the Indian Child Welfare Act, or ICWA, apply. (See the Resource Section to learn about the ICWA.)

How this booklet is organized

This guide starts with informal agreements for grandparents and other nonparental caregivers and moves on to more formal arrangements, such as guardianship, licensed foster homes and adoption. It also covers grandparent visitation rights, cost ranges of various legal services and tips for working with attorneys.

Keep in mind that over time, some families rely on several legal options. For example, a family may start with an informal agreement for a grandchild to live with grandparents while a parent recovers from an illness. At some point, grandparents may realize they need guardianship to provide medical care for the child. If, after a certain amount of time, returning a child to a parent is no longer an option, a family may want to look into adoption.

Glossary

Biological parent generally refers to a parent who has given birth to or fathered a child who is the subject of legal proceedings. Biological mothers are automatically given legal custody of their children. Biological fathers who are married to the biological mothers are also automatically given legal custody. Unmarried fathers have to take additional steps, called paternity actions, to gain legal custody of a child.

Custody or legal custody is the right to make certain legal decisions on a child's behalf. Having legal custody lets caregivers make decisions about nonemergency health care, education, and similar decisions. Biological parents automatically have legal custody over their children, though unmarried fathers may have to take steps to get legal custody. Legal custody can be granted to nonparental caregivers through a guardianship, adoption and, in some cases, a court order placing a child in a home. In Wisconsin, a parent cannot simply "sign over" legal custody of a child.

Guardianship is a specific kind of legal status between an adult caregiver and a child. Becoming a child's legal guardian allows a caregiver to make legal decisions and sign paperwork for a child, such as school and medical documents. Guardianships can be temporary if a child needs a legal guardian for a set period of time -- for example, a child's parent is in prison -- or permanent, until the child becomes an adult.

Nonparental caregiver is any person other than a biological or legal parent taking care of a child. A nonparental caregiver is often a grandparent, aunt, uncle or cousin, but can be any adult who takes care of a child permanently or for a significant period of time. This term does not refer to someone who provides day care or who agrees to watch a child for a few days once in awhile.

Physical placement is a set period of time in which a child lives with, or is physically placed with, someone. Usually, this refers to time spent with legal parents who do not live together. For example, one parent has primary physical placement, the other has set periods of physical placement, and they share joint legal custody.

Primary care includes providing housing, food, clothes, medical care and other support for a child.

Visitation is similar to physical placement and refers to set periods of time a person is allowed to spend with a child. Under Wisconsin law, a court may grant visitation rights to grandparents and others. For example, a grandparent might have a court order allowing visitation every other Saturday from 12 p.m. to 6 p.m.

Informal caregiving arrangements

We all expect and hope our family will be there when we need help. If, for some reason, a parent is unable to care for a child, relatives often step in. Close-knit families often work as a team to support children and expect that children will step in to support ailing parents. As a result of these expectations, families often enter into informal child-care agreements. It's important to understand the benefits and drawbacks of such agreements.

The greatest benefit of informal agreements is that they allow families to make private, personal decisions without involving outside agencies. For example, grandparents often step in to provide short-term primary care for grandchildren, without resorting to legal action, when parents are unavailable. Families can and should rely on each other for support. However, informal agreements have drawbacks you should know about.

First, informal agreements generally provide no legal protection for nonparental caregivers or for children. For example, if a family decides a grandchild should live with a grandparent for six months while the parent completes a rehab program, then halfway through the program the parent decides to remove the child from the grandparent's house, the grandparent may have no legal ability to stop the parent from removing the child. The parent has the right to take back, or revoke, an informal agreement, even if that agreement is in writing.

Second, in entering an informal agreement, a family may give up financial help and other services available under more formal arrangements. Caring for a child can be very expensive, especially for grandparents or other relatives who hadn't planned on taking care of young children at this stage of their lives. Such families may qualify for financial support under more formal child-care agreements. (See "Kinship Care" or

“foster home licensure” later in this booklet.) Sometimes parents promise to financially support a child living with a caregiver, but promises are not enforceable under the law unless there is a legal connection, such as the ones discussed in this booklet, with the child.

Third, an informal agreement may keep a child from receiving certain protections. Without legal documentation of some type, grandparents and other nonparental caregivers are not legally allowed to authorize routine health care or make school-related decisions. In practice, many caregivers don't have problems when they take grandchildren to doctors' offices or sign school permission slips. Depending on the type of legal document or permission slip, though, you could find yourself in trouble for authorizing actions without proper legal authority.

You have to decide for yourself how to handle your own special situation. Obviously, legal documents aren't needed every time a parent leaves a child with a grandparent for a week or two. However, when a week stretches to a month, or six months, or longer, you should consider seeking some legal protections and rights. This guide outlines several such protections, from a short-term, temporary guardianship to a permanent arrangement such as adoption.

KINSHIP CARE

What is Kinship Care?

Kinship Care is a program that provides financial help -- \$215 per child per month -- to support children living with relatives other than a parent or guardian. A child does not have to be placed in a home through a court order to qualify for Kinship Care. However, county social services (the Department of Health and Family Services in Milwaukee County) must determine whether applicants meet Kinship Care conditions.

Note: Children receiving Supplemental Security Income (SSI) are not eligible for Kinship Care payments.

Due to limited funds, Kinship Care sometimes has a waiting list. If a court order places a child in a relative's home, and the child qualifies for Kinship Care, the family will receive benefits even if there is a waiting list for noncourt-ordered families. You should be aware that social services may require families who apply for Kinship Care benefits to help refer the case to the Child Support Agency, which may seek out the biological parents for child support.

To qualify as a Kinship Care relative, you must be related to a child in one of these ways:

- step-parent
- brother, sister, step-brother, step-sister
- first cousin
- nephew, niece
- aunt, uncle
- or any person whose relationship to a child can be preceded by the words “grand,” “great,” or “great-great” (grandparent, great-grandparent, great-great-grandparent)

You may be related by blood, marriage or legal adoption, or be the husband or wife of a qualified person, even if that relationship ended in divorce or death. Let's say, for example, you become a child's step-grandmother by marrying the child's grandfather. If the child later lives with you, you may qualify for Kinship Care even if you are divorced from the child's blood relative (the grandfather) or the grandfather has died. Wis. Stats. § 48.57(3m).

Who qualifies for Kinship Care?

To qualify for Kinship Care payments, ALL the following conditions must be met:

1. The proposed Kinship Care relative applies for benefits with the county department of social services (all counties except Milwaukee), or with the Wisconsin Department of Health and Family Services, or DHFS, in Milwaukee County. (See the Resource Section for contact information.)
2. The county or department determines there is a need for a child to be placed with the Kinship Care relative and that placement is in the child's best interests.
3. The county or DHFS determines a child would be at risk of one or more of the following conditions if the child stayed in the home:
 - a. The child has no parent or guardian.
 - b. The child has been abandoned.
 - c. The child is a newborn who was given up or turned over to authorities pursuant to the "safe harbor" law of Wis. Stats. § 48.195.
 - d. The child has been the victim of abuse.
 - e. The child is at substantial risk of being abused, based on reliable information that another child in the home has been abused.
 - f. The child's parent or guardian has signed a petition asking for the placement and indicating that he or she can't care for the child.
 - g. The child has been placed for care or adoption in violation of the law.
 - h. The child is receiving inadequate care while the parent is missing, incarcerated, hospitalized or institutionalized.
 - i. The child is at least 12 years old and signs a petition requesting Kinship Care and stating that the parent or guardian is unable or unwilling to provide special treatment or care needed by the child.
 - j. The child's parent, for reasons other than poverty, refuses or is unable to provide basic needs of food, clothing, medical care and shelter so as to endanger the child.
 - k. The child is suffering emotional damage for which the parent, guardian or legal custodian, for reasons other than poverty, has refused to seek treatment.
 - l. The child has an alcohol or drug problem for which the parent, guardian or legal custodian, for reasons other than poverty, has refused to seek treatment.
 - m. The child has not been immunized.

- n. The child would be exposed to manufacture of methamphetamine (the parents make meth, crystal meth or similar drugs at home or with the child present).
4. The Kinship Care relative does not have any arrests or convictions that could adversely affect the child or the relative's ability to care for the child. The following convictions or arrests result in an automatic denial of Kinship Care payments, unless the person requests a review of the decision to deny Kinship Care payments:
 - a. Felony conviction under the Uniform Controlled Substances Act. [ch. 961.]
 - b. Penalties imposed for habitual criminality [§ 939.62]; certain domestic abuse offenses [§ 939.621]; use of a dangerous weapon [§ 939.63]; use of a bulletproof garment while committing a felony [§ 939.64]; concealing identity while committing a crime [§ 939.641]; and hate crime [§ 939.645].
 - c. Convictions of a crime against life and bodily security [ch. 940]; *except* failure by a peace officer to render aid [§ 940.291]; and failure by an individual to aid a victim or report a crime [§ 940.34].
 - d. Conviction of a crime against sexual morality [ch. 944]; *except* solicitation of drinks by an employee from a customer [§ 944.36]; and the following crimes if the violation was 20 or more years prior to the investigation: prostitution [§ 944.30]; patronizing prostitutes [§ 944.31]; and pandering [§ 944.33].
 - e. Convictions of a crime against children [ch. 948]; *except* contributing to truancy [§ 948.45]; receiving property from a child [§ 948.63]; and tattooing a child [§948.70].
 5. In addition, a Kinship Care relative cannot employ anyone who would have regular contact with the child, or allow any adult to live in his or her home, if the employee or adult has been convicted of such crimes or had such penalties imposed. [§ 48.57 (3p) (g), Stats.]

Note: The statutes regarding criminal convictions and appealing a decision denying payments because of a caregiver's convictions are complex. However, if you are denied Kinship Care, you have a right to appeal that decision. (See the Resource Section for information on finding legal assistance.)

Licensed foster homes

Another option for caregivers is to become licensed foster parents. Foster home placement is only for children who have been removed from their homes by a court order, usually because a child is alleged to have been abused or neglected, or in some other way is not safe in the home. Before considering this step, carefully weigh the pros and cons.

The main benefits in becoming licensed as a foster home include receiving more financial support and access to additional services. Basic rates for foster care payments are \$317 for a child younger than 5; \$346 for a child 5 to 11; \$394 for a child 12 to 14; and \$411 for a child 15 or older. In addition to these basic maintenance grants, a foster home may receive an initial clothing allowance and funds for a child with special needs. Depending on a child's needs, payments can sometimes exceed \$1,000 per month. Wis. Stat. § 48.62(4). Foster care payments are almost twice those of Kinship Care. If a child has special needs, payments may be much higher than the basic rate. Sometimes relatives are not given information about foster care and adoption options, so it is important to ask whether this could be an option for you.

A potential drawback for some families is that foster homes run by relatives must follow the same licensing process as other licensed foster homes. Licensing usually requires passing a background check, answering social workers' questions, making sure your home meets safety requirements and, in some cases, completing several hours of classes, usually offered by county social services. However, it does not cost anything to become a licensed foster parent.

Families may hesitate to pursue foster care due to worry over a parent's reactions or concern about involving outsiders. Keep in mind that if foster care is an option, the family situation is already serious. Placing a child in foster care requires a court order, meaning that outsiders, including courts and social workers, are already involved.

Legal guardianships

Legal guardianship of a child allows a nonparental caregiver such as a grandparent to make some legal decisions on a child's behalf. A guardianship can be limited, allowing a guardian to make certain, say educational, decisions for a child, or full, giving a guardian full legal rights and responsibilities of legal custody, including the right to make medical and educational decisions, the right to visitation or periods of placement with the child, and more. Wis. Stat. § 48.023.

The major benefit of legal guardianship is that it allows you to make important legal decisions without asking permission from a parent or others, such as a social worker. For example, a caregiver who has legal guardianship can sign educational documents such as school permission slips and take a child to medical appointments without getting permission from anyone. Another benefit is that guardianship can occur without terminating parental rights, as must be done in adoption. Therefore, legal guardianship may not be as emotional or difficult for some families.

Potential benefits of legal guardianship include:

- Signing legal documents, such as those authorizing medical care or school field trips.
- Depending on your insurer, adding the child to your health insurance.
- Maintaining the parents' legal status while allowing a nonparental caregiver, or guardian, to make the routine decisions needed to raise a child.
- Claiming a child as a dependent/exemption for tax purposes if you provide at least half the child's financial support. See a tax advisor or visit the website, IRS.gov, for details.

A. Guardianships for children in need of protective services

A relative may be appointed a child's legal guardian in two ways. A court may order guardianship when all the following conditions are met:

1. The child is in need of protective services.
2. The child is placed with a relative who likely will care for the child for an extended period of time.
3. The relative is likely to be willing to serve as the child's guardian for an extended period of time.
4. It is not in the child's best interest to file a petition to terminate parental rights.
5. The child's parent (or parents) is neglecting, refusing or unable to carry out the duties of a guardian.
6. The agency primarily responsible for providing services to the child under a court order has made reasonable efforts to return the child to the parent's home, but it is unlikely the child will be returned to the parent's home.

Wis. Stat. § 48.977 (2).

Court-ordered permanent guardianships are often used in families with older children who have had an ongoing relationship with their biological parents, but those parents are unable or unwilling to provide appropriate care. Relatives who become appointed guardians through this process, sometimes called "Chapter 48 Guardianships" or "CHIPS (Child in need of Protective Services)" guardianships may be eligible for monthly payments equivalent to foster care payments. Wis. Stat. § 48.977(3r).

Guardianships make it easier for relatives to care for children. They also allow families to make legal decisions without permanently breaking the legal tie between parents and children. For example, guardianships allow grandparents and other caregivers to take a child to medical appointments, enroll a child in school and sign permission slips.

Guardianships for children in need of protective services begin with filing a petition for guardianship. The petition must state that the six previous conditions exist. If a parent¹ does not contest or dispute the guardianship, the legal procedure is fairly simple.

However, if a biological parent does not want a caregiver to have guardianship, court proceedings become much more complex. If a parent wants to keep a caregiver from being named guardian, the parent has a right to a fact-finding hearing to determine whether guardianship should be allowed. A fact-finding hearing is similar to a trial, with testimony, witnesses and a judge. The process can be emotionally difficult, but is sometimes necessary to provide legal protection in a child's best interest. If you think a parent will not agree to a guardianship, consult a lawyer if possible.

B. Guardianships for children not in need of protective services

In some cases, parents voluntarily place a child with a relative without involving social services. A parent may see the need to place a child in a better environment, may have drug or alcohol problems, or be unavailable due to military service or other reasons. In such cases, a person can simply request legal guardianship without the need for the abuse or neglect findings stated earlier. (See Chapter 54 of Wisconsin Statutes for laws on these guardianships.)

Two types of guardianship exist: guardianship of the person and guardianship of the estate. An individual can serve as guardian of both the person and the estate, or the duties can be split between two adults. Guardianship of the person gives the rights and responsibilities to make legal decisions on a child's behalf. Most legal guardianships for children are guardianships of the person. Guardianship of the estate involves financial management for a child. For example, if a child receives some sort of payments, such as

¹ For purposes of this booklet, we will use the term "parent," as the person most likely to have a legal right to contest a guardianship. However, other people with certain legal relationships to the child may also contest or request to intervene in a guardianship case. Wis. Stat. § 48.977.

Social Security payments, a guardian of the estate might be appointed to manage the money, making sure payments are used for the child's benefit or saved for the child's later use.

Guardianships can be temporary -- 60 days with the right to renew for a 60-day extension -- or permanent -- lasting longer than 120 days. The term "permanent guardianship" can be confusing -- it sounds as if the guardianship can't be changed or ended. However, permanent guardianship simply means a guardianship is expected to last more than 120 days. A permanent guardianship can be changed. It can cover limited issues such as medical decisions, and can be ended when a child no longer needs a guardian. Permanent guardianships can also be changed or ended if a guardian is not acting in a child's best interest. See, for example, Wis. Stat. § 54.68.

A person who wants to petition a court for guardianship of a minor must complete a packet of forms, including a Petition for Guardianship, a Notice of Hearing, Waiver and Consent to Guardianship (the waiver is used if a parent or current legal guardian voluntarily agrees to the guardianship), Order Appointing Guardian Ad Litem, Order for Guardianship and Letters of Guardianship. The Petition for Guardianship includes a long checklist of "powers" to be granted by the guardianship. It is important to read through each of these powers carefully to decide whether it makes sense to award that power to the guardian. In general, awarding more powers is preferable, since being appointed guardian does not eliminate the parental rights to also be involved in each power, if applicable. However, in some cases requesting a particular power may trigger resistance from a parent, and it may be best to limit the guardian's authority in that area. The form also includes space for listing additional powers for the guardian, in case the standard powers are not sufficient to cover your needs.

Other forms might also be required. Practices for filing guardianship documents vary from county to county, so if you're seeking a guardianship, make sure to file the proper paperwork. Some counties have brochures designed to walk you through the process. In other counties, the staff of probate offices, usually located in the courthouse, can answer questions about forms and filing.

If you decide to file for guardianship on your own, without an attorney, keep in mind that a person who is not an attorney cannot give legal advice. They can't tell you whether guardianship is right for your family or whether other legal protections might better fit your situation. If you have questions about whether a guardianship is right for you, it's best to consult an attorney.

Adoption

Adoption is the most formal legal connection to a child. It gives an adopting parent the same legal obligations and benefits as a child's biological parent (the parent who has given birth to or fathered the child). In some cases, adoptions come with additional financial benefits. Adoption is a permanent legal status and not to be taken lightly. It is a lifetime commitment. Along with the benefits of adoption, such as the right to claim a child as a dependent and make decisions for a child, come responsibilities, including financial, educational, medical and others.

Before a child can be adopted, a court must terminate, or end, the parental rights of the biological or legal parents. Courts give relatives special status for adoption, making it much easier for a parent to voluntarily terminate parental rights to offer a child for adoption by another family member.

Some children may qualify for "special needs adoption." This category includes children who are 10 years old or older, children who have special needs such physical, psychological, or educational needs, or who might develop such needs in the future, and adoption of sibling groups of three or more. It is important to consider whether children might qualify as a special needs adoption prior to filing for adoption, because in that case, you will need (and be eligible for) special assistance from an adoption agency or social services to coordinate the adoption. Benefits of a "special needs" adoption include substantial state and/or federal tax credits, monthly financial support, eligibility for certain college scholarships, and more.

A. Voluntary termination of parental rights

A parent may voluntarily place a child in a relative's home for purposes of adoption without first getting a court order. Wis. Stat. § 48.835. Relatives include grandparents,

great-grandparents, step-parents, brothers, sisters, first cousins, nephews, nieces, uncles or aunts, by blood or marriage. Wis. Stat. § 48.02(15).

When a parent wants to allow a relative to adopt, either the parent or the adopting relative can file a petition to terminate the parental rights of the legal parents before the adoption. Wis. Stat. § 48.835. It is important to understand that if there are two legal parents, usually a mother and father, parental rights of both parents must be terminated to clear the way for an adoption. If all individuals who are, or may be, the legal parents of the child agree to voluntarily give up their parental rights, an adoption hearing can be held immediately after the voluntary termination of parental rights.

It is also important to understand that when a court terminates parental rights, either by a parent's agreement or by an involuntary termination, termination is permanent. Once rights are terminated, a parent has no rights to the child and no responsibilities, such as paying child support. A parent can't come back later and ask for a change.

In cases of voluntary placement for adoption by a relative, the procedure is fairly simple. People familiar with court procedures sometimes handle the paperwork themselves. Even so, attorney fees for a voluntary adoption are often quite reasonable. What's more, hiring an attorney can ensure a smooth transition to the adoption. If you go through the process without an attorney, keep in mind that a missed deadline or failure to file certain paperwork can cause an adoption to fall apart.

Because adoption creates a permanent legal connection to a child, it offers many benefits, including:

- The right to add the child to the adoptive parents' health insurance.
- Coverage under the Family Medical Leave Act, allowing adoptive parents, among others, to take up to 12 weeks of unpaid leave to care for a child with a serious

medical condition. Not all employees qualify, but most people who have worked for 12 or more months for a company with 50 or more employees do qualify.

- The right to claim the child as a dependent/exemption on state and federal taxes.
- Eligibility for financial help. If you qualify for food stamps or child-care supplements, you may begin receiving these after an adoption. Check with a social worker before an adoption to find out what you need to do to qualify for assistance.
- Consistency and predictability for the child. Some children bounce through the foster care system, to different families, new schools and constant change. Adoption creates the permanency and stability that benefit most children.

B. What if a parent won't agree to terminate parental rights?

If anyone who may be a biological or legal parent objects to an adoption, legal proceedings become much more complex and having an attorney becomes very important. While voluntary termination of parental rights can be as easy as signing some papers and getting court approval, terminating parental rights against a person's will could involve a trial in front of a judge or jury. Relatives who know, or suspect, a parent will object to termination of parental rights should consult an attorney specializing in this work before taking legal action. An attorney may advise you to wait to file or to try alternatives to adoption before filing for a termination of parental rights.

When a child needs intervention because of severe neglect or abuse, social services may try to place the child temporarily in a relative's home. The placement may extend to the point where adoption becomes an option. If this happens, you may be referred to an attorney. In these cases, the county or state will usually pay for an attorney to terminate parental rights.

GRANDPARENT VISITATION RIGHTS

Wisconsin law gives some grandparents and other relatives a chance to petition the court for visitation rights in cases where parents are not allowing grandparents to visit grandchildren. The court system should be used only as a last resort in this situation. If a grandparent or other caregiver files a lawsuit to force visitation, he or she can expect a strong emotional and perhaps legal reaction from parents.

If a family is intact, or living together, grandparents are not likely to get court-ordered visitation with grandchildren. Generally, state and federal laws recognize that parents have a right to decide whether grandparent visitation is in a child's best interest. However, when a family splits because of divorce, legal separation or other legal action (Chapter 767 of the Wisconsin Statutes), grandparents and others may have a right to petition for visitation. Also, grandparents can petition for visitation if one or both of the child's legal parents have died. See, Wis. Stat. § 54.56.

Grandparent visitation lawsuits can be legally and emotionally difficult. If you're considering filing a petition for visitation, talk to an attorney if possible.

A. Options for visitation involving divorce or legal separation

With divorce or marital separation, grandparents, great-grandparents, step-parents and those who have had a "parent-like relationship with the child" may file a petition for visitation if both the following factors exist (See *Cox v. Williams*, 177 Wis. 2d 433, 439 (1993)):

- 1) A court action has already been filed, for divorce or a legal separation, for example.
- 2) The family is not intact. In deciding whether this requirement has been met, a court will typically consider a number of factors including whether the biological or legal parents live together. At

times the court has declared a family to be intact when children were living with a biological parent and a step-parent. (See *Matter of Hegeman*, 190 Wis. 2d 447 (Wis. App. 1994). These older cases may not be as relevant today, because of more recent cases described below.

A grandparent or other person described above who believes he or she has standing to request visitation may file an action under Wis. Stat. § 767.43 for visitation. The request will require a hearing, and the child's parents must be notified of the hearing.

In deciding whether to grant grandparent visitation, a court must determine whether grandparent visitation is in a child's best interest. The court will start with the presumption that a parent's decisions regarding visitation are in the child's best interest. *In re Paternity of Roger D.H.*, 2002 WI App 35, 250 Wis. 2d 747, 641 N.W.2d 440. Recent Wisconsin cases have determined that in a situation where the grandparents were already informally permitted substantial contact with their grandchildren, the court would not set a specific visitation schedule. *In re: Nicholas L.*, 2007 WI App 37. On the other hand, where a parent had unreasonable restrictions on grandparent visitation, the court did set a specific visitation schedule. *In re: Rogers*, 2007 WI App 50. These situations are very fact specific.

B. Options if parents were not married (paternity cases)

When a child is born to unmarried parents, the law allows a court to grant reasonable visitation rights to grandparents. This involves a hearing, with both parents notified of the hearing. During the hearing, a court must determine all of the following:

- 1) The child was born to unmarried parents who have not subsequently married.

- 2) The paternity, or identity of a child's father, has been determined. This does not apply if the mother's grandparents are petitioning for grandparent visitation.
- 3) The child has not been adopted.
- 4) The grandparent has a relationship with the child or has tried to have a relationship with the child.
- 5) The grandparent is not likely to go against decisions made by the parent who has legal custody of the child.
- 6) Visitation is in the child's best interest.

When these conditions exist, grandparents may file a petition for visitation under Wis. Stat. § 767.43. If paternity has not been legally determined, and a paternity action has not already started, a grandparent may also need to file a lawsuit under Wis. Stat. § 767.80(1)(k) requesting that paternity be determined by a court. Once paternity is determined, the court will make a determination on a grandparent's rights to visitation.

If a court terminates the parental rights of a parent, often to clear the way for a step-parent adoption, the parent's parents (child's grandparents) *will not* have a right to ask for visitation. For that reason, if an adult child indicates he or she is thinking about terminating parental rights, you should talk about how that could affect your relationship with your grandchildren. Ending parental rights essentially ends grandparent rights as well. Informal agreements allowing visitation after an adoption are unlikely to be enforced by a court, unless skillfully written by attorneys.

C. Death of a parent

When one or both of a child's parents have died and the child is in the custody of a surviving parent or another person, the child's grandparents may file a lawsuit requesting visitation. This suit may be brought under Wis. Stat. § 54.56. This type of petition may be filed separately, or as part of a guardianship or temporary guardianship proceeding.

As with visitation requests due to divorce and paternity, a hearing is required and the child's parent or other caregiver must be notified of the hearing so they can come to court to say whether they agree or disagree with the proposed visits. Again, a court must decide whether grandparent visitation is in a child's best interest.

In some cases Wisconsin law allows grandparents to exercise visitation rights with grandchildren, however there are limits to grandparents' rights. The U.S. Supreme Court has consistently recognized the right of parents to make decisions regarding the "care, custody and control of their children." (See *Troxel v. Granville*, 530 U.S. 57 (2000)). As a result, in most cases, the court will give substantial weight to parents' wishes regarding frequency and length of grandparent visitation.

Legal Costs

It's impossible to know exactly how much it will cost to hire an attorney to help you with the legal issues of guardianship, adoption and visitation. The cost of a case often depends on the facts. A more complicated case will usually cost more than a less complicated case. The following rough estimates will give you some idea of attorney fees for these services.

How much does a guardianship cost?

If a parent or parents agree to guardianship, legal guardianships are fairly simple. Many people choose to handle the legal process themselves, without an attorney's help. Filing a guardianship requires completing several court forms (see the Resource Section) and attending at least one court hearing. An attorney will likely charge less than \$2,000 for an uncontested guardianship, and possibly less than \$1,000.

A contested guardianship, in which one or both parents disagree with the guardianship, requires more complex legal paperwork and may include a trial with

witnesses and exhibits. If you expect a contested guardianship, we strongly suggest you seek an attorney's advice. Contested guardianships can get expensive, with attorney fees of \$5,000 to \$10,000.

How much does an adoption cost?

If parents voluntarily agree to terminate parental rights to allow an adoption, attorney costs can be quite reasonable. By law, a court will have to appoint a "guardian ad litem," or GAL, an attorney who represents the best interest of the child. The GAL will conduct a brief investigation to make sure he or she can recommend to the court that adoption is in the child's best interest. GAL fees, in a voluntary termination of parental rights, usually run around \$500. This fee is typically paid by the person adopting a child.

If you want to adopt, we strongly recommend you hire an attorney to guide you through the process. Many attorneys offer "flat-fee" services, perhaps \$2,000 or \$3,000, which cover all fees. Others charge an hourly rate. A smooth adoption takes roughly eight to 12 hours of an attorney's time.

If a parent refuses to terminate parental rights, adoption becomes much harder and more expensive. When the state or county seeks to terminate parental rights, they hire their own attorney, so you don't have attorney costs. However, even in that situation, you may want to hire your own attorney to guide you through the process.

You may be able to deduct some or all attorney fees related to an adoption. Tax laws change often, so check with a tax adviser or visit the IRS website to learn more. Additionally, if you qualify for a "special needs adoption," you may be eligible for substantial tax credits and other financial support.

How much does a lawsuit for visitation cost?

Grandparent visitation lawsuits are not common, making it hard to estimate costs. If everyone agrees on a visitation schedule, an attorney might charge a few hundred dollars

to write up an agreement and prepare a court order. Cases requiring a trial can cost several thousand dollars. If you can't afford to pay all at once, many attorneys will set up payment plans.

Tips for working with attorneys

This guide is not meant to replace the expertise of an experienced attorney. Legal work is relatively expensive, but following these steps can help keep costs down:

1. Check to see if your county offers reduced-cost or free legal services. (See the Resource Section.)
2. Choose a lawyer based on your confidence in that person's skill and experience. Lower hourly rates aren't necessarily the best deal. The lowest-cost attorney may cost more in the long run. A higher-priced, experienced attorney, on the other hand, may be able to quickly advise you of your rights and help you through required legal procedures. It's okay to ask for a lower rate. You may not get it, but you can ask.
3. Be prepared for meetings with your attorney. Have a written list of questions and concerns, and discuss them during meetings.
4. Help your attorney by gathering documents and providing information, such as phone numbers, addresses and names of people who can help your case, in a timely manner. Follow up on your attorney's instructions immediately.
5. Keep calls or e-mails to your attorney to a minimum. You will be charged for every call and e-mail. Some attorneys charge a minimum of 15 minutes a call even if the call only takes five minutes. Keep a notebook by your phone to write down questions. When you have three or four questions, set up a time to talk. If an emergency comes up, call right away.
6. Don't depend on your attorney for emotional support. If you call your attorney to complain about your son, daughter or social worker, you'll be charged for the call. We recommend you get counseling or support through a local support group, web-based program, or certified therapist or psychologist. You may want to see if your health insurance plan covers counseling. (See the Resource Section for tips on finding a support group in your area.)
7. Remember that your attorney works for you. You should have confidence in your attorney and be able to talk freely with him or her. If you don't understand something, ask.

WISCONSIN RESOURCES

Parenting Again (in Dane County) (608) 261-9930

<http://www.countyofdane.com/aging/>

Wisconsin Department of Health and Family Services

<http://dhfs.wisconsin.gov>

Wisconsin Foster and Adoptive
Parents Association

<http://www.wfapa.org/>

Wisconsin State Law Library Resources

<http://wsll.state.wi.us/topic/familylaw/grandparents.html>

NATIONAL RESOURCES

AARP Grandparent Information Center (888) 687-2277

www.aarp.org/grandparents

Adoption Information Clearinghouse (888) 251-0075

<http://naic.acf.hhs.gov/>

The Brookdale Foundation Group (212) 308 -7355

www.brookdalefoundation.org

Child Welfare League of America (202) 638-2952

www.cwla.org

Children's Defense Fund (202) 628-8787

www.childrensdefense.org

Generations United (202) 289-3979

www.gu.org

KINship Information Network (772) 501-0502

www.kinsupport.org

N'tl Aging Information Center (202) 619-0724

www.aoa.dhhs.gov

N'tl Committee of Grandparents (866) 624-9900

www.grandparentsforchildren.org
For Children's Rights

National Indian Child Welfare Ass'n (503) 222-4044

www.nicwa.org

(Info re: Indian Child Welfare Act
and specific legal issues for Native
American children and families)

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