

Grandparent Visitation

For more information call the LREP toll-free Legal Helpline
at 800-876-6657 or 505-797-6005 (Albuquerque area)
www.nmbar.org/public/LREP

Communication between family members is perhaps the most important factor in grandparents being able to spend time with their grandchildren. If informal communication hasn't worked out, there are advocacy groups that may assist with more formal communication. Mediation is also a possible tool to be used in reaching an agreement between grandparents and parents. Your senior center may be a starting place for locating information about local support groups for grandparents seeking visitation rights.



What can I do if the parent of my grandchildren absolutely refused to communicate and/or compromise in regard to my seeing my grandchildren?

Grandparents may file a grandparent visitation petition in district court under certain limited circumstances:

1. If one or both of the parents are deceased.
2. If there is a court proceeding or a judgment from a court proceeding (divorce, separation, paternity, determination of existence of parent-child relationship, or certain adoptions)
3. The grandchild lived with the grandparent for certain periods of time at certain ages.

If I file a petition, how will the court decide whether I get visitation?

The court will look at several factors in making the decision as to whether visitation will be given to you:

1. The best interest of the child.
2. Prior interaction and relationships between grandparents, parents and grandchild.
3. Prior time-sharing or visitation arrangements
4. Effect of the visitation on the child.
5. Prior convictions (of the grandparent) for physical, emotional or sexual abuse or neglect.
6. Status as full-time caretaker for the child for a significant period.

Possible outcomes of going to court:

1. The court may order mediation or evaluation of the parties.
2. The court may order some other type of contact, such as by telephone or mail, instead of visitation.
3. Visitation may be granted.
4. Visitation may be denied.

I am certain that my son is the father of a child. He never married the little boy's mother, but I'm sure that this child is my grandchild. Can I get grandparent visitation?

The court allows one to petition for grandparent's rights under limited conditions. In this instance, there has to be some type of court proceeding such as divorce, separation, adoption, paternity suit, or suit to establish the existence of a parent-child relationship before the petition for grandparent visitation can be brought. Your rights would flow from your son's rights. He would need to file a paternity case in order to establish that the child was his. You could then enter that case to request grandparent visitation.

My daughter couldn't handle being a parent, so she left her baby girl at my house right after the child's birth. I took care of my granddaughter for three years. My daughter has taken the little girl to live with her now and doesn't want me to see my granddaughter.

If the child's home state is New Mexico, you may petition the court for grandparent visitation. This is based upon the time that the child lived with you.

I don't approve of the way that my grandchildren are being raised. My son and his wife are mad at me now because I told them about my disapproval. I haven't been able to see my grandchildren for quite a while because of this. Can I get a court to order grandparent visitation?

The circumstances you describe do not give rise to a situation where you would be able to petition the court for grandparent visitation. As mentioned earlier, there has to be a court proceeding or the children would have to have been in your care for a certain amount of time in order for a petition to be brought. Generally speaking, the courts do not like to get involved in family disputes such as this. If you believe the children are in danger, you should contact Child Protective Services.

I heard that there was a big court case that will make it impossible for me to get visitation if my grandchild's parents don't want me to see my grandchild.

You are probably referring to *Troxell v. Granville*, a 1998 US Supreme Court Case. This case has caused concern for grandparents' rights advocates. There is a New Mexico case decided in 2002 after the Troxell case— *Williams v. Williams*. The New Mexico court in *Williams v. Williams* stated that special consideration must be given to the wishes of the parents, but, even so, gave the grandparents visitation rights. New Mexico's statutes that cover grandparent visitation have not been repealed.