

# Grandparents' Visitation Rights Re-Visited

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November 12, 2013 | by Jennifer Fortunato



Do grandparents really have rights to see their grandchildren?

I recently answered a question for Einhorn Barbarito' "Ask the Attorney" column about grandparents' visitation rights. The "Ask the Attorney" column is posted in 57 different online [Patch newspapers](#) in which the attorneys at the firm answer questions submitted. Since this is a topic which could provoke many questions, I've decided to take it further in this blog.

In New Jersey, grandparents have a statutory right to see their grandchildren. However, this right is the exception, not the norm. [Grandparents' visitation](#) rights are only granted under unusual circumstances. Most grandparents will not qualify for visitation rights with their grandchildren under our New Jersey statute.

In order to be allowed to see their grandchildren, grandparents have to show the Court that their grandchildren will be harmed if they are not granted visitation with them. The harm that a grandchild will suffer if they do not have a relationship with their grandparents is not the type of harm that qualifies under our statute warranting visitation rights. Instead, the harm has to be more substantial.

For example, if the harm of not seeing his or her grandparents is destructive psychologically to a grandchild, then this harm would qualify under our State statute and the grandparents would be granted visitation rights. In one case, the Court found that maternal grandparents had a right to visitation with their grandchildren where their daughter, the mother of their grandchildren, died and the grandparents served as a link to their grandchildren's mother. The grandchildren were very bonded to their mother and distressed by her death and their only ties to their mother were their maternal grandparents, with whom they had an extensive relationship. The Court found that not granting the maternal grandparents' visitation rights in this case would be psychologically destructive to their grandchildren.

The reason our statute in New Jersey makes it difficult for grandparents to have visitation rights is because the right to raise one's child is deeply embedded in our history and culture. It has been identified as a fundamental liberty interest protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution. As a result, it is only under certain circumstances, where the grandchildren will endure substantial harm if their grandparents are denied visitation rights, that a Court will intervene and grant grandparents' visitation rights with their grandchildren.

If you are seeking grandparent visitation rights, then you should retain a mental health expert to assist you in establishing that your grandchildren will be substantially harmed if they are denied visitation rights with you. Although you are not required to retain such an expert, it is often helpful to have a reputable mental health expert assist you. However, even if you have a mental health expert find that substantial harm will occur to your grandchildren if you are not granted visitation rights with them, it does not mean that you will automatically be granted visitation rights. The Court still has to decide, after considering all of the facts and circumstances, if substantial harm exists under our statute to warrant granting grandparents' visitation rights. This is why an attorney well versed in this area of family law should be retained as well. Also be aware that the parent or parents opposing the visitation

may obtain their own expert whose findings conflict with your expert – i.e. that expert finds that no substantial harm exists.