

Custody & Visitation For Grandparents

By Laura Robbins, Esq.

Laura Robbins is an attorney with MidPenn Legal Services. Ms. Robbins works extensively in the area of family law in Centre and Clearfield Counties.

Prior to 1996, grandparents and great-grandparents had a difficult time obtaining custody or visitation privileges with their grandchild. However, courts and the legislature are now more willing to allow grandparents standing to sue for custody or visitation with their grandchild. The following is a discussion about a grandparent's standing to sue for custody or visitation and what you as a grandparent must prove to prevail on a custody or visitation claim.

To file for any type of custody or visitation with your grandchild, you need to have standing. If you have 'standing', the court will recognize your right to file a petition. Otherwise, the court will dismiss your petition before it even hears your case.

Standing: The right to bring a lawsuit.

PRIMARY AND PARTIAL PHYSICAL CUSTODY, LEGAL CUSTODY AND VISITATION

As a grandparent, you may be able to obtain primary custody, partial custody, or visitation with your grandchild or great-grandchild. The following are definitions of the different types of custody:

- ◆ **Primary physical custody:**
Primary physical custody is the right to have actual possession of the child.



- ◆ **Partial physical custody:**
Partial physical custody gives a person the right to take possession of a child for an agreed upon or ordered amount of time.
- ◆ **Visitation:**
Visitation is the right of a person to see and visit a child, but it is not a right to take actual possession of a child.

STANDING FOR CUSTODY AND VISITATION

Before 1996, the law only gave standing to grandparents if the grandchild lived with them before they filed a petition for custody or visitation. It is no longer necessary to show that the grandchild lived with you. The court will now hear *any* petition for custody or visitation brought by a grandparent.

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WHAT YOU MUST PROVE FOR CUSTODY OR VISITATION WITH YOUR GRANDCHILD

Once you pass the standing requirement for custody or visitation, you must still prove your case to the court. The type of proof that the court will require depends on whether you are suing for primary custody, partial custody, or visitation.

PRIMARY PHYSICAL CUSTODY

To win primary physical custody of your grandchild, the court must find that:

- ◆ It is in the *best interest* of the child to NOT be in the custody of either parent, AND
- ◆ It IS in the *best interest* of the child to be in your custody.

To win on these factors in court, you should be prepared to argue:

- ◆ You have genuine care and concern for your grandchild, AND
- ◆ Your relationship with the child began because the child's parent or the court itself allowed it to begin, AND
- ◆ You either acted as your grandchild's parent OR you believe it's necessary to act as your grandchild's parent because your grandchild is being abused, neglected or is witnessing substance abuse or mental illness.

If you can prove that these three factors exist, you **may** win primary custody of your grandchild.

PARTIAL CUSTODY OR VISITATION

If you ask the court for partial custody or visitation, you need to prove that:

- ◆ partial custody or visitation with you would

be in the best interest of the child, AND

- ◆ the partial custody or visitation would not interfere with the parent-child relationship.

Thus, you do not have to justify taking the child away from his/her natural parents as much as if you tried to obtain primary physical or legal custody.

SPECIAL RULE WHEN A CHILD'S PARENT IS DECEASED



There is a special rule that states if one of the child's parents has died, you as a grandparent have automatic standing to ask the court for partial custody or visitation. If this is your situation, you need to prove:

- ◆ Your request would be in the *best interest of the child*, AND
- ◆ Your request would not interfere with the parent-child relationship.

In making a decision, the court will take into account your relationship with the grandchild before you file

for custody under this part of the statute.

Therefore, if one of the child's parents is deceased, it will be easier for you to convince the court that you should be given custody or visitation.

Every situation is unique. For advice about a specific situation, you should contact an attorney.

MidPenn Volunteer & Attorney Honored



MidPenn Legal Services will honor one of its long-time volunteers at the thirty-second Annual Rose Cologne Volunteer Recognition on April 25 at the Elks Country Club in Boalsburg.

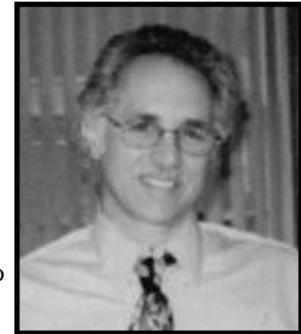
Daniel Decker has volunteered for MidPenn for over seven years. He has been invaluable in providing

support to the staff and clients of the State College office. Daniel is a hard worker and is always ready to lend a hand, no matter what the job entails. The Board and Staff of MidPenn thank him for all he has done.

MidPenn Lancaster Attorney **Howard Miskey** received the Pennsylvania Legal Services Excellence Award at the annual awards dinner on March 10.

The award honors those individuals who have given exceptional service to legal services' programs throughout the Commonwealth of Pennsylvania.

Attorney Miskey has been an attorney at MidPenn for 28 years. He is a dedicated advocate who is committed to working on behalf of those who are less fortunate.



Meet MidPenn's Executive Director



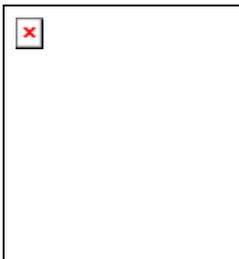
On November 1, 2003, Attorney Rhodia D. Thomas became the Executive Director of MidPenn Legal Services.

Ms. Thomas, a graduate of the Widener School of Law, formerly held the position of Chief

Administrator Officer for Pennsylvania Legal Services – the state funder and oversight agency of legal services agencies in Pennsylvania. Ms. Thomas brings to MidPenn over fourteen years of experience in public interest law.

Keynotes Available on the Web

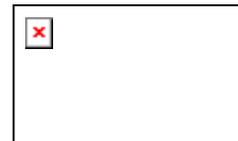
Current issues of Keynotes are now available at MidPenn's website. Go to www.midpenn.org and click on the Publications link.



The Altoona Office Is Moving

The Altoona office of MidPenn Legal Services will be moving to its new location on May 1, 2004. The new address will be:

205 Lakemont Park Boulevard
Altoona, PA 16602
814/943-8139



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2054 East College Avenue
State College, PA 16801

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Administration

213-A North Second Street
Harrisburg, PA 17101
717/234-0492
Fax: 717/234-0496

Clearfield

211 1/2 East Locust Street
Clearfield, PA 16830
814/765-9646
Fax: 814/765-1396

Lewistown

3 W. Monument Sq., Ste. 203
Lewistown, PA 17044
717/248-3099
Fax: 717/248-0791

Altoona

1107 12th St., Suite 1
Altoona, PA 16601
814/943-8139
Fax: 814/944-2640

Gettysburg

128 Breckenridge St.
Gettysburg, Pa 17325
717/334-7624
Fax: 717/334-0863

Pottsville

100 West Laurel Blvd.
Pottsville, PA 17901
570/628-3931
Fax: 570/628-9697

Bedford

322 S. Juliana St.
Bedford, PA 15522
814/623-6189
Fax: 814/623-6180

Harrisburg

213-A N. Front St.
Harrisburg, PA 17101
717/232-0581
Fax: 717/232-7821

Reading

501 Washington Street #401
Reading, PA 19601
610/376-8656
Fax: 610/376-8650

Carlisle

8 Irvine Row
Carlisle, PA 17013
717/243-9400
Fax: 717/243-8026

Lancaster

38 N. Christian St., Ste. 200
Lancaster, PA 17603
717/299-0971
Fax: 717/295-2328

State College

2054 East College Avenue
State College, PA 16801
814/238-4958
Fax: 814/238-9504

Chambersburg

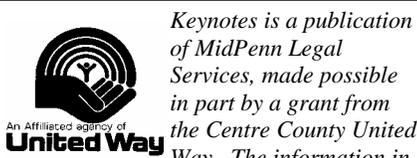
230 Lincoln Way E., Ste. A
Chambersburg, PA 17201
717/264-5354
Fax: 717/264-2420

Lebanon

513 Chestnut St.
Lebanon, PA 17402
717/274-2834
Fax: 717/274-0379

York

256 East Market Street
York, PA 17403
717/848-3607
Fax: 717/854-5431



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