

RESOLUTION 07-10-2018

DIGEST

Visitation: Rights for Great-Grandparents in Actions Involving Divorce and Child Custody
Amends Family Code section 3103 to give great-grandparents the same visitation rights as grandparents in actions involving marital dissolution, annulment, separation, and child custody.

STATEMENT OF REASONS

The Problem: Existing law provides that the Court may only grant reasonable visitation to grandparents failing to consider the potential need for great-grandparents to be afforded the same right. The code as drafted eliminates the ability for great-grandparents to seek the same visitation.

Under current law, great-grandparents do not have grounds in the Family Code to seek visitation with their great-grandchildren. The family structures and dynamics are ever changing, and it is not uncommon for grandparents, and even great-grandparents to raise their grandchildren and great-grandchildren.

In fact, in 2014 in the case of *Finberg v. Manset*, the judge found for the parents, saying that the law unfairly discriminates between natural parents and adoptive parents. On appeal, however, the court found that the law is constitutional, noting that children who have been through family upheavals may need the stability of continuing relationships with grandparents. This same logic can easily apply to great-grandparents as well.

The Solution: This resolution would add great-grandparents to the code, and allow great-grandparents to seek visitation with their great-grandchildren.

TEXT OF RESOLUTION

RESOLVED that the Conference of Delegates of California Bar Association recommends that legislation be sponsored to amend Family Code section 3103 to read as follows:

1 § 3103

2 (a) Notwithstanding any other provision of law, in a proceeding described in Section
3 3021, the court may grant reasonable visitation to a grandparent or great-grandparent of a minor
4 child of a party to the proceeding if the court determines that visitation by the grandparent or
5 great-grandparent is in the best interest of the child.

6 (b) If a protective order as defined in Section 6218 has been directed to the grandparent
7 or great-grandparent during the pendency of the proceeding, the court shall consider whether the
8 best interest of the child requires that visitation by the grandparent or great-grandparent be
9 denied.

10 (c) The petitioner shall give notice of the petition to each of the parents of the child, any
11 stepparent, and any person who has physical custody of the child, by certified mail, return receipt
12 requested, postage prepaid, to the person's last known address, or to the attorneys of record of the
13 parties to the proceeding.

14 (d) There is a rebuttable presumption affecting the burden of proof that the visitation of a

15 grandparent or great-grandparent is not in the best interest of a minor child if the child's parents
16 agree that the grandparent or great-grandparent should not be granted visitation rights.

17 (e) Visitation rights may not be ordered under this section if that would conflict with a
18 right of custody or visitation of a birth parent who is not a party to the proceeding.

19 (f) Visitation ordered pursuant to this section shall not create a basis for or against a
20 change of residence of the child but shall be one of the factors for the court to consider in
21 ordering a change of residence.

22 (g) When a court orders grandparental or great-grandparental visitation pursuant to this
23 section, the court in its discretion may, based upon the relevant circumstances of the case:

24 (1) Allocate the percentage of grandparental or great-grandparental visitation between the
25 parents for purposes of the calculation of child support pursuant to the statewide uniform
26 guideline (Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9).

27 (2) Notwithstanding Sections 3930 and 3951, order a parent or grandparent or great-grandparent
28 to pay to the other, an amount for the support of the child or grandchild or great-grandchild. For
29 purposes of this paragraph, "support" means costs related to visitation such as any of the
30 following:

31 (A) Transportation.

32 (B) Provision of basic expenses for the child, or grandchild or great-grandchild, such as
33 medical expenses, day care costs, and other necessities.

34 (h) As used in this section, "birth parent" means "birth parent" as defined in Section
35 8512.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Contra Costa County Bar Association

IMPACT STATEMENT

This resolution is related to Family Code Section 3102.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Lisa J. Mendes, Mendes Weed, PC, 1655 N.
Main Street, Suite 240, Walnut Creek, CA 94596, Phone: (925) 979-5568.
lisa@mendeslawca.com

RESPONSIBLE FLOOR DELEGATE: Lisa J. Mendes

COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

FAMILY LAW SECTION – APPROVE IN PRINCIPLE

FLEXCOM approves this Resolution to amend Family Code section 3103 for the reasons noted in Resolution 07-09-18 and the proponent's Statement of Reasons.