

Stepparent Visitation Rights in California

With the escalating rates of divorce and remarriage in California, this office has experienced an increase in cases involving the rights, duties and obligations between stepparents and stepchildren. Forecasters are predicting that as many as one in every three children in this country will spend some of his or her childhood in a family with a stepparent. In this firm alone, we have dealt with numerous (hundreds of divorces) involving stepchildren. Stepparents, stepbrothers, and stepsisters often form a close bond with each other and desire to keep at least some degree of contact with each other after divorcing their stepchild's biological parent. Although it has not been the conventional practice of courts to provide stepparents with visitation rights, courts across the country are beginning to recognize the value of fostering a continued relationship between stepparent and stepchild.

Because historically both a stepparent's rights and duties to his or her stepchild were dependent upon the marital relationship with the child's biological parent, these rights and obligations would conclude when the marriage ended, either by way of death or divorce. Thus, until recently, divorce could mean the end of a valuable relationship for both stepparent and stepchild. Indeed, studies indicate that stepparents and stepchildren often form close bonds with one another during the course of the marriage that initially brought the families together. With the increasing trend towards multiple divorces and remarriage, courts and some state legislatures have begun to formulate case law and statutes that allow stepparents visitation rights with their stepchildren. While a number of states have enacted specific laws granting courts the power to allow stepparents visitation rights, such as California's Family Code Section 3101(a) other courts have relied upon the doctrine of "in loco parentis" to confer visitation rights on stepparents. In loco parentis is a Latin term defined by Black's Law Dictionary as "[i]n the place of a parent." The in loco parentis doctrine allows courts a mechanism for protecting the bond that develops between stepparent and stepchild by focusing on three factors:

1. Assumption of parental status; and,
2. Discharge of parental duties.
3. The Doctrine of " In Loco Parentis"

In applying this doctrine, courts will focus on the facts and circumstances indicating that the stepparent intended to assume the parental status and took on parenting responsibilities for his or her stepchild. Courts will use this doctrine to interpret visitation statutes in a manner that protects the emotional bonds that have developed between stepparent and stepchild. As one court

observed, "a stepfather (or stepmother) may be the only parent that the child has truly known and loved * * * * A stepparent may be as devoted and concerned about the welfare of a stepchild as a natural parent would be."

A stepparent who shows that they have voluntarily assumed the relationship of "parent" to a stepchild might also anticipate that some parental duties, such as support obligations, might also be imposed out of the establishment of in loco parentis status. However, because the establishment of in loco parentis status requires proof of intent to enter into such a parent-child relationship, merely allowing stepchildren to live in your home will not likely result in support obligations upon the conclusion of the marriage. In fact, courts have been much more hesitant to impose support obligations on stepparents than they have been in providing stepparents with visitation rights. Nonetheless, it is advisable for stepparents to keep in mind that the law often imposes parental obligations along with parental privileges. Stepparent Visitation in California, Kansas, Tennessee, Virginia, and Wisconsin all have statutes explicitly addressing stepparent visitation; Alaska, Connecticut, Hawaii, Louisiana, Maine, Minnesota, Ohio, and Washington have third party visitation statutes have been used as basis for allowing stepparent visitation. California has not passed any legislation providing for stepparent support in conjunction with stepparent visitation, but that could change at any time, and stepparents should be aware of this fact before asking the court for visitation rights.

Modern day life has seen many changes in the structure of family. More and more, the family composition includes stepparents, stepchildren and stepsiblings. Step-relations often form close bonds and a complete loss of those relationships following the breakup of a marriage could have harmful effects on the children involved, just as it can when a traditional family breaks apart. The in loco parentis doctrine can be employed to protect the relationships that stepparents have developed with their stepchildren. It provides a way for stepparents to have a voice and an opportunity to be heard in custody and visitation issues during divorce proceedings. I have litigated all aspects of custody, visitation, and child support over the past twenty-three years, and these issues are very common.

I have 23 years experience in handling matters involving these issues. I can be reached by telephone at (619) 425-0810, or e-mail at ronaldjpullen199@cs.com

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