



# KNOW YOUR RIGHTS

## Custody & Visitation in New York State

### Who may petition for custody?

- Parents

Either legal parent may apply for guardianship, charge and custody of a child. The court awards custody solely based on what is in the best interest of the child, and what will best promote her/his welfare and happiness. You become a legal parent if you complete a second parent adoption or a joint adoption.

- Grandparents

Where a grandparent of a minor child, residing within the state, can demonstrate to the satisfaction of the court the existence of extraordinary circumstances such parent may apply for custody rights. An extended disruption of custody constitutes an extraordinary circumstance. "Extended disruption of custody" includes, but is not limited to, a prolonged separation of the respondent parent and the child for at least twenty-four continuous months during which the parent voluntarily relinquished care and control of the child and the child resided in the household of the grandparent, provided, however, that the court may find that extraordinary circumstances exist should the prolonged separation have lasted for less than twenty-four months.

### Who may petition for visitation?

- Parents

You become a legal parent if you complete a second parent adoption or a joint adoption.

- Siblings

Where circumstances show that conditions exist which equity would see fit to intervene, a brother or sister or, if he or she is a minor, a proper person on his or her behalf whether by half or whole blood, may apply to the supreme court for visitation rights for such brother or sister.

- Grandparents

Where either or both of the parents of a minor child, residing within the state, is or are deceased, or where circumstances show that conditions exist which equity would see fit to intervene, a grandparent of such child may apply to the supreme court for visitation rights.

### Becoming a Parent Through Second Parent Adoption

Similar to step-parent adoption, this is an adoption where a biological or adoptive parent consents to the adoption of the child by her or his partner while retaining her or his parental rights. Both parents are legally recognized. Same sex second parent adoption has been available in New York since 1995 when the Court of Appeals granted such



adoption to a lesbian partner in the case *In the Matter of Jacob*. Second parent adoption or joint adoption is the only legal basis in New York State for seeking custody or visitation in case of separation.

### **Becoming a Parent Through Joint Adoption**

This is an adoption where both parents jointly and simultaneously adopt a child who is not biologically related to either parent. Second parent adoption or joint adoption is the only legal basis in New York State for seeking custody or visitation in case of separation.

### **The Best Interest of the Child Standard**

Awarding custody and visitation to a parent is decided by a state court. There are different types of custody:

- Physical custody- physical care and supervision of a child
- Legal custody- a right to make legal decisions about a child
- Joint custody- both parents share legal custody and may share physical custody

The standard used by New York courts in awarding custody and visitation is the “best interest of the child.” As family law is highly subjective, this standard is not void of social prejudice. Courts assess different factors to see whether they will be detrimental or beneficial to a child. One such factor is morality and includes parent’s sexual orientation. However, the parent’s sexual orientation should only be considered if it is detrimental to the child’s well being. Unfortunately, there are no clear guidelines as to the proof of the impact of parent’s sexual behavior on the relationship with a child.

In the precedent case *In the Matter of Alison D. v. Virginia M.* (1991), the highest court of NY State decided that a same sex domestic partner who is not an adoptive or natural parent has no standing to petition for visitation rights. This means that even when non-biological parent is “de facto” or “psychological parent” and she or he has lived with a child fulfilling all parental responsibilities, she or he will not have visitation rights unless she or he adopts a child therefore becoming a legal parent. Sperm donor may be awarded expanded visitation schedule despite the sperm donor agreement, when the court finds that the expanded visitation is in the best interest of the child. (*Tripp v. Hinckley*, 2002)

For more information on same sex custody and visitation issues see:

*Protecting Families: Standards for Child Custody in Same-Sex Relationships* available at [http://www.glad.org/Publications/publications\\_lgbt.shtml#childcustody](http://www.glad.org/Publications/publications_lgbt.shtml#childcustody)