**What is a legal relationship between a grandparent and the grandchild he or she is raising? What are the possible options for our family?**

A legal relationship is written authority for a grandparent to care for a grandchild. There are four primary legal options:

* Power of attorney;
* Custody/allocation of parental responsibility;
* Guardianship; and
* Adoption.

A power of attorney is the least formal; it does not involve the court. The parent(s) can give and revoke this authority at will. Custody and guardianship do involve the court, but are usually of an indefinite duration, including a long term relationship. Adoption involves the court, and is a permanent change of the legal relationship. Each of these options is discussed in more detail below.

**What is a power of attorney?**

A power of attorney is written permission from one person (the principal) to another person (the agent) to perform certain acts that the principal would have authority to perform for him or herself. A power of attorney (“POA”) gives the agent a parallel power to act in addition to the principal’s power to act; it does not diminish the principal’s power to continue to act on his or her own behalf. The principal retains the right to revoke the power of attorney and “fire” the agent at any time, for any reason, or for no reason at all.

**How does a power of attorney to a grandparent operate regarding legal matters for a grandchild?**

In the family law arena, a power of attorney regarding a child generally is written permission from a parent to another person authorizing that person to care for a child and make certain decisions for that child. This power of attorney (“POA”) can vary from handwritten permission to obtain medical care to a formal document prepared by an attorney and signed in front of a notary public. A power of attorney from the parent to the grandparent usually gives the grandparent the authority to make certain decisions for the child, but it does not reduce any of the rights of the parents. The parent is able to revoke the power of attorney, take the child back, or change decisions that have been made by the grandparent. Any time a child is being cared for by someone other than the legal parent or guardian, it is important for the caregiver to have a power of attorney so that the child is able to receive medical care and/or other assistance in times of need.

Although the POA may authorize the grandparents to make all decisions for a child, including medical, educational, residential, religious, and other matters, there are some legal limitations on this power. First, Colorado law allows for a power of attorney regarding a child to be valid for a maximum of twelve months. After twelve months, the parents must sign a new power of attorney to continue the authority of the agent (grandparent). Second, by law, an agent under a power of attorney may not consent to either marriage or adoption of the child. Some school districts will not accept a power of attorney as a basis for enrolling a child in the grandparent’s school district; they may require a court determination of guardianship or allocation of parental responsibility. Also, most health insurance companies will not allow grandparents to enroll a grandchild on their health insurance coverage based upon only a power of attorney; they usually require a court order, as well.

The parent may give specific powers to the grandparent, limited to only a few things or the POA may grant the grandparent the right to make all decisions for the child. For example, the right to make medical decisions could be in emergency cases only. The power of attorney needs to be signed only by one of the child’s parents or legal guardians. If grandparents expect disagreements about the power of attorney, it is best to seek advice from an attorney when writing it.

**If I want a more stable award of responsibility for my grandchild, not a power of attorney that could be immediately revoked by the parents, what are my options?**

Other than adoption, which is permanent and essentially irreversible, the two primary options are legal guardianship and legal custody. In Colorado, these two options are handled by two different branches of the civil court system. Guardianship is handled by the probate courts and custody (which is called allocation of parental responsibility in Colorado) is handled by the domestic (family law) courts. If the child is the subject of a dependency and neglect action, the court in that case would also have the power to enter orders for guardianship or allocation of parental responsibility for the child, at certain stages in the case.

**What is allocation of parental responsibility or custody?**

Although the public tends to use the common term of “custody,” Colorado law no longer uses that label. Instead, Colorado uses the longer phrase, “allocation of parental responsibility and decision making.” This is the legal authority to make decisions about a minor child. The court specifically allocates decision making about three topics, or occasionally more. The three required elements of allocation of parental responsibility (“APR”) are: education, religious upbringing, and non-emergency medical care. (Of course, emergency medical care is handled by whatever responsible adult is caring for the child at the time of an emergency.) Usually this authority is allocated to both or one of the child’s parents, but sometimes it is allocated to another person who is filling a custodial or parental role for the child, such as a grandparent, aunt or uncle, step-parent, or another involved and appropriate person.

**How can a grandparent get an order for allocation of parental responsibility (custody)?**

Allocation of parental responsibility (“APR”, commonly called “custody”) must be granted by a court order (usually in domestic relations court) and an attorney is often involved. An APR order gives the grandparent the right and obligation to care for the child and to make whatever decisions the judge grants when the order is signed. An APR order does not permanently end the rights of the parents, but they can only have parenting time (visit) with the child as provided in the order. The judge’s decision in an APR hearing will be made based on the best interests of the child.

Grandparents are able to file a court action asking for custody of a child if the child has been living with the grandparent for six months. The grandparent can also file the action within six months after the child leaves his or her home as long as the child had lived in their home for six months. Both of the child’s parents must be notified of the hearing. The judge will decide what rights the parents have and what parenting time (visitation) the parents have. It is important specifically to ask the judge about clarifying who has the right to make decisions regarding the educational, medical, and religious needs of the child, since this authority is allocated separately in Colorado. The judge also may order the parents to pay child support to the grandparents to help meet the financial burden of raising their child.

**What if I want a change in the custody (APR) order?**

A custody (allocation of parental responsibility) order can be changed by returning to court and requesting a change. This can be done if the custodial parent or grandparent agrees to the change, or if the child has been integrated into someone else’s family with the consent of the custodial parent or grandparent. If the parents and grandparent do not agree to a change in the custody/APR order, then the person who wants the change must ask the court to grant it. A contested change in APR and primary residence of the child can only be requested once every two years, unless the judge believes that there has been a change in the custodial parent or grandparent’s circumstances which create a danger to the child’s physical health or which significantly impairs the child’s emotional development because of the environment in which the child is living.

**What is a natural guardian?**

Parents are the natural guardians of their children, either natural or adopted children. So, they do not need to go to court to be appointed as guardians and to have the authority to make these decisions. Anyone other than a parent needs a court order to be appointed as a guardian for a minor child (under age 18). To be the guardian of a disabled person over age 18, the guardian must be appointed by the court, even if the parent is the guardian.

**How can a grandparent get an order for guardianship and how is this different from allocation of parental responsibility?**

A legal guardianship is another way that a grandparent may get the authority to care for a child and make decisions on the child’s care. This is an order that is issued by the probate court, instead of the domestic court, but it results in very similar authority about the child. Guardianship is granted by a court and gives the guardian full permission to make all decisions about a child except financial decisions and the right to agree to adoption. The guardian may care for the child, or arrange for someone else to provide care. The guardian is not legally responsible to support the child financially. If authority is needed to make decisions about the child’s property and finances, the court may grant a conservatorship to the grandparent or someone else, as well as guardianship. A conservatorship is not needed for a grandparent simply to receive and spend child support for the child.

Guardianships are very flexible. Few laws define how they are used. Flexibility can be good or bad for the guardian and the parents. Since there are few laws saying how guardianship is revoked or changed, a judge has significant leeway when deciding these issues. A guardianship is an exclusive power, so it takes away the parent’s rights to make decisions for the child and gives that authority to the guardian, within the scope of the guardianship order, until the guardianship is modified or terminated. Guardianship does not terminate the parent’s parental rights. If circumstances improve for the parent, he or she can request termination of the guardianship and return of the child to the parent’s care.

Guardianship can be granted either through the Colorado Probate Code when a parent is unable to care for his or her child, or the parent has died, or through the Colorado Children’s Code when a child is dependent or neglected. A person with guardianship is issued a document called Letters of Guardianship. This document can be provided by the guardian to prove that he or she has the authority to make decisions for the child. Unless the guardianship is limited, this authority generally allows the guardian(s) to enroll the child in school, to consent to medical care, to cover the child on the guardian’s health insurance policy, and other matters that would usually be handled by the child’s parents. The guardian is required to file an annual report with the court about the child’s situation and ongoing residence, medical care and educational arrangements.