
To: Members of The House Judiciary Committee

From: Family & Juvenile Law Section Council (FJLSC)

Date: February 24, 2022

Subject: **House Bill 943:**
Family Law – Grandparent Visitation

Position: **UNFAVORABLE**

The Maryland State Bar Association (MSBA) FJLSC **opposes House Bill 943 – Family Law-Grandparent Visitation.**

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

The issue of grandparent visitation is an important and highly emotional issue. There are many situations in which a grandparent is estranged from a grandchild at the hands of a parent and the result is that the child at issue suffers and court ordered grandparent visitation (or custody) could serve the child’s best interests. There are also situations in which a grandparent seeks court ordered visitation (or custody) in which the child issue and/or the parent suffer harm. The family law bar has shared and expressed a wide range of experiences for the families they represent. In recognition of the importance of this issue, the FJLSC convened an informal workgroup to consider this issue. When considering HB 943 the FJLSC, reviewed, *inter alia*, the work done in the workgroup.

The conclusions reached were:

1. It is difficult for any law providing for grandparent visitation to pass constitutional muster. The Supreme Court of the United States and the Court of Appeals have recognized that biological parents have a fundamental

constitutional right to the care and custody of their children. Because parents have this constitutional right to raise their children free from unwarranted interference by the State, there is a substantive presumption that it is in the best interest of children to remain in the custody and care of their parents. Before a Maryland Court can consider granting access rights to a third party or grandparent, the Court must make a finding of either unfitness of the parents or find that exceptional circumstances exist. HB 943 may not fully comply with these constitutional standards.

2. In certain limited circumstances the best interests of a child require the granting of grandparent visitation. Current jurisprudence, including Family Law Section 9-102 as it is currently written (and interpreted by case law to require a threshold showing of parental unfitness or exceptional circumstances before applying the best interests standard) provides a means for grandparents to pursue visitation.
3. The issue of grandparent visitation cannot be separated from the more inclusive issue of 3rd party custody and visitation. For many children, the adult who serves in the role as “grandparent” or third-party caregiver is not a grandparent. The current laws in place allow for the consideration and granting of grandparent visitation by the Court, as well as the opportunity for De Facto parenthood, custody, or guardianship when appropriate. Therefore, the rights of a grandparent are not altered by the provisions of this bill. Case law is rapidly and regularly addressing this complex issue. Argument can be made to allow time for the case law to wrestle with the issue so that the law addresses the family structures and issues in a manner that is in line with the realities of our current society. HB 943 does not adequately address the complexities of this issue.
4. As the nature and structure of Maryland families continues to change, and in light of the holding of the Supreme Court, it is the position of the FJLSC that it is critically important that a formal workgroup be formed to study the issue of third party custody and visitation, including grandparent visitation, before any legislation is passed.

The FJLSC urges the House Judiciary Committee, for the reasons stated above, to issue an **UNFAVORABLE** report on HB 943.

Should you have any questions, please contact Michelle Smith by msmith@lawannapolis.com or by telephone at (410) 280-1700.