

Third Party Rights to Custody- Siblings, Significant Others, Other Relatives (Not Grandparents)

A sibling does not have standing to seek court ordered visitation with a minor sibling, nor does an adult sibling have standing to bring an action for partial custody of the minor sister where either natural parent exists and has not had their rights terminated.

Illustration: A sister lacked standing to seek visitation with her half-sisters after her mother denied her contact with them, where, although the sister had a "substantial interest" and "direct interest" in visitation, as her interest in maintaining the sibling relationship far outweighed the interests of the general citizenry and the court system was the only means of maintaining the relationship, the sister did not have an "immediate interest" inasmuch as her interests were not protected by the statute granting standing to seek visitation.

A maternal aunt has no standing as against the natural father to seek partial custody or visitation in the absence of a specific legislative pronouncement to the contrary. However, an aunt does have standing to seek custody where the aunt brings dependency proceedings, and the natural parents' *prima facie* right to custody is successfully overcome *via* the proceedings, or where the aunt has stood *in loco parentis* to the child.

Illustration: Custody of a child was properly granted to the child's aunt where the aunt obtained temporary custody by court order after the mother abandoned the child at the hospital after birth, the mother suffered from cancer and her prognosis was a 100% chance of death within four years, the mother had a drinking problem and got into violent confrontations with the father when they drank too much, and the aunt had been cooperative with the mother in regard to visitation.

Where the **parent is deceased** and two third parties seek visitation, namely, a **cousin to the parent** and the parent's mother, the cousin may properly be granted standing to seek visitation with the child where the cousin has shown a sincere and sustained interest in the child. Where both parents are dead, as between an aunt and uncle and a brother, the trial court may find that the best interest of the child is served by awarding custody to her **aunt and uncle**, in accordance with the testamentary guardianship appointment of the child's sole surviving parent, since there is a rebuttable presumption in favor of the testamentary appointment.

The Domestic Relations Code provides **great-grandparents** with the right of action for partial custody or visitation under certain circumstances.

THE BOTTOM LINE

Any party may gain custodial rights to a child, when the following exist:

- (1) Both parents are deceased or have legally terminated their rights to the child; **or**
- (2) The parents have been statutorily or by an order of court excluded from participating in the action and the third party has been granted special standing by statute or by order of court; **AND**
- (3) The party seeking custody has stood in a position of *in loco parentis* with the minor child for a period of 12 months or more; **AND**
- (4) It would be in the **best interests of the minor child** if custody were granted to the moving party.