



NON PARENT VISITATION

A non-parent in a same sex relationship may seek *In Loco Parentis* Visitation Rights after his or her relationship with the child's legal parent ends. As a non-parent person under the domestic relations statutes does not enjoy the same legal rights as a parent. Consistent with the constitutional right to parent, our legislature has provided non-parents with fewer rights than parents. Thus, a non-parent may seek *In Loco Parentis* "visitation," but not "parenting time." A non-custodial parent is legally entitled to "reasonable parenting time," but the right of the non-parent to visitation is discretionary with the Superior Court. However, looking at A.R.S. §25-408(A) "a parent who is not granted custody is entitled to reasonable parenting time unless the court finds it would seriously endanger the child's physical, mental, moral or emotional health." While A.R.S. §25-415(C) provides the Superior court may grant reasonable visitation rights to an *In Loco Parentis* parent. This parenting time granted to a non-custodial parent is "to ensure that the minor child has frequent and continuing contact with the non-custodial parent." (A.R.S. §25-408(A))

Same sex relationships and the visitation issues is comparable to a relationship between a legal parent and a grandparent where that relationship deteriorates to the point that the parent does not want the grandparent involved in the child's life. In that scenario the grandparent has the right to seek *In Loco Parentis* custody or visitation. This also applies to boyfriend/girlfriend, step-parent, or step-grandparent relationship. Although the type of relationship involved is a factor the court may consider, the relationship itself does not justify applying a different evidentiary or procedural framework for judging the best interests of the child. *Egan v. Fridlund-Horne*, 221 Ariz. 229, 211 P.3d 1213.

Under the *Egan* holding the Court determined that the trial courts temporary order granting equal visitation rights to the non-parent was not reasonable. The Appellate Court reasoned that the visitation order essentially granted custody rights to the non-parent by allowing her to direct the upbringing of the child practically to the same extent as the parent.

It is also important to note the statutory provisions governing *In Loco Parentis* custody opposes a higher standard of proof than the *In Loco Parentis* visitation provision. The legislature intended that Court's treat custody and visitation petitions in a different manner. Presumably because granting of visitation is a far lesser intrusion, or assertion of control, than is an award of custody, and plus not nearly as invasion of parents' rights. *Dodge*, 195 Ariz. at 125.