

FAMILY LAW QUESTION

Fifteen years ago, Mom and Dad were married in State A, where both were domiciled.

Fourteen years ago, Mom gave birth to Daughter in State A. Dad is Daughter's biological father.

Four years ago, Dad died in State A. After Dad's death, Mom relied heavily on Dad's parents, Grandparents. Mom and Daughter moved to an apartment near Grandparents in State A. Thereafter, Grandparents visited Mom's home at least once a week. Daughter was also a frequent visitor at Grandparents' home. Grandparents also helped Mom to support Daughter financially.

Four months ago, Mom married Stepdad and moved with Daughter to Stepdad's home in State B, 500 miles from Mom's former residence in State A. Stepdad believes that Grandparents discouraged Mom's marriage to him, and he asked Mom not to invite Grandparents to visit. Mom agreed to Stepdad's request. However, she allowed Daughter to visit Grandparents in State A during a school vacation.

One week ago, Grandparents sent Daughter a bus ticket. Without revealing her plans to Mom, Daughter used the ticket to go to Grandparents' home in State A. When she arrived at Grandparents' home, Daughter telephoned Mom and said, "I hate State B, I dislike Stepdad, and I want to live with Grandparents in State A until you leave Stepdad and return to State A, too."

On the same day that Mom received this telephone call, she was served with a summons to appear in a State A court proceeding, brought by Grandparents, in which Grandparents seek custody of Daughter. Grandparents' petition was brought pursuant to a State A statute that authorizes the award of child custody to a grandparent when the court finds that (1) the "child has been abandoned or one of the child's parents has died" and (2) an award of custody to the petitioner grandparent "serves the child's best interests."

Both State A and State B have enacted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Mom has sought advice from your law firm. She asks the following questions:

1. Does State A have jurisdiction to award custody of Daughter to Grandparents? Explain.
2. On the merits, may a court deny Grandparents' custody petition if Daughter testifies that she wants to live with Grandparents? Explain.
3. Is the State A statute authorizing the award of custody to grandparents constitutional? Explain.