

## DE FACTO PARENT

There is no due process right to family or association for grandparents or de facto parents. (*Miller v. Cal. Dept. of Social Services* (9th Cir 2004) 355 F.3d 1172, 1176-1177; see *Mullins v. Oregon* (9th Cir. 1995) 57 F.3d 789, 791-793-797 [grandparents do not have any constitutionally protected rights in the adoption of their grandchildren].)

Consider five factors: (1) bond; (2) whether assumed a day-to-day role of a parent; (3) has unique information; (4) regularly attended juvenile hearings; (5) future proceedings may transform relationship or relative's rights. (*In re A.F.* (2014) 227 Cal.App.4th 692, 700; *In re Giovanni F.* (2010) 184 Cal.App.4th 594, 602; *In re Leticia S.* (2001) 92 Cal.App.4th 378, 381; *In re Ashley P.* (1998) 62 Cal.App.4th 23, 27; *In re Charles S.* (1985) 168 Cal.App.3d 151 [grandparent who never cared for the minor]; *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67.)

Grant petition if would serve the best interests of the minor to receive the information from the de facto parent. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76, 78; *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67; *In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 5 [It is a judicial concept. The issue is not whether the de facto parent would be in the minor's best interests but whether the applicant has information which would be in the minor's best interests to hear].)

Liberal construed. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76; *In re B. G.* (1974) 11 Cal.3d 679, 693 [in order to determine the best interests of the minor]; *In re Ashley P.* (1998) 62 Cal.App.4th 23; *In re Brandon M.* (1997) 54 Cal.App.4th 1387, 1393; *In re Joshua S.* (1988) 205 Cal.App.3d 119, 125.)

Case law provides for broader qualifications for de facto parenthood than the rules of court. (*In re Joel H.* (1993) 19 Cal.App.4th 1185, 1195.)

Deny de facto parent status if applicant has been adjudicated to have harmed the minor. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76; *In re Merrick V.* (2004) 122 Cal.App.4th 235, 257 [removed from grandparent who was guardian when it was terminated because she left minor with a babysitter who used drugs and endangered the minor]; *In re Jacob E.* (2004) 121 Cal.App.4th 909, 920-21 [removed from grandparents, who cared for minor for five years, because they resented CPS's help and lied to the social worker]; *In re Leticia S.* (2001) 92 Cal.App.4th 378, 382-383 [act as unfit parent when left drugs within minor's reach]; but see *In re Bryan D.* (2012) 199 Cal.App.4th 127, 141-147 [though the dependency petition alleged the grandparent was unfit for reasons not concerning sexual abuse]; *In re Vincent C.* (1997) 53 Cal.App.4th 1347, 1356-1358 [CPS removing the minor from the grandparents is insufficient grounds for

denying de facto parent status]; *In re Jonique W.* (1994) 26 Cal.App.4th 685, 690-697 [must have been adjudicated a harm to the minor].)

The court did not abuse its discretion by denying de facto parent application for a grandparent who frequently visited the minor. (*In re R.J.* (2008) 164 Cal.App.4th 219, 224-225.)

Applicant has burden of proof by preponderance of evidence. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 381; *Christina K. v. Superior Court* (1986) 184 Cal.App.3d 1463, 1466-1469; *In re Joshua S.* (1988) 205 Cal.App.3d 119.)

Step-parent who had assumed parental role may qualify as de facto parent. (*Nancy S. v. Michele G.* (1991) 228 Cal.App.3d 831, 835.)

In a 387 petition, caretaker can petition for de facto parent status in order to adjudicate jurisdiction for the supplemental petition. (*In re Jonique W.* (1994) 26 Cal.App.4th 685, 690-697.)

A relative who is not a de facto parent can address the court, but this is not enough if should be de facto parent. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76; *In re B. G.* (1974) 11 Cal.3d 679, 693; *In re Jonique W.* (1994) 26 Cal.App.4th 685, 693-695; *In re Joshua S.* (1988) 205 Cal.App.3d 119; *Katsuff v. Superior Court* (1976) 54 Cal.App.3d 1079, 1084.)

De facto parent can be present at court and represented by counsel. (Cal. Rules of Court, rule 1412(e); *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66.)

De facto parent status should be granted to permit an adult to protect his or her potential custody interest in a dependent child where a future proceeding may result in an order permanently foreclosing any future contact between the child and the adult. (*In re B.G.* (1974) 11 Cal.3d 679; *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66-67.)

A de facto parent has the right to (1) an attorney, (2) be present at hearings, and (3) present evidence. (*In re A.F.* (2014) 227 Cal.App.4th 692, 700-701; *In re P.L.* (2005) 134 Cal.App.4th 1357, 1361; see also *In re Kieshia E.* (1993) 6 Cal.4th 68, 82.)

De facto parent does not have the right to placement or reunification services. (*In re Kieshia E.* (1993) 6 Cal.4th 68, 77, fn. 7; *In re A.F.* (2014) 227 Cal.App.4th 692, 700 ; *In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1490-1491, fn. 11; *In re P.L.* (2005) 134

Cal.App.4th 1357, 1361 [or visitation]; *Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 752; *In re Rachel C.* (1991) 235 Cal.App.3d 1445, 1452.)

A de facto parent does not have the right to the child's psychological evaluation without a showing of need. (*In re B.F.* (2010) 190 Cal.App.4th 811, 816-821.)

De facto parent status normally ends when the dependency ends. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 383, fn. 5 [does not terminate at the will of the court]; *In re Patricia L.* (1992) 9 Cal.App.4th 61, 66.)

De facto status does not otherwise terminate automatically. To terminate de facto parent status, the movant must show a change of circumstances that no longer supports de facto parent status. (*In re D.R.* (2010) 185 Cal.App.4th 852, 859-860.) The court can revoke de facto parent status when the minor has been out of the person's home for so long that he or she is no longer the psychological parent of the child and no longer has unique information about the child. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1514.) The court is not required to terminate de facto parent status when the de facto parent abuses the minor when the minor retains a psychological bond with them. (*In re D.R.* (2010) 185 Cal.App.4th 852, 860-865.)

The rights of a designated prospective adoptive parent is "akin" to those of a de facto parent, "but even more circumscribed." (*R.H. v. Superior Court* (2012) 209 Cal.App.4th 364, 372-374 [no right to appointment of counsel].)

Standing: CPS has standing for the minor to contest de facto status. (*In re D.R.* (2010) 185 Cal.App.4th 852, 858-859.)

Standing: Only the potential de facto parent can appeal. (*In re Jacob E.* (2004) 121 Cal.App.4th 909, 921, fn. 6; *In re Crystal J.* (2001) 92 Cal.App.4th 186, 192; *In re Vanessa Z.* (1994) 23 Cal.App.4th 258, 261; *In re Daniel D.* (1994) 24 Cal.App.4th 1823, 1835-1839.)

Standing: De facto parent can challenge an issue only if affects the de facto parent. (*Clifford S. v. Superior Court* (1995) 38 Cal.App.4th 747, 751-752 [inadequate services to parent waived]; *In re Joel H.* (1993) 19 Cal.App.4th 1185, 1194-1196; *In re Rachel C.* (1991) 235 Cal.App.3d 1445, 1454-1455 [can appeal denial of de facto parent motion]; cf. *In re Vincent M.* (2008) 161 Cal.App.4th 943, 953 [de facto parent can appeal § 388 petition leading to father's paternity and reunification services]; but see *In re Alexandria P.* (2014) 228 Cal.App.4th 1322, 1340-1342 [cannot appeal the constitutionality of ICWA, which resulted in removal of the minor].)

Standard of review: Review for abuse of discretion. (*In re Leticia S.* (2001) 92 Cal.App.4th 378, 381.) “In most cases, the lower court does not abuse its discretion if substantial evidence supports its determination to grant or deny de facto parent status.” (*In re Michael R.* (1998) 67 Cal.App.4th 150, 156; but see *In re Hirenia C.* (1993) 18 Cal.App.4th 504, 512 [summary denial is analogous to a summary judgment so an independent standard of review should apply].)