

There are many other factors that the court is permitted to consider when determining the “best interest of the child.” A judge has great latitude in what to consider. Fitness or unfitness has been discussed by the courts in the context of child custody. Here is summary of some of the considerations that address fitness:

Questions of parental fitness generally fall within the following categories: moral fitness; psychological or emotional fitness; prior conduct affecting the child’s physical, psychological and financial needs; and love and affection for the child including willingness and ability to care for the child. Although historically courts took a moralistic view in examining parental conduct, today such conduct seems to be considered only in light of its effect on the child. If a


parent’s conduct is not found to adversely affect the child or diminish the quality of care a child receives, then a parent will, most likely, avoid being declared unfit. 26 U. Balt. L.E. 3, 5 (1995).

The courts have said that they will not predefine “exceptional circumstances.” Instead, “exceptional circumstances” will be decided on a case-by-case basis, after analyzing all the factors before the court in the particular case. Examples of “exceptional circumstances” have been discussed in other custody cases:

The factors which emerge from our prior decisions which may be of probative value in determining the existence of exceptional circumstances include the length of time the child has been away from the biological parent, the age of the

child when care was assumed by the third party, the possible emotional effect on the child of a change of custody, the period of time which elapsed before the parent sought to reclaim the child, the nature and strength of the ties between the child and the third-party custodian, the intensity and genuineness of the parent’s desire to have the child, the stability and certainty as to the child’s future in the custody of the parent.

From Ross v. Hoffman.

In conclusion, unless the state legislature changes the law, you would have to show either that the parents are unfit or that there are exceptional circumstances that exist. If shown, then the court can evaluate what is in the best interests of the children. 

*We are providing information about the law. Legal information, however, is not the same as legal advice about your specific circumstances. We try to be accurate and useful. We strongly recommend that you consult a lawyer to find out what is appropriate in your particular situation. We are not giving specific legal advice to you. These answers do not create an attorney-client relationship.*

# Ask the Undertaker

By Ryan Helfenbein

A few weeks ago I was meeting with some job applicants who were interviewing for an administrative position at one of our funeral home locations. During the interview, I couldn’t help but notice their confused reactions when I began to talk about our industry. Then it clicked. It wasn’t what I was saying, it was the words I used. I have tried here to create a funeral director glossary to help the general public better understand some of the words undertakers are using today.

The language of undertaking has evolved quite a bit over the years. This industry has gone from offering mostly traditional burial services to now more than 50 percent offering alternative services. Today there are more methods of disposition available (we’ll save that one for another issue) than ever seen before. With these changes in language, undertaking has changed as well. I am going to touch on five very common terms used today in the funeral industry: First-call, at-need and pre-need, embalming, cremains and inurnment.

**First-call:** I don’t think I need to spend too much time on this one, especially for those of you who are involved in an “on call” service industry. First call is when a family contacts a funeral home to tell them they’d like to use their services because someone has passed away in

their family. It is the first “call to action” the funeral home receives.

**Embalming:** Historically the most recited term in our industry. Embalming is a process done by morticians or licensed embalmers that slows down the natural process upon death. It does not involve removal of organs or other things you might imagine. It is a very contained means of introducing a formaldehyde-based solution into the body so that the deceased is in a safe and presentable state.

**At-Need and Pre-Need:** I’d like to call this the work of the funeral industry as a whole. These two words are classifications of what the consumers’ needs are. At-need is the “need” of funeral home services immediately, or at the time of death. Pre-need is the “need” before the time of death. At-need is something that is heavily regulated by the Federal Trade Commission and the State Board of Morticians and is truly the bread and butter of the funeral industry. It is truly why funeral homes exist. As for pre-need, let’s just say that aspect of the industry flies at a different altitude for most undertakers and is a bit more advanced for some of my associates. Services provided “pre-need” have evolved into something much larger than ever imagined and are becoming an extremely popular means of planning one’s end-of-life ceremony, especially with the baby boomer

generation. Those firms that do offer a pre-need or pre-planning program are usually the more progressive firms; while at-need is historically what the funeral industry has always provided.

**Cremains:** This one always gets Microsoft Word upset. This is a new word in the language of undertaking due to the increased popularity of cremation. Cremains are what remain after the cremation procedure is complete. It is a combination of two terms - cremation and human remains. We use this term, rather than ashes, because it is more respectful, defines exactly what it is and it’s one of those words that is truly derived from undertakers! Like most undertakers, nothing upsets me more than to hear the media describe the cremains of someone’s loved one as ashes.

**Inurnment:** Like cremains, this word is also becoming popular because of cremation. Inurnment is the process of putting an urn into a burial space or columbarium -- an above-ground structure used for placement of urns. This word is also derived from two words: Internment (placement of remains in a grave) and urn (a container used to hold the remains). So the next time you run across one of us dark-suited undertakers, you can now ask with confidence, “Have you received any first calls on a pre-need that requests you do an inurnment of their cremains with embalming prior to their services?” Shoot me an e-mail if you do, I’d love to hear the response or at least know what the look was on the undertaker’s face.

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