

## Rights of UnWed Fathers

### Rights of Fathers and Non-respondent Parents

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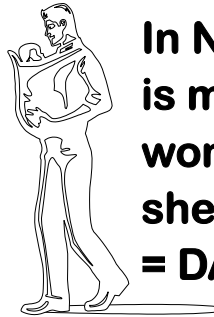
### “Legal” Father

- In Wedlock Father
- Adjudicated or Acknowledged Unwed Father
- Adoptive Father

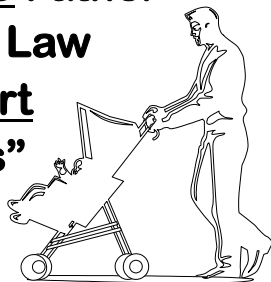
Children who are  
born in wedlock  
have a legal  
father.



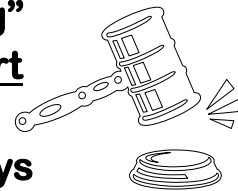
In NYS, if a man  
is married to a  
women when  
she gives birth  
= DADDY



Husband IS Father  
under NYS Law  
unless court  
“de-fathers”



“De-fathering”  
requires court  
action and  
doesn’t always  
work—may depend  
on relationship →  
equitable estoppel cases



## Rights of UnWed Fathers

### **FIND OUT:**

**Was mother married  
when she had child?**

**What does it mean  
to be on the birth  
certificate?  
  
What about  
establishing paternity?**

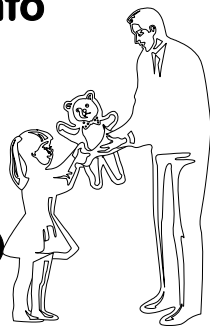
**What are the rights of  
a non-custodial parent  
during a CPS  
investigation?**

**Non-respondent parent  
is always entitled to  
know about A/N report,  
investigation,  
child's placement  
in care**

**If he is Dad, info  
on child is not  
"confidential"  
from him**

**SSL §422 (4) (A) (d)**

**SSL §412 (5)**



**How do we know  
he is Dad, if he  
wants info?**

## Rights of UnWed Fathers

**Doesn't Mom have  
right to privacy about  
her problems?**

**But what if Mom is a  
victim of domestic  
violence?**

### **FCA §1035**

**The legal rights of non-  
respondent parents in  
child abuse and neglect  
petitions**

### **“FRONT DOOR”**

**When child is going  
or has gone into care,  
DSS obligated to  
identify and find father  
NYCRR §§421.4, 421.5, 421.6**

### **“FRONT DOOR”**

- **Who is he?**
- **Where is he?**
- **Does he need help?**

### **DSS should:**

- **Ask everyone**
- **Get birth certificate**
- **CSEU help**
- **Putative father registry**
- **FOLLOW-UP**
- **Everyone else should ASK!!**

## Rights of UnWed Fathers

### Notice of Pendency to Non Respondent Parent FCA §1035 (d)

- Court **MAY** order an investigation whether a petition should be filed against N R Parent
- If child removed, order investigation on whether NRP would be a suitable custodian
- If child placed and remains in foster care 15 out of 22 months agency may be required to seek a TPR even if parent was not named as a respondent in Article Ten case
- Right to appear as an interested party intervenor

### Notice of Pendency to Non Respondent Parent FCA § 1035 (d)

- May participate in all fact finding and dispositional hearings
- May go to court to seek temporary or permanent custody or enforce visitation
- Serve with copy of summons and the petition
- Who is a “father” in out of wedlock situation?

### DSS Obligations as to fathers

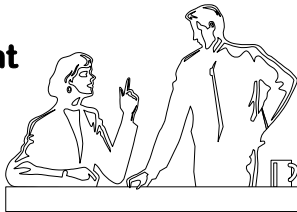
- Obligation to try to find, determine relationship with mother and children.  
18 NYCRR §421.4 & 5
- Establishment of Paternity
- Plan with father if child is in foster care
- May be a way to keep children out of foster care

### All parties should help “legally” clarify Dad’s status

- “De-fathering”
- Filiation
- CSEU
- FCA §564

### Check at every hearing to make sure that Dad is being offered:

- Visitation
- Assessment
- Services
- Service Plan

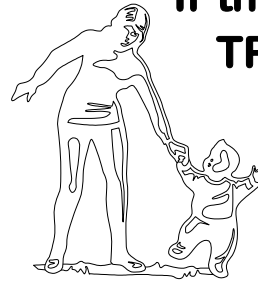


### Does he have to be offered visits if we don’t know if he is Dad? FCA §1084

## Rights of UnWed Fathers

### **“BACK DOOR”**

**If child does not go home to Mom or Dad**



**If there is a  
TPR of Mom  
or...**

**If she wants to  
surrender...**



**If child born in wedlock  
and no “de-fathering”  
then in wedlock must be  
TPRed or surrender**

**DRL § 111 (1)(b)**

**If child born out of  
wedlock, then  
question will be:  
What is he under  
DRL §111 , 111-a?**

### **3 KINDS:**

- **“Consent” Dad**
- **“Notice” Dad**
- **“No Rights” Guy**

## Rights of UnWed Fathers

**“Consent” Dad must  
be TPRed or  
surrender**

### **Who is a “Consent” Dad?**

Dad who has ACTED like a Dad

**DRL§ 111(1) (d) and (e)**

- visited (twice a month)
- supported (as he is able to)
- attempted to

**Raquel Marie X case**

**You do not have  
to be a “legal”  
Dad to be a  
“consent”  
Dad**



**“Notice” Dad has  
only “right” to be  
notified**

### **Who is “notice” Dad?**

**DRL§111-a  
A paper Dad**

- **Adjudicated in NYS**
- **Adjudicated  
outside of NYS  
and filed with PFR**
- **Filed intent to claim**

## Rights of UnWed Fathers

- **Named on birth certificate**
- **Lived with child or child's mother at placement and held self out**
- **Identified as father by mother in sworn, written statement**

- **Married to mother when child less than six months old and prior to mother surrendering or TPR brought**
- **Filed with PFR**

**What if child is conceived by rape?  
Depends if criminally convicted of forcible rape**

**"Noticed" of what?  
Adoption, unless already noticed of TPR or surrender**

**What happens if he shows up?  
He can get a "best interests" hearing or argue that he is a "consent" dad**

**A "notice" father is not entitled to publication  
SSL §384-c (4)  
A judge's ruling on "notice" is binding on any judge doing adoption  
SSL §384-b (12)**

## **Rights of UnWed Fathers**

**Who is a  
“No Rights” Guy?**

**What about the  
“Name Only” Guy?**

**Failure to deal with Dads:**

- **unfair to children**
- **may be a resource**
- **may have relatives**
- **may need to TPR**