

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

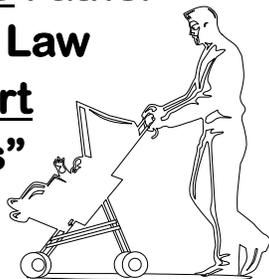
Children who are
born in wedlock
have a legal
father.



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



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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?

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**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!!**

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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

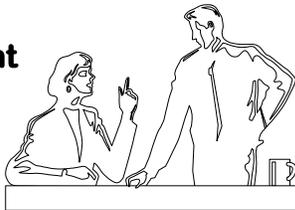
- Obligation to try to find, determine relationship with mother and children.
18 NYCRR §421.4 & 5
- Establishment of Paternity
- Plan with father if child is in foster care
- May be a way to keep children out of foster care

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

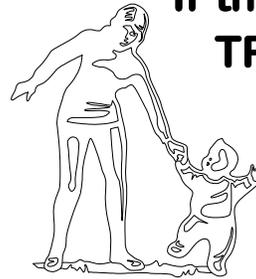


Does he have to be offered visits if we don’t know if he is Dad? FCA §1084

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“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**

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**“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**

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- **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)**

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**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**