

## FATHERS UNDER NYS LAW - by Margaret A. Burt, Esq.

If the mother of a child is going to surrender the child for adoption or if a petition to terminate her parental rights will be brought and the **child was born in wedlock, the man** who is or was married to the mother **must also have his parental rights surrendered or terminated**. If the child was born out of wedlock, then the agency must determine what rights the unwed father has regarding the child in order to determine what action is necessary to free the child legally. The first question that the agency must decide if **an unwed mother** is going to surrender her rights or the agency is considering filing to terminate her rights is: **does the father have rights that also need to be surrendered or terminated?**

### Fathers with Full Rights or Consent Fathers

Unwed fathers who have maintained a course of substantial and continuous contact or repeated contact with the child have the same rights as mothers and must either surrender the child or have a termination of parental rights petition brought against them. **The father does not have to be a “legal father” to be a consent father with full rights**

If the child was placed more **than six months after birth**, then the father is a consent father as above if he has:

- paid a reasonable and fair sum, in accordance with his means , for child support **AND**
  - visited the child at least monthly or maintained contact at least monthly when physically and financially able and not prevented from doing so by custodian
- OR**
- openly lived with the child for six months during the year before the child was placed and held himself out to be the father

If the child was placed **less than six months after birth**, then the father is a consent father as above if he has:

- evinced a commitment to the child by holding himself out to be the father, has offered to or is paying a reasonable sum for birth expenses and or child support, demonstrated an ability and a willingness to assume personal custodial responsibility for the child, takes prompt action within the first six months of the child’s placement to attempt to establish a parental relationship with the child – the evidence might also include such things as the father attempting to determine what the plans are for the baby, the father seeking legal advice or filing petitions in court, the father contacting the mother or her family or any agency involved and indicated his willingness to care for the child – evidence that he simply “opposes” the mother’s plan is not usually sufficient

If the man in question does not fit in the categories above, then the agency must consider the next possible category: **is he a father entitled to notice of certain legal actions?**

### **Fathers with Due Process Rights or Notice Fathers**

If a father falls into any of the following categories, he is entitled to formal legal notice of any procedures regarding the termination or surrender of the mother's rights or any procedures involving the voluntary placement of the child in care. The legal notice is specifically outlined in the law and must be demonstrated to enable the court to actually free the child. The notice father is offered the opportunity to provide the court with evidence regarding the child's best interests. It is good practice to attempt contact and offer services to any man on this list in any foster care situation. If the man is on this list but has been criminally convicted for forcible rape regarding the conception of the child, then he need not be noticed.

- any man adjudicated by a NYS court as the father of the child (the "legal father")
- any man who was adjudicated as the father in another state AND registered that adjudication with NYS
- any man who has filed an intent to claim paternity of the child
- any man who is listed on the child's birth certificate as the father
- any man who lived with the child and the mother and held himself out to be the child's father at the time that the child went into care
- any man identified as the father in a written and sworn statement by the mother
- any man who married the mother before the child was 6 months old and before any surrender or termination of mother's rights
- any man who filed with NYS as the possible putative father of the child

If the man in question was never married to the mother, does not fit in either of the two categories above, then he may be a "**no rights**" father. If this is the agency's position, then an attempt should be made to seek a judicial order to that effect as part of mother's surrender or termination proceeding. The court has discretion to still require notice to a potential "no rights" father to see if he claims to in fact be a father with rights to consent or notice.