

## **9.16 Examinations by Experts and Motion for Examination Effective 10/1/80**

### **PURPOSE**

In some instances, facts gathered by the worker from his own observation and from other persons, sources or witnesses are not sufficient to establish:

1. Whether a parent or other caretaker can care for and protect the child, and
2. The effects on the child of his experiences in his own home, and/or
3. The effects of proposed plans.

When the gap remains, after other sources of information have been utilized, a motion may be brought requesting a court ordered examination by an expert.

### **LEGAL BASE**

1. Title 22, MRSA §4007 (3) permits the court to order an examination of a parent, child, person frequenting the household or having custody at the time of the alleged abuse or neglect.
2. The examination may be ordered only after a clear and convincing showing of the necessity for information that cannot be obtained by other means.
3. The possible examiners for court ordered exams are limited to physician, psychologist or psychiatrist.
4. In accordance with the usual rules for judicial proceedings, the motion may be brought by any party, including the guardian ad litem for the child, or the court itself.
5. In a ruling dated 3/31/80, the Maine Supreme Judicial Court has ordered that because of the nature of these reports, including information and opinions relating to rights of privacy of parties in proceedings and third persons, all psychiatric and child custody reports ordered under Title 15 MRSA §101, Title 19 MRSA, §751, or other provisions of the law (e.g., the Child Welfare Law, Title 22 MRSA §4007) shall be impounded by the court clerks. The clerks shall notify counsel of record (attorneys for the parties and guardian ad litem) of the receipt of the reports and permit counsel to inspect such reports. Such reports may be released from impoundment by specific written authorization of the court under such conditions as the court may impose. The Department would request such authorization by means of a Motion setting out good cause for such release.

### **PRACTICE STANDARDS**

1. Prior to suggesting an examination, the worker will fully utilize all usual investigative skills and sources of information. An examination is not a substitute for good social fact gathering and diagnosis (see Intake Study, PC50, Section IV, Subsection D).

2. When the worker believes, from his own knowledge and observations, which may be supplemented by information from other witnesses who can be brought forth to testify, (e.g., via investigatory subpoena) that the child, parent, or other person has a mental or physical problem or condition that is directly related to the investigation of suspected abuse or neglect, treatment or custody, he will determine whether to suggest an expert examination.
3. In determining whether to suggest an examination, the worker will consider that an examination, whether physical or mental, is in some ways an intrusion of privacy, yet may also permit access to information which is often difficult to impossible to assess without expert knowledge and ability if it involves a physical condition or state of mind which is not diagnosable by a layman.
4. The rules of the court and the statutes on child abuse and neglect reporting and on confidentiality are an attempt to balance persons' rights to privacy and at the same time not interfere with parties' rights, through their counsel to present and examine evidence.
5. A person performing an examination, whether in the past (which can be obtained by investigatory subpoena) or present, whether voluntary or court ordered, may be required by the court to submit a report and may be subpoenaed by a party or the court to appear at the hearing as a witness, for examination and cross-examination, regarding both whether the examiner will be accepted by the court as an expert (whose opinions therefore are admissible as evidence) and regarding the content of his exam, report, and the basis for his opinions.

6. Voluntary Examination

When the worker determines that an examination by an expert outside the Department child welfare program would provide valuable information he can use in decision making (including investigation, gathering evidence, treatment or custody) regarding a child or his family, he will discuss the suggestion for an examination with the person (or his custodian, if a child), as part of the case plan.

- a. Such examiners include physicians, psychologists, clinical psychologists, psychiatrists, or certified social workers.
  - b. Persons who may be requested to be voluntarily examined include a parent, person responsible for the child, person frequenting the household, or having custody at the time of the alleged abuse or neglect, or proposed custodian or caretaker.
  - c. A voluntary release of information form will be requested.
  - d. The selection of the examiner will be a joint decision by the worker and client, and will include the specific areas of functioning to be examined and evaluated (i.e., related to the care and protection of the child), and arrangements for advance summaries, appointment(s) and reports.
  - e. Payment arrangements will be made in advance (see Legal Billing, subsection W).
6. Motion for court ordered examination:

- a. The court may order an examination when any child protection proceeding is pending before the court (preliminary protection order, final hearing, review, or termination of parental rights).
- b. If no child protection proceeding is currently pending before the court, but a protection order is in effect, the worker and his supervisor will determine whether, from a case management point of view, a motion for court review should be brought, which could include a motion for examination.
- c. Before requesting a motion for a court ordered examination, the worker will determine whether:
  - (1) The information is vital to his decision making, and/or as evidence to prove the case at a hearing.
  - (2) The information needed can be secured:
    - (a) Through interviews with the child, family and other sources
    - (b) Through a voluntary release of past or present examination information
    - (c) By investigatory subpoena
    - (d) By testimony of expert or lay witness already having pertinent information.
  - (3) Both the thoroughness of efforts made to obtain the information by other means and the necessity for the information in the child protection proceeding can be clearly and convincingly shown.
  - (4) The person to be examined is within the specific statutory list of persons whom the court may order to be examined (see Legal Base, paragraph 1).
  - (5) The proposed examiner meets statutory requirements (see Legal Base, paragraph 3).
- d. If approved by the supervisor, the worker will consult with his Assistant Attorney General, who will bring the motion.
- e. The motion will contain recommendations regarding choice of examiner, extent of exam, payment, etc. (see Legal Billing, subsection W).
- f. If the motion is granted, the worker and Assistant Attorney General will determine which of them will send a copy of the order to each party or their attorney, including the guardian ad litem.