

## **9.7 Interested Party**

**Effective 10/1/80**

### **PURPOSE**

To assure that interested parties are identified and named on Petitions for Child Protection Order and Motions for Review of Child Protection Order, and that they are served with notice of hearing on such petitions and motions, so that they may appear and be heard.

### **LEGAL BASE**

1. Title 22 MRSA §4033, requires service of the Petition for Child Protection Order and notice of hearing to parents and custodians, the guardian ad litem for the child and any other party to the proceedings.
2. Title 22 MRSA §4038, requires notice of judicial review of a Child Protection Order to be given to all parties to the initial proceeding and to the child's parent or custodian, except a parent whose parental rights have been terminated.

### **PRACTICE STANDARDS**

1. Legal parents (whether married, divorced, widowed, deceased, single or adoptive) will be named as parents, unless their legal rights have been terminated in a judicial proceeding.
2. Non-parental legal custodians (legal custody and power over the person of a child granted by a court) will be named as custodians.
3. Interested parties will be:
  - a. Guardians (guardianship of person or property granted by court).
  - b. Putative father.
  - c. Relatives seeking custody.
  - d. Relatives who have been the primary caretaker for at least a month immediately preceding the time a petition is filed.
  - e. Prior custodian seeking custody.
  - f. Indian tribe (when petition concerns "Indian child" under federal Indian Child Welfare Act).
4. Another person wishing to be considered an interested party will not be so named, unless that person or another party (e.g., parent) requests of the court that the person be an interested party, and the court so determines.
5. Procedure for determining whether there is a putative father:
  - a. A putative father may become a legal father by establishing paternity, e.g.

- (1) Marrying the mother, making an affidavit for vital statistics (Acknowledgment of Paternity, Form VS-027), and having the birth record amended, or
    - (2) Adopting the child into his own family, or
    - (3) A judicial proceeding, resulting in adjudication that he is the father of the child. If he has become a legal father, he will be named as a legal father, not as an interested party.
  - b. A putative father may exist whether the mother is single, married, divorced or widowed.
  - c. If it is not clear whether the legal father is the biological father, the mother will be asked. Her affirming reply will be sufficient unless there is reason to believe that her reply is not accurate.
  - d. If a putative father has been identified, reasonable means will be used to locate him (see Reasonable Steps to Inform Parties of Intent or Action, subsection B).
    - (1) If he affirms he is the biological father he will be treated as a putative father, and therefore as an interested party. He may complete an affidavit (e.g., Acknowledgment of Paternity, Form VS-027).
    - (2) If he denies paternity, he will be asked to make an affidavit. If this affidavit is acceptable to the court, he will not be named as an interested party.
  - e. If the identify of the biological father is unclear from statements by the mother:
    - (1) Information will be sought from other reliable persons, such as relatives, other agencies, official records (e.g., Support Enforcement and Location Unit).
    - (2) The mother, if the identity is still unknown or unclear, will be asked to complete an affidavit for the court (SWSS-097) with 2 copies for departmental files (see Routing of Legal Documents, subsection V).
    - (3) The court will determine whether or which man or men will be named as interested party(s).
  - f. A putative father will not be named as an interested party if:
    - (1) He has made an affidavit denying paternity, and/or waiving parental rights, and
    - (2) The court accepts his affidavit and rules that he has no parental rights.
  - g. The court will be requested to make a disposition regarding the putative father's status and rights at the earliest proceeding when the facts about him are known, i.e., in the petition request for court action, the final protection order, review, other motion while proceedings are pending, or termination of parental rights.
  - h. The Department will not pay costs (e.g., blood tests) related to establishing paternity or non-paternity unless it is clearly in the Department's interest to do so, upon approval of the Assistant Regional Director.
  - i. A putative father seeking legal advice will be referred to his attorney or the court.
6. Reasonable steps/means will be taken to inform an interested party when a petition and/or request for preliminary order is to be filed/requested unless:

- a. The child would suffer serious harm during the time needed to notify the interested party.
  - b. Prior notice would increase the risk of serious harm to the child or petitioner.
7. Interested parties will be served notice of a protection petition and preliminary protection order, if any, the same as legal parents and custodians (see Service of Petition, subsection J and Service of Preliminary Order, subsection K).
8. If, during the course of the proceedings, it becomes clear that a person be added or deleted as an interested party, the Assistant Attorney General will be consulted and a motion sought to amend.

Such instances may be:

- a. A putative father:
  - (1) Was named, and denies paternity, which is accepted by the court
  - (2) Is identified
  - (3) Formally waives further interest, which is accepted by the court
  - (4) Completes a process to become a legal parent
- b. A custodian or guardian formally waives further interest, which is accepted by the court.
- c. A relative:
  - (1) Who was seeking custody decides he does not want custody and formally waives further interest in seeking custody.
  - (2) Comes forth or is located who is seeking custody and/or has been the primary caretaker for the child for at least a month immediately preceding the time a petition is filed.