



NEW YORK STATE
 OFFICE OF TEMPORARY AND DISABILITY ASSISTANCE
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 GOVERNOR

Administrative Directive

Section 1

Transmittal:	10-ADM-02
To:	Local District Commissioners
Issuing Division/Office:	Division of Child Support Enforcement (DCSE) Center for Child Well-Being (CCWB)
Date:	March 23, 2010
Subject:	Legal Services and Cost Recovery for Recipients of Child Support Services
Suggested Distribution:	Child Support Enforcement Coordinators Support Collection Unit Supervisors IV-D Attorneys Accounting Supervisors
Contact Person(s):	Division of Child Support Enforcement at 1-800-343-8859 Office of Legal Affairs – Brian Wootan at 1-518-473-6188
Attachments:	Attachment 1-Cooperative Agreement/Purchase of Services Agreement Attachment 2-Right to Recovery Agreement for Legal Services (LDSS-4920) Attachment 3-Right to Recovery Agreement for Legal Services (LDSS-4920 SP) Attachment 4-Worksheet to Calculate the DSS Attorney Hourly Rate for Legal Services Attachment 5-Time Record for Legal Services Provided Attachment 6-SCU Notice of Total Costs for Legal Services Attachment 7-Notice to Custodial Parent of Total Costs for Legal Services Attachment 8-Notice to Noncustodial Parent of Total Costs for Legal Services Attachment 9-Notice of Court Order for Counsel Fees Attachment 10-Legal Representation on Objection or Appeal Attachment 11-Notice of Possible Conflict of Interest
Attachment Available On – Line:	<input checked="" type="checkbox"/>

Filing References

Previous ADMs/INFs	Releases Cancelled	Dept. Regs.	Soc. Serv. Law & Other Legal Ref.	Manual Ref.	Misc. Ref.
77 ADM 20	Dear Colleague Letter issued	18 NYCRR	SSL § 111-g	Fiscal Reference	

85 ADM 32	1/20/98 Dear Colleague Letter issued 2/16/99 77 ADM 20 85 ADM 32	347.17	SSL 111-c(4) as added by Chapter 343 of the Laws of 2009	Manual Volume 3 (Volume 4 for New York City), Chapters 3, 4, 5, and 7	
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Section 2

I. Summary

This administrative directive provides the local district Child Support Enforcement Unit (CSEU) with procedures to obtain legal services, provide legal services to requesting child support services recipients (hereafter referred to as “CSS recipients”), and recover costs of those services.

II. Purpose

The purpose of this administrative directive is to provide procedures and forms for obtaining legal services for the child support program, for providing legal services to requesting CSS recipients and for recovering the costs for providing those legal services.

III. Background

Under federal and State law and regulation, child support enforcement services must be made available by the child support enforcement program operated in compliance with Title IV-D of the Federal Social Security Act (Title IV-D) equally to both public assistance recipients and non-public assistance recipients. If the children are not in receipt of public assistance, either the custodial or noncustodial parent may apply for such services. Federal law requires that services under the State plan must be made available to any eligible individual who files an application (45 CFR 302.33(a)). Under State law, legal services must be made available by the CSEU to all persons applying for services pursuant to Social Services Law (SSL) § 111-g (CSS recipient).

On August 11, 2009, the Governor signed Chapter 343 of the Laws of 2009, the “Child Support Modernization Act.” The bill was effective immediately. Among other things, the bill clarifies that an attorney representing or appearing for the district, (hereafter referred to as the “CSEU attorney”) does not represent the CSS recipient in a traditional attorney-client relationship but rather represents the child support agency in performing its functions and duties.

As originally conceived in the 1970s, child support enforcement programs operating in compliance with Title IV-D were responsible for establishing paternity and obtaining support for custodial parents. Over the last several decades, the Title IV-D program has expanded to require state certified programs to provide services to both custodial and noncustodial parents and the caseload composition has changed from predominantly public assistance families to former or never-assistance families. Attorneys providing legal services to the IV-D program are generally government employees (county attorneys or local county department of social services employees) or are under contract

with local governments. In order to fulfill this expanded role and ensure compliance with attorney ethical obligations, the child support enforcement attorney's role has been clarified in states nationwide to provide that the IV-D attorney and the IV-D staff do not represent individual parties but instead represent the agency with respect to the delivery of IV-D services, and specifically to establish paternity and establish, modify and enforce orders of support.

Legal services to establish paternity, and establish, modify or enforce child support must be provided to all CSS recipients who request such services, and must be provided in the same manner for both local and interstate cases. Either the custodial or the noncustodial parent may apply for child support services, including legal services. Local district child support programs must ensure that there are sufficient numbers of attorneys available to provide legal services (see 18 NYCRR 347.17 and 45 CFR 303.20[f]).

Legal services may be provided by the local district DSS attorney's office, by the county attorney by cooperative agreement, or by a purchase of service agreement with a private attorney or not-for-profit legal services attorney.

Federal law allows states to recover costs beyond an application fee, either by recovering the actual cost of the services or a standardized cost (42 USC § 654(E) (ii)). A state that recovers standardized costs must develop a written methodology to determine standardized costs which are as close to actual costs as is possible (45 CFR § 302.33(d)(2)). New York has elected to recover costs through the standardized costs methodology if the cost is incurred by a DSS attorney, or actual costs if the service is procured through a cooperative agreement or a purchase of services agreement. This administrative directive will provide a methodology for determining costs that can be recovered either from the noncustodial parent or from the custodial parent.

Information about cooperative agreements and cost recovery are consolidated into this administrative directive and replace the existing instructions found in 77 ADM 20 and 85 ADM 32.

IV. Program Implications

Local districts must review current procedures for obtaining and providing legal services to CSS recipients and ensure compliance with the statute and regulation and these instructions. Implementation of these procedures will ensure that CSS recipients who request legal services for child support are provided legal services in the same manner for both local and interstate cases.

V. Required Action

A. CSEU Procedures for Obtaining Legal Services

1. CSEU Options for Legal Services

Legal services for child support may be obtained through the DSS attorney, the County Attorney's Office by cooperative agreement, or by purchase of service agreement with a private attorney or not-for-profit legal services attorney.

Federal regulations established specific criteria in 45 CFR 303.107 which all cooperative agreements and purchase of service agreements must meet to be eligible for federal reimbursement under the Title IV-D program. Attachment 1, *Cooperative Agreement/Purchase of Services Agreement*, provides local districts with a sample contract that includes necessary federal and State requirements that must be used when developing a cooperative agreement for legal services. A Purchase of Service Agreement may be based on the draft *Cooperative Agreement/Purchase of Services Agreement* as well. Additionally, local districts should review Chapter 5 of Volume 3 (Volume 4 for New York City) of the Fiscal Reference Manual for information about cooperative agreements.

Note: All child support enforcement services cooperative agreements and purchase of service agreements are subject to prior approval by DCSE, and must be sent to DCSE's Bureau of Program Operations for prior approval.

2. Clarification of No Attorney-Client Relationship

a. Services Provided

When a CSS recipient applies for legal services, they are requesting that an attorney appear on behalf of the child support agency and provide assistance to the CSEU in the child support matter. The attorney providing legal services does not represent the individual requesting services in a traditional attorney-client. Instead, the attorney represents the CSEU for the purpose of helping it perform its statutory functions. A limited exception to this rule is set forth below in V.A.2.c. These functions include establishing paternity, establishing or modifying child support obligations in accordance with the Child Support Standards Act, and enforcing child support obligations. The assistance of counsel may be very beneficial to the individual requesting legal services, but it also creates an additional cost. The CSS recipient will be required to reimburse the CSEU for this cost, as set out below.

The provision of legal services to CSS recipients requesting such services does not create an attorney-client relationship with the CSEU attorney. A limited exception to this rule is set forth below in V.A.2.c. Either the custodial or the noncustodial parent may apply for child support services, including legal services. As in cases where the custodial parent has applied for public assistance and assigned his or her child support rights, no attorney/client

privilege or right to confidentiality in communications between the CSEU attorney and the CSS recipient exists. The *Right to Recovery Agreement for Legal Services* form (Attachment 2, Attachment 3 for a Spanish version) provides an explanation and a disclaimer that any legal services provided by CSEU attorneys are provided to the CSEU, not to the CSS recipient individually. The notice advises that if at any time the CSS recipient's interests are different from the CSEU's, the attorney's role is to represent the interest of the CSEU.

It is important that the CSEU attorney, when providing legal services, clearly disclose his or her role to the CSS recipient at each appropriate opportunity. Full disclosure can eliminate honest misunderstandings or the creation of an implied attorney-client relationship. The CSEU attorney should not by word or conduct imply that an attorney/client relationship exists. The *Right to Recovery Agreement for Legal Services* form also advises the CSS recipient that they may obtain a private attorney to represent their interests.

In order to avoid the creation of an implied attorney-client relationship, it is also important that staff is trained about the delivery of legal services and should not suggest to the CSS recipient that the CSEU attorney is the CSS recipient's attorney. Instead, CSEU staff should be reminded to refer to the CSS recipient as "customers" or "recipient of services" rather than "clients." The CSEU attorney should do the same.

In providing legal services to the CSEU in CSS cases, the attorney should seek to achieve the goal of the child support program - to ensure that children receive appropriate financial and medical support. The Child Support Standards Act (CSSA) guideline percentages provide the presumptively correct amount of support. The attorney should generally seek a guidelines order and enforce that order according to its terms. As in cases where the child is in receipt of public assistance, the attorney should prepare for trial, call witnesses, offer evidence and take all necessary steps to establish, modify or enforce a child support order.

However, unlike the public assistance case, the person receiving services has the ultimate financial interest, and may also participate in the hearing, testify on his or her own behalf and offer evidence. The parents may stipulate to a non-guidelines award. The CSEU attorney should assist the court in making sure that the agreement meets the requirements to deviate (opt-out) from the guidelines (FCA 413(h)). This assists in ensuring that the parties make an informed decision. The court should review agreements to ensure

that they are in the best interests of the child and meet the statutory requirements.

The CSEU attorney should object to an agreement of the parties that is contrary to state law and Title IV-D requirements (i.e., direct payments in a SSL § 111-g case, stays on enforcement, suspended orders, repayment schedules or alternate additional amounts). The attorney should object to any order that directs the CSEU to act or refrain from acting in a manner inconsistent with program requirements.

b. Transition of Existing Cases

If the CSEU provided legal services in a manner that created an attorney-client relationship between the CSS recipient and the attorney, the CSEU attorney will need to ensure that there is no conflict of interest arising from the prior representation. Counsel should review the requirements of Rules 1.6, 1.9, and 1.11 of the Rules of Professional Conduct. Counsel may not reveal confidential information or use such information to the disadvantage of a CSS recipient or for the advantage of the lawyer or a third person unless the CSS recipient gives informed consent.

If the lawyer (including his or her present or former law office) formerly represented a CSS recipient, he or she must determine if the new application for services involves the same or a substantially related matter in which the CSS recipient's interests are materially adverse to the interests of the CSEU. If so, the attorney cannot appear on behalf of the CSEU unless the CSS recipient gives informed consent, confirmed in writing. The consent should authorize the CSEU attorney to use confidential information of the former CSS recipient protected by Rule 1.6. A sample consent form is attached as Attachment 11. Absent informed consent of the CSS recipient as required herein, the attorney shall not provide legal services.

If the attorney must recuse him or herself due to a conflict of interest, and if the recipient of services does not sign the waiver but still wants legal services (by checking option #2 on Attachment 11), then alternate arrangements will have to be made by the child support agency. Paragraph (b) of rule 1.11 of the Rules of Professional Conduct provides guidance as to when another attorney in the DSS legal bureau or the county attorney's office may provide legal services:

1.11(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that

lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) the firm acts promptly and reasonably to:

(i) notify, as appropriate, lawyers and non-lawyer personnel within the firm that the personally disqualified lawyer is prohibited from participating in the representation of the current client;

(ii) implement effective screening procedures to prevent the flow of information about the matter between the personally disqualified lawyer and the others in the firm;

(iii) ensure that the disqualified lawyer is apportioned no part of the fee therefrom; and

(iv) give written notice to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule; and

(2) there are no other circumstances in the particular representation that create an appearance of impropriety.

If compliance with this rule is not possible, the CSEU will be required to procure outside counsel to provide legal services on the case.

c. Special Considerations: Not-for-profit legal services

A CSEU may elect to enter into a purchase of service agreement with a not-for-profit legal services corporation or agency (Corporation or Agency) to provide legal services for the establishment of paternity and the establishment, modification and enforcement of support in accordance with Title IV-D. Where the provision of legal services by such Corporation or Agency would be precluded because of conflict of interest barriers, the CSEU may elect to structure the delivery of legal services by the Corporation or Agency under a purchase of services agreement with the CSEU in a manner that that does not require such Corporation or Agency to represent the district in providing legal services to CSS recipients and permits the creation of an attorney-client relationship between the CSS recipient and the Corporation or Agency attorney. All other requirements of this ADM are applicable to such arrangements including the recovery of costs for legal services. Any form adaptations necessary for implementing the legal services requirement in such manner will require the prior approval of DCSE and must be sent to DCSE's Bureau of Program Operations for such approval.

Districts are reminded of their responsibilities to secure compliance with Title IV-D state plan requirements by any entity or person under contract with the district including compliance with Title IV-D confidentiality requirements.

3. Calculating Costs of Legal Services

A standard hourly rate must be set for child support legal services as follows:

a. Legal Services Costs if Provided by DSS Attorney

When the CSEU attorney is the DSS attorney, the DSS attorney's standardized hourly rate for legal services can be obtained from information provided on the LDSS-2347, "Schedule D, DSS Administrative Expenses Allocation and Distribution by Function and Program." The *Worksheet to Calculate the DSS Attorney Hourly Rate for Legal Services* (Attachment 4) is provided to assist local districts with the calculation. The CSEU may use the standardized rate for the individual attorney assigned to a case, or the average standardized rate for all attorneys that provide legal services in CSS cases.

b. Legal Services Costs if Provided by County Attorney or Private Attorney

When a local district provides legal services by a cooperative agreement with the County Attorney's Office or by a purchase of services agreement with a private attorney or not-for-profit legal services attorney, the agreement must set forth an hourly rate that will be charged for legal services. The hourly rate charged for legal services by the County Attorney's Office should be a standardized rate that is as close to actual costs, including salary, fringe benefits and administrative overhead, as possible. While the *Worksheet to Calculate the DSS Attorney Hourly Rate for Legal Services* (Attachment 4) cannot be completed line-by-line by the County Attorney's Office, it can be used as a guide to assist in calculating the hourly rate based on actual costs. The rate charged by either the private attorney or not-for-profit legal services attorney must also be reasonable and representative of the usual costs of legal services in the community. For example, in some counties, private attorneys agree to represent persons applying for legal services at the same hourly rate as assigned counsel or law guardians (currently \$75.00 per hour).

The hourly rate will be the basis for the recovery from the person receiving services.

The hourly rate for services set forth in the *Right to Recovery Agreement for Legal Services* form shall continue throughout the duration of the support proceeding regardless of any change in rates that may occur.

c. Attorney Notification to Support Collection Unit (SCU) of Attorney Costs

The attorney must provide the SCU with an itemized statement based on their records for the total hours required to provide legal services. The *Time Record for Legal Services Provided* (Attachment 5) is provided to assist attorneys with providing and maintaining these records. Attorneys should record the services provided and the time expended contemporaneously with the provision of the services; these records should not be created after the services have been rendered. At the conclusion of the case the attorney must determine the total hours expended and provide the SCU with the information necessary to advise the CSS recipient of those total costs and perform the necessary account adjustments. The attorney should complete and provide the SCU with the *SCU Notice of Total Costs for Legal Services* (Attachment 6) and a copy of the *Time Record For Legal Services Provided* (Attachment 5).

B. CSEU Procedures for Providing Legal Services to CSS Recipients

1. Eligibility for Legal Services

a. CSS Applicant/Recipients

The CSEU must make available legal services as described in section V.B.3. to establish paternity and establish, modify, adjust, or enforce child support to CSS applicant/recipients who sign a *Right to Recovery Agreement for Legal Services*. CSS applicant/recipients are individuals who have applied for child support services pursuant to SSL § 111-g or who are no longer in receipt of public assistance, Medicaid or foster care but are continuing to receive child support services and request legal services.

b. Interstate Cases

The CSS recipient may have or be applying for services in New York State, including directly from another state or through a child support program in another state. In any case, a request for legal services must be accommodated by having the CSS recipient complete a *Right to Recovery Agreement for Legal Services* as provided in section V.B.2. A person receiving child support services in another state must receive the same services as a person who applies for child support services in New York.

c. International Cases

Per 42 USC 654, section 454(c) of the federal Social Security Act, there cannot be any fees imposed in international child support cases to a party living in another country. Therefore, legal services should be provided without cost recovery on all such cases. This does not apply to parties living in other countries who apply directly to New York for child support services, nor does it apply to parties residing in New York on international cases. It only applies to parties living in other countries who apply for child support services to the foreign country's child support agency. These cases should be handled similarly to other cases in that services should be provided on all applicable cases, but no cost recovery will take place.

2. Requests for Legal Services

a. CSS Applicants/Recipients

To request legal services, a CSS applicant/recipient must sign the *Right to Recovery Agreement for Legal Services* portion of the "Application for Child Support Services" (LDSS 2521 or the new application/referral LDSS 4882, when available), or by signing a separate *Right to Recovery Agreement for Legal Services* form (LDSS 4920) for interstate cases or for cases where an application is already on file. Copies of LDSS 4920 and the LDSS 4920 SP, the Spanish language version of the form are attached (Attachments 2 and 3, respectively). A *Right to Recovery Agreement for Legal Services* must be completed each time a CSS recipient makes a new request for legal services. This will ensure that they are aware of any changes to the hourly rate.

b. Interstate Cases

Although New York has notified other jurisdictions of its cost recovery policy and provided the *Right to Recovery Agreement for Legal Services* form, it is possible for an out-of-state local support agency to be unaware of the need to submit a *Right to Recovery Agreement for Legal Services* form. It is recommended that the CSEU or the CSEU attorney forward a *Right to Recovery Agreement for Legal Services* form, including the hourly rate of legal services, to the out-of-state local agency. If the transmittal package does not include a request to testify electronically, it is recommended that the CSEU or the CSEU attorney send a request for electronic testimony to persons receiving services that reside in other states.

c. International Cases

A Child Support Enforcement Transmittal #1 received from a foreign country is sufficient to provide legal services for these cases. No separate *Right to Recovery Agreement for Legal Services* form is required.

3. Legal Services Subject to Cost Recovery

a. Legal Services Costs that are Recoverable

Costs that may be recovered for reasonable and usual legal services rendered in the course of the child support proceeding include:

- i. reviewing the file or petitions, discovery, and preparation for court appearances and hearings;
- ii. court appearances and hearings;
- iii. client conferences, correspondence, discussions with opposing counsel, etc;
- iv. drafting letters/notices, drafting and filing objections/appeals, assisting with the creation of non-standard petitions, and orders prepared by counsel's office; and
- v. presenting objections and appeals.

b. Non-Recoverable Legal Services Costs

Costs that may not be recovered for legal services related activities include:

- i. drafting petitions (except in circumstances where the complexity of the issues requires that it be prepared or reviewed by counsel's office);
- ii. service of process;
- iii. drafting orders (unless prepared or reviewed by counsel's office); and
- iv. preparing and issuing administrative subpoenas.

New York regulations do not permit recovery of other costs or expenses associated with providing legal services, such as filing fees. Such costs are program administrative expenses.

4. Recovery of Costs for Legal Services

a. Costs Recovered from CSS Recipient

Costs recovered from the CSS recipient who is a custodial parent can only be recovered from support collected: 1) at the rate of 25%

of the current child support obligation amount; 2) if there is no current support obligation, an amount equal to 25% of the former current support obligation amount; or 3) if there never was a current support obligation, at a rate of 25% of the additional amount determined pursuant to 18 NYCRR 347.9(e), until such time as the CSEU is reimbursed for the total cost of legal services provided.

If legal services are provided at the request of a CSS recipient who is a noncustodial parent, he or she must pay the CSEU: 1) at the rate of 25% of the current child support obligation amount; 2) if there is no current support obligation, an amount equal to 25% of the former current support obligation amount; or 3) if there never was a current support obligation, at a rate of 25% of the additional amount determined pursuant to 18 NYCRR 347.9(e), until such time that the CSEU is reimbursed for the total cost of the legal services provided.

b. CSS Recipient Notice of Legal Services Hourly Rate

Before signing an agreement the CSS recipient should review the *Right to Recovery Agreement for Legal Services* (Attachment 2) with the CSS recipient to ensure that they understand the legal services disclaimer, the hourly rate which the CSEU should include in the Agreement, and the method of recovering the cost of legal services. If the CSS recipient has questions, he or she should be referred to the appropriate staff person or attorney for clarification.

c. CSS Recipient Notice of Total Costs of Legal Services Provided

At the conclusion of the proceedings, the CSS recipient must be advised of the total cost of legal services rendered. Once the SCU receives the *SCU Notice of Total Costs for Legal Services* and the *Time Record for Legal Services Provided* from the attorney, local districts should complete and mail to the CSS recipient the *Notice of Total Costs for Legal Services* (Attachment 7 for custodial parents and Attachment 8 for noncustodial parents) to advise the CSS recipient of those total costs and the manner in which they will be recovered.

d. Court Ordered Counsel Fees from Noncustodial Parent

Family court has discretion to award counsel fees to the custodial parent or DSS in proceedings to establish paternity or establish, modify, or enforce an order of child support. See Family Court Act (FCA) sections 438(a) and 536. However, if the noncustodial parent is found to be in willful violation of a child support order,

the court “shall” order payment of counsel fees; including costs incurred pursuant to a *Right to Recovery Agreement for Legal Services* form. See FCA sections 438(b) and 454(3). Where appropriate, counsel must request the court to order counsel fees to be paid by the noncustodial parent. The CSEU attorney should request that the court order a payment schedule and state in the disposition of the order that payments must be made as directed by the SCU. Any counsel fees ordered to be paid by the noncustodial parent should not be assessed to or recovered from the CSS recipient.

e. Notice to Noncustodial Parent of Court Ordered Payments for Counsel Fees

When the court orders the noncustodial parent to pay counsel fees, the SCU must create a separate account for the court ordered payments as explained under section V.B.5. The *Notice of Court Order for Counsel Fees* (Attachment 9) should be completed and sent to the noncustodial parent advising of the obligation, payment schedule, date to begin payments, account number, and how to make payments.

f. Enforcement of Court Ordered Counsel Fees or the Cost of Legal Services from Noncustodial Parents

If the noncustodial parent does not pay court awarded counsel fees or repay the cost of legal services under the *Right to Recovery Agreement for Legal Services*, the amount due may not be enforced using regular child support enforcement tools. Instead these amounts must be enforced by other means permitted by law.

When the court orders the noncustodial parent to pay counsel fees it should state the manner in which the fees should be repaid. The issuing court may enforce such a provision directly, using its contempt powers. The court may also reduce the amount due to judgment, and the debt may be enforced using the general enforcement provisions of Civil Practice Laws & Rules (CPLR) Article 52.

However, the family court does not have jurisdiction to enforce an agreement to repay the cost of legal services costs. This debt arises from the *Right to Recovery Agreement for Legal Services* Agreement and would be enforced as a contract action in civil court. The court would reduce the amount due to a judgment, enforceable under the general enforcement provisions of CPLR Article 52.

5. CSMS Account Creation/Adjustments for Legal Services Costs

The following actions should be taken for creating and adjusting CSMS accounts to address legal services costs:

a. Costs Payable by the Custodial Parent CSS Recipient

If the court does not order counsel fees to be paid by the noncustodial parent (section V.B.5.b.), the ledger for recovery of legal services costs from the CP should be set up as follows:

- i. An account should be created (or adjusted if it exists) with a ledger for the current support payable to the CP/CSS recipient (e.g., 11BW ledger). The obligation amount on this ledger should be 75% of the amount indicated for current support in the order. The distribution switch, located in the DIST-SW field on the individual ledger screen, should be set to a "1" (disburse all applied per court order), and the billing switch, located in the BILL-SW field on the IVDQRY screen, should be set to a "4" (same as 1, except income execution amount is greater than zero).
- ii. A sub-account (ledger) should be created for the "fee for services" payable to DSS with a ledger type 24CZ (DSS Voluntary Agreement Arrears, Non-IV-D Fee for Service). The obligation amount on the 24CZ ledger should be 25% of the current support obligation amount as indicated in the order or in an arrears-only case, the former current support obligation, or in a never current support case, at a value of 25% of the additional amount.
- iii. The total "fee for services" rendered should be entered on the 24CZ ledger as an Arrears Set At Balance (ASAB), via a 62 Batch Type.
- iv. When the NET DUE on the 24CZ equals the ASAB, increase the obligation amount on the 11BW ledger by the obligation amount on the 24CZ ledger and set the obligation amount on the 24CZ ledger to 0.00. A district can monitor this by setting a tickler date when these two fields are expected to be equal.
- v. When the ASAB on the 24CZ ledger reaches zero, the message "ARREARS SATISFIED" will appear on the Daily Action Listing and the status of that ledger, located in the STATUS field, should be changed to "03" (terminated). When this happens, increase the obligation amount on the

11BW ledger by the obligation amount on the 24CZ ledger, or 100% of the current support order obligation, if the situation in section V.B.5.a.iv. has not already occurred.

- vi. Each payment received by the SCU will be credited to the account based on the normal distribution hierarchy. This would cause CSMS to account for, apply, and disburse the payments following the normal distribution rules.
- vii. The total applied amount for the 24CZ ledger appears on the MADE AND RETAINED NON-IV-D FEE FOR SERVICES roll and should be reported on line 17 “Deductible Collection Costs” of the Schedule D-8.

b. Costs Payable by the Noncustodial Parent

If the noncustodial parent is receiving CSS services or if the court orders the noncustodial parent to pay counsel fees, the legal services costs are not recovered as a portion of a child support payment and are not enforceable as child support. For example, an income execution cannot be issued to recover the cost. Therefore, the noncustodial parent is responsible for making payments as ordered by the court or pursuant to the *Right to Recovery Agreement for Legal Services*.

- i. An account should be created for the noncustodial parent (if one does not already exist) with a ledger for the current support payable to the client (e.g., an 11BW ledger). The obligation amount on this ledger should be the amount indicated in the order. The DIST-SW field should be set to a “1” and the BILL-SW field should be set to a “4.”
- ii. A sub-account should be created for the legal services costs payable by the noncustodial parent to DSS with a ledger type 24C_ or a 34C_ if the NCP is ordered to repay a custodial parent’s private attorney. If the order is for arrears only, create a 12BW ledger for the amount of arrears that were established. The obligation amount on the 24C_ or 34C_ ledger should be the amount indicated for legal services in the order.
- iii. The total costs payable by the noncustodial parent should be entered on the 24C_ or 34C_ ledger as an ASAB, via a 62 Batch Type.
- iv. The noncustodial parent must be notified on how and where to make payments for legal services. Local districts should use the *Notice to Noncustodial Parent of Total*

Costs of Legal Services (Attachment 8) or Notice of Court Order for Counsel Fees (Attachment 9) to provide the noncustodial parent with payment instructions.

VI. Systems Implications

None.

VII. Additional Information

A. Fiscal Claiming of Recovery of Costs of Legal Services

When a recovery is made from the CSS recipient, the dollar amount is considered to be a reduction in child support administrative costs (unless a private attorney or non-for-profit legal services attorney was providing the legal services and the cost of those services was not claimed as an administrative expense). Therefore, the actual amount recovered is a deductible collection cost and must be reported on Schedule D-8, Line 17, Section 2. This is found under administrative expenditures for the Child Support Program (the F-8 function) and is claimed on Schedule D-8 (LDSS-2547) *Allocation for Claiming Title IV-D Child Support Activities & Support Collection Unit Expenditures*. Any recovery amounts received during a month should be credited against the child support administrative costs for the same month.

Instructions for cooperative agreements may be found in the Fiscal Reference Manual, Volume 3 (Volume 4 for NYC) County Cost Allocation Plan, Chapter 5. Instructions for the Schedule D are found in Chapter 7; instructions for time records are found in Chapter 4; and instructions for completing Schedule D-8 are found in Chapter 15.

B. Legal Representation on Objection or Appeal

Legal services include those for objections or appeals from an order when appropriate. Attachment 10 is a memorandum which discusses legal representation on objection or appeal, and may be referenced by attorneys when considering this issue.

C. Obtaining Notices/Forms

All notices included with this ADM will be available through ERS or may be locally reproduced from the publication of this ADM. In order to ensure that use of the revised *Right to Recovery Agreement for Legal Services* begins in a timely manner, local districts must destroy all previous versions of this notice immediately, make copies of the attachment, and provide those copies to applicants/recipients until the local district orders and receives, or otherwise prepares, a supply of the revised forms. This can be done in one of three ways.

1. **OTDA-876 Process:** local districts must request printed copies of the revised LDSS form by completing and submitting an OTDA-876 “Request For Forms or Publication,” to:
Office of Temporary and Disability Assistance
BMS Document Services and Operational Support
P.O. Box 1990
Albany, New York 12201
Questions concerning ordering forms should be directed to BMS Document Services at 1-800-343-8859, ext. 4-9522.
2. **OTDA Intranet Website:** Documents may also be ordered via the intranet. To order the forms you must obtain an OTDA-876 electronically by going to the OTDA Intranet Website at <http://otda.state.ny.net/>, then to the Division of Program Support & Quality Improvement page and then to the PSQI E-Forms page, to the Bureau of Management Services section (this section contains the electronic OTDA-876). For a complete list of forms available for downloading, please refer to OTDA Intranet site: http://otda.state.ny.net/ldss_eforms/default.htm.
3. **Via E-Mail:** For those who cannot access OTDA’s intranet, the Internet e-mail address is: gg7359@otda.state.ny.us.

VIII. Effective Date

This administrative directive is effective immediately.

Issued By:

Name: Scott E. Cade
Title: Deputy Commissioner and Director
Division/Office: New York State OTDA
Center for Child Well-Being
Division of Child Support Enforcement

COOPERATIVE AGREEMENT/PURCHASE OF SERVICES AGREEMENT

This AGREEMENT made on the _____ day of _____, 20__, by and between the _____ County Department of Social Services, (hereinafter referred to as the “Department”), and _____ (hereinafter referred to as the “Attorney”), with offices located at _____.

WITNESSETH:

WHEREAS, Section 454 of the Federal Social Security Act, Sections 101 and 111-c of the Social Services Law of the State of New York, and the rules and regulations promulgated by the New York State Office of Temporary and Disability Assistance (OTDA), provide that the Department is responsible through its Child Support Enforcement Unit (CSEU) for providing child support services to eligible individuals, including the establishment of paternity, locating of noncustodial parents, and the collection, modification, adjustment and enforcement of support, including medical support, from legally responsible relatives of persons applying for, or receiving, public assistance and care, and foster care; and

WHEREAS, Code of Federal Regulations 45 CFR Section 302.33, Social Services Law SSL section 111-g, and New York Code of Rules and Regulations 18 NYCRR 347.17, require that services relating to the establishment of paternity and the establishment, modification, adjustment or enforcement of support obligations be made available to persons (hereafter referred to as “CSS recipients”): 1) not receiving public assistance and care, and foster care, upon application for such services; 2) upon the filing of a petition to establish paternity and/or support which makes application of child support services; or 3) for persons formally in receipt of public assistance, Medicaid or foster care; and

WHEREAS, 45 CFR Section 302.34, 303.107, Section 352-a(1)(d) of the Social Services Law and Section 347.4 of Volume 18 of the New York Code of Rules and Regulations require that cooperative agreements and purchase of services be in the form of written agreements meeting the requirements and rules set out in those sections of law; and

WHEREAS, the parties desire to enter into an agreement whereby the Attorney will provide legal services necessary to the fulfillment of the Department’s responsibilities under the child support program established pursuant to Title IV-D of the Social Security Act and the Social Services Law;

NOW, THEREFORE, it is agreed as follows:

I. Scope of Services

1. The Attorney shall represent the Department and appear as counsel in all proceedings where the Department or the Commissioner of the Department is a party as required to establish paternity, and establish, modify, adjust and enforce child support obligations and in all other actions or proceedings required or deemed appropriate to administer the child support program pursuant to Title IV-D of the Federal Social Security Act, as well as other federal and State law and regulation.

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2. The Department shall refer to the Attorney appropriate cases where an individual has applied for Child Support Services (CSS) pursuant to Section 111-g of Social Services Law or is a former recipient of family assistance, Medicaid or foster care and has requested legal services and has executed and signed a *Right to Recovery Agreement for Legal Services*.
3. The Attorney shall also provide legal services in all cases or proceedings where the Department is required to provide child support services to child support agencies of other states and countries or individuals residing in other states or countries as required by federal and State law.
4. The Attorney will ensure that all legal services will be provided in a professional and thorough manner. Where a conflict is present or perceived, alternate arrangements to provide for legal services must be provided unless otherwise waived in a manner consistent with applicable ethics rules and guidelines. The Attorney agrees to provide all legal services under this Agreement in a manner to ensure that the IV-D agency is in compliance with federal and State law and regulations, including standards for processing child support enforcement cases and any timeframes established in Title 45 of the Code of Federal Regulations, Part 303 (45 CFR Part 303). In order to ensure this, the Attorney agrees to establish paternity or show the alleged father excluded as a result of genetic tests and/or legal process within one year of the later of successful service of process or the child reaching six (6) months of age, in all cases referred in which paternity has not yet been established. For all cases referred, the Attorney agrees to establish an order for support or complete service of process necessary to commence proceedings to establish a support order (or document unsuccessful attempts to serve process, in accordance with the state's guidelines defining diligent efforts to serve process) within ninety (90) calendar days of locating a noncustodial parent or of establishing paternity.
5. The Attorney agrees to comply with new or revised requirements issued by the federal Department of Health and Human Services, or OTDA, and the Department agrees to notify the Attorney of any directives or policy transmittals affecting the child support program.
6. The Department will provide the Attorney with all available information necessary to the conduct of tasks under this Agreement. The Attorney will promptly provide a report of all court appearances, including a summary of court determinations, next appearances, and address, employment or other information about the parties obtained in court. The Attorney shall also promptly provide copies of all orders or papers served in court.
7. The Attorney shall inform the Department of problems, delays, or adverse conditions which will materially impair the ability to obtain the objectives of the Agreement, as soon as the problems, delays or adverse conditions become known to the Attorney.

II. Remuneration

The parties agree that the amount of funds to be paid to the Attorney is reasonable and necessary to assume quality services and is the most cost-effective way of providing these services. It is economically and organizationally feasible for the Department to contract with the Attorney for the performance of these services. If and so long as federal and State

Attachment 1

reimbursement is available therefore, the Attorney shall furnish services to the Department in accordance with standards prescribed by the Department and by OTDA.

III. CSS Recipients

1. It is agreed between the parties hereto that the cost of all legal services rendered by the Attorney, pursuant to this contract, excluding services to persons receiving legal services pursuant to an executed and signed *Right to Recovery Agreement for Legal Services*, shall not exceed _____ dollars per annum. The Attorney's budget shall be attached hereto and made part hereof as Appendix A. All costs that are claimed must be fully documented.

Select one of the following two options:

County Attorney

For any legal services rendered to a CSS recipient pursuant to a signed and executed *Right to Recovery Agreement for Legal Services*, the Attorney shall charge a standardized hourly rate. The standardized hourly rates must approximate the actual cost of legal services, and may include salary, fringe benefits, and administrative overhead costs. The SCU may charge the CSS recipient the standardized rate for the Attorney actually providing the legal services or the average standard cost of all attorneys providing legal services in child support cases. The initial hourly rate schedule shall be attached hereto as Appendix B. The CSS recipient may not be required to pay other costs or expenses, and Appendix B shall not include any such charges. The standardized hourly rate must be recalculated annually, and a new Appendix B provided to the Department. The Attorney assigned to each case will need to maintain accurate time records of the hours expended and services provided and provide the Department's Support Collection Unit (SCU) with the total cost of the legal services at the close of the proceeding using the forms provided in Appendices C and D. The SCU shall provide notice to the CSS recipient of the hours expended, the hourly rate of the legal services, and the total cost of the legal services provided. Where appropriate and permitted by law, the Attorney shall request a court order requiring the child support obligor to pay the cost of legal services.

Private Counsel

For any legal services rendered to a CSS recipient pursuant to a signed and executed *Right to Recovery Agreement for Legal Services*, the Attorney shall charge a standardized hourly rate. The initial hourly rate schedule is attached hereto as Appendix B. The CSS recipient may not be required to pay other costs or expenses, and Appendix B shall not include any such charges. The attorney assigned to each case will need to maintain accurate time records of the hours expended and services provided and provide the Department's SCU with the total cost of the legal services at the close of the proceeding using the forms provided in Appendices C and D. The SCU shall provide notice to the CSS recipient of the hours expended, the hourly rate of the legal services, and the total cost of the legal services provided. Where appropriate and permitted by law, the Attorney shall request a court order requiring the child support obligor to pay the cost of legal

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services. The Department shall collect the attorney fees and forward them to the Attorney.

2. All claims for work accomplished under this contract will be prepared in accordance with federal and State law, regulations and directives. To the extent claims or information must be sent to the OTDA, the Department will transmit the claim or information.

IV. Confidentiality and Record Keeping

1. The Attorney agrees that all information and data obtained in the performance of this Agreement is deemed confidential and will be used only for the intended purposes as provided in law. Measures shall be taken to safeguard the confidentiality of such information to the extent required by applicable federal and State laws and regulations. The Attorney agrees to be bound by provisions of Section 654(26) of Volume 42 of the United States Code, Section 6103(l) and (p) of Volume 26 of the United States Code, Section 303.21 and 307.13 of Volume 45 of the Code of Federal Regulations, Section 111-v of the Social Services Law, Section 347.19 of Volume 18 of the New York Code of Rules and Regulations, and other related statutes or regulations regarding confidentiality of child support information. This paragraph shall survive the termination of the Agreement.
2. The Attorney agrees to maintain books, records, time reports, documents and other evidence and accounting procedures and practice which sufficiently and properly reflect all direct and indirect costs of any nature claimed in the performance of this Agreement.
 - a. These records shall be subject at all reasonable times to inspection, review, or audit by OTDA and other personnel duly authorized by the Department, as well as by federal Office of Child Support Enforcement.
 - b. Upon request of the Department, the Attorney agrees to collect and report information or data, including fiscal or case result information, on a regular basis and to make statistical reports at times prescribed by and on forms furnished by the Department.
3. The Department will provide reports, documents and other information that will enable the Attorney to perform its duties under this Agreement.
4. The Attorney agrees to maintain case records required by the Department and agrees that a review, including review of records, review of service policy and procedural issuances, review of staffing and job descriptions, and meetings with any staff directly or indirectly involved in the provision of services may be conducted at a reasonable time by appropriate federal and State personnel and other persons duly authorized by the Department.
5. The Attorney agrees to retain all books, records, and other documents relative to this Agreement for six (6) years after final settlement of this Agreement. Federal and/or State auditors and any persons duly authorized by the Department shall have full access to and the right to examine any of said materials during said period. If an audit by or on behalf

Attachment 1

of the federal and/or State governments has begun but is not completed by the end of the six (6) year period, the records shall be retained until resolution of the audit findings.

6. The Attorney shall cooperate in developing a system of reports to be made periodically by the Department as are or may be necessary to comply with applicable federal and State requirements. The Attorney agrees to include these requirements in all subcontracts and assignments.

V. Miscellaneous

1. This Agreement shall not take effect until approved by OTDA, and shall be terminated if OTDA withdraws or revokes its approval. If State or federal reimbursement for any claims under this Agreement is lost because of the performance or failure to perform by the Attorney under this Agreement, then such loss shall be chargeable to the Attorney.
2. This Agreement shall be deemed executory only to the extent of the monies appropriated and available for the purpose of this Agreement and no liability on account thereof shall be incurred by either the Department or the Attorney, for monies to be paid or services to be performed, beyond monies appropriated and available for the purpose thereof. In the event of loss of funding for the purpose of this Agreement, the Department shall not be liable for payment on account of, and the Attorney shall not be required to provide, the services contracted for hereunder.
3. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise regarding the subject matter of this Agreement, shall be deemed to exist, or to exist or to bind any of the parties hereto.
4. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and every other term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.
5. The Attorney shall not assign, transfer, convey or otherwise dispose of this Agreement or the Attorney's right, title or interest therein, or authority to execute this Agreement to any other person or corporation without written approval of the Department (which shall be attached to the original Agreement). No such approval by the Department of any assignment, transfer, conveyance or other disposition shall be deemed in any event or in any manner to provide that the Department incur any obligation in addition to the total agreed upon prices. No transfer or assignment shall be effective without the approval of OTDA.

VI. Amendments/Termination

1. This Agreement shall be effective on _____, 20____, and shall terminate on _____, 20____; however claims may be submitted and paid for the Contract period until the year's accounting records are closed so long as the claims do not exceed the appropriated and reserved/encumbered dollars.

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2. This Agreement may be terminated by the Department upon thirty (30) days notice to the Attorney without cause or when deemed to be in the Department's best interest and immediately if for cause or if federal or State reimbursement is terminated or not allowed.

3. In the event this Agreement is terminated, suspended, revoked, nullified, or voided, the Department, as a settlement, agrees to pay for services rendered by the Attorney under this Agreement which have been completed prior to the effective date of such termination, suspension, revocation, nullifications or voiding. The Department may at its discretion process other necessary and proper costs, which the Attorney could not reasonably avoid, for services begun but not completed prior to termination, suspension, revocation, nullification, or voiding of this Agreement; provided such cost would have otherwise been allowable.

4. This Agreement may be amended whenever determined necessary or desirable by the Department and the Attorney. All amendments must be in writing, duly signed by both parties and annexed to the Contract. No amendment is effective until approved by the OTDA.

In witness whereof, the parties hereby execute this agreement

By: _____
signature

By: _____
signature

Print Name

Print Name

Title: _____

Title: _____

_____ County
Department of Social Services

Agency or Firm _____

Date: _____

Date: _____

Attachment 1
APPENDIX C

New York Case Identifier: _____
_____ Support Collection Unit

Name of Applicant: _____
Address of Applicant: _____

Page _____ of _____

TIME RECORD FOR LEGAL SERVICES PROVIDED

Date	Name of attorney providing service	Description of service	Total time for service provided (round to nearest quarter hour increment)

HOURLY RATE: \$ _____	TOTAL HOURS FOR LEGAL SERVICES: _____
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APPENDIX D

New York Case Identifier: _____
 Name of Applicant: _____
 Address of Applicant: _____

TO:

_____ Support Collection Unit (SCU)

RE: SCU Notice of Total Costs for Legal Services

Legal services have been provided for the above applicant who executed a *Right to Recovery Agreement for Legal Services*. The rate provided to this applicant upon said Agreement was \$_____ per hour. Services provided to this applicant involved a total of _____ hours. The total costs for legal services provided are \$_____. Please notify the applicant under separate cover of the total costs of legal services.

Name of Attorney: _____
 Signature of Attorney: _____
 Date: _____

Address: _____

Telephone Number: _____

Attachment: Time Record for Legal Services Provided

Attachment 1

**RIGHT TO RECOVERY AGREEMENT
FOR LEGAL SERVICES**

IMPORTANT: Please read the "Legal Services Disclaimer" carefully before signing this Right to Recovery Agreement for Legal Services. If you wish that the Child Support Enforcement Unit (CSEU) be represented by an attorney, you must sign the Right to Recovery Agreement for Legal Services in the presence of a Notary Public. The CSEU can provide a Notary Public for this purpose. You may not sign this Agreement if your child is in receipt of Temporary Assistance, Medicaid, or Foster Care as there is no cost recovery for legal services.

Legal Services Disclaimer

Pursuant to Social Services Law (SSL) section 111-g, the CSEU provides services to: establish paternity, obtain or modify child support obligations in accordance with the child support standards act, adjust obligations, and enforce child support orders. It may be helpful for the CSEU to be represented by an attorney in fulfilling its duties, but the appearance of counsel creates an additional expense for the CSEU. You have the option to request that legal services be provided to you in your case by a CSEU attorney, but you must repay the CSEU for the additional expense. The CSEU attorney does not represent you individually but is helping the CSEU provide you with an additional service. Because the CSEU attorney does not represent you, any information you give to the attorney is not privileged and confidential (SSL section 111-c). If at any time your interests are different from the CSEU's, the CSEU attorney will represent the CSEU. You do have the right to secure the services of a private attorney to represent you at your own expense. If you choose to do so, you must notify the CSEU of your intention. You must also notify the CSEU of any change of circumstance that may affect your child support case. This includes entering into any agreement, waiver, or stipulation that may change your status.

I have read the "Legal Services Disclaimer" above. I request legal services by a CSEU attorney in my case, pursuant to subsection 347.17 of Title 18 of New York Codes, Rules and Regulations and SSL section 111-g. The cost of these legal services will be determined at the rate of \$ _____ per _____. I understand that I will be notified under separate cover of the total cost of legal services incurred.

Check the appropriate box:

CUSTODIAL PARENT:

To recover the cost for legal services, I hereby assign to the _____ CSEU the title to and right to receive 25% of the child support obligation or payment received by the Support Collection Unit on behalf of my children until such time that the CSEU is reimbursed for the total cost of the legal services provided.

NONCUSTODIAL PARENT:

To recover the cost for legal services, I hereby agree to pay to the _____ CSEU an additional amount equal to 25% of the child support obligation or payment I must make to the Support Collection Unit on behalf of my children until such time that the CSEU is reimbursed for the total cost of the legal services provided.

Name of Applicant _____
Address of Applicant _____

Contact Number: (____)/____-_____

Signature of Applicant _____ / ____ / 20____

On the _____ day of _____, 20____, the applicant, _____, to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that he/she executed the same.

ACUERDO SOBRE DERECHOS DE RECUPERACIÓN DE PAGOS POR SERVICIOS LEGALES

IMPORTANTE: favor de leer cuidadosamente el «Descargo de responsabilidad por pago de servicios legales» antes de firmar este Acuerdo sobre derechos de recuperación de pagos por servicios legales. Si desea recibir los servicios legales de un abogado del programa de la Unidad de Ejecución de Pagos de Sustento de Menores (*Child Support Enforcement Unit, CSEU*), debe firmar el Acuerdo sobre derechos de recuperación de pagos por servicios legales en presencia de una persona autorizada a autenticar firmas (*notary public*). La Unidad de Ejecución de Pagos de Sustento de Menores puede ofrecerle los servicios de una persona autorizada a autenticar firmas (*notary public*) para ese propósito. No es necesario firmar este Acuerdo si usted o su hijo reciben beneficios de Asistencia Temporal, Medicaid o Cuidados de Crianza (*Foster Care*), dado que no se hace una recuperación de gastos por servicios legales.

Descargo de responsabilidad por el pago de servicios legales

En virtud del artículo 111-g de la Ley de Servicios Sociales, la Unidad de Ejecución de Pagos de Sustento de Menores (CSEU, por sus siglas en inglés) ofrece servicios para determinar la paternidad o para obtener o modificar órdenes de sustento según la reglamentación sobre sustento de menores; modificar pagos y hacer cumplir las órdenes de sustento. Sería beneficioso si la Unidad de CSEU es representada por un abogado en el desempeño de sus funciones; sin embargo, la asistencia de un abogado crea un gasto adicional para la CSEU. Usted tiene la opción de solicitar los servicios legales de un abogado de la CSEU en su caso, pero deberá reintegrar a la CSEU el gasto adicional. El abogado de la CSEU no lo representa a usted en forma particular, sino que ayuda a la CSEU a brindarle un servicio adicional. Debido a que el abogado de la CSEU no lo representa a usted, toda información que usted brinde al abogado no es información protegida y confidencial (SSL 111-c). Si en algún momento se presenta un conflicto entre sus intereses y los de la CSEU, el abogado de la CSEU representará a la CSEU. Usted tiene derecho a contratar, de su propia cuenta, los servicios de un abogado privado que lo represente a usted. Si usted elige esa opción, deberá comunicar su decisión a la unidad de CSEU. Usted también deberá notificar a la CSEU cualquier cambio de circunstancias que puedan afectar su caso de sustento de menores. Ello incluye celebrar acuerdos, dispensas o estipulaciones que puedan cambiar su condición.

He leído el «Descargo de responsabilidad por el pago de servicios legales» que antecede. Solicito los servicios legales de un abogado de la Unidad de Ejecución de Pagos de Sustento de Menores (CSEU) en mi caso, en virtud de lo dispuesto en el inciso 347.17 del Título 18 de Códigos, Normas y Disposiciones de Nueva York y el artículo 111-g de la Ley de Servicios Sociales. El costo de los servicios legales se calculará aplicando un índice de \$ _____ por _____. Entiendo que se me informará por separado el costo total incurrido por servicios legales.

Marque el casillero que corresponde:

PADRE CUSTODIO:

Para recuperar el costo de servicios legales, por el presente cedo a la _____ CSEU, el título y derecho a recibir hasta 25% de cada obligación o pago de sustento de menores recibido por la Unidad de Cobro de Sustento en nombre de mis hijos hasta tanto la CSEU haya recuperado el costo total de los servicios legales brindados.

PADRE NO CUSTODIO:

Para recuperar el costo de servicios legales, por el presente acepto pagar a la _____ CSEU, un monto adicional equivalente al 25% de cada obligación o pago de sustento de menores que deba hacer a la Unidad de Cobro de Sustento en nombre de mis hijos hasta tanto la CSEU haya recuperado el costo total de los servicios legales brindados.

Nombre del solicitante _____

Domicilio del solicitante _____

Número de contacto: (____)/____-____

Firma del solicitante _____ / ____ /20____

On the _____ day of _____, 20____, the applicant, _____, to me known to be the individual described herein and who executed the foregoing instrument and acknowledged that he/she executed the same.

Notary Public or Commissioner of Deeds

Expires: _____

**Worksheet to Calculate the
DSS Attorney Hourly Rate for Legal Services**

Year: _____

The following information is obtained from the LDSS-2347, Schedule D, DSS Administrative Expenses, Allocation and Distribution by Function and Program.

- | | | | |
|-----|--|-----|----------|
| 1. | Enter the DSS attorney total salaries from line 1, item 8 (F 8) of the LDSS-2347. Information is available from the local district payroll records. | 1. | \$ _____ |
| 2. | Enter the DSS calculated fringe benefit percentage from line 4, item 8 (F 8) of the LDSS-2347. | 2. | _____ % |
| 3. | Multiply the amount on line 1 by the percentage on line 2 to determine the total amount of fringe benefits to be included in the DSS attorney rate for legal services. | 3. | \$ _____ |
| 4. | Enter the amount of DSS administrative overhead distributed from line 13, item 8 (F 8) of the LDSS-2347. | 4. | \$ _____ |
| 5. | Enter the amount of total non-salary expenses from line 19, item 8 (F 8) of the LDSS-2347. | 5. | \$ _____ |
| 6. | Enter the amount of Total A-87 costs distributed from line 29, item 8 (F 8) of the LDSS-2347. | 6. | \$ _____ |
| 7. | Add the amounts from lines 4, 5, and 6. This is the total overhead and non-salary costs attributed to the Title IV-D function. | 7. | \$ _____ |
| 8. | Enter the total number of staff assigned to the Title IV-D function from line 8, item 8 (F 8) of the LDSS-2347. | 8. | _____ |
| 9. | Divide the amount on line 7 by line 8. This is the individual overhead and non-salary costs. | 9. | \$ _____ |
| 10. | Enter the number of DSS attorneys. | 10. | _____ |
| 11. | Multiply the number on line 10 by the amount on line 9 and enter the results here. | 11. | \$ _____ |
| 12. | Add the amounts from lines 1, 3 and 11. This is the total salary, fringe benefit, non-salary, and overhead costs for the attorneys. | 12. | \$ _____ |
| 13. | Enter the total number of agency hours worked per year.
(Normal agency work week hrs x 52 weeks/year; e.g., 37.5 x 52=1,950) | 13. | _____ |
| 14. | Divide the amount from line 12 by line 13.
This is the DSS attorney hourly rate for legal services. | 14. | \$ _____ |

Attachment 5

New York Case Identifier: _____
 _____ Support Collection Unit
 Page _____ of _____

Name of Applicant: _____
 Address of Applicant: _____

TIME RECORD FOR LEGAL SERVICES PROVIDED

Date	Name of attorney providing service	Description of service	Total time for service provided (round to nearest quarter hour increment)
HOURLY RATE: \$			TOTAL HOURS FOR LEGAL SERVICES: _____

Attachment 6

New York Case Identifier: _____
Name of Applicant: _____
Address of Applicant: _____

TO:

_____ Support Collection Unit

RE: SCU Notice of Total Costs for Legal Services

Legal services have been provided for the above applicant who executed a "Right to Recovery Agreement for Legal Services." The rate provided to this applicant upon said Agreement was \$_____ per hour. Services provided to this applicant involved a total of _____ hours. The total costs for legal services provided are \$_____. Please notify the applicant under separate cover of the total costs of legal services.

Name of Attorney: _____

Signature of Attorney: _____

Date: _____

Address: _____

Telephone Number: _____

Attachment: Time Record for Legal Services Provided

Attachment 6

New York Case Identifier: _____
Name of Applicant: _____
Address of Applicant: _____

TO:

_____ Support Collection Unit

RE: SCU Notice of Total Costs for Legal Services

Legal services have been provided for the above applicant who executed a "Right to Recovery Agreement for Legal Services." The rate provided to this applicant upon said Agreement was \$_____ per hour. Services provided to this applicant involved a total of _____ hours. The total costs for legal services provided are \$_____. Please notify the applicant under separate cover of the total costs of legal services.

Name of Attorney: _____

Signature of Attorney: _____

Date: _____

Address: _____

Telephone Number: _____

Attachment: Time Record for Legal Services Provided

[SCU LETTERHEAD]

TO: _____

Date: _____

New York Case Identifier: _____

Notice to Custodial Parent of Total Costs for Legal Services

Dear _____:

Our records indicate that you have requested and received legal services from the _____ County Child Support Enforcement Unit (CSEU) attorney in regards to establishing paternity or establishing, modifying, adjusting or enforcing a child support order.

At the time that you requested legal services, you signed a "Right to Recovery Agreement for Legal Services." The agreement gave the CSEU the title to and right to receive an amount equal to 25% of the current support obligation or payment received by the CSEU on behalf of the children included in your child support order until such time that the CSEU is reimbursed for the total cost of the legal services provided to you. Because your child support payments are made payable through the _____ County Support Collection Unit (SCU), you authorized the SCU to pay the CSEU the amounts retained as reimbursement for legal services.

The rate for the legal services provided was \$ _____ per hour. Legal services were provided for _____ hours, for a total of \$ _____ in legal services costs.

Court ordered fees: If the court awarded legal fees, you are not responsible to pay the amount that the court ordered the noncustodial parent to pay. In this case, the court:

- DID award fees. This amount has been deducted from the total you owe.
- DID NOT award fees.

You are responsible for \$ _____, payable per the agreement at the rate of \$ _____ per _____, until such time that the CSEU is reimbursed for the total cost of the legal services provided.

If you have any questions about this notice, please contact the **NYS Child Support Helpline toll-free at 888-208-4485** [Monday through Friday from 8:00 AM to 7:00 PM].
TTY 866-875-9975, Video Relay Service (http://www.fcc.gov/cgb/dro/trs_providers.html)

Sincerely,

SCU Supervisor

[SCU LETTERHEAD]

TO: _____

Date: _____

New York Case Identifier: _____

Notice to Noncustodial Parent of Total Costs for Legal Services

Dear _____:

Our records indicate that you have requested and received legal services from the _____ Child Support Enforcement Unit (CSEU) attorney in regards to establishing paternity or establishing, modifying, or enforcing a child support order.

At the time that you requested legal services, you signed a "Right to Recovery Agreement for Legal Services." You agreed to pay the CSEU an additional amount equal to 25% of the current support obligation or payment made to the Support Collection Unit until such time that the CSEU is reimbursed for the total cost of the legal services provided.

The rate for the legal services provided was \$ _____ per hour. Legal services were provided for _____ hours, for a total of \$ _____ in legal services costs.

You are responsible for \$ _____, payable, per the agreement, at a rate of \$ _____ per _____, until such time that the CSEU is reimbursed for the total cost of the legal services provided.

Do not include the payment for attorney's fees with your child support payments. The attorney's fees must be paid separately. You must submit your payments by money order or cashier's check. These payments will NOT be deducted through income withholding by your employer. You must include your name, New York Case Identifier _____, and write "counsel fees" on each payment. All payments must be made payable to the NYS Child Support Processing Center and mailed to:

NYS Child Support Processing Center
PO Box 15363
Albany, NY 12212-5363

If you have any questions about this notice, please contact the **NYS Child Support Helpline toll-free at 888-208-4485** [Monday through Friday from 8:00 AM to 7:00 PM].
TTY 866-875-9975, Video Relay Service (http://www.fcc.gov/cgb/dro/trs_providers.html)

Sincerely,

SCU Supervisor

[SCU LETTERHEAD]

TO: _____

Date: _____

New York Case Identifier: _____

Custodial Parent Name: _____

Notice of Court Order for Counsel Fees

Dear _____:

On _____, 20__, the _____ Court ordered you to pay the total costs for counsel fees provided by the _____ Child Support Enforcement Unit (CSEU) attorney in regards to a child support proceeding for the above cited case, in the total amount of \$_____. The court provided a payment schedule in which you are required to pay \$_____ per _____. You must begin making the court ordered payments identified in the payment schedule beginning on _____, and continue to make such payments until such time that the CSEU is reimbursed for the total cost of the legal services as ordered by the court.

Do not include the payment for attorneys fees with your child support payments. The attorneys fees must be paid separately. You must submit your payments by money order or cashier check. These payments will NOT be deducted through income withholding by your employer. You must include your name, New York Case Identifier _____, and write "counsel fees" on each payment. All payments must be made payable to the NYS Child Support Processing Center, and mailed to:

NYS Child Support Processing Center
PO Box 15363
Albany, NY 12212-5363

If you have any questions about this notice, please contact the **NYS Child Support Helpline toll-free at 888-208-4485** [Monday through Friday from 8:00 AM to 7:00 PM].
TTY 866-875-9975, Video Relay Service (http://www.fcc.gov/cgb/dro/trs_providers.html)

Sincerely,

SCU Supervisor

LEGAL REPRESENTATION ON OBJECTION OR APPEAL

QUESTION: Does the scope of legal services provided to a person receiving services pursuant to Social Services Law 111-g include both filing and perfecting an objection or appeal or responding to an objection or appeal by the respondent?

RESPONSE: The county is required to provide legal services to individuals not receiving family assistance pursuant to Social Services Law (SSL) 111-g when a right to recovery agreement is executed. The purpose of these services, as with all child support services, is to meet the Support Collection Unit's (SCU's) obligation to establish paternity and establish, modify and enforce support obligations. **The attorney represents the SCU in achieving these goals.**

A person receiving child support services pursuant to SSL 111-g is entitled to the same services as would be provided in a case where the child is receiving public assistance. This may include an objection or appeal in appropriate circumstances. In the event of an unfavorable outcome, the attorney must consider and evaluate the necessity of an objection or appeal. The regulations do not mandate an objection or appeal in every instance. For example, it would be unethical for the attorney to pursue an objection or appeal without merit. In determining whether to pursue an objection or appeal, the attorney should consider:

1. The wishes of the person receiving services;
2. The merits of the objection or appeal;
3. The likelihood of success;
4. The seriousness of the issues;
5. The impact of the trial court's ruling on the program;
6. Whether the court inappropriately varied from the guidelines (18 NYCRR 347.10[a] [1] [v]); and
7. Any other relevant factor.

Regardless of whether an appeal is pursued, the attorney should always put the reasons for his or her decision in writing in the file. If the attorney decides not to pursue an objection or appeal, he or she must notify the person receiving services as soon as possible (in writing), and well within the timeframe for filing an objection or a notice of appeal. Such a notice should advise the person receiving services that they may retain an attorney for the purpose of pursuing an objection or appeal or proceed pro se if they choose. If the time to file a notice of appeal is near expiration, it may be necessary for the attorney to assist the person receiving services by filing the notice of appeal on their behalf. The attorney should follow the local procedure for filing a notice of limited appearance.

The procedure is the same if the respondent objects or appeals to an order of support. The attorney and/or SCU must determine whether providing legal services during the appellate process furthers the interests of the district in pursuing the goals of the IV-D program. However, the factors outlined above will almost always require that the attorney provide services during the objection or appeal. First, the SCU, having obtained a correct decision at the trial level and/or on objection, should act to preserve the lower court decision. Second, providing the family court or Appellate Division with a correct statement of the facts and law will help avoid an error on objection or appeal, and creating bad precedent. In particular, because the decision on appeal will create a published decision which may be cited as precedent, the SCU should act to avoid an erroneous decision.

Third, the person receiving services will generally want the SCU to act decisively to protect her/his interests, especially after a favorable decision before the magistrate or family court. Fourth, having prevailed at trial and/or on objections, the likelihood of success is strong, barring an obvious error by the family court.

Finally, filing a reply to an objection or appeal is less labor-intensive than actually objecting or appealing an order. The appellant has the burden of producing the transcript and record. The failure to provide an adequate record will be grounds to dismiss the appeal or deny the objection.

ATTACHMENT 11

Name of Applicant: _____

NY Case Identifier: _____

NOTICE OF POSSIBLE CONFLICT OF INTEREST

You recently applied for legal services by signing a *Right to Recovery Agreement for Legal Services*. Pursuant to that agreement, our office would appear on behalf of the CSEU for the purpose of helping the CSEU perform its statutory functions, including establishing paternity, establishing or modifying child support obligations in accordance with the Child Support Standards Act, and enforcing child support obligations. You have agreed to reimburse the CSEU for the cost of these services.

The provision for legal services to the CSEU does not create an attorney-client relationship between you and our office or attorneys. If at any time your interests are different from or adverse to the interest of the CSEU, our office will represent the interest of the CSEU. There is no attorney-client privilege and anything you tell our office will not be confidential.

Our office has determined that we represented you in the past and that there was an attorney-client relationship. We cannot provide the legal services you requested in this matter without your consent to proceed. If you sign this consent, we will appear on behalf of the CSEU and represent its interests, even if those interests are different from yours. You may inform the court at anytime that your interests are different or that you disagree with the CSEU. By signing this document, you are authorizing our office to share with the court all information we received about your case during the prior representation. You will be waiving your right to keep that information confidential under the Rules of Professional Responsibility. See Rule 1.6, on the reverse side of this Notice.

Legal services are not required to proceed. You may seek relief in Family Court without an attorney or you may hire a private attorney to represent you at your own expense.

CONSENT TO LEGAL SERVICES AND RELEASE OF INFORMATION

Option #1: I, _____, hereby acknowledge and agree that:

- I was represented by _____ in a prior proceeding.
- I am requesting legal services from the CSEU.
- I understand that _____ will represent the CSEU that the CSEU's interests may be different or adverse to my interests, and that _____ will represent the interests of the CSEU, not mine.
- I understand that there is no attorney-client privilege between me and _____ and anything I tell him/her/them will not be confidential.
- I am authorizing _____ to disclose to the court any information I revealed during prior representation. I understand that this information may be confidential and privileged, but I am waiving my rights to confidentiality and privilege, even if disclosure of the information is contrary to my interests.
- I understand that if I do not cooperate with the SCU or the child support attorney, my right to child support services will cease.
- I understand that legal services are only provided with regard to current or pending child support matters. Upon entry of a final order, legal services will cease and the SCU attorney will not provide ongoing legal services or provide me with general legal advice.

Option #2: I do not agree to the above.

Dated

Print name:

Address:

ATTACHMENT 11

PART 1200 RULE 1.6: Confidentiality of Information

(a) A lawyer shall not knowingly reveal confidential information, as defined in this Rule, or use such information to the disadvantage of a client or for the advantage of the lawyer or a third person, unless:

- (1) the client gives informed consent, as defined in Rule 1.0(j);
- (2) the disclosure is impliedly authorized to advance the best interests of the client and is either reasonable under the circumstances or customary in the professional community; or
- (3) the disclosure is permitted by paragraph (b).

“Confidential information” consists of information gained during or relating to the representation of a client, whatever its source, that is

- (a) protected by the attorney-client privilege,
- (b) likely to be embarrassing or detrimental to the client if disclosed, or
- (c) information that the client has requested be kept confidential.

“Confidential information” does not ordinarily include

- (i) a lawyer’s legal knowledge or legal research or
- (ii) information that is generally known in the local community or in the trade, field or profession to which the information relates.

(b) A lawyer may reveal or use confidential information to the extent that the lawyer reasonably believes necessary:

- (1) to prevent reasonably certain death or substantial bodily harm;
- (2) to prevent the client from committing a crime;
- (3) to withdraw a written or oral opinion or representation previously given by the lawyer and reasonably believed by the lawyer still to be relied upon by a third person, where the lawyer has discovered that the opinion or representation was based on materially inaccurate information or is being used to further a crime or fraud;
- (4) to secure legal advice about compliance with these Rules or other law by the lawyer, another lawyer associated with the lawyer’s firm or the law firm;
- (5) (i) to defend the lawyer or the lawyer’s employees and associates against an accusation of wrongful conduct; or (ii) to establish or collect a fee; or
- (6) when permitted or required under these Rules or to comply with other law or court order.

(c) A lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer from disclosing or using confidential information of a client, except that a lawyer may reveal the information permitted to be disclosed by paragraph (b) through an employee.

RULE 1.9: Duties to Former Clients

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

(b) Unless the former client gives informed consent, confirmed in writing, a lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 1.6 or paragraph (c) of this Rule that is material to the matter.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use confidential information of the former client protected by Rule 1.6 to the disadvantage of the former client, except as these Rules would permit or require with respect to a current client or when the information has become generally known; or
- (2) reveal confidential information of the former client protected by Rule 1.6 except as these Rules would permit or require with respect to a current client.