

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.