



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.nyenet/>, 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.nyenet/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