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May 22, 2019

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
State House
Concord, N.H. 03301

His Excellency, Governor Christopher T. Sununu
and the Honorable Executive Council
State House
Concord, N.H. 03301

REQUESTED ACTION

Pursuant to RSA 604-A:1-b, Additional Funding, authorize the Judicial Council to receive an additional appropriation from funds not otherwise appropriated in the total amount of \$265,000, upon Fiscal Committee and Governor and Council approval, through June 30, 2019. Source of funds is 100% General Funds.

Funds are to be budgeted as follows:

02-07-07-070010

Class/Account	Title	Accounting Unit	Current Budget	Requested Change	Adjusted Budget
108-500751	Assigned Counsel	10910000	\$1,620,001	\$80,000	\$1,700,001
108-500751	Abuse and Neglect (Non-CASA)	11010000	\$360,000	\$25,000	\$385,000
108-500751	Ancillary Non-Counsel Services	11030000	\$1,650,001	\$160,000	\$1,810,001

EXPLANATION

RSA 604-A:1-a provides that "cases involving a neglected or abused child, when an attorney is appointed to represent a parent determined to be indigent pursuant to RSA 169-C:10, II, at the preliminary hearing or a hearing pursuant to RSA 169-C:6-a, III, whichever occurs earlier, the cost of such appointment shall be paid from funds appropriated for indigent defense pursuant to this chapter."

RSA 604-A:1-b provides that “in the event that expenditures for indigent defense by the Judicial Council are greater than amounts appropriated in the operating budget, the Judicial Council may request, with prior approval of the Fiscal Committee of the General Court, that the Governor and Council authorize additional funding. For funds requested and approved, the Governor is authorized to draw a warrant from any money in the treasury not otherwise appropriated.”

The Assigned Counsel (1091000) accounting unit funds the work of assigned counsel for both indigent criminal defendants and accused parents in abuse and neglect cases. Expenditures have exceeded our forecasts in this line. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services.

Year to date expenditures for parent attorneys are more than triple the cost for criminal representation in this line. This increase in expenditures is due in large part to New Hampshire’s opioid crisis. Additional staffing for the Department of Health and Human Services’ Division of Children, Youth and Families to address the opioid crisis contributes to the increase in the number of abuse and neglect petitions.

Pursuant to the State’s statutory order of appointment, all indigent criminal defense cases are sent directly to the Public Defender program. The Public Defender reviews each case, and if an ethical conflict exists, the case is then assigned to a contract attorney. The majority (approximately 85%) of indigent criminal defense cases remain with the Public Defender. Contract attorneys are paid a flat fee and serve as the back-up to the Public Defender. If contract counsel is unavailable or if the charged conduct is a homicide that the Public Defender has conflicted out of, assigned counsel is then appointed to the case. The assigned counsel system is based on an hourly rate of payment, with a structure of fee caps in place through court rules. Unpredictable factors, such as the number of homicides in a fiscal year, significantly impact the assigned counsel expense.

RSA 604-A:2 provides that “Whenever the court makes an appointment under paragraph I, the appointment shall be made as follows: first, appointment of the public defender program under RSA 604-B if that office is available; second, in the event the public defender program is not available, appointment of a contract attorney under RSA 604-A:2-b if such an attorney is available; and third, in the event that neither the public defender program nor a contract attorney is available, the appointment of any qualified attorney under paragraph I.”

The funds currently available in account 02-07-07-070010-1091 are insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year.

The Abuse and Neglect (Non-CASA) (11010000) accounting unit funds the court-ordered payments made to private guardians ad litem who provide services to abused and neglected children. Expenditures have exceeded our forecasts in this line. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services.

Though the State’s preferred method of delivering these guardian-ad-litem (GAL) services is through Court Appointed Special Advocates of New Hampshire, (CASA), this organization has been unable to meet the increased demand of the spike in cases resulting from the opioid crisis.

As a result, the Courts have turned to private providers to deliver these services to children, leading to increased expenditures by the Judicial Council from the account that funds private GALs.

RSA 169-C:10 provides that "In cases brought pursuant to this chapter involving a neglected or abused child, the court shall appoint a Court Appointed Special Advocate (CASA) or other approved program guardian ad litem for the child. If a CASA or other approved program guardian ad litem is unavailable for appointment, the court may then appoint an attorney or other guardian ad litem as the guardian ad litem for the child."

Based on the monthly average of expenditures since July 1, 2018, the account will require an additional \$25,000 to meet the anticipated expenditures in this line through June 30, 2019. By way of history, total FY18 expenditures for this line were \$304,972. To date in FY19, the Judicial Council has paid a total of \$334,679 for Abuse & Neglect – (Non-CASA) invoices. The funds currently available in account 02-07-07-070010-1101 are insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year.

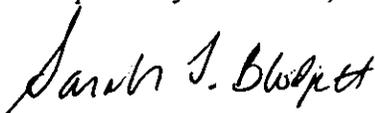
The Ancillary Non-Counsel Services (11030000) accounting unit funds services other than counsel which a court deems necessary for an adequate defense. RSA 604-A:1 provides that "representation shall include counsel and investigative, expert and other services and expenses, including process to compel the attendance of witnesses, as may be necessary for an adequate defense before the courts of this state." Expenditures have significantly exceeded our forecasts in this line. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services.

Total FY 18 expenditures for this line were \$1,379,971. As of May 17, 2019, year-to-date expenditures for this line were approximately \$1,550,243, leaving a balance of approximately \$159,755. The Judicial Council has an additional \$175,00 in invoices waiting to be processed. The funds currently available in account 02-07-07-070010-1103 are insufficient to pay the court-approved invoices already in-house and expected to arrive between now and the end of the current fiscal year. Based on the monthly average of expenditures since July 1, 2018, the account will require the addition of \$160,000 to meet the anticipated expenditures in this line through June 30, 2019.

This Agency will remain at your service to provide any requested information concerning the critical importance of this additional funding to the orderly administration of justice.

Thank you for your consideration.

Respectfully Submitted,



Sarah T. Blodgett
Executive Director