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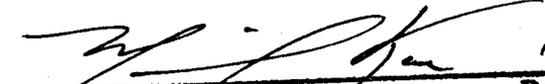


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December 22, 2016

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court
State House
Concord, N.H. 03301


Approved by Fiscal Committee Date 1/13/17

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 amount of \$500,000, upon Fiscal Committee and Governor and Council approval, for the period effective July 1, 2016 through June 30, 2017. Source of funds is 100% General Fund.

Funding is to be budgeted in account 02-07-07-070010-1091, entitled "Assigned Counsel" as follows:

| Class/Expense | Class Title | Current Budget | Change | Revised Budget |
|---------------|------------------|----------------|-----------|----------------|
| 108/500751 | Assigned Counsel | \$940,000 | \$500,000 | \$1,440,000 |

EXPLANATION

This account 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.

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 88%) 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 from which the Public Defender has conflicted out, 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.

Costs for representation of parents in abuse and neglect cases continues to increase, due in large part to New Hampshire's opioid crisis. It is anticipated that we will meet or exceed the FY16 caseload. If additional staffing for the Department of Health and Human Services' Division of Children, Youth and Families is increased per

recommendations from the Center for the Support of Families Quality Assurance Review, a corresponding increase in the number of abuse and neglect petitions is expected.

N.H.R.S.A. 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.”

N.H.R.S.A. 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.”

N.H.R.S.A. 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.”

By way of history, the Council received an original FY16 appropriation for this account of \$900,000. The following adjustments were made to this line:

- March 9, 2016: Judicial Council received an additional \$430,000 from the Governor and Council.

Total FY16 expenditures for this line were \$1,305,598.

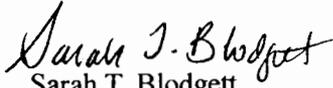
The funds currently available in account 02-07-07-070010-1091 are insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year. While the available balance as of December 20, 2016 was \$226,323, a total of approximately \$170,073 of invoices was in process at the Judicial Council office. Following payment of those pending bills, the balance will be approximately \$56,249. Additional invoices for representation in the Katlyn Marin and Michael Addison cases are expected in the near future.

In the first six months of FY17, costs for this account totaled approximately \$866,577 – over 90% of the entire FY17 budget. Based on the monthly average of expenditures since July 1, 2016, and the anticipated costs of the above-mentioned cases, at this time, the account will require the addition of a minimum of \$500,000 to meet the anticipated expenditures in this line through June 30, 2017.

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