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THE STATE OF NEW HAMPSHIRE  
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FIS 17 063

March 24, 2017

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

*[Signature]* 4/14/17  
 Approved by Fiscal Committee Date

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 \$760,000, 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 02-07-07-070010 as follows:

Acct/Class/Expense	Class Title	Current Budget	Change	Revised Budget
11010000/108/500751	Abuse and Neglect (Non-CASA)	\$169,453	\$60,000	\$229,453
10910000/108/500751	Assigned Counsel	\$1,464,402	\$400,000	\$1,864,402
10930000/102/500731	Contract Counsel	\$1,851,290	\$50,000	\$1,901,290
11030000/108/500752	Services other than Counsel	\$947,289	\$250,000	\$1,197,289

EXPLANATION

**I. Abuse and Neglect (Non-CASA)**

The Abuse and Neglect (Non-CASA) account funds the court-ordered payments made to private guardians ad litem (GAL) 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.

SA 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.”

Though the State’s preferred method of delivering GAL services is through Court Appointed Special Advocates of New Hampshire, (CASA), this organization has been unable to meet the increased demand resulting from a spike in cases.<sup>1</sup> As a result, the Courts have relied on private providers to deliver these services to children, leading to increased expenditures by the Judicial Council from this account.

RSA 604-A:1-a provides that “In cases involving a neglected or abused child, when a guardian ad litem is appointed for the child pursuant to RSA 169-C:10, 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.”

Total FY16 expenditures for this line were \$160,547. The remaining funding was carried forward into FY17 such that the original FY17 appropriation of \$50,000 was supplemented by the carry forward amount of \$19,453. The following adjustment was made to this line:

- October of 2016: Judicial Council received an additional \$100,000 from the Governor and Council.

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. As of March 1, 2017, year-to-date expenditures in this line were \$125,971. By March 20, 2017, an additional \$37,128 of invoices has been processed or received.

Based on the monthly average of expenditures since July 1, 2016, the account will require the addition of \$60,000 to meet the anticipated expenditures in this line through June 30, 2017.

## **II. Assigned Counsel**

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 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 and the Public Defender has a conflict, 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.

Cost 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 staff for the Department of Health and Human Services’ Division of Children, Youth and Families is increased per

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<sup>1</sup> According to data provided by the Administrative Office of the Courts, there were approximately 431 more child protection cases in CY16 compared to CY14.

the Governor's budget request, a corresponding increase in the number of abuse and neglect petitions is expected.

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."

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."

Total FY16 expenditures for this line were \$1,305,598. The remaining funding was carried forward into FY17 such that the original FY17 appropriation of \$900,000 was supplemented by the carry forward amount of \$24,401. The following adjustment was made to this line:

- February of 2017: Judicial Council received an additional \$500,000 from the Governor and Council.

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. As of March 1, 2017, year-to-date expenditures for this line were \$1,083,737. The account balance on March 1, 2017 was \$380,665. By March 20<sup>th</sup>, an additional \$203,636 in invoices had been processed or received at the Judicial Council office. Following payment of those pending bills, the balance will be approximately \$177,028. Additional invoices for representation in the Katlyn Marin and Michael Addison cases are expected in the near future.

Based on the monthly average of expenditures since July 1, 2016, the account will require the addition of \$400,000 to meet the anticipated expenditures in this line through June 30, 2017.

### **III. Contract Counsel**

Under RSA 604-A:2, II, when the Public Defender program is unable to accept an appointment, the case will be assigned to contract counsel. 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."

Total FY 16 expenditures for this line were \$1,811,153. Toward the end of FY 16, the Judicial Council ran out of contract attorney units, resulting in approximately 170 cases where appointment was made under the more stly assigned counsel program.

The funds currently available in account 02-07-07-070010-1093 are insufficient to pay the anticipated number of units expected to be assigned by the end of the fiscal year. The account balance on March 1, 2017 was

\$48,637. It is anticipated that an additional 180 units (\$50,000) is necessary to continue utilization of this cost-effective representation through June 30, 2017.

#### **IV. Services Other Than Counsel**

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." Pursuant to RSA 604-A:1-b, the Judicial Council may request, with prior approval of the Fiscal Committee of the General Court, that the Governor and Council authorize additional funding if expenditures for indigent defense are greater than amounts appropriated in the operating budget.

Total FY 16 expenditures for this line were \$872,711. The remaining funding was carried forward into FY17 such that the original FY17 appropriation of \$930,000 was supplemented by the carry forward amount of \$17,288.

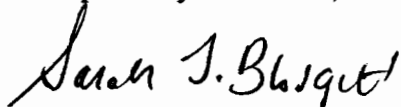
The funds currently available in account 02-07-07-070010-1103 are insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year. As of March 1, 2017, year-to-date expenditures for this line were \$685,800. The account balance on March 1, 2017 was \$261,488. The FY17 monthly average for this line is \$85,725. As of March 20<sup>th</sup>, an additional \$170,412 in invoices had been processed or received at the Judicial Council office. Following payment of those pending bills, the balance will be approximately \$91,076.

Based on the monthly average of expenditures since July 1, 2016, the account will require the addition of \$250,000 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