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THE STATE OF NEW HAMPSHIRE
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50

March 21, 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 amount of \$396,000, upon Fiscal Committee and Governor and Council approval, through June 30, 2019. Source of funds is 100% General Fund.

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

AU	Title	Class	Account	Current Budget	Requested Change	Adjusted Budget
10910000	Assigned Counsel	108	500751	\$1,320,001	\$396,000	\$1,716,001

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. Total FY18 expenditures for this line were \$1,729,981. The current balance is \$134,807 and as of March 18, 2019, there were over \$100,000 in pending invoices.

The funds currently available in account 10910000 are insufficient to pay the court-approved invoices 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 \$300,000 to meet the anticipated expenditures in this line through June 30, 2019.

The additional \$96,000 would be transferred to the Judicial Council's Guardian ad Litem budget line (10920000).¹ This line funds (among other services) parent attorneys and private guardians ad litem in termination of parental rights cases. The current balance in this line is \$15,499. This is insufficient to pay the in-house bills. It is also insufficient to pay the remainder of the invoices expected to come in before the end of the fiscal year. Currently, the Judicial Council does not have authority to request additional funding for this account. A transfer is necessary to obtain adequate funding through the remainder of the fiscal year.

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. 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.

Costs for representation of parents in abuse and neglect cases continues to increase, due in large part to New Hampshire's opioid crisis. Increased staffing at DCYF also impacts costs for these services. Currently, parent representation accounts for two-thirds of expenditures in this line.

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."

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.

¹ Please see the Judicial Council's request for a transfer of funds to the Guardian ad Litem budget line in a companion item.

Thank you for your consideration.

Respectfully Submitted,

Sarah T. Blodgett

Sarah T. Blodgett
Executive Director