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THE STATE OF NEW HAMPSHIRE  
JUDICIAL COUNCIL  
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April 9, 2018

The Honorable Neal M. Kurk, 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 \$685,000, upon Fiscal Committee and Governor and Council approval, through June 30, 2018. Source of funds is 100% General Fund and is to be budgeted in line 02-07-07-070010 as follows:

Acct/Class/Expense Budget	Class Title	Current Budget	Change	Revised
1101/108/500751	Abuse and Neglect Non-CASA	\$250,000	\$35,000	\$285,000
1091/108/500751	Assigned Counsel	\$1,380,000	\$350,000	\$1,730,000
1093/102/500731	Contract Counsel	\$1,980,000	\$300,000	\$2,280,000

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 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.

N.H.R.S.A. 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.”

N.H.R.S.A. 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.”

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.”

In January of 2018 the Judicial Council received an additional \$100,000 from the Governor and Council for this line. Based on the monthly average of expenditures since July 1, 2017, the account will require an additional \$30,000 to meet the anticipated expenditures in this line through June 30, 2018.

By way of history, total FY17 expenditures for this line were \$225,552. To date in FY18, the Judicial Council has paid a total of \$206,667 for Abuse & Neglect – (Non-CASA) invoices, leaving a balance of \$53,333. As of today’s date, pending in-house bills total \$36,319. 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.

## **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. 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 which the Public Defender cannot take due to 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.

Costs for representation of parents in abuse and neglect cases continue to increase, due in large part to New Hampshire’s opioid crisis. Year to date expenditures for parent attorneys are more

than double the cost for criminal representation in this line. 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.

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, total FY17 expenditures for this line were \$1,877,368. To date in FY18, the Judicial Council has paid a total of \$1,248,172 for assigned counsel representation, leaving a balance of \$131,828. As of today's date, pending in-house bills total \$157,547. 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.

### **III. Contract Counsel**

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

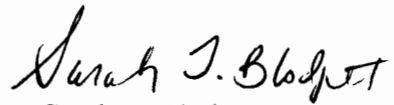
Various factors have contributed to an increase in the number of case units assigned to contract attorneys in FY18. By the end of the third quarter, 624 more units had been assigned to contract attorneys than for the same period in FY17.

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. Based on average monthly contract assignments, the contract attorney program will run out of units before the end of the year. The account balance on April 7, 2019 was \$2,218. It is anticipated that an additional 800 units is necessary to continue utilization of this cost-effective representation through June 30, 2018. Without additional units, conflict cases will have to be appointed under the more costly assigned counsel program.

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,

A handwritten signature in black ink that reads "Sarah T. Blodgett". The signature is written in a cursive style with a large initial 'S'.

Sarah T. Blodgett  
Executive Director