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April 29, 2022

The Honorable Karen Umberger, 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 \$595,000, effective upon Fiscal Committee and Governor and Council approval through June 30, 2022. Source of funds is 100% General Fund.

Funding is to be budgeted in account 02-07-07-070010 as follows:

Class/Account	Title	Accounting Unit	Current Budget	Requested Change	Adjusted Budget
108-500751	Abuse and Neglect (Non-CASA)	11010000	\$150,000	\$35,000	\$185,000
108-500751	Assigned Counsel	10910000	\$1,480,000	\$350,000	\$1,830,000
108-500752	Guardian ad Litem	10920000	\$508,050	\$150,000	\$658,050
108-500751	Contract Counsel	10930000	\$2,030,000	\$60,000	\$2,090,000

EXPLANATION

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." 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.”

The Abuse and Neglect (Non-CASA) accounting unit (11010000) funds the court-ordered payments made to private guardians ad litem (GAL) who provide services to abused and neglected children. The State’s preferred method of delivering these guardian-ad-litem services is through Court Appointed Special Advocates of New Hampshire (CASA). When CASA is unable to accept an appointment, the court appoints a private guardian ad litem. 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 FY21 expenditures for this line were \$174,794. Year-to-date expenditures total \$146,715, leaving a balance of \$3,285. It is anticipated that the funds currently available in account 02-07-07-070010-1101 will be insufficient to pay the court-approved invoices expected to arrive between now and the end of the current fiscal year. In addition, private GALs are beginning to submit invoices for services other than counsel, further increasing expenditures. (See Senate Bill 143 (Session Year 2021)). It is expected that the account will require the addition of \$35,000 to meet the anticipated expenditures in this line through June 30, 2022.

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. Costs for assigned counsel have increased significantly as a result of the indigent defense crisis. Through the end of April 2022, there have been 1,202 criminal appointments to private defense attorneys. This amount is greater than the past four years combined.

Year-to-date expenditures for this line are approximately \$1,260,455, leaving a balance of approximately \$219,545. In-house bills total \$76,706. Based on the monthly average of expenditures since July 1, 2021, and the recent statutory change authorizing payment for court-approved services other than counsel in abuse and neglect cases (See Senate Bill 143 (Session Year 2021)), the account will require the addition of \$350,000 to meet the anticipated expenditures through June 30, 2022. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services.

The Guardian ad Litem (10920000) accounting unit funds a variety of services, including guardians appointed to incapacitated adults and minors in guardianship court proceedings. It also funds parent attorneys and private guardians ad litem in termination of parental rights cases. The current balance in this line is \$1,587. As of April 28, 2022 in-house bills total approximately \$70,499. The current balance is insufficient to pay the pending invoices and those expected to come in before the end of the fiscal year. The Council anticipates transferring funds into this line to pay the older invoices as expeditiously as possible. Based on the monthly average of expenditures since July 1, 2021, and the recent statutory change authorizing payment for court-approved services other than counsel in termination and guardianship cases (See Senate Bill 143 (Session Year 2021)), the account will require the addition of \$150,000 to meet anticipated expenditures through June 30, 2022. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services.

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.”

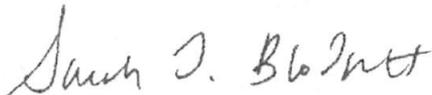
Total expenditures for the Contract Counsel (10930000) accounting unit in FY21 were \$2,128,902. The current unencumbered balance is \$270,392. While there may be sufficient funding through the end of the fiscal year, this request for \$60,000 is being made out of an abundance of caution. In the event that the contract attorney program runs out of funding, all conflict cases will be appointed under the more costly assigned counsel program. Under the contract program, representation of a misdemeanor case is reimbursed at \$300 and a regular felony is reimbursed at \$825. Under the assigned counsel program, there is a maximum fee of \$1,400 for a misdemeanor and \$4,100 for a felony. If this additional appropriation is not necessary, the balance will be brought forward for FY23 expenditures.

Although the contract attorney program has lost several attorneys over the past 18 months, it has taken on a significant number of cases during the indigent defense crisis. Historically, the month of June sees a significant number of appointments because it includes two payments.

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