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THE STATE OF NEW HAMPSHIRE  
JUDICIAL COUNCIL  
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Richard E. Samdperil, Acting Executive Director  
25 Capitol Street, Room 120  
Concord, New Hampshire 03301-6312

ARC  
Heather Kulp, Esq.  
Steven D. Lubrano  
Rep. Bob Lynn  
Dianne Martin, Esq.  
Brian J. X. Murphy, Esq.  
Hon. Tina Nadeau  
Dino Scala  
Alan Seidman, Ed.D  
Phillip Utter, Esq.

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February 17, 2023

The Honorable Ken Weyler, Chairman  
Fiscal Committee of the General Court and

His Excellency, Governor Christopher T. Sununu  
and the Honorable 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 \$299,000.00 effective upon Fiscal Committee and Governor and Council approval, through June 30, 2023. **100% General Funds.**

Funding is to be budgeted in Fiscal Year 2023 in 02-07-07-070010-10920000 GUARDIAN AD LITEM as follows:

<b>Class/Expense Budget</b>	<b>Class Title</b>	<b>Current Budget</b>	<b>Change</b>	<b>Revised</b>
108/500751	Provider Payments Legal Services	\$550,016	\$299,000	\$849,016

**EXPLANATION**

The Guardian ad Litem (10920000) accounting unit funds a variety of services: Pursuant to RSA 170-C:13, this account funds parent attorneys and guardians ad litem in termination of parental rights (TPR) cases. This account also funds guardians ad litem appointed to minors and guardians appointed to incapacitated adults in guardianship court proceedings (RSA Chapters 463 and 464-A). And since October, 2021, this account also pays for court-approved services other than counsel in termination and guardianship cases (*See* Senate Bill 143 (Session Year 2021)).

Expenditures will soon exceed the budgeted amounts for this account. As is explained below, this is due in significant part to a change in the pay rate for persons providing these services. Without additional funding, the Judicial Council will be unable to pay the court-approved invoices for these services for the remainder of the fiscal year.

RSA 604-A:1-b provides that “[i]n 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 FY22 expenditures for this account were \$661,083. The FY23 budget for this account was \$550,016. The current balance in this account is \$59,218.

As of January 31, 2023, year-to-date expenditures for this account have been \$416,471. Additionally, the Judicial Council has paid \$71,828 in invoices so far for February of 2023. The FY23 balance for this account is insufficient to pay invoices expected to be submitted before the end of the fiscal year.

The cost for the various services paid from this account has increased and will continue to do so through the remainder of the fiscal year due in significant part to a change in the Supreme Court rule that sets the compensation rate in these cases. Effective October 1, 2022, the rate for representation in indigent cases, including guardianship cases and TPR cases, increased from \$60.00 to \$90.00 per hour (Sup. Ct. R. 48 and 48-A). Additionally, the fee cap for guardianship cases under RSA Chapter 463 increased from \$1,200 to \$1,800; the fee cap for guardianship cases under RSA Chapter 464-A increased from \$900 to \$1,350; the fee cap for TPR cases increased from \$1,700 to \$2,550; and the fee cap for guardians ad litem in TPR cases increased from \$1,400 to \$2,000.

Under the prior \$60.00 per hour rate, the expenditures under this account has ranged significantly over the past five years:

FY18	FY19	FY20	FY21	FY22
\$563,029	\$775,495	\$754,812	\$706,354	\$661,083

The new \$90 per hour compensation rate will be major factor in the actual cost for representation for expenditures covered by this account in FY23. Since the rule change went into effect, the Judicial Council has seen a steady increase (roughly \$7,000 per month) in the amount of court-approved payments:

November 2022	December 2022	January 2023	February 2023
\$ 51,798.32	\$ 58,987.66	\$ 64,370.47	\$71,827.47

Assuming that the invoices under this account continue to increase at the same rate and do not plateau until after the end of the current fiscal year, the following additional funds will be necessary:

Estimated March 2023	Estimated April 2023	Estimated May 2023	Estimated June 2023	Less funds remaining in this account	<b>Estimated total additional funds needed for balance of FY23</b>
\$79,000	\$86,000	\$93,000	\$100,000	(\$59,218)	<b>\$298,782</b>

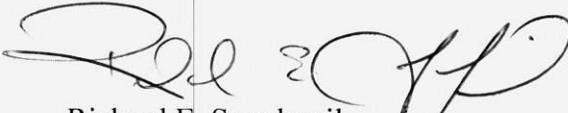
The requested revised budget of \$849,016 represents approximately a 14% increase over the actual expenditures for this account in FY19-21, the three highest years that the \$60 per hour rate was in still in effect, and before the statutory change that now includes services other than counsel within this accounting unit.

The funds currently available in account 02-07-07-070010-10920000 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 October 1, 2022 (the effective date of the rule change) and the belief that the full impact of the rule change has not yet manifest in approved invoices to date, the Judicial Council anticipates that the account will require the addition of \$299,000 to meet the anticipated expenditures in this account through June 30, 2023.

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,



Richard E. Samdperil  
Acting Executive Director