



NEW YORK  
CITY BAR

**COUNCIL ON CHILDREN**

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March 19, 2023

Hon. Kathy Hochul  
Governor of the State of New York  
New York State Capitol Building  
Albany, NY

Hon. Carl E. Heastie  
Speaker, New York State Assembly  
Legislative Office Building 932  
Albany, NY 12248

Hon. Andrea Stewart-Cousins  
Majority Leader, New York State Senate  
Legislative Office Building 907  
Albany, NY 12247

**Re: Fund Equal Access to Justice for Children in NYS Family Courts**

Dear Governor Hochul, Speaker Heastie, and Majority Leader Stewart-Cousins:

On behalf of the New York City Bar Association (“City Bar”), I write to sound an alarm. Attorney for the Child (“AFC”) offices across the state are suffering an unprecedented crisis of underfunding that threatens the very safety and well-being of the children they serve. New York State cannot advance equal justice in our courts without correcting the gross funding inequities that have plagued attorneys representing children in our family courts for years.

AFC office budgets have lagged behind the cost of living index for two decades, falling further and further behind their government and public sector counterparts. While civil legal services offices recently received a well-deserved 12% budget increase, court personnel are scheduled to receive comparable 12% increases this year, and increased funding has been approved for 18-b panel attorneys in New York City, the institutional AFC offices that handle over 90% of

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has over 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.*

the legal representation of children in family court in New York City and other cities across our state have suffered essentially flat budgets for close to twenty years. And, as budgets have flatlined, caseloads have increased in number and complexity.

The lack of pay parity with their government counterparts has consistently drawn attorneys away from the AFC work they are committed to pursuing. As the AFC's years of experience increase, so does the salary disparity with their government counterparts. Consequently, experienced AFCs have been resigning in record numbers and offices that were inundated with job applicants five to ten years ago are sitting with vacancies that are now taking months to fill, if they can be filled at all.

The result is fewer and fewer AFCs handling higher and higher caseloads. As the New York State Bar Association has recognized, "The objective of providing high-quality mandated representation to all eligible persons cannot be accomplished by even the ablest and most industrious attorneys in the face of excessive workloads."<sup>1</sup>

Fairness, dignity, respect, and equity demand a clear-eyed look at the workload guidance provided by the New York State Office of Indigent Legal Services (NYS OILS). NYS OILS has determined that in order to deliver high quality legal services in state intervention matters, the suggested range for a full-time attorney is no more than 55-65 active cases at any given time.<sup>2</sup> Yet, § 127.5 of the Rules of the Administrative Judge caps AFC caseloads at 150 children.<sup>3</sup>

New York has an opportunity to begin to turn this narrative around by recognizing the desperate need for a FY 2024 Judiciary Budget that provides fair and adequate funding to AFC offices throughout the state – funding that will reduce caseloads and fairly compensate attorneys for children.

In his report on Equal Justice in the New York State Courts,<sup>4</sup> Secretary Jeh Johnson concluded that New York's court system remains "under-resourced" and "over-burdened"; and singled out the New York State Family Courts, which overwhelmingly serve the poor and people of color, as a "second class court."<sup>5</sup>

In order for New York's justice system to fulfill its commitment to racial equity and equal access to justice, all parties entitled to free legal counsel assigned by the court must be provided with attorneys who are fairly compensated for their work and are responsible for manageable caseloads. As long as AFC offices remain underfunded with overwhelming caseloads, the second-class status of the Black and brown families who depend on court appointed legal counsel to

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<sup>1</sup> "2021 Revised Standards for Providing Mandated Representation," New York State Bar Association Committee on Mandated Representation, January 30, 2021, [https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep\\_2021.pdf](https://nysba.org/app/uploads/2020/02/Standards-for-Quality-Mandated-Rep_2021.pdf). (All websites last accessed on March 16, 2023.)

<sup>2</sup> Standards for Parental Representation in State Intervention Matters, New York State Office of Indigent Legal Services (2015), <https://www.ils.ny.gov/files/Parental%20Representation%20Standards%20Final%20110615.pdf>.

<sup>3</sup> 22 N.Y.C.R.R. § 127.5.

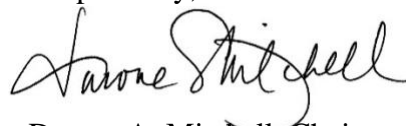
<sup>4</sup> Report from the Special Advisor on Equal Justice, October 2020, <https://www.nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf>.

<sup>5</sup> *Id.* at 54.

represent them and their children in matters of the utmost importance, including the separation of children from their families by the state, cannot be remedied.

In sum, the City Bar is calling for a Judiciary Budget enhancement for New York State's AFC offices that can provide reasonable and equitable compensation for the AFC offices throughout our state. We respectfully request your full support for funding in the amount of a minimum \$15 million dollar increase in the Judiciary budget, earmarked to provide for desperately needed AFC budget increases in the 2023-2024 budget cycle. We applaud the Assembly for including funding for panel attorneys performing AFC work in its one-house budget bill, but note that the one-house bills fail to address the immense needs facing AFC organizations. We remain firm in our belief that the nonprofit offices representing children in the Family Courts must have this increase in state funding in order to begin to achieve the race equity required for the fair administration of justice in New York City and State.

Respectfully,



Dawne A. Mitchell, Chair  
Council on Children

Cc:

- Hon. Jabari Brisport, Chair, NYS Senate Children & Families Committee
- Hon. Andrew Hevesi, Chair, NYS Assembly Children & Families Committee
- Hon. Brad Hoylman, Chair, NYS Senate Judiciary Committee
- Hon. Liz Krueger, Chair, NYS Senate Finance Committee
- Hon. Charles Lavine, Chair, NYS Assembly Judiciary Committee
- Hon. Helene Weinstein, Chair, NYS Assembly Ways & Means Committee

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