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February 4, 2022

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

Hon. Carl 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: Funding for Family Court Representation - Recommendation to Incorporate A.6013-A / S.3527-A into Art. VII Public Protection & General Government Budget Bill (A.9005 / S.8005)**

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

On behalf of the New York City Bar Association (“City Bar”), we are writing to urge you to increase in this year’s budget the rates paid to attorneys who are assigned pursuant to County Law Article 18-B to represent parents and children, and to provide increased funding for parent representation. These requests fit squarely within the City Bar’s 2022 New York State Legislative

**About the Association**

*The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 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.*

agenda calling for the fair and effective administration of justice.<sup>1</sup> We urge you to immediately address the woefully insufficient funding directed towards family court representation, which has created a significant crisis in the State’s provision of constitutionally and statutorily mandated legal representation of parents and children. Failure to adequately fund these services has resulted in further marginalization of the thousands of Black and brown families who depend on court appointed legal counsel to represent them in matters of the utmost fundamental importance, including the separation of families by the state.

We offer the suggestions described below in the context of the October 2020 report, released by Secretary Jeh Johnson, concerning Equal Justice in the New York State Courts.<sup>2</sup> Secretary Johnson concluded that notwithstanding the hard work of Judiciary personnel, there was ample evidence that New York’s court system remains “under-resourced” and “over-burdened;” and that this has a disparate impact on people of color. The Family Court, which overwhelmingly serves the poor and people of color, was singled out as suffering from its status as a “second class court.”<sup>3</sup>

We believe that the funding increases we suggest herein will represent a solid step towards achieving greater racial equity in the New York State Family Courts. In order for New York’s justice system to fulfill its commitment to racial equity and equal access to justice, parties entitled to free legal counsel assigned by the court must be provided with attorneys who are fairly compensated for their work. As long as assigned counsel for parents and children remain underpaid and overwhelmed by caseloads, the second-class status of the Family Courts, the attorneys who serve there, and the litigants who appear there, cannot be overcome.

### **The State Should Adequately Fund Parent Representation**

The City Bar fully supports the request of the state Office of Indigent Legal Services (ILS) to increase the funding for improving parent representation to \$9 million from the \$2.5 million included in the Executive Budget, but also notes that such an increase still would result in a funding level insufficient to address the significant need statewide.<sup>4</sup> We applaud the State’s provision of funding to support the criminal caseload standards developed in 2016; it is critical that the State provide comparable support for the representation of parents in Family Court. It is well past time for the State to address the well documented gaps in funding for parent representation.

In Chief Judge Janet DiFiore’s State of Our Judiciary address on February 6, 2018, she asserted that New York’s parental representation system “has suffered from many of the same deficiencies that once afflicted our criminal defense system, including excessive attorney

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<sup>1</sup> See <https://www.nycbar.org/issue-policy/issue/new-york-state-2022-legislative-agenda>. (All websites last visited Feb. 4, 2022.)

<sup>2</sup> Report from the Special Advisor on Equal Justice, October 2020, <https://nycourts.gov/whatsnew/pdf/SpecialAdvisorEqualJusticeReport.pdf>.

<sup>3</sup> *Id.* at 54.

<sup>4</sup> Testimony of the Office of Indigent Legal Services, Joint Legislative Hearing on the FY 2022-23 Public Protection Budget, Jan. 25, 2022, [https://www.nysenate.gov/sites/default/files/ils\\_testimony\\_jan\\_2022\\_public\\_protection\\_budget\\_hearing.pdf](https://www.nysenate.gov/sites/default/files/ils_testimony_jan_2022_public_protection_budget_hearing.pdf).

caseloads, inadequate training, and insufficient funding for support services.”<sup>5</sup> She subsequently created a Commission on Parental Legal Representation which issued a report in February 2019 concluding that a “complete transformation is urgently needed” in New York’s system of parent representation in child welfare matters.<sup>6</sup> The report documented a crisis in parent representation caused by funding deficiencies that results in enormous costs to impacted families who suffer the unnecessary trauma and stress of children being removed from their homes and prolonged family separations. Additionally, this crisis actually results in increased costs to the State because of the significant expenses related to foster care and adoption. Since the Commission report was issued, little has been done to address this crisis.

The Commission on Parental Legal Representation cited excessive attorney caseloads as a substantial factor contributing to inadequate representation, delays, and lack of due process. Thus, one of the Commission’s recommendations was for the State to fund a study to determine appropriate maximum caseload standards for parent attorneys. After a comprehensive study of Caseload Standards, ILS released a report on June 4, 2021, recommending case load standards intended to ensure that parents’ attorneys have sufficient time and resources to provide ethically responsible, high quality representation.<sup>7</sup> Despite this clear and well-founded recommendation, the State has failed to dedicate any funding to help achieve such standards. Just as New York State has invested in indigent criminal defense representation, the State must invest in parent representation to meet case load standards and provide the resources necessary to improve outcomes for families who are impacted by the family regulation system.

### **18-b and Attorney for the Child (AFC) Rates Should be Increased**

Attorneys for the Child (AFCs) receive compensation in two ways. 18-b AFC compensation is determined by statute and not-for-profit AFC offices are funded through the NYS Judiciary budget. 18-b AFC and parent representation rates have not been raised in 18 years. Since the onset of the pandemic, nonprofit AFC offices have suffered NYS budget cuts of 10% and higher, driving up staff shortages and skyrocketing caseloads. Moreover, prior to the pandemic, attorneys in nonprofit AFC offices were already disadvantaged by years of budget increases of 1.5% or less -- far below the cost of living. The 2020 NYS Judiciary’s 10% budget cuts to AFC offices have plunged these offices into dire straits that threaten their very ongoing sustainability. No restoration of these funds has been offered.

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<sup>5</sup> The State of Our Judiciary 2018, Chief Judge Janet DiFiore, <https://www.ils.ny.gov/files/State%20of%20Our%20Judiciary%20Address%20020618.pdf> at 14.

<sup>6</sup> Commission on Parental Legal Representation Interim Report to Chief Judge DiFiore, Feb. 2019, [http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR\\_Commission-Report.pdf](http://ww2.nycourts.gov/sites/default/files/document/files/2019-02/PLR_Commission-Report.pdf) at 6. The Commission focused its initial report on parent representation in child welfare cases, and asserted its intention to subsequently issue recommendations in other areas of family law practice.

<sup>7</sup> Caseload Standards for Parents’ Attorneys in New York State Family Court Mandated Representation Cases, June 4, 2021, <https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf>.

In a letter to the Governor dated February 1, 2022,<sup>8</sup> the Association of Judges of the Family Court of the State of New York explained that AFCs are assigned on almost every case that involves a child in each and every county throughout New York State. In many instances, multiple attorneys must be assigned in one case due to the conflicting needs or desires of the children. “In many of the not-for-profit AFC offices attorneys are required to handle between 125-150 cases at one time and in order to survive, many 18-b attorneys are likewise required to take on many more cases than are humanly possible to handle effectively.”

The Judges went on to explain that, “There has been so much emphasis on improvements to indigent services within all aspects of the legal system, yet the Legislature has not considered that one very important piece of that puzzle - competent legal representation - requires appropriate compensation.” In addition to providing the statutory 18-b increase and restoring the funds cut from the Judiciary Budget in 2020, it is imperative to include cost-of-living adjustments so that this will not be a reoccurring crisis in our State. The continuation of this crisis in fair compensation speaks to a lack of due regard and respect for the people of color who are served by Family Court, for the attorneys who represent them, and for the judicial system itself.

In sum, the City Bar wholeheartedly endorses the statutory changes required to sustainably provide reasonable and equitable compensation for the 18-b attorneys representing the parents and children who come before the Family Courts of our state.<sup>9</sup> We remain firm in our belief that the nonprofit offices representing parents and children in the Family Courts must have funding cuts restored and funding enhanced in order to begin to achieve the race equity required for the fair administration of justice in New York City and State.

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<sup>8</sup> On file with the New York City Bar Association.

<sup>9</sup> We encourage the appropriation of adequate funds and the incorporation of **A.6013-A / S.3527-A** into the Art. VII Public Protection and General Government Budget Bill (A.9005 / S.8005), to ensure that assigned counsel representing parents and children in both Family Courts and Supreme Court matrimonial cases will be adequately compensated. The bill also provides increased compensation rates for assigned counsel who represent indigent clients in Surrogate's Court and Criminal Court, which the City Bar also supports. As properly noted in the bill's Justification section, “[d]espite their vital role and extensive experience, 18-b lawyers/Attorneys for Children have not received a raise in their rates since 2004. They received only two raises in the last 32 years. They are currently compensated at a rate of \$75/hour - far below the average rate of compensation for attorneys in this state. In order to continue to maintain the quality of the attorneys currently available, and to attract experienced and qualified attorneys, 18-b attorneys/Attorneys for Children must be provided an hourly rate that is respectful and commensurate with their legal experience.”

The Unified Court System also supports increased compensation rates for assigned counsel. In testimony submitted at the January 25 Joint Public Protection Hearing, Chief Administrative Judge Marks stated, “[t]he Chief Judge has consistently advocated increasing the statutory rates of compensation for attorneys providing legal services as County Law Article 18-B panel attorneys and as attorneys for the child in Family Court. These lawyers, appointed by the courts to represent indigent criminal defendants and children and parents in Family Court, have not received any increase in compensation since 2004. The State can ill afford to wait any longer to adjust their compensation to keep pace with inflation. Failure to do so has reduced the number of lawyers willing to take on these assignments, which are vital to the health of our criminal justice and Family Court systems. In the attorney for the child program alone, the number of panel attorneys has declined by nearly 30% -- just since 2018. This leads to delays in adjudication that can jeopardize the rights and welfare of litigants, especially those who are disadvantaged and vulnerable.” See [https://www.nysenate.gov/sites/default/files/judiciary\\_statement\\_2022-23\\_1.pdf](https://www.nysenate.gov/sites/default/files/judiciary_statement_2022-23_1.pdf)

Respectfully,

A handwritten signature in black ink, appearing to read "Dawne Mitchell". The signature is fluid and cursive, written over the printed name below.

Dawne A. Mitchell, Chair  
Council on Children

Cc: Hon. Jamaal Bailey  
Hon. James Gaughran  
Hon. Brad Hoylman  
Hon. Liz Krueger  
Hon. Charles Lavine  
Hon. William Magnarelli  
Hon. Fred Thiele  
Hon. Helene Weinstein

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