



## **Legal Representation of Children in New York State: The Crisis of Chronic Underfunding and High Workloads for Attorneys For the Child in Family Court**

### Executive Summary

If equal access to justice for children is to become a reality in our Family Courts, attorneys representing children must have the capacity to work with each of their young clients to ensure family court proceedings are fair to them as well as to their families and the communities in which they live. The Attorney for the Child (AFC) role is unique in that it encompasses acting as an advocate for the most vulnerable subjects of the proceedings while also providing their clients with the resources and services they need to safely grow and thrive. The AFC has a duty to represent their clients in a manner that is compassionate, zealous, and consistent with the highest standards of legal practice.

The role of the AFC is central to the critical and profound work of the Family Court. Children are impacted by almost all litigation before the Family Court judiciary. These children deserve and are entitled to an attorney, supported by social workers, paralegals, and other professionals, who can spend the time necessary to vigorously represent their interests and step in to support them in ways that are not always achievable by the court process or the agencies tasked with child protection.

Funding levels for AFC Offices have been stagnant for over a decade. This funding erosion has resulted in large-scale attrition, which is the result of salaries that are not competitive or even on par with government and other attorneys in the very same Family Courts in which the AFCs practice. In addition, inadequate funding has left AFC Offices saddled with crushing caseloads imposed by their contracts or by court assignments, and sanctioned by the outdated Rules of the Chief Administrator of the Court.

Section 127.5 of the Rules of the Chief Administrator of the Court currently sets a cap for attorneys representing children at 150 children per attorney at any given time. Since many children are involved in multiple proceedings, each attorney will inevitably represent children in many more than 150 open dockets or petitions (“dockets”), which may be pending simultaneously in different courtrooms in Family Court. Because each AFC office is committed to continuity of representation, this means that when necessary the same AFC will represent a client in multiple courtrooms in those jurisdictions that have specialized parts that hear only a

certain category of cases. It may also mean following a case to another courthouse if a judge is transferred and takes cases with them that are already underway. Moreover, different dockets indicate different types of cases that require unique preparation and legal arguments.

This caseload standard, issued over 15 years ago, must be revised by OCA, and a new interim standard of 75 dockets created that will immediately cut the caseload expectations for AFCs in half and set a clear course for further caseload reductions in the next two fiscal years. It is only by making both the transition to a caseload standard based on the number dockets rather than the number of children and by reducing the caseload number to 75 that caseloads comparable to those of counsel for parents in the same proceedings can begin to be realized. This initial caseload reduction must also recognize the unique posture of delinquency and PINS cases, which continue to demand a much lower active caseload in order to provide the zealous advocacy required in these quasi-criminal cases. Over the next fiscal year, a plan must be put in place to further reduce AFC caseloads to best reflect the different workloads involved in the cases where AFCs represent children in Family Court and to provide funding for AFC offices that comports with this workload standard.

While recognizing that there are differences in the practices of AFC offices across the state, this White Paper describes the essential factors common to the role of the AFC and relevant to the need for additional funding in order to immediately begin the process of establishing equitable caseloads and salaries that reflect the value and importance of the AFC in Family Court and the children we serve. Our proposed path to advance justice and equity for the children who come before the New York State Family Courts is outlined below.

#### I. Understanding Who Represents Children in the Family Court Proceedings

Across New York State, children are represented in their Family Court proceedings by either institutional providers, such as non-profit legal organizations or county-based defender offices, (“AFC Offices”) or by Assigned Counsel panel attorneys (“18-b attorneys”). In many jurisdictions, as many as 90% of children are represented by AFC Offices through this interrelated network of providers.

As described in greater detail below, NYS AFC Offices provide holistic legal representation, which, depending on the office, includes social workers, paralegals, youth advocates with relevant lived experience, investigators, and AFCs with specialized expertise in handling chronic, recurring issues for this vulnerable client population, such as education, immigration, housing and disability rights. This network of AFC Offices includes organizations that have received local, regional, and national recognition for the quality of their holistic representation of New York State’s children and youth. Child and youth advocacy in AFC Offices does not begin or end at the courthouse door. Our holistic services often engage before a petition is filed and can end long after a court case is closed.

AFC Offices represent children and youth in three primary areas:

- (1) Allegations of abuse or neglect where the child is the subject of the proceeding against a parent or guardian (Article 10 of the Family Court Act).
- (2) Cases where the child is arrested and facing a criminal charge (Article 3 of the Family Court Act).
- (3) Custody cases where parents or other guardians are seeking custody of the child in cases where the Family Court deems it advisable for an AFC to be appointed (Article 6 of the Family Court Act).

The children served by AFC Offices are often involved in more than one type of case, such as when the child is the subject of an Article 10 or custody case and is then arrested, or when an Article 10 case is pending against one parent and the other parent is seeking custody of the child. Consequently, one child will often have multiple dockets, which in many jurisdictions will require appearances before different judges, in different courtrooms.

There are many other types of cases, such as voluntary foster care placement, guardianship, adoption, termination of parental rights, destitute minor, and family offense matters in which an AFC is assigned as well. There are also appeals from any of these types of cases, both interlocutory and on final orders, that require the full participation of the AFC in order to guarantee that the rights of the child are upheld and that the child's voice is heard in the courts determining their lives and the future of their family.

The primary funding for each AFC Office's critical work is provided by the Office of Court Administration (OCA) through the annual judiciary budget. Unfortunately, the unsustainably low level of this funding has reached a crisis point. As detailed in sections V and VI (below), inadequate funding and unsustainable workloads must be addressed in order to provide the comprehensive and quality legal services that every child in our state deserves.

In those jurisdictions where there is no institutional AFC Office, or in instances where the AFC Office has a conflict and cannot accept assignment in a particular matter, the child is likely to be represented by a private 18-b attorney who is certified as a member of that jurisdiction's assigned counsel panel. Funding for 18-b panel attorneys is distinct from that for the institutional AFC Offices and is not the subject of this document. It is worth noting, however, that due to many of the same considerations (low income, large caseloads), the hourly rate for 18-b attorneys was recently the subject of a lawsuit and subsequent increase to \$158 per hour, which could amount to well over \$200,000 per year for an attorney taking on the very same cases that AFC Office attorneys handle for salaries ranging from \$70,000 to \$140,000. The investment made in the assigned counsel rates must be balanced with a similarly impactful investment in the AFC Offices. Realistic salaries and lower caseload expectations cannot be delayed, as the new 18-b rates are contributing to already high attrition within our offices and making it more and more difficult to emerge from this crisis with the qualified and well-trained attorneys and other staff our clients need and deserve.

## II. The Critical Nature of Legal Representation of Children in Family Court

When children are involved in Family Court, the biggest decisions in their lives are being made for them—by the government and the court. AFCs achieve improved short and long-term outcomes for their young clients and empower children and youth through resourceful advocacy and representation in complex legal matters that will forever impact their lives. The work of an AFC is intense, wide-ranging, and far-reaching. AFCs work at both the micro and macro level to safeguard their clients’ due process rights, listen to and counsel their clients, determine their position, fight for services to which they are entitled, present their position to the court, participate in numerous hearings, write motions to trial and appellate courts, address chronic agency failures and an education system that is overwhelmed and often non-responsive to our clients’ needs, and empower them with the tools and resources they need to navigate their case and, in many instances, their lives.

The advocacy provided by AFCs ensures that their clients are seen and understood, are safe and in affirming homes, that the court process respects family integrity, promotes stability, expedites reunification, and minimizes the trauma experienced by children and youth interfacing with the child welfare, custody, and juvenile justice systems. AFC advocacy is also critical to ensure that a young person aging out of foster care or reentering their community from placement has access to the education, stable housing, and employment they need to successfully transition to independence.

Children and youth are entitled to receive effective and zealous legal representation throughout the time they are subject to the jurisdiction of the New York State Family Courts. In 2007, Chief Judge Judith Kaye promulgated §7.2 of the Rules of the Chief Judge, confirming that Attorneys for Children carry all the same ethical requirements and professional responsibilities as any other attorney. (Please see the attachment.) Also in 2007, the Statewide Advisory Committee on Counsel for Children developed its “Summary of the Responsibilities of the Attorney for the Child”. These responsibilities apply to all proceedings where an AFC is assigned and acknowledge some variance in the activities of the AFC based on the individual circumstances of each child. This document provides some guidance on what, at minimum, is expected of every AFC and helps to illustrate the unique demands that AFCs must satisfy in order to provide the high-quality legal representation that every child deserves and to which they are entitled.

### **Summary of the Responsibilities of the Attorney for the Child**

While the activities of the attorney for the child will vary with the circumstances of each client and proceeding, in general, those activities will include, but not be limited to, the following:

- (1) Commence representation of the child promptly upon being notified of the appointment;
- (2) Contact, interview and provide initial services to the child at the earliest practical opportunity, and prior to the first court appearance when feasible;

- (3) Consult with and advise the child regularly concerning the course of the proceeding, maintain contact with the child so as to be aware of and respond to the child's concerns and significant changes in the child's circumstances, and remain accessible to the child;
- (4) Conduct a full factual investigation and become familiar with all information and documents relevant to representation of the child. To that end, the lawyer for the child shall retain and consult with all experts necessary to assist in the representation of the child;
- (5) Evaluate the legal remedies and services available to the child and pursue appropriate strategies for achieving case objectives;
- (6) Appear at and participate actively in proceedings pertaining to the child;
- (7) Remain accessible to the child and other appropriate individuals and agencies to monitor implementation of the dispositional and permanency orders, and seek intervention of the court to assure compliance with those orders or otherwise protect the interests of the child, while those orders are in effect; and
- (8) Evaluate and pursue appellate remedies available to the child, including the expedited relief provided by statute, and participate actively in any appellate litigation pertaining to the child that is initiated by another party, unless the Appellate Division grants the application of the attorney for the child for appointment of a different attorney to represent the child on appeal.

The National Association of Counsel for Children (NACC) has issued similar guidance on the critical duties to be performed by AFCs. The 2021 NACC Recommendations for Legal Representation of Children and Youth not only outlines the important duties that Attorneys for Children must undertake<sup>1</sup>, but also highlights the critical importance of the AFC's role: *"Too many children and youth do not feel a sense of belonging or inclusion in the courtroom proceedings that shape their families and their lives; children's lawyers are duty bound to address this. To do so, the legal field must give special consideration to unique facets of children's representation... Because children have specialized and unique needs, they deserve someone well-trained and well-resourced on their side."*<sup>2</sup>

Consequently, the duty of the AFC is to provide client-directed legal representation in a manner consistent with *the same ethical and legal obligations as any attorney representing any client*. The AFC ensures that clients can participate in decision-making and that the child's position is brought before the court and litigated zealously. This model prioritizes direct

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<sup>1</sup> The Report includes 10 primary duties for attorneys for children which echo those included in the State Report: 1) Establish an Attorney-Client Relationship; 2) Support the Attorney-Client Relationship; 3) Offer Legal Counsel and Advice; 4) Ensure Opportunity for Full Participation; 5) Provide Competent Legal Representation; 6) Provide Loyal and Independent Legal Representation; 7) Maintain Confidentiality; 8) Advance Equity in Legal Representation; 9) Provide "360" Advocacy; 10) Preserve Continuity of Legal Representation. National Association of Counsel for Children, *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*, 2021, pages 6-30.

<sup>2</sup> See National Association of Counsel for Children, *Recommendations for Legal Representation of Children and Youth in Neglect and Abuse Proceedings*, 2021, page 2.

advocacy for clients who have the capacity for decision-making, and substituted judgment for younger children who lack that capacity. To do so, the AFC must consider the child's developmental stage, ability to express a relevant position, individual decision-making capabilities, and ability to understand consequences. Because the child's capacity changes as they mature, and a child may develop from one incapable of meaningful participation in the litigation to one who is capable of such participation, the determination about capacity must be reassessed frequently and meaningfully.

The role of the AFC is also uniquely demanding because in addition to providing legal representation of the child in court proceedings, the AFC must provide age-appropriate counseling to all clients, substitute judgment for infants and other especially vulnerable clients, and aid in the identification of community-based services that can support families and children. The AFC has a duty to provide the child, in a developmentally appropriate manner, with all the information necessary to help the child understand the proceedings and meaningfully participate in decisions about their cases. Most importantly, AFC attorneys and social workers must take a trauma-informed approach to their work: this takes time and resources.

Extensive preparation is necessary in order to enable the AFC to perform these duties. The AFC must fully prepare for hearings by reviewing all case records and other relevant evidence and preparing witnesses for court appearances, while also assessing and addressing the needs of a severely vulnerable and disadvantaged client population, with varying special needs related to education, immigration, foster care placement, mental health, housing deficits, substance use, and other issues. In all cases, the attorney must research all relevant issues, file appropriate motions, and fully investigate the facts of the case. Additionally, the AFC participates in settlement negotiations with other counsel, as well as mediations.

Only the AFC can provide the court with factual information and legal arguments from the child's unique perspective in order to enable the court to fully consider the case and make a well-informed decision as to what is in each child's best interests.

### III. The Role of the AFC in Juvenile Justice Cases and its Impact on Caseloads

The role of the AFC in representing children who are arrested and facing the possibility of detention or other forms of punishment demands a distinct set of skills and resources. A delinquency case may be one that is initiated in Family Court or one under the "Raise the Age" legislation passed in 2018, wherein the case may begin in the adult criminal court. In such matters, a child or adolescent who is arrested routinely has his or her life scrutinized at each stage of a case. This leads to dramatically higher rates of active government supervision and incarceration risk which, in turn, leads to increased responsibilities and time commitments for the AFC at every stage of a prosecution.

Delinquency proceedings often include complex investigations and digital forensics, diversion advocacy, voluminous pretrial discovery, parole/remand hearings, significant motion

practice, probable cause hearings, suppression hearings, evidentiary challenges, expert witnesses, planning interventions and support for clients with mental health and intellectual disabilities, fact-finding trials, robust dispositional and post dispositional representation, including extension of placement hearings and revocation hearings. The dispositional outcomes juveniles face are generally the same for misdemeanor and felony cases.

These cases start with an expansive assessment and inquiry into the life and circumstances of the client. Since the enactment of Raise the Age, the AFC may participate in the initial probation diversion interview and the government's information gathering process as well. This early intervention is seen by the Juvenile Defender offices as something to which all children should be entitled to ensure the narrative of the youth is fully supported and the child and parent or guardian understand the court process and high stakes at this early and critical process that can often divert the case out of the court system. Moreover, because of the exposure to collateral consequences, the AFC's work extends beyond the courthouse as the client may face unlawful discrimination by employers, schools, and law enforcement agencies due to the arrest. AFCs routinely address arrest-related concerns and collateral consequences.

Although the Chief Administrative Judge did not specifically establish a 150 case cap under Rule 127.5 for any particular type of case [e.g., child welfare, juvenile delinquency, persons in need of supervision (PINS), custody, etc.], it has always been the case that Youth Justice and PINS cases have required a drastically lower case cap than other Family Court cases. For instance, the average duration from filing to disposition in New York City is approximately 128 days, with a median of 104 days.<sup>3</sup> Furthermore, about 43% of cases progress from arraignment to disposition within three months. Consequently, every three months, almost half of a delinquency attorney's active caseload turns over, presenting the attorney with a new set of clients. The remaining half is divided, with 25% expected to conclude within six months and the remaining 25% after the six-month mark. All the work on each case is compacted into a short window of time due to the Family Court's strict guidelines on these cases.

Considering these timelines, any point-in-time caseload for a delinquency attorney implies serving three to four times as many clients in a given year. In addition, any computation would need to count those clients initially arraigned in the Youth Part in adult criminal court and transferred to Family Court pursuant to Raise the Age who require representation during the interim period, even before the new matter is filed in Family Court and during which time, investigations must occur and the client will be eligible for an adjustment interview with the Department of Probation. Recognizing the unique challenges of delinquency and PINS cases, and considering the liberty interests at stake as well as the unique demands on defense counsel in those proceedings, there is widespread acknowledgment that a case cap must be significantly lower for AFCs engaged in a delinquency practice

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<sup>3</sup> <http://www.criminaljustice.ny.gov/crimnet/osja/jj-reports/newyorkcity.pdf>

#### IV. The Intersection of Racial Inequity and Disparities, Underfunding, and Legal Representation for Children in the Family Court System

Former Homeland Security Secretary Jeh Johnson’s report on equal justice in the New York State courts recognized the inequities that abound in our family courts and described the family court as under-funded and over-burdened. He concluded that, “The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State.”<sup>4</sup> In its *Report and Recommendations on Racial Justice and Child Welfare*, The New York State Bar Association Committee on Families and the Law recommends budget advocacy to “[s]upport increased funding for effective legal representation for parents and children to ensure appropriate caseloads and practice standards...”<sup>5</sup> Likewise, the immediate past-president of the Bar Association of the City of New York was quoted in the *New York Law Journal* on February 14, 2023, recognizing this two-tiered system of justice: “The big issue we have is access to justice for low-income New Yorkers and racial equality across the state. . . . But the fact [is] that we have a family and housing court that’s not functioning in the same way that the commercial division functions.”<sup>6</sup>

The glaring racial disparities within both the child welfare and juvenile justice systems underscore an urgent need for systemic change. Whether due to biased decision-making, systemic inequalities, or the over-policing of marginalized communities, the outcomes for the children and families in Family Court on all types of proceedings have an undeniable racial disproportionality. In the child welfare sector, in 2020, Black children were 10.8 times more likely to be placed in foster care than white children.<sup>7</sup> In New York City, Black children accounted for roughly 50% of children involved in emergency removals (removals of children conducted prior to obtaining a court order) from their parents/guardians. By age 18, almost 45% of Black and Hispanic/Latinx children in NYC have experienced an investigation of their family. In New York City where about 60% of kids are Black and Hispanic/Latinx, they account for almost 90% of children in the child welfare system. Black children are more likely to be involved in the family regulation system than white children at every stage of the process. The NYC Administration for Children’s Services (ACS) itself has documented that Black families are less likely than other families to remain together under agency and court-ordered surveillance, and Black children are disproportionately separated from their parents.<sup>8</sup>

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

<sup>5</sup> “Report and Recommendations of the Committee on Families and the Law Racial Justice and Child Welfare,” New York State Bar Association Committee on Mandated Representation, April 2022, <https://nysba.org/app/uploads/2022/03/Committee-on-Families-and-the-Law-April-2022-approved.pdf>

<sup>6</sup> *City Bar Urges Added Funding to Restore NY Courts to Pre-Pandemic Levels*, *New York Law Journal*, April 14, 2023, <https://www.law.com/newyorklawjournal/2023/02/14/city-bar-urges-added-funding-to-restore-ny-courts-to-pre-pandemic-levels/>

<sup>7</sup> <https://ocfs.ny.gov/reports/sppd/dmr/DMR-County-Comparison-2020.pdf>

<sup>8</sup> Commissioner David Hansell Testimony to New York City Council “Oversight – Racial Disparities in Child Welfare System” October 28, 2022, <https://www.nyc.gov/assets/acs/pdf/testimony/2020/GWCommitteeHearing.pdf> ACS



In the juvenile justice sector, the data is equally troubling. Youth of color, and particularly Black youth, are disproportionately overrepresented in the juvenile legal system. For example, in NYC approximately 60% of children identify as Black or Latinx, yet in NYC youth of color make up more than 88% of all youth arrested.<sup>9</sup> Black and Latinx children and adolescents are disproportionately held in detention while charges are pending as well. In NYC, more than 90% of those detained are youth of color.<sup>10</sup>

The intersection of racial disparities and underfunded legal representation creates a perfect storm of compounded injustices for children and families of color. The continuation of decades of underfunding threatens to lead to insufficient legal representation, which in turn can result in unfavorable outcomes, such as unjust removals, inappropriate placements, and harsher sentences. These consequences disproportionately impact Black and brown children, reinforcing systemic biases and perpetuating a cycle of disadvantage that persists into adulthood.

Recognizing the intersection of racial disparities, underfunding, and legal representation is a vital step towards meaningful change. Advocating for increased funding for legal representation in the Family Court System is not just about addressing a budgetary issue; it's about rectifying a systemic flaw that perpetuates racial injustice. Attorneys for Children hold systems accountable and provide an important resource to the court that can counter some of the harshest racially-disparate outcomes, such as family separation, adolescent incarceration and long-term foster care placements. By ensuring that every child has access to quality legal representation, the State can help to break the cycle of compounded injustices and pave the way for a more equitable future for children of color.<sup>11</sup>

#### V. Acknowledging the Current Crisis: Decades of Underfunding & Unsustainable Workloads

The judiciary, legislature, and executive have articulated a commitment to the New York State Family Courts and to the equitable administration of justice. It is with this commitment in mind that we are compelled to sound an alarm. AFC Offices across the State are suffering long-standing underfunding that threatens the very safety and well-being of the children we serve, and the system of justice designed to serve them and their families. Equal justice in our courts cannot be advanced without acknowledging and correcting the inequities and unsustainable

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<sup>9</sup>[https://www.nyc.gov/assets/nypd/downloads/pdf/analysis\\_and\\_planning/year-end-2020-enforcement-report-20210721.pdf](https://www.nyc.gov/assets/nypd/downloads/pdf/analysis_and_planning/year-end-2020-enforcement-report-20210721.pdf). According to NYPD data, in 2020, 66% of juvenile arrests were of Black youth and 26% of Hispanic youth.

<sup>10</sup><https://www.nyc.gov/assets/acs/pdf/data-analysis/2022/DetentionDemographicReportFY22.pdf>.

<sup>11</sup> Another group that is disproportionately impacted across New York State consists of young people who live in rural areas. Children who are involved in Family Court from rural areas are often experiencing extreme poverty, including food scarcity, homes that are not heated, even as temperatures drop well below freezing in upstate areas, as well as lack of appropriate services in schools when they have a disability. These issues are precisely what a well-funded AFC can address.

caseloads that have plagued attorneys representing children in our family courts for years and have now reached a crisis.

A. AFC Workloads

A clear-eyed look at relevant caseload guidelines, practice standards, and independent reports leads to one inescapable conclusion: in order to prevent the continued erosion of the State's commitment to providing high-quality legal representation to children in their Family Court proceedings, the current workload standard for AFCs must be immediately modified and sufficient funding must be provided to enable AFC Offices to reach the staff levels necessary to maintain those reduced caseloads.

Currently, §127.5 of the Rules of the Chief Administrator of the Court sets the workload standard for AFCs at **150 children**, which can mean significantly more than 150 discreet legal cases since one child often has several dockets pending simultaneously. For example, a recent caseload "snapshot" report showed that AFCs at Lawyers For Children were representing 1,971 children in 3,170 dockets; the Legal Aid Society of Suffolk County Children's Law Bureau had 2,004 clients with over 5,600 open dockets; and the Legal Aid Society of Rochester had 1,878 clients with 3,471 open dockets. Furthermore, AFC's are the only attorneys whose caseload standard is based on number of clients rather than dockets. The caseload standards for parental representation and criminal defense, for example, recognize that a standard based on dockets is critical to accurately reflect and maintain manageable workloads.

A case cap of 150 children cannot possibly guarantee that children receive the quality representation that has been described in this document and we respectfully request that the court immediately reduce the case cap by half to 75 dockets (not children), recognize that the case cap for AFCs handling delinquency cases should remain at a much lower level, and over the next fiscal year work to further reduce the case cap to fairly reflect the lower case cap standards that are necessary to allow AFCs to practice with an equitable caseload and a competitive salary.

B. Critical Support In OCA's 2024-2025 Budget

The AFC Offices support enactment of the proposed OCA 2024-2025 budget and acknowledge the inclusion of total AFC funding of \$205 million, representing an increase of \$19.7 million dollars over FY 2023-24. Our understanding is that this reflects a 3% increase in AFC funding over the current funding level and a 2% enhancement increase. While this provides a necessary first step in rectifying decades of underfunding and rollbacks to funding that occurred during the pandemic, the AFC Offices have calculated that initial additional funding of at least \$50,000,000 is required to achieve the staffing levels and salaries necessary to realize caseloads of 75 dockets in abuse, neglect, custody and related proceedings by the signatories

to this document.<sup>12</sup> Additional funding of \$10,000,000 is also necessary to enhance staffing and begin to reduce caseloads in delinquency proceedings.

In sum, an initial infusion of \$60,000,000 is needed to right-size our programs, provide competitive salaries, and create an environment where attorneys and other staff can afford to stay in this important work and develop the skills they need to ensure our clients receive justice and fairness in our courts. Having said this, we know that both OCA and the AFC offices need time to finalize any new standards that come into effect. At this time, we are asking OCA to make the initial commitment to reduce the case cap to 75 cases; to, at a minimum, ensure salary parity for AFCs with their government counterparts; and to work with the AFC Offices over the next fiscal year to identify a plan to further reduce caseloads and raise salaries and benefits while increasing staff numbers, obtaining space to accommodate increased staffing, and otherwise creating stable offices with a sustainable plan to maintain equitable caseloads and salaries going forward.

### C. The Impact of Inadequate Funding

AFC Offices have suffered crippling one or two-percent budget increases for close to two decades while caseloads have increased in number and complexity, and experienced AFCs have been resigning in record numbers. Despite the budget increases for AFC Offices in FY 2023-2024, salaries of attorneys in most AFC offices continue to lag far behind those of our government counterparts and other civil legal service providers. As a consequence of low salaries and brutally high caseloads, our offices remain saddled with unfilled vacancies. AFCs are not resigning because they want to leave AFC Offices, but because they cannot provide for their own families if they stay. AFC Offices that were inundated with job applicants for a small number of vacant positions ten or twenty years ago are sitting with vacancies that are now taking months to fill if they can be filled at all. Over the past several years, the low pay of our offices as compared to many other legal services, public defense, or government jobs (including OCA Court attorney positions) has drawn attorneys away from the AFC work they are passionate about and caused them to leave for higher-paying positions elsewhere in the public sector.

Across the state, with staff attorneys stressed to the breaking point and no relief in sight, supervisory staff are themselves taking on large caseloads, making it harder for them to oversee the work of newer attorneys, and reducing the quality of the work our offices can provide. Examples include one upstate office in which the 2023 resignation of five attorneys was exacerbated by leaves of absence taken by several other staff attorneys, resulting in the Division

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<sup>12</sup> In reaching this work load number, one consideration was the extensive report issued by the Commission on Parental Representation, which spent a year analyzing the need for proper legal representation for parents in Family Court, as well as the caseload standards issued shortly thereafter by ILS for parents. While the ILS study and standards are not directly applicable to AFC workloads, it is a useful reference point and was used as such in developing the recommendations contained in this document.

<https://www.ils.ny.gov/files/2019%20Commission%20on%20Parental%20Legal%20Representation%20Interim%20Report.pdf>;

<https://www.ils.ny.gov/files/Caseload%20Standards%20Parents%20Attorneys%20NYS%20Family%20Court.pdf>

Director having to represent young people in 527 dockets, while the supervising attorney in one county was assigned to 467 dockets and the supervising attorney in another was assigned to 439. In the latter part of 2023, another AFC Office was so understaffed that the supervising attorney, who generally handles all of the office's appeals in addition to supervisory responsibilities, needed to take over the caseloads of two busy referee parts consisting of a large volume of custody and family offense dockets. In another AFC Office, the Bureau Chief handles a full caseload and all the appeals for the bureau in addition to administrative duties. In that same office, as recently as this past November, two senior attorneys were representing 127 clients in 938 dockets and 141 clients in 866 dockets.

In a survey of AFC Offices in New York State late last year, we found that not one office was able to reach pay parity with their government counterparts. Throughout the state, as the AFC's years of experience increase, so does the salary disparity with their government counterparts, creating the dynamic for an AFC "brain drain" with the recurring loss of more experienced attorneys. This crisis has increasingly been the focus of attention by the media and the public.<sup>13</sup> For example, the attorneys at Legal Aid of Rochester start at an annual salary of \$60,000 and increase to \$67,500 at year five, while their government and Family Court counterparts earn \$84,000 at year five. Similarly, at Suffolk County Legal Aid, AFC's starting salary is \$70,040, increasing to \$77,500 by year five, while their government counterparts earn in excess of \$100,000 annually by year five. Likewise, a recent evaluation by the Legal Aid Society of NYC determined that its attorneys are underpaid by 30% when compared to attorneys at the Office of the Attorney General, where the starting salary is \$90,000. That disparity is just as extreme at Lawyers For Children, where the starting salary is \$76,407.

VI. Call to Action: Provide Funding Levels Consistent with a Reduced AFC Case Cap in Child Welfare, Custody and Delinquency matters

The starting point for equitable funding must be a redraft of §127.5 of the Rules of the Chief Administrator of the Court. It is imperative that the process begins with an immediate cut in case caps to 75 cases and a commitment to fully fund this initial reduction, while analyzing the need for even lower caps, tied to case type, going forward.

As explained above, in order to begin to recruit and sustain the number of new attorneys needed with a reduced case cap, while beginning to approach pay parity with AFC's government and some parent-advocate counterparts, AFC Offices need an immediate across-the-board, baselined budget increase of a minimum of an additional \$50,000,000 to reduce caseloads and raise salaries, and an additional \$10,000,000 to sustain the caseloads and salaries for AFCs handling delinquency cases. This level of funding reflects the need for AFC Offices around the

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<sup>13</sup> <https://www.nydailynews.com/2023/04/03/staffing-crisis-caseloads-threaten-legal-services-for-children-in-nyc-family-court/>  
<https://gothamist.com/news/facing-attrition-and-crushing-workloads-ny-family-court-lawyers-for-children-plead-for-more-state-funding>  
<https://www.wnyc.org/story/attorneys-children-new-york-face-unprecedented-crisis/>

state to immediately add attorneys to bring average caseloads down and allow supervisors and bureau heads to focus on recruitment, case supervision, and training.

Furthermore, as the number of Family Court judges increases, having sufficient numbers of AFCs is essential to reducing the delays that have plagued Family Court for years. In fact, based on the current overcrowded calendars of our attorneys, failing to immediately reduce the AFC case cap would create an impediment to achieving the goals OCA seeks to achieve for a more efficient, compassionate, and equitable Family Court in which cases do not drag on for years, unnecessarily leaving families in limbo with no resolution in sight.

## VII. Conclusion: Racial Equity & Access to Justice

The fight against racial disparities in the child welfare and juvenile justice systems must include a dedicated effort to address the chronic underfunding of legal representation for children in the Family Court system. Only through a comprehensive approach can we hope to dismantle the entrenched systemic biases that disproportionately affect children living in very low-income households, ensuring that their rights and futures are safeguarded with fairness and equity.

AFC Offices need the full support of OCA, the legislature, and the executive to take swift action to begin to ameliorate this AFC crisis by:

1. Redrafting §127.5 of the Rules of the Chief Administrator of the Court to initially and immediately reduce the AFC case cap from 150 children to 75 dockets.
2. Allocating the increased funding detailed above in the 2024-25 fiscal year while working to establish lower case caps going forward, which are tied to the work involved in various types of AFC cases.
3. Over the next fiscal year, creating a concrete plan to increase the staffing and funding of AFC Offices in order to build salary structures that reflect the need for lower caseloads and respect the importance of the work of AFCs.

These steps will directly impact our ability to serve the court by providing our young clients with the highest quality legal representation. Doing so is in the best interests of children, will facilitate the expeditious and efficient handling of proceedings by the court, and will directly benefit the communities whose children and families are the subjects of Family Court proceedings.

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Compilation of Codes, Rules and Regulations of the State of New York Currentness  
Title 22. Judiciary  
Subtitle A. Judicial Administration.  
Chapter I. Standards and Administrative Policies  
Subchapter A. Rules of the Chief Judge  
Part 7. Law Guardians (Refs & Annos)

22 NYCRR 7.2

Section 7.2. Function of the attorney for the child

(a) As used in this Part, attorney for the child means a law guardian appointed by the Family Court pursuant to section 249 of the Family Court Act, or by the Supreme Court or a Surrogate's Court in a proceeding over which the Family Court might have exercised jurisdiction had such action or proceeding been commenced in Family Court or referred thereto.

(b) The attorney for the child is subject to the ethical requirements applicable to all lawyers, including but not limited to constraints on: ex parte communication; disclosure of client confidences and attorney work product; conflicts of interest; and becoming a witness in the litigation.

(c) In juvenile delinquency and person in need of supervision proceedings, where the child is the respondent, the attorney for the child must zealously defend the child.

(d) In other types of proceedings, where the child is the subject, the attorney for the child must zealously advocate the child's position.

(1) In ascertaining the child's position, the attorney for the child must consult with and advise the child to the extent of and in a manner consistent with the child's capacities, and have a thorough knowledge of the child's circumstances.

(2) If the child is capable of knowing, voluntary and considered judgment, the attorney for the child should be directed by the wishes of the child, even if the attorney for the child believes that what the child wants is not in the child's best interests. The attorney should explain fully the options available to the child, and may recommend to the child a course of action that in the attorney's view would best promote the child's interests.

(3) When the attorney for the child is convinced either that the child lacks the capacity for knowing, voluntary and considered judgment, or that following the child's wishes is likely to result in a substantial risk of imminent, serious harm to the child, the attorney for the child would be justified in advocating a position that is contrary to the child's wishes. In these circumstances, the attorney for the child must inform the court of the child's articulated wishes if the child wants the attorney to do so, notwithstanding the attorney's position.

**Credits**

Sec. filed Oct. 29, 2007 eff. Oct. 17, 2007.