

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
NEW YORK COUNTY LAWYERS :
ASSOCIATION, BRONX COUNTY BAR :
ASSOCIATION, QUEENS COUNTY :
BAR ASSOCIATION, RICHMOND :
COUNTY BAR ASSOCIATION, :
ASSIGNED COUNSEL ASSOCIATION : Index No. ____ - ____
OF NEW YORK STATE, INC. (ACA- :
NYS, INC.), MACON B. ALLEN BLACK : COMPLAINT
BAR ASSOCIATION and LATINO :
LAWYERS ASSOCIATION OF QUEENS :
COUNTY, :
: :
Plaintiffs, :
: :
-against- :
: :
THE STATE OF NEW YORK, THE CITY :
OF NEW YORK, NEW YORK CITY :
DEPARTMENT OF FINANCE, and :
SHERIF SOLIMAN, in his official :
capacity as Commissioner of the New :
York City Department of Finance, :
: :
Defendants. :
-----X

Plaintiffs New York County Lawyers Association (“NYCLA”), Bronx County Bar Association (“BCBA”), Queens County Bar Association (“QCBA”), Richmond County Bar Association (“RCBA”), Assigned Counsel Association of New York State, Inc. (“ACA-NYS”), Macon B. Allen Black Bar Association (“MBABBA”), and Latino Lawyers Association of Queens County (“LLAQC”), by their attorneys Kramer Levin Naftalis & Frankel LLP, for their complaint against the State of New York (the “State Defendant”), the City of New York, the New York City Department of Finance (“Department of Finance”), and Sherif Soliman, in his

official capacity as Commissioner of the Department of Finance (together with the Department of Finance and New York City, the “City Defendants”), allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action for declaratory and injunctive relief to prevent the continuing violation of the constitutional right of children and indigent adults to meaningful and effective legal representation by assigned private counsel in family and criminal court proceedings at the trial and appellate levels in New York City. The State and City of New York have not met their obligation to ensure such representation because they have failed to increase the compensation for such counsel for more than seventeen years.

2. This Court has already addressed these constitutional violations. NYCLA brought a prior lawsuit in 2001, after the compensation for assigned counsel had not been increased since 1986 (“*NYCLA I*”). On February 5, 2003, more than eighteen years ago, this Court granted declaratory relief and a permanent injunction against the State and New York City, found they violated the New York and United States Constitutions, and required them to increase assigned counsel compensation. The Court found their failure to do so for the prior seventeen years created a severe and unacceptably high risk that children and indigent adults were receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions. *See New York County Lawyers’ Ass’n v. State of New York*, 196 Misc. 2d 761 (Sup. Ct. N.Y. Cnty. 2003).

3. This Court’s February 5, 2003 decision explained (i) the importance of the constitutional right of indigent litigants to appointed counsel, (ii) New York’s assigned counsel plan to provide that representation, and (iii) the unacceptable threat that the inadequate compensation of assigned counsel poses to that representation and the adversarial process:

“The indigent’s right to appointed counsel was imposed on the states by hammer and chisel (*see*, U.S. Const. amend. VI; N.Y. Const. art. I, § 6; *Gideon v. Wainwright*, 372 U.S. 335 (1963)) and is now widely understood to mean that defendants are entitled to meaningful and effective legal representation at every critical stage of a proceeding. *See McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970); *People v. Baldi*, 54 N.Y.2d 137, 146–47 (1981). New York has historically been concerned with the need for counsel, expanding its application in many proceedings, arguably but not directly required by the United States Constitution. In so doing, the Legislature expressly recognized the importance of an attorney in family court proceedings, holding the appointment of counsel essential to secure due process. *See* Family Court Act § 261. Family Court litigants, like the accused in criminal cases, are entitled to the assistance of counsel that is meaningful and effective. The statutory right to counsel under Family Court Act § 262 affords protections equivalent to the constitutional standard of meaningful and effective assistance of counsel afforded defendants in criminal proceedings. *Thompson v. Jones*, 253 A.D.2d 989, 989–90 (3d Dep’t 1998); *In re Erin G.*, 139 A.D.2d 737, 739 (2d Dep’t 1988). In Family Court, meaningful and effective assistance requires that attorneys accomplish certain basic tasks in all cases. Attorneys must thoroughly interview and counsel their clients. *See In re James R.*, 238 A.D.2d 962 (4th Dep’t 1997) (reversal where attorney did not meet with respondent mother and did not inform her of need to appear at fact-finding). They must conduct an independent investigation and develop evidence. *See In re Colleen CC.*, 232 A.D.2d 787, 788 (3d Dep’t 1996) (reversal where law guardian failed to develop evidence on behalf of his client). They must also adequately prepare for and actively participate in proceedings at each stage of a case. *See In re Jamie TT.*, 191 A.D.2d 132, 136–37 (3d Dep’t 1993) (reversal where law guardian called no witnesses and conducted perfunctory cross-examination); *In re Elizabeth R.*, 155 A.D.2d 666 (2d Dep’t 1990) (reversal where law guardian was not an active participant in the proceedings); *In re Bernard K.*, 280 A.D.2d 728, 729 (3d Dep’t 2001) (“totality of circumstances demonstrates that respondent received meaningful representation” and citing criminal precedent, including *People v. Rivera*, 71 N.Y.2d 705, 709 (1988), to define effective assistance).

The assigned counsel plan is part of the infrastructure created by the City of New York in response to the State’s mandate to devise a plan which provides legal representation to indigent litigants. The system operates because attorneys choose to uphold their oath, undertake the obligation to test the adversarial process and bring to bear such skill and knowledge as will render the outcome reliable. In return, the State assumes the obligation to provide assigned

counsel with a reasonable basis upon which they can carry out their profession's responsibility, without either personal profiteering or undue financial sacrifice. The current rates threaten the adversarial process by creating an unacceptable tension between adherence to professional standards and the financial burden an attorney assumes when serving on an 18-B panel."

Id. at 779-80 (parallel citations omitted).

4. This Court found that the Legislature's failure to provide adequate compensation to assigned counsel created a "grim reality" that children and indigent adults were at unreasonable risk of being deprived of their constitutional right to counsel:

"What has emerged from the evidence is the grim reality that children and indigent adults in the New York City Family Court, Criminal Court, and Criminal Term of Supreme Court are at unreasonable risk of being subjected to a process that is neither swift nor deliberate, and fails to confirm the confidence and reliability in our system of justice. This is a direct result of the Legislature's failure to provide adequate compensation to assigned counsel. The right of a criminal defendant or family court litigant to interpose an attorney between himself and the State with its considerable power and resources is a cherished principle, zealously protected by New York Courts. The State of New York continues to ignore its constitutional obligation to the poor by failing to increase the assigned counsel rates that result, in many cases, in denial of counsel, delay in the appointment of counsel, and less than meaningful and effective legal representation."

Id. at 763.

5. This Court concluded that to address the severe and unacceptably high risk that children and indigent adults were receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions, a permanent injunction was required that ordered New York City to pay an interim rate of \$90 per hour until the Legislature modified the laws for compensation or further order of this Court:

"It is declared that Defendant State of New York has a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children and indigent adults in New York City; it

is declared that Defendant State of New York's failure to increase the rates paid to assigned private counsel, to abolish the arbitrary distinction between the rates paid for in- court and out-of-court work, and to remove the caps on total per case compensation has created a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions; it is declared that those portions of §722-b of the [New York] County Law ['County Law'], § 245 of the Family Court Act, and § 35 of the Judiciary Law fixing these rates and limits are unconstitutional as applied to the representation of children and indigent adults in New York City; and accordingly, it is ordered, that NYCLA's motion for a permanent injunction is granted to the extent that Defendant City of New York is directed to pay assigned counsel the interim rate of \$90 an hour for in-court and out-of-court work, in Criminal Court, Family Court (other than those Family Court matters for which the State of New York has been paying the vouchers) and Supreme Court, Criminal Term until modification of County Law § 722-b by the Legislature or further order of this court; and it is further ordered, that Defendant State of New York is directed to pay assigned counsel the interim rate of \$90 an hour for in-court and out-of-court work, as it relates to such representation in Family Court in New York City, until the Legislature modifies Judiciary Law § 35."

Id. at 790.

6. This Court also found that § 722-B of the County Law, § 245 of the Family Court Act and § 35 of the Judiciary Law "were enacted without a mechanism for automatic periodic increases [in assigned counsel rates], thereby requiring recurrent visitation by the Legislature."

Id. at 763-64.

7. After this Court's February 5, 2003 order, Article 18-B of the County Law and Article 2 of the Judiciary Law (codified at N.Y. County L. § 722 and 2 N.Y. Jud. L. § 35), were amended, and the rates set by N.Y. Family Court Act § 245 were accordingly revised, to provide that counsel assigned to represent indigent adults in family court matters, appeals, or felony cases, and children, shall not receive compensation in excess of \$75 per hour, and that counsel for indigent adults facing criminal misdemeanor charges shall be paid not more than \$60 per

hour. Those statutes impose a \$4,400 cap on the amount that assigned private counsel may receive for felony cases, appeals, and all Family Court matters, and a \$2,400 cap for misdemeanors, regardless of the number of hours actually worked. Exceptions to these rates and caps may be made only in “extraordinary circumstances” upon application to the court (together, the “2004 Rates”). The Chair of the Assembly Judiciary Committee wrote that she hoped “we will not have to wait 17 more years to adjust rates.”

8. However, the Legislature has not followed this Court’s admonition that “recurrent visitation” of the rates of compensation is “requir[ed].” The Legislature has not changed the assigned counsel rates since 2004. During the 17 years that the assigned counsel rates for state court proceedings have been frozen, the rate paid to assigned counsel in federal court proceedings, which this Court considered in *NYCLA I* in determining whether the rates for assigned counsel in state court proceedings were adequate, has been increased *fourteen* times and is now \$155 per hour, *more than double* the highest, \$75 per hour rates paid to assigned counsel in state court proceedings.

9. Defendants’ failure to increase the hourly rates since 2004 has caused New York City’s assigned counsel system to deteriorate once again to a point where it subjects children and indigent adults to a severe and unacceptably high risk that meaningful and effective representation will not be provided in violation of their right to counsel and to due process of law.

10. The number of assigned counsel willing to take on cases in the assigned counsel program has again dropped. Lawyers who decide to participate must take on more cases to meet the growing demand for assigned counsel. That in turn increases the risk that they will not be able to give sufficient attention to any client. It causes delays in the administration of justice. As

this Court held in 2003, the high — and still increasing — workloads of assigned counsel do not give them enough time for each case. Assigned counsel frequently do not have time to perform many of the tasks that are critical to effective representation, including interviewing their clients; consulting with their clients on a regular basis throughout proceedings; reviewing all relevant records and documents; performing an independent investigation of the facts and the law; identifying and interviewing witnesses; filing motions; conducting discovery and follow up on appropriate discovery requests; making applications for investigators or other experts where appropriate; preparing for a negotiated settlement or litigation at each stage of the proceedings; ensuring that their clients receive necessary services; preparing appropriate service plans for their clients; securing appropriate orders; and monitoring compliance.

11. Chief Judge Janet DiFiore has explained that the failure to increase the 2004 Rates has caused a crisis, and urged the Governor and the leaders of the Legislature to address it. On February 26, 2019, the Chief Judge emphasized in her annual State of the Judiciary Address that an increase in assigned private counsel rates was “necessary to maintain the quality of justice in our criminal and family courts, and to continue the systemic progress we have made to reduce systemic delays in New York State courts.” On February 26, 2020, the Chief Judge explained in her 2020 State of the Judiciary Address that the continuing use of the 2004 Rates has caused a “crisis that cannot be ignored:”

“Across the state we are experiencing a major exodus from our assigned counsel panels. As 18-B and Attorney for the Child compensation rates have stagnated, it has become increasingly difficult to recruit and retain experienced lawyers willing to provide these critical services. This is a crisis that cannot be ignored, not if we want to ensure that indigent criminal defendants are accorded their constitutional right to counsel and not if we want to ensure that the rights of children are protected when their safety and welfare are at stake.”

12. And on March 2, 2021, Chief Judge DiFiore renewed her plea for the Legislature to increase the 2004 Rates in a letter to Governor Cuomo, State Senate Majority Leader Andrea Stewart-Cousins, and State Assembly Speaker Carl E. Heastie:

“[A]ssigned counsel rolls continue to struggle across the state exacerbating already excessive caseloads, endangering the quality of legal representation for indigent litigants and contributing to the backlogs that impair the operational efficiencies of our criminal and family courts. For example, since 2013 more than a third of the lawyers serving on our attorney-for-the-child panels have dropped out of the program, leading to increased adjournments and worsening delays in many of our family courts Without appropriate compensation ensuring an adequate pool of well-qualified assigned counsel, the overall quality of our indigent representation system is diminishing and the important policy goals of many recent enactments implicating the rights of criminal defendants and children—including bail and discovery reform, Raise the Age, and the Family First Prevention Services Act—are at risk of being compromised.”

13. The COVID-19 pandemic has exacerbated the crisis. The backlog of cases to be assigned to private counsel continues to mount. The number of cases requiring assigned counsel is expected to escalate even more as normal court operations resume and new cases are filed. As Chief Judge DiFiore reminded Governor Cuomo, Senate Majority Leader Stewart-Cousins and Speaker Heastie in her March 2, 2021 letter, increases in compensation of assigned counsel are “critical now more than ever as the criminal and family courts statewide confront unavoidable backlogs left in the wake of the COVID-19 public health emergency.”

14. Moreover, in February, 2021, the New York State Office of Indigent Legal Services (“ILS”) expanded the presumptive eligibility for assigned counsel to all litigants whose net income is at or below 250% of the Federal Poverty Guidelines. That expansion will increase the need for assigned private counsel.

15. The Appellate Division, First Department, emphasized in *NYCLA I* that courts have the authority to determine whether assigned counsel rates create a constitutional infirmity:

“[A]s the Court in *Klostermann v. Cuomo* (61 N.Y.2d 525) stated, when the Legislature creates a duty of compensation “it is within the courts’ competence to ascertain whether [the State] has satisfied [that] duty . . . and, if it has not, to direct that the [State] proceed forthwith to do so.” Even though the Legislature, when creating that duty, also established rates for compensation, the courts must have the authority to examine that legislation to determine whether its monetary cap provisions create or result in the alleged constitutional infirmity (see *Board of Educ., Levittown Union Free School Dist. v. Nyquist*, 57 N.Y.2d 27, 39, appeal dismissed 459 U.S. 1138).”

294 A.D. 2d 69, 72 (1st Dept. 2002) (parallel citations omitted).

16. This Court should now make that determination, just as it did 18 years ago. The State Defendant’s failure to increase the 2004 Rates paid to assigned private counsel, and to remove the caps on their total compensation per matter, has once again created a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions. The portions of § 722-b of Article 18-B of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law that fix those rates and limits are once again unconstitutional as applied to the representation of children and indigent adults in New York City. This Court should issue a preliminary injunction and a permanent injunction setting new rates at a level sufficient to ensure that qualified private counsel are available and able to provide children and indigent adults in New York City with constitutionally adequate representation in family and criminal court proceedings at the trial and appellate levels, and should remove the current limits on compensation for private counsel who participate in the assigned counsel program. This Court should also require Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

PARTIES AND VENUE

17. NYCLA is a not-for-profit association of lawyers, many of whom work in New York County. It promotes the fair administration of justice and the public interest by, among other things, seeking to ensure equal access to justice for all. NYCLA helped to draft and was a co-sponsor of the Assigned Counsel Plan for the First Department when it was devised in 1965 pursuant to Article 18-B. Today, some of NYCLA's members serve as assigned counsel under the Assigned Counsel Plan in New York City. Some of NYCLA's members also serve on the First Department's screening committee for the criminal panel and the advisory committee for the attorneys for the children plan.

18. BCBA is a not-for-profit association of lawyers practicing in Bronx County. It promotes the fair administration of justice. Some of BCBA's members serve as assigned counsel under the Assigned Counsel Plan in New York City. Some of BCBA's members also serve on the First Department's screening committee for the criminal panel and advisory committee for the attorneys for the children plan.

19. QCBA is a not-for-profit association of lawyers who work in Queens County. It promotes the fair administration of justice. Some of QCBA's members serve as assigned counsel in the Second Department, and on the advisory committees for the Second Department's criminal defense panel and attorneys for the children plan. QCBA maintains a screening committee to recommend attorneys to serve on the criminal and family court panels in the Second Department.

20. RCBA is a not-for-profit association of lawyers who work in Richmond County. It promotes the fair administration of justice. Some of its members serve as assigned counsel in the Second Department, and on the advisory committees for the Second Department's criminal defense panel and attorneys for the children plan. RCBA maintains a screening committee to recommend attorneys to serve on the criminal panel in the Second Department.

21. ACA-NYS is an association of assigned counsel members on panels throughout the State of New York, including the five boroughs of New York City. These members provide legal services for indigent adults and children in New York's courts. ACA-NYS is organized and operated with the objective of promoting the interests of assigned counsel, and the indigent litigants they serve, in New York City and throughout the State. It promotes the fair administration of justice.

22. MBABBA is an organization for Black and African-American attorneys and judges in Queens. It promotes the fair administration of justice. Some of MBABBA's members serve as assigned counsel.

23. LLAQC is a not-for-profit organization that promotes the general welfare and legal rights of the Latino community and the fair administration of justice. Some of LLAQC's members serve as assigned counsel.

24. Plaintiffs and their members are committed to the fundamental principle that qualified private counsel must be available to children and indigent adults in New York courts, and the compensation rate the State sets for participants in the assigned counsel program, and the City pays to those participants, must be sufficient to ensure that their clients receive the meaningful and effective legal representation to which they are constitutionally entitled.

25. Defendant State of New York is required by its Constitution, the statutes cited above, and the United States Constitution, to provide meaningful and effective legal representation to children and indigent adults in New York State Family and Criminal Court proceedings, as explained more fully below.

26. Defendant City of New York is a political subdivision of Defendant State of New York. New York City was created by and is subject to the control of the State Legislature. The

City is an agent of the State Defendant to the extent it performs the State Defendant's responsibilities and exercises its governmental powers. The State Defendant, in County Law §§ 722 and 722-e, required New York City to "place in operation" a plan for providing counsel to children and indigent adults in Family and Criminal Court proceedings in New York City, and to pay "[a]ll expenses for providing counsel and services other than counsel" in those proceedings. N.Y. Cnty. Law § 722; *see* §722-e ("All expenses for providing counsel and services other than counsel hereunder shall be . . . a city charge to be paid out of an appropriation for such purposes."). However, the State Defendant prohibits the City from paying assigned private counsel at rates higher than those set forth in § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law absent a finding of "extraordinary circumstances" by the trial or appellate court. Since 1965, the City has complied with the State Defendant's statutory command by adopting the Assigned Counsel Plan pursuant to New York City Executive Order No. 178, and by paying the expenses of providing counsel, and services other than counsel, for indigent adults in Family and Criminal Court proceedings in New York City. The State Defendant has not delegated and cannot delegate to New York City its constitutional and statutory obligations to ensure that children and indigent adults receive meaningful and effective legal representation in Family and Criminal Court proceedings.

27. Pursuant to § 722-b of the County Law, Defendant New York City Department of Finance, through its Payment Unit, is responsible for paying assigned private counsel who represent indigent clients in family and criminal matters. Assigned counsel submit payment vouchers to the New York City Department of Finance for approval. If the Department approves a voucher, the Department forwards it to the judge or justice presiding over the proceeding. If the judge or justice approves the payment, the voucher is returned to the Department, and it

processes the payment to the attorney. Consistent with the relevant statutes, the Department does not pay assigned counsel more than the statutorily capped 2004 Rates.

28. Defendant Sherif Soliman is the Commissioner of the Department of Finance. He is responsible for overseeing the activities of the Department of Finance, including its Payment Unit, and its payment of compensation to private counsel designated as assigned counsel. Defendant Soliman is sued only in his official capacity.

29. Because the State Defendant does not authorize, and the City Defendants do not pay, sufficient compensation to assigned counsel, Plaintiffs' members who provide services as assigned counsel — and Plaintiffs on behalf of those members — have been and will be injured in connection with their representation of their past, current, and prospective clients. The past, current, and prospective clients of assigned counsel would face formidable and genuine obstacles to bring the claims in this action on their own. The clients are indigent and do not have readily available resources to compensate an attorney to represent them in individual lawsuits addressing the constitutional violations set forth in this Complaint. The vast majority of the clients also do not have the ability fairly to represent themselves *pro se* in individual lawsuits. The clients who have not reached the age of majority would also face severe difficulties in bringing these claims individually.

30. This Court has jurisdiction over this action pursuant to Article 30 of the New York Civil Practice Law and Rules (“CPLR”), § 3001. Venue is proper in this Court pursuant to Article 5 of the CPLR, §§ 503(a) & (c), 504(3) & 505(a).

BACKGROUND

A. The Right to Assigned Counsel in New York State

31. This Court explained in its 2003 order in *NYCLA I*:

“The true administration of justice is the firmest pillar of good government.’ The courts of this state cannot be true to George Washington’s conviction when the most vulnerable in our society, children and indigent adults, appear in courts without advocates to champion or defend their causes. The pusillanimous posturing and procrastination of the executive and legislative branches have created the assigned counsel crisis impairing the judiciary’s ability to function. This pillar is essential to the stability of our political system. It should therefore be continually strengthened and not allowed to crumble into the detritus of a constitutional imbalance among the branches of government. Equal access to justice should not be a ceremonial platitude, but a perpetual pledge vigilantly guarded.”

196 Misc. 2d at 762 (quoting inscription on this Court’s entrance portico ascribed to George Washington).

32. The right of children and indigent adults, the most vulnerable among us, to counsel in Family Court and criminal proceedings has a long tradition in this State. It dates back to the early words of George Washington quoted by this Court, and is enshrined in the State’s Constitution. But the “perpetual pledge [to] vigilantly guard” these individuals’ right of equal access to justice has not been kept. More than eighteen years have passed since this Court ordered the State Defendant to increase the compensation rates for private counsel assigned to represent children and indigent adults, and reiterated the “requir[ement for] recurrent visitation [of those rates] by the Legislature.” *Id.* at 763-64. The Legislature has not followed this Court’s admonition, however. That failure has put children and indigent adults at unreasonable risk of being deprived of their constitutional right to counsel, just as they were when this Court granted declaratory and injunctive relief in *NYCLA I*.

33. Federal and State law firmly establish the right of children in New York to assigned counsel in Family Court proceedings. The United States Constitution gives the right to counsel to children accused of crimes who are tried in family court rather than criminal court. In 1967, the United States Supreme Court ruled that when a child faces a loss of liberty, he or she is

constitutionally entitled to meaningful and effective assistance of counsel. *See In re Gault*, 387 U.S. 1 (1967). In 1962, five years earlier, New York adopted the Family Court Act. That Act placed this State at the forefront of the protection of children's rights. It provides that each child who is the subject of a Family Court proceeding, or an appeal of a proceeding originating in the Family Court, is entitled to representation by counsel of his or her choice or by an attorney for the child appointed by the State. *See* N.Y. Fam. Ct. Act 241 (McKinney 1998).

34. Following the enactment of the Family Court Act and the reasoning of *Gault* and a similar line of New York authorities, New York Courts have held that indigent children who press claims in Family Court that implicate their liberty interest, such as allegations of child abuse, are also entitled to meaningful and effective legal representation by assigned counsel. *See Silverman v. Silverman*, 186 A.D.3d 123, 129 (2d Dep't 2020); *Matter of Payne v. Montano*, 166 A.D.3d 1342, 1345 (3d Dep't 2018); *In re Brian S.*, 141 A.D.3d 1145, 1150 (4th Dep't 2016); *In the Matter of Jamie TT*, 191 A.D.2d 132 (3d Dep't 1993).

35. Federal and New York law also require that indigent adults have meaningful and effective legal representation in other family proceedings. For example, the United States Supreme Court has held that an indigent adult has a right to meaningful and effective legal representation in child custody proceedings. *See Lassiter v. Department of Soc. Servs.*, 452 U.S. 18 (1981). And the Family Court Act extends the right of assigned counsel to indigent adults in a wide range of Family Court proceedings including abuse and neglect, family offense, child custody proceedings and proceedings to terminate parental rights pursuant to Social Services Law § 384-b. *See* N.Y. Fam. Ct. Act § 262 (McKinney 1998).

36. Federal and New York law also recognize the right of indigent adults to counsel in criminal cases. In *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme

Court held that the Sixth and Fourteenth Amendments to the United States Constitution require the States to provide adequate legal representation to children and indigent adults charged with felonies. The United States Supreme Court opined that:

“[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

Id. at 344.

37. That same year, the United States Supreme Court held in *Douglas v. California*, 372 U.S. 353 (1963), that the federal constitution also requires the States to provide indigent defendants with counsel in their first appeal as of right in all criminal cases. As the Court later clarified, that includes the right to meaningful and effective assistance of appellate counsel. *See Evitts v. Lucey*, 469 U.S. 387 (1985).

38. New York law provides a more expansive right to counsel in criminal cases than the United States Constitution. More than eighty years before the United States Supreme Court decided *Gideon*, New York law recognized that children and indigent adults who are charged with serious crimes have a right to counsel. In 1881, the New York Legislature adopted §308 of the Criminal Procedure Law, which directed courts to appoint private counsel on a pro bono basis for unrepresented defendants responding to an indictment.

39. Less than two years after *Gideon*, the New York Court of Appeals held that indigent defendants are entitled to have counsel appointed to represent them in all criminal cases, and not merely in felony prosecutions. *See People v. Witek*, 15 N.Y.2d 392 (1965). The Court explained that the “right and the duty of our courts, to assign counsel for the defense of destitute persons, indicted for crime, has been, by long and uniform practice, as firmly

incorporated into the law of the State, as if it were made imperative by express enactment.” *Id.* at 397. The Court found that “the right of counsel must be made ‘meaningful and effective’ in criminal courts on every level.” *Id.* at 395. *See also Hurrell-Harring v. State of New York*, 66 A.D.3d 84 (3d Dep’t 2010) (reaffirming the right to effective assistance of counsel under *Gideon*).

40. In 1965, the New York Court of Appeals also held that an indigent criminal defendant “who is by statute accorded an absolute right to appeal . . . is entitled to the assignment of counsel to represent him on such appeal if he so requests.” *People v. Hughes*, 15 N.Y.2d 172, 173 (1965). This requires the effective assistance of assigned appellate counsel. *See People v. Gonzalez*, 47 N.Y.2d 606 (1979).

41. In 2003, this Court confirmed that the assignment of counsel who are not adequately compensated to represent children and indigent adults creates a severe and unacceptably high risk that children and indigent adults would receive inadequate legal representation in New York City in violation of the New York and United States Constitutions. Under New York law and its constitution, attorneys assigned to represent children and indigent adults in family court and criminal proceedings must be adequately compensated so they can devote sufficient time and resources to their cases. *NYCLA I*, 196 Misc. 2d 761 (Sup. Ct. N.Y. Cnty. 2003); *see also NYCLA I*, 192 Misc. 2d 424, 425 (Sup. Ct. N.Y. Cnty. 2002).

B. New York State’s Assigned Counsel Program in the Family, Supreme, and Criminal Courts in New York City

42. In 1965, to meet New York’s long-standing obligation to satisfy the constitutional right of indigent and vulnerable litigants to effective legal representation, the Legislature adopted Article 18-B of the County Law (enacted as N.Y. Cnty. L. §§ 722 - 722-F). Before the enactment of Article 18-B, New York State relied almost exclusively on private attorneys to

represent children and indigent adults on a pro bono basis. While the Legislature debated the enactment of Article 18-B, the New York State Bar Association (“NYSBA”) issued a report that concluded that the immense burden of representing all children and indigent adults required to be represented by assigned counsel in criminal trial and appellate proceedings could not be met by private attorneys working on a pro bono basis. The NYSBA report recommended that “[l]awyers who are assigned to represent indigent [parties] should be compensated sufficiently to permit them to devote the time, care and patience to the preparation and disposition of the cases which are necessary to meaningful exercise of the right to counsel.” Comm. on State Legis., NYSBA Report No. 48, at 2 (1965).

43. Article 18-B requires local governments to implement their own systems for providing adequate legal representation for children and indigent adults charged with crimes. It offers four options for establishing an indigent defense system, including a “mixed” system in which the locality engages both a public defender agency such as the Legal Aid Society and a panel of private counsel under a bar association plan to provide representation in criminal matters. New York City employs that system.

44. In November 1965, New York City Mayor Robert F. Wagner signed Executive Order No. 178. It designated the Legal Aid Society as the provider of legal representation to children and indigent adults under Article 18-B, and called for the establishment of an Assigned Counsel Plan. The Plan for the First Department, originally co-sponsored by NYCLA and the Association of the Bar of the City of New York, established the Criminal Panel from which private counsel would be appointed to represent indigent defendants in criminal matters. The Plan took effect in 1966 following approval by the State Judicial Conference. It continues to

govern the representation of children and indigent adults by assigned private counsel in criminal cases in the Bronx and New York County.

45. In 1974, the Legislature amended the Family Court Act to require the Appellate Divisions to designate panels of private counsel, and attorneys for the children, to represent indigent adults and children in Family Court proceedings. Pursuant to that law, the First and Second Departments established Family Court Panels to provide assigned private counsel for children and indigent adults entitled to representation in Family Court in New York City. Assigned attorneys for children and assigned private counsel for indigent adults in Family Court matters are paid at the rates set by § 245 of the Family Court Act and § 35 of the Judiciary Law.

46. Assigned counsel are also appointed, pursuant to New York Judiciary Law § 35(8), to represent indigent litigants in custody and visitation matters and matrimonial litigation in the Supreme Court.

47. The New York City Department of Finance and/or the State is responsible for paying the assigned counsel who submit vouchers for professional services rendered. It has adopted Rules and Procedures for Attorneys and Experts on Payments to meet that responsibility. Those rules set forth a procedure for assessing and paying those fees.

48. New York City regulations provide procedures for impaneling, screening, and training counsel assigned to represent children and indigent adults. Those regulations state the Appellate Division for the First Department shall govern the administration of the attorney panels for indigent criminal defendants in the Bronx and New York County, with the assistance of a screening committee. 22 NYCRR §§ 612.0, 612.3, 612.4. The screening committee is responsible for screening applicants for the panel and overseeing matters related to performance

and conduct. *Id.* §§ 612.6, 612.3. The Appellate Division adds attorneys to the panel for an indefinite term, but may remove them at any time. *Id.* §§ 612.6, 612.2.

49. The Appellate Division for the Second Department governs the administration of attorney panels for indigent criminal defendants in Kings, Queens, and Richmond Counties through a plan administrator. 22 NYCCR § 678.1. There is an advisory committee for the criminal defense panel that is comprised of members of the judiciary, bar association representatives, a law school faculty member, and others chosen by the Presiding Justice. It is responsible for establishing procedures for appointment to the panel, periodic evaluations of attorneys, mandatory training and educational programs, investigating complaints, disciplining attorneys, and periodically reviewing the plan. *Id.* §§ 678.4, 678.5, 678.10. Each county bar association is responsible for maintaining a screening committee to recommend attorneys to the administrator for approval. *Id.* § 678.7. The Appellate Division then designates members of the panel for three-year terms. *Id.* § 678.8.

50. The attorneys for the children plan in the Bronx and New York County is administered by the Director of the Office of Attorneys for the Children, who is appointed by the Presiding Justice of the First Department. 22 NYCCR § 611.1. The plan is overseen by an advisory committee. The advisory committee screens applicants for membership on the family court panels and coordinates mandatory ongoing education and training for panel attorneys. *Id.* §§ 611.8, 611.9.

51. The attorneys for children plan for the Second Department is administered by the director of the program, who is appointed by the Second Department and supervised by the Presiding Justice. 22 NYCRR § 679.2. The plan is overseen by the Departmental Advisory Committee, which is comprised of the Administrative Law Judge of the Family Court of the City

of New York, or his or her designee, a representative of each of the county bar associations (including QCBA and RCBA), a law school faculty member, and three additional members including at least one non-attorney. *Id.* § 679.4. The advisory committee is responsible for procedures for appointing attorneys to the panel, and for evaluating, training, and investigating complaints against attorneys on the panel. *Id.* § 679.5. The Second Department designates attorneys to the panel for one-year terms on the recommendation of the advisory committee. *Id.* § 679.7. The advisory committee is also responsible for establishing mandatory education and training for panel attorneys. *Id.* § 679.9.

C. This Court's 2003 Ruling That Assigned Counsel Compensation Rates Must Be Adequate

52. In 1965, County Law 722-b set the compensation rates for assigned counsel at \$15 per hour for in-court time and \$10 per hour for out-of-court time, with monetary caps of \$500 and \$300 respectively. The State Defendant increased these rates twice over the next twenty years, but as of 2001 had not done so since 1986. Thus, as of 2001, Defendants compensated assigned counsel at the rates set in 1986: \$25 per hour for out-of-court work and \$40 per hour for in-court work, with a monetary cap of \$800 for all misdemeanor and Family Court cases and \$1,200 for felonies and appellate matters.

53. At the same time, in 2001, assigned private counsel in the United States District Courts for the Southern and Eastern Districts of New York received \$75 per hour for time spent in and out of court. That was almost twice the rate New York State paid for in-court time, and three times the rate New York paid for out-of-court time. By 2003, the compensation rate for in-court time in the Southern and Eastern Districts had been increased to \$90 per hour. Counsel on the federal panel were permitted to receive up to \$3,500 for felony cases and \$1,000 for misdemeanor cases.

54. In 2001, NYCLA filed its complaint in this Court in *NYCLA I*. NYCLA sought redress on behalf of the many children and indigent adults who were at risk of being deprived of their constitutional right to effective assistance of counsel due to the inadequate compensation of assigned counsel. The complaint had nine causes of action. Eight alleged that the State's failure to provide sufficient compensation to private counsel resulted in systemic deficiencies in the assigned counsel system in the Supreme, Criminal, and Family Courts in New York City, and created a risk that indigent adults and children would be denied their right to the meaningful and effective assistance of counsel and due process of law, in violation of Article I, Sections 5 and 6 of the New York State Constitution and the Sixth, Eighth and Fourteenth Amendments of the United States Constitution.

55. The defendants moved to dismiss. They argued NYCLA lacked standing and the dispute was not justiciable. This Court rejected both arguments and allowed the eight constitutional claims to proceed. This Court found NYCLA had standing to seek relief on behalf of the children and indigent adult litigants and its claims raised a justiciable controversy. *New York County Lawyers' Ass'n v. Pataki*, 188 Misc.2d 776, 787 (Sup. Ct. N.Y. Cnty. 2001).

56. Defendants appealed to the First Department. A unanimous five-justice panel affirmed this Court's order. The First Department ruled that NYCLA's claim was justiciable, and "when the Legislature creates a duty of compensation, it is within the courts' competence to ascertain whether [the State] has satisfied [that] duty." *New York County Lawyers' Ass'n v. State of New York*, 294 A.D.2d 69, 72 (1st Dep't 2002) (internal quotations omitted). The Court explained that "at the heart of the present action is the demand that the court system ensure that its processes do not cause systemic violations of constitutional guarantees. We therefore

conclude that the matter must be deemed justiciable.” *Id.* at 73. The First Department also affirmed this Court’s conclusions that NYCLA had standing.

57. In May 2002, this Court granted NYCLA’s motion for a preliminary injunction and declaratory relief. This Court concluded that NYCLA was likely to succeed on the merits of its constitutional claims. This Court rejected Defendants’ argument that NYCLA must prove actual harm to specific indigent adults and clients. The purpose of an ineffective assistance of counsel claim “is to ensure that a defendant has the assistance necessary to justify society’s reliance on the outcome of the proceedings. Notably, New York is concerned as much with the integrity of the judicial process as with the issue of guilt or innocence.” *New York County Lawyers’ Ass’n v. State of New York*, 192 Misc. 2d 424, 430-31 (Sup. Ct. N.Y. Cnty. 2002). “[B]ecause the right to effective assistance of counsel in New York is much more than just the right to an outcome, threatened injury is enough to satisfy the prejudice element and obtain prospective injunctive relief to prevent further harm.” *Id.* at 431.

58. On February 5, 2003, this Court granted NYCLA’s request for a permanent injunction and declaratory relief. This Court concluded that:

“(1) assigned counsel are necessary; (2) there are an insufficient number of them; (3) the insufficient number results in denials of counsel, delay in proceedings, excessive caseloads, and inordinate intake and arraignment shifts, further resulting in rendering less than meaningful and effective assistance of counsel, and impairment of the judiciary’s ability to function; and (4) the current assigned counsel compensation scheme—the rates, the distinction between the rate paid for in- and out-of-court work, and the monetary caps on per case compensation—is the cause of the insufficient number of assigned counsel.”

NYCLA v. State of New York, 196 Misc. 2d 761, 763-4 (Sup. Ct. N.Y. Cty. 2003). The Court explained that compensation rates for assigned counsel had not been increased in seventeen years, *id.* at 764, and assigned counsel in federal cases in New York City were paid two to three

times as much as assigned counsel in state court even though trial testimony “established that attorneys’ work in state courts requires more preparation and skill.” *Id.* at 785. This Court also reviewed the cost of operating an attorney business in New York and concluded that the assigned counsel compensation rates must “enable the panel attorneys to pay overhead and earn a reasonable income” because “when the rate is insufficient to cover overhead and provide a profit, attorneys refuse to take cases.” *Id.* at 787-88.

59. This Court granted: (a) a declaration that the State of New York has a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children and indigent adults in New York City; (b) a declaration that the State of New York’s failure to increase the rates paid to assigned private counsel and to remove the caps on total per case compensation created a severe and unacceptably high risk that children and indigent adults were receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions; and (c) a declaration that the portions of § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law that set those rates and limits were unconstitutional as applied to the representation of children and indigent adults in New York City. *Id.* at 790. The Court also issued a permanent injunction ordering the defendants to pay assigned counsel the interim rate of \$90 per hour for in-court and out-of-court work in Criminal Court, Family Court, and Supreme Court, Criminal Term until the Legislature modified County Law § 722-b and Judiciary Law § 35 or further order of the Court. *Id.*

60. In 2004, following this Court’s judgment granting the permanent injunction, the Legislature amended the rates set by Article 18-B, § 245 of the Family Court Act, and § 35 of the Judiciary Law to set the assigned private counsel compensation rates at \$75 per hour for work on

felony and family court cases and \$60 per hour for work on misdemeanor cases. The rate for appellate work was fixed at the same rates. The Legislature also amended the statutes to increase the caps to \$4,400 for felony cases and family court matters, and \$2,400 for all misdemeanor cases. As before, exceptions to these rates and caps were permitted to be made only in “extraordinary circumstances” upon application to the court. Such exceptions are rarely if ever granted. The express language of these provisions continues to prohibit local governments, including the City Defendants, from paying assigned private counsel at rates higher than those set forth in the statutes.

61. Defendants have not increased the 2004 Rates since that time.

D. The Assigned Private Counsel Crisis in New York City Family, Supreme and Criminal Courts

62. The rates and caps mandated by Article 18-B, § 245 of the Family Court Act, and § 35 of the Judiciary Law are directly responsible for serious systemic deficiencies that have again developed in the provision of legal representation by assigned private counsel to children and indigent adults in New York City. Because the 2004 Rates provide “inadequate” compensation to assigned counsel, the number of attorneys actively participating on the Criminal and Family Court Panels has declined. For example, the number of assigned counsel in the Bronx has decreased by 22% in the past six years. Yet the number of children and indigent adults in the Bronx and throughout New York City who depend on representation by assigned private counsel in family and criminal court matters has risen during that period.

63. ILS operates under a statutory mandate “to monitor, study and make efforts to improve the quality of services provided pursuant to article eighteen-B of the county law.” Executive Law Article 30, Section 832(1). In 2016, ILS established caseload standards for appointed counsel in criminal cases. ILS determined that an attorney should not receive in any

year more than 50 violent felony appointments, 100 felony appointments, 300 misdemeanor or violation appointments, 200 post-disposition appointments, 200 parole revocation appointments, 12 appeals of verdicts, or 35 appeals of guilty pleas.

64. In June 2021, ILS issued caseload standards for attorneys who represent indigent parents in Family Court cases. Under those standards, an attorney for indigent adults in Family Court should not receive in any year more than 300 paternity appointments, 150 willful violation of support appointments, 100 adoption or guardianship appointments, or 33 neglect or abuse appointments. ILS found that the current caseloads of attorneys who handle this work are so “crushing” that they often cannot perform “even basic lawyering tasks,” and the:

“inefficiencies and delays caused by attorneys’ unmanageable caseloads cascade into the lives of their clients beyond the courtroom. Litigants often wait for hours, days, or weeks before meeting their assigned attorney for the first time. Sometimes, if the matter is on the docket for that day, they wait hours for their case to be called or recalled, and “[t]here have even been instances where no attorney was available at all and the litigant was told to return another day.” The impact on New York’s families can be devastating, as parents represented by overburdened assigned counsel “are often unable to maintain stable employment, access services, or have any sense of stability if they are engaged in protracted litigation . . . On many occasions, [they] have acquiesced to an unfavorable settlement, or simply withdrawn their petition, because they could not continue to come to court with no end in sight.”

Caseload Standards for Parents’ Attorneys in New York State Family Court Mandated Representation Cases, ILS (June 4, 2021), at 4 (quoting Commission on Parental Legal Representation, *Interim Report to Chief Judge DiFiore*, New York State Unified Court System (February 2019)). Attorneys who still participate in the Family and Criminal Court Panels in New York City handle caseloads that far exceed the limits that ILS determined would allow counsel to provide meaningful and adequate representation to each of their many clients.

65. Then Family Court Judge Michael Gage testified in *NYCLA I* that, “[i]n my judgment” the inadequate compensation for assigned counsel “is overwhelmingly the reason why fewer attorneys are willing to work in Family Court...” Aug. 6, 2002 Trial Tr. at 311:11-23. Similarly, then Family Court Judge Philip Segal testified in *NYCLA I*, “the result of the problems with the [assigned counsel] rate . . . means the panel has diminished and there were just less and less attorneys over the years available to catch these cases.” July 10, 2001 Trial Tr. at 123:17-20. When asked by the *NYCLA I* Court whether it would “improve representation if these 18B attorneys were paid more,” Judge Segal testified, “In my view it would. It would attract more lawyers to the panel . . . The ones who stay on the panel and still take cases have so many cases that they can’t deal with them adequately.” *Id.* at 162:12-20. Columbia Law School Professor Jane Spinak conducted a study of the assigned counsel system in Family Court and testified in *NYCLA I*, “[i]n my opinion, the root cause of the shortage of counsel [in Family Court] is the current rates that are being provided to counsel under the New York State system.” Aug. 9, 2002 Trial Tr. at 909:8-10. Indiana University School of Law Professor Norman Lefstein, a former Chair of the ABA Criminal Justice Section, likewise testified in *NYCLA I* that he had “no doubt” that inadequate compensation has a “significant effect upon the willingness of attorneys to take cases” and on “the quality of the representation.” Dec. 20, 2001 Tr. at 164:17-166:7. And former First Department Law Guardian Director Katherine Law agreed in her *NYCLA I* testimony that “money” was the reason that she and her committee could not successfully recruit enough assigned counsel and experienced practitioners stopped taking cases. July 30, 2002 Trial Tr. at 78:23-80:11. She explained that “The Committee and I were both concerned because, as a result of the diminishing numbers of Family Court attorneys, those who remained in the Family Court were increasingly stressed by volume. Every time one attorney left

those — the cases that that attorney had been carrying had to be divided among the remaining attorneys. And there were consequently higher and higher caseloads.” *Id.* at 94:22-95:15.

66. Defendants’ inadequate compensation of assigned counsel is having the same effect today. And, as in 2003, the insufficient compensation rates have created a severe and unacceptably high risk that private counsel assigned to represent indigent children and adults in family and criminal court proceedings will be unable to provide the adequate level of representation required by the New York and United States Constitutions.

67. Inadequate funding, along with the excessive caseloads it causes, compromises the quality of legal representation that assigned private counsel can provide to their indigent clients. It thereby risks serious and irreparable injury to those clients at each stage of family and criminal court proceedings. Excessive caseloads prevent assigned private counsel from performing basic pre-trial and pre-hearing tasks that are necessary and fundamental to the provision of meaningful and effective legal representation. Those tasks include, but are not limited to meeting with, interviewing, and counseling their clients; conveying basic information to their clients about the nature and purpose of upcoming court proceedings; spending adequate time reviewing their clients’ files, including volumes of case records, social media, and/or electronic evidence; conducting necessary legal and factual research; preparing witnesses to testify; filing evidentiary and procedural motions; and otherwise preparing their cases for trial. The inability or failure of trial counsel adequately to prepare and to preserve issues for appellate review also compromises and undermines the ability of appellate counsel to raise issues on appeal. This Court has already concluded in *NYCLA I* in 2003 that such deficiencies create a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of their constitutional and legal rights.

68. The shortage of qualified assigned private counsel who actively participate in the Family Court and Criminal Panels, and the increase in the types of matters that require assigned counsel, have also caused delays in court proceedings. The increased volume of cases that individual assigned counsel handle has led to counsel being absent, late and less prepared for court appearances and hearings. In addition, the scarcity of assigned counsel has resulted in attorneys not always being assigned to represent indigent parties in family offense proceedings. As Judge Segal testified in *NYCLA I*, the inadequate numbers of assigned counsel meant that domestic violence petitions often lacked the most “significant information . . . which would lead to much more proscriptive orders of protection so that process was slowed down as well and, of course, the cases weren’t tried, they didn’t go forward without lawyers unless the people decided to throw in the towel and represent themselves.” Aug. 6, 2002 Trial Tr. at 281:5-12. This Court ruled in *NYCLA I* that the portions of the County Law, Family Court Act and Judiciary Law that fixed assigned counsel rates and limits in 2003 that caused these conditions were unconstitutional as applied to the representation of children and indigent adults in New York City. That is also true of the 2004 Rates now.

69. The failure to increase the 2004 Rates has caused some of the more experienced attorneys to leave the assigned counsel panels. As a result, indigent litigants, and children, including those charged with the most serious crimes, are less likely to have the benefit of experienced counsel.

70. The inadequate numbers and compensation of assigned counsel have created dire consequences for children and adult litigants in state court. Judge Segal testified in *NYCLA I* that as a result of the delays caused by the inadequate numbers of assigned counsel, “more children languish in foster care without a judicial assessment as to charges against their parents What

happens is you get less dispositions and more and more cases remain on the calendar and the same just grind to a halt.” Aug. 6, 2002 Trial Tr. at 278:10-18. That is still true today. Children languish in foster care for long periods due to continuous adjournments to find counsel or because the heavy caseloads of their assigned counsel require adjournments of three to five months or more. Parents are denied visitation rights or lose custody of their children for long periods because courts cannot find assigned counsel to represent the parents. Overburdened attorneys who represent litigants in custody and visitation matters are less likely to prevent their clients’ adversaries from relocating to distant residences. Juveniles in delinquency proceedings face delays that often lengthen their time in detention facilities. Children are removed from the custody of their parents because those parents are unrepresented. Parents often are not represented during child protective investigations and do not receive timely representation at abuse and neglect hearings. Indigent criminal defendants face a substantial risk that they will have to make crucial decisions about plea offers before their attorneys have an adequate opportunity to consider the strengths and weaknesses of their cases. Moreover, their attorneys often do not have enough time to prepare for pre-trial suppression hearings. Domestic violence and family offense survivors file petitions without the assistance of counsel and often omit crucial information that would permit them to obtain greater protection from the courts. Their petitions are therefore often denied or inadequate relief is provided when the result would have been different had they received the adequate assistance of counsel. Temporary orders of protection are not granted to indigent petitioners because their petitions are poorly drafted and counsel cannot be assigned quickly enough to provide adequate representation at the early stages of the proceedings. This leaves some litigants in physical danger. Family court proceedings are grossly delayed or adjourned as courts do not have sufficient panel attorneys to assign to litigants

at their first, second, or third appearances. This Court has already found in *NYCLA I* that these consequences of the inadequate compensation rates for assigned counsel and the concomitant inadequate staffing in 2003 created a severe and unacceptably high risk that the constitutional rights of children and indigent adults were being violated. That is true again today.

71. An ever smaller and overburdened group of private attorneys is handling felony, homicide, and misdemeanor cases filed in the First and Second Departments. This creates unacceptably high risks of severe and irreparable harm to the indigent clients these attorneys represent, to the court system, and to the public.

72. By freezing the rates and the caps for seventeen years, the State Defendant has again caused the system of indigent representation in New York City to deteriorate to a point where it subjects men, women, and children to a severe and unacceptably high risk that private counsel assigned to represent them in family and criminal court proceedings will be unable to provide the meaningful and effective legal representation required by the New York and United States Constitutions. This Court has already concluded, in 2003, that Defendants' failure to provide adequate compensation is not constitutionally permitted. Yet Defendants persist in this failure today. The State Defendant's refusal to protect the constitutional rights of children and indigent adults threatens the entire system, and therefore widespread violations of the right to counsel and due process of law.

73. The current compensation scheme creates an unacceptable tension between adherence to professional standards and obligations and the responsibility of private attorneys on the Family and Criminal Court Panels to provide representation for all children and indigent adults in New York City who are entitled to such representation.

E. It Is Widely Recognized That the Compensation Rates Fixed by State Law Create a Serious and Unacceptably High Risk of Inadequate Representation by Assigned Private Counsel

74. Members of the judiciary who oversee the administration of justice in the State and City of New York, as well as prominent professional organizations, have expressed concern that the 2004 Rates fixed by state law create a serious and unacceptably high risk of inadequate representation by assigned private counsel in family and criminal court proceedings at the trial and appellate levels. This can cause severe and irreparable harm and injustice to indigent litigants.

75. For example, Chief Judge DiFiore has urged legislators to remedy this “crisis.” In each of the last three years, the Chief Judge has explained that the “major exodus from our assigned counsel panels” as a result of the failure to increase assigned counsel compensation rates for seventeen years has made it “increasingly difficult to recruit and retain experienced lawyers willing to provide [] critical services” to indigent criminal defendants, children, and other indigent litigants and imperils their right to counsel enshrined in the New York and United States Constitutions. “Their safety and welfare are at stake.”

76. Chief Judge DiFiore established the Commission on Parental Legal Representation to examine the state of assigned Family Court representation, and appointed former Presiding Justice of the Appellate Division, Third Department, Karen Peters to lead the Commission. The Commission comprised twenty members who held public hearings statewide, considered advice from experts and sought input from members of the judiciary, parents, panel attorneys, and institutional providers.

77. The Commission concluded in its February 26, 2019 Interim Report that the 2004 Rates are “woefully insufficient” and the “inadequate compensation rate has led to a growing

shortage of qualified attorneys, adding to the problem of excessive caseloads and the resulting poor quality of representation for clients.”

78. The Commission concluded that the hourly rates for family court assigned counsel should be increased to \$150 per hour and that a mechanism for periodic review and adjustment should be instituted. The proposed \$150 per hour would be twice the current rate for private assigned counsel who represent children and indigent adults in felony cases, appeals, and family court, and two-and-a-half times the current rate for private assigned counsel who represent indigent adults in misdemeanor cases.

79. Judge Robert Mulroy, President of the New York City Family Court Judges Association, similarly reported that it was “evident” that “the need to increase the number of attorneys on the assigned counsel plan is pressing, if not desperate.” Judge Mulroy concluded that the “best way to accomplish this is by increasing both the hourly rate . . . as well as the maximum amount that can be charged per case absent extraordinary circumstances.” *See* Commission on Parental Legal Representation, Interim Report, Feb. 26, 2020 at 43.

80. The NYSBA has declared that rates of compensation to all assigned counsel should be increased to prevent the exodus of practitioners from assigned counsel panels throughout the State because a shortage of such lawyers undermines the administration of justice. *See* New York State Bar Association, Criminal Justice Section, The Need to Increase Assigned Counsel Rates in New York, *available at* <http://www.nysacdl.org/wp/wp-content/uploads/2018/06/Assigned-Counsel-Report.pdf>. A report by the NYSBA’s Criminal Justice Section and Committee on Mandated Representation advocated an increase in assigned counsel rates and an annual review process and adjustment using a formula similar to the one employed under the federal Criminal Justice Act. *Id.*

81. The agreement by prominent judges and professional organizations responsible for the administration of justice in New York State that the 2004 Rates undermine the administration of justice underscores the urgency of plaintiffs' request for relief here. Defendants should not be allowed to continue to ignore the constitutional crisis they have created for indigent men, women, and children in need of legal representation by private counsel in New York City's courts. Defendants' failure to act requires a remedy—once and for all.

F. New York State Compensates Assigned Private Counsel for Children and Indigent Adults at Lower Rates than the Federal Government and Lower Rates than Other Counsel and Personnel

82. Other indicia show the 2004 Rates do not satisfy the requirement for "adequate" compensation to assigned counsel.

83. New York State's rates are significantly lower than the rates the federal government pays to assigned private counsel. In the United States District Courts for the Southern and Eastern Districts of New York, assigned private counsel receive \$155 per hour for time spent in and out of court. That is more than twice the 2004 Rates paid by New York State. This Court found the disparity between federal and state rates for assigned counsel persuasive in *NYCLA I*. The enormous disparity is equally persuasive today.

84. New York State also compensates assigned private counsel for children and indigent adults at far lower rates than private counsel retained by the State to represent state employees facing civil actions. The New York State Comptroller maintains a fee schedule that provides for hourly fees of \$225 for experienced counsel for state employees, three times the rate paid to assigned counsel for felony cases in state courts. In recent years, the Comptroller has paid rates as high as \$800 per hour for private counsel in such cases, more than ten times the 2004 Rates paid to assigned counsel in felony cases in state courts.

85. New York State also compensates assigned private counsel for children and indigent adults at far lower rates than physicians, social workers, and other court-appointed experts. Section 722-c of Article 18-B of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law all require that court-appointed experts such as physicians and social workers be made available to children and indigent adults in family and criminal court proceedings. However, while these laws set rates for the compensation of assigned private counsel, they do not do so for court-appointed experts.

86. For many years, judges in family and criminal court proceedings limited compensation for court-appointed experts to the hourly rates paid to assigned private counsel. However, in 2017, recognizing that these rates infringed on the constitutional and statutory rights of children and indigent adults to the assistance of qualified professionals, the Chief Administrative Judge of the Unified Court System issued an Order recommending that court-appointed expert physicians and psychiatrists receive \$250 per hour, and certified psychologists receive \$150 per hour. *See* Admin. Order of Chief Administrator of the Unified Court System, effective Jan. 1, 2018. The Chief Administrative Judge also ordered that certified social workers receive \$75 per hour, a rate higher than assigned private counsel receive for work on misdemeanors. *See id.*

87. The Chief Administrator's order reflects the fact that children and indigent adults in family and criminal court proceedings can expect to receive meaningful and effective assistance by qualified physicians, social workers, and other court-appointed experts only if those professionals are compensated for their services at reasonable rates. It is equally true that children and indigent adults can expect to receive meaningful and effective legal representation by assigned private counsel only if they too are compensated at reasonable rates.

88. The federal and state constitutions do not tolerate assigned counsel rates that are almost universally far lower than rates paid to other court-appointed experts, assigned counsel in federal jurisdictions in New York City, and counsel for city and state employees. Defendants' failure to pay adequate compensation to assigned private counsel for the most vulnerable citizens in our State—children and indigent adults—has created a constitutional crisis that makes the fair and equal administration of justice impossible. Accordingly, Plaintiffs state the following causes of action for relief:

First Cause of Action for Declaratory and Injunctive Relief
(Violation of Article I, § 6 of the New York Constitution)

89. Plaintiffs repeat and reallege paragraphs 1 through 88 above.

90. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused systemic deficiencies in the assigned counsel system in Family Court in New York City and created a severe and unacceptably high risk that children in proceedings implicating their liberty interests will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of Article I, § 6 of the New York Constitution.

91. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

92. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that children are receiving inadequate legal representation in New York City in violation of

the New York Constitution; and that the portions of § 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of children in New York City.

93. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to children in proceedings implicating their liberty interests.

94. Plaintiffs and children in proceedings implicating their liberty interests have no adequate remedy at law for this failure.

95. Plaintiffs and children in proceedings implicating their liberty are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Second Cause of Action for Declaratory and Injunctive Relief
(Violation of Fourteenth Amendment to the United States Constitution)

96. Plaintiffs repeat and reallege paragraphs 1 through 90 above.

97. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused systemic deficiencies in the assigned counsel system in Family Court in New York City and created a severe and unacceptably high risk that children in proceedings implicating their liberty interests will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of the Fourteenth Amendment of the United States Constitution.

98. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

99. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to children in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that children are receiving inadequate legal representation in New York City in violation of the United States Constitution; and that the portions of § 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of children in New York City.

100. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to children in proceedings implicating their liberty interests.

101. Plaintiffs and children in proceedings implicating their liberty interests have no adequate remedy at law for this failure.

102. Plaintiffs and children in proceedings implicating their liberty are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Third Cause of Action for Declaratory and Injunctive Relief
(Violation of Article I, § 6 of the New York Constitution)

103. Plaintiffs repeat and reallege paragraphs 1 through 92 above.

104. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused systemic deficiencies in the assigned counsel

systems in Family Court and in matrimonial matters in the Supreme Court in New York City and created a severe and unacceptably high risk that indigent adults will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of Article I, § 6 of the New York Constitution.

105. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

106. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to indigent adults in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that indigent adults are receiving inadequate legal representation in New York City in violation of the New York Constitution; and that the portions of § 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of indigent adults in New York City.

107. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to indigent adults in proceedings in Family Court and in matrimonial matters in the Supreme Court in New York City.

108. Plaintiffs and indigent adults in proceedings in Family Court and in matrimonial matters in the Supreme Court in New York City have no adequate remedy at law for this failure.

109. Plaintiffs and indigent adults in proceedings in Family Court and in matrimonial matters in Supreme Court in New York City are therefore entitled to an injunction permanently

— and, pending the Court’s determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Fourth Cause of Action for Declaratory and Injunctive Relief
(Violation of Fourteenth Amendment to the United States Constitution)

110. Plaintiffs repeat and reallege paragraphs 1 through 94 above.

111. Defendants’ failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused systemic deficiencies in the assigned counsel systems in Family Court and in matrimonial matters in the Supreme Court in New York City and created a severe and unacceptably high risk that indigent adults will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983.

112. As a result of Defendants’ failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

113. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to indigent adults in New York City; that Defendants’ failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that indigent adults are receiving inadequate legal representation in New York City in violation of the United States Constitution; and that the portions of § 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of indigent adults in New York City.

114. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to indigent adults in proceedings in Family Court and in matrimonial matters in the Supreme Court in New York City.

115. Plaintiffs and indigent adults in proceedings in Family Court and in matrimonial matters in Supreme Court in New York City have no adequate remedy at law for this failure.

116. Plaintiffs and indigent adults in proceedings in Family Court and in matrimonial matters in the Supreme Court in New York City are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Fifth Cause of Action for Declaratory and Injunctive Relief
(Violation of Article I, § 6 of the New York Constitution)

117. Plaintiffs repeat and reallege paragraphs 1 through 96 above.

118. Defendants' failure to provide reasonable and sufficient compensation to assigned private counsel has caused systemic deficiencies in the assigned counsel system in Family Court in New York City and created a severe and unacceptably high risk that juveniles in delinquency proceedings and appeals will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of Article I, § 6 of the New York Constitution.

119. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

120. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are

available and able to provide meaningful and effective representation to juveniles in delinquency proceedings and appeals in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that juveniles in delinquency proceedings and appeals are receiving inadequate legal representation in New York City in violation of the New York Constitution; and that the portions of 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of juveniles in delinquency proceedings and appeals in New York City.

121. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to juveniles in delinquency proceedings and appeals in proceedings implicating their liberty interests.

122. Plaintiffs and juveniles in delinquency proceedings and appeals have no adequate remedy at law for this failure.

123. Plaintiffs and juveniles in delinquency proceedings and appeals are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Sixth Cause of Action for Declaratory and Injunctive Relief
(Violation of Sixth and Fourteenth Amendment to the United States Constitution)

124. Plaintiffs repeat and reallege paragraphs 1 through 98 above.

125. Defendants' failure to provide reasonable and sufficient compensation to assigned private counsel has caused systemic deficiencies in the assigned counsel system in Family Court

in New York City and created a severe and unacceptably high risk that juveniles in delinquency proceedings and appeals will be denied their right to meaningful and effective assistance of counsel and to due process of law, in violation of the Sixth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

126. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

127. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to juveniles in delinquency proceedings and appeals in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that juveniles in delinquency proceedings and appeals are receiving inadequate legal representation in New York City in violation of the United States Constitution; and that the portions of § 245 of the Family Court Act and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of juveniles in delinquency proceedings and appeals in New York City.

128. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to juveniles in delinquency proceedings and appeals in proceedings implicating their liberty interests.

129. Plaintiffs and juveniles in delinquency proceedings and appeals have no adequate remedy at law for this failure.

130. Plaintiffs and juveniles in delinquency proceedings and appeals are therefore entitled to an injunction permanently — and, pending the Court’s determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Seventh Cause of Action for Declaratory and Injunctive Relief
(Violation of Article I, § 5 & 6 of the New York Constitution)

131. Plaintiffs repeat and reallege paragraphs 1 through 100 above.

132. Defendants’ failure to provide reasonable and sufficient compensation to assigned private counsel has caused systemic deficiencies in the assigned counsel system in criminal court proceedings at the trial and appellate levels in New York City and created a severe and unacceptably high risk that indigent criminal defendants will be denied their right to meaningful and effective assistance of counsel at critical stages of the criminal process, to bail, and to due process of law, in violation of Article I, §§ 5 & 6 of the New York Constitution.

133. As a result of Defendants’ failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

134. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to indigent criminal defendants in New York City; that Defendants’ failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that indigent criminal defendants are receiving inadequate legal representation in New York City in violation of the New York Constitution; and that the

portions of Article 18-B fixing the 2004 Rates and limits are unconstitutional as applied to the representation of indigent criminal defendants in New York City.

135. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to indigent criminal defendants.

136. Plaintiffs and indigent criminal defendants have no adequate remedy at law for this failure.

137. Plaintiffs and indigent criminal defendants are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

Eighth Cause of Action for Declaratory and Injunctive Relief
(Violation of Sixth, Eighth and Fourteenth Amendments to the
United States Constitution and Section 1983)

138. Plaintiffs repeat and reallege paragraphs 1 through 102 above.

139. Defendants' failure to provide reasonable and sufficient compensation to assigned private counsel has caused systemic deficiencies in the assigned counsel system in criminal court proceedings at the trial and appellate levels in New York City and created a severe and unacceptably high risk that indigent criminal defendants will be denied their right to meaningful and effective assistance of counsel at critical stages of the criminal process, to bail, and to due process of law, in violation of the Sixth, Eighth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

140. As a result of Defendants' failure to increase the 2004 rates, there exists an actual and justiciable controversy between Plaintiffs and Defendants.

141. By reason of the foregoing, Plaintiffs are entitled to a declaration that Defendants have a constitutional and statutory obligation to ensure that qualified assigned private counsel are available and able to provide meaningful and effective representation to indigent criminal defendants in New York City; that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that indigent criminal defendants are receiving inadequate legal representation in New York City in violation of the United States Constitution; and that the portions of Article 18-B fixing the 2004 Rates and limits are unconstitutional as applied to the representation of indigent criminal defendants in New York City.

142. Defendants' failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel has caused and threatens to further cause substantial irreparable harm to indigent criminal defendants.

143. Plaintiffs and indigent criminal defendants have no adequate remedy at law for this failure.

144. Plaintiffs and indigent criminal defendants are therefore entitled to an injunction permanently — and, pending the Court's determination of this action, preliminarily — setting new rates, removing the current limits on compensation for private counsel who participate in the assigned counsel program, and requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

WHEREFORE, plaintiffs respectfully request the following relief:

- (a) a declaratory judgment that, as this Court found in *New York County Law Ass'n v. State of New York*, 196 Misc. 2d 761 (Sup. Ct. N.Y. Cnty. 2003), Defendants have a constitutional and statutory obligation to ensure that

qualified assigned private counsel are available and able to provide meaningful and effective representation to children and indigent adults in New York City;

- (b) a declaratory judgment that Defendants' failure to increase the 2004 Rates paid to assigned private counsel and to remove the caps on total compensation per matter has created a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in New York City in violation of the New York and United States Constitutions;
- (c) a declaratory judgment that the portions of Article 18-B, § 245 of the Family Court Act, and § 35 of the Judiciary Law fixing the 2004 Rates and limits are unconstitutional as applied to the representation of children and indigent adults in New York City;
- (d) an injunction setting new rates and removing the current limits on compensation for private counsel who participate in the assigned counsel program. The new rates should be set both preliminarily and permanently at a level sufficient to ensure that qualified private counsel are available and able to provide children and indigent adults in New York City with constitutionally adequate representation in family and criminal court proceedings at the trial and appellate levels. Plaintiffs request that the Court issue such an injunction setting new rates against the State Defendant, order the State Defendant to fund the expenses incurred as a result of the new rates and, to the extent necessary, declare the provisions

of § 722-e of the County Law unconstitutional as applied to the expenses incurred as a result of the new rates. In the alternative, Plaintiffs request that the Court issue such an injunction against both the State and the City Defendants setting new rates;

- (e) an injunction requiring Defendants to establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis;
- (f) an order retaining jurisdiction over this action to reset the assigned counsel compensation rates periodically unless and until Defendants establish an effective mechanism to increase the compensation rates at least every two years based on increases in the cost of living or another appropriate index;
- (g) an award of Plaintiffs' attorney's fees, costs and disbursements accrued in pursuit of this action, under 42 U.S.C. § 1988 and CPLR Article 86; and
- (h) such other and further relief as the Court deems just and proper.

Dated: July 26, 2021
New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Michael J. Dell

Michael J. Dell

Jason M. Moff

Aaron Webman

1177 Avenue of the Americas

New York, New York 10036

(212) 715-9100

mdell@kramerlevin.com

Attorneys for Plaintiffs