

injunction against the State and the City, found they violated the New York and United States Constitutions, and required them to increase assigned counsel compensation. The Court found the failure of the State and the City 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 the 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, 790 (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 the 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).

....

[T]he State [has] assume[d] 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 the City in violation of the New York and United States Constitutions, a permanent injunction was required that ordered the defendants 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 section 722-b of the [New York] County Law ['County Law'], section 245 of the Family Court Act, and section 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], therefore requiring recurrent visitation by the Legislature.” *Id.* at 763.

7. After this Court’s February 5, 2003 order, the Legislature amended Article 18-B of the County Law and Article 2 of the Judiciary Law (codified at N.Y. County Law § 722-b and N.Y. Judiciary Law § 35) and revised the rates set by N.Y. Family Court Act § 245 to provide that counsel in the Counties and the City who were 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 did not follow this Court’s admonition that “recurrent visitation” of the rates of compensation is “requir[ed].” *NYCLA I*, 196 Misc. 2d at 763. The Legislature has not changed the assigned counsel rates since 2004. During the eighteen years that assigned counsel rates for state court proceedings have been frozen outside the City, 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 \$158 per hour, *more than twice* the highest, \$75 per hour rates paid to assigned counsel in state court proceedings in the Counties.

9. On July 25, 2022, this Court again addressed the State and the City’s 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 in the City. *See New York County Lawyers Ass’n v. State of New York*, No. 156916/2021, 2022 WL 2916783 (Sup. Ct. N.Y. County Jul. 25, 2022). In 2021, after the Legislature failed for more than seventeen years to heed this Court’s admonition in its 2003 order that “recurrent visitation” of compensation for assigned counsel was required, NYCLA and nine other bar associations, including the bar associations of the four other counties in the City, four bar associations representing lawyers of color, and the Assigned Counsel Association of New York, Inc. (together, the “*NYCLA II* plaintiffs”) sued the State and the City (“*NYCLA I*”).

10. In February 2022, the *NYCLA II* plaintiffs moved for a preliminary injunction. On July 25, 2022, Justice Lisa Headley of this Court granted a preliminary injunction requiring the State and the City to increase assigned counsel compensation in the City to \$158 per hour, the rate paid to assigned counsel in federal courts in New York. *Id.* at *4.

11. The Court found “that severe and irreparable harm to children and indigent adult litigants would occur without an injunction” and the violation of their constitutional rights is of “paramount importance.” *Id.* at *3-4. This Court explained that “the quality of legal representation for children and indigent adults, as well as their due process rights would continue to decline without a preliminary injunction . . . [and] it is certain that a decrease in the number of assigned counsel leads to an already overburdened assigned attorney having to assume an increased workload. Furthermore, . . . the overburdened workload affects the quality and time an

assigned counsel spends on each child litigant or indigent adult's case." *Id.* at *4. This Court reiterated the holding of this Court in 2003 that "[t]hese litigants suffer irreparable constitutional harm when they are denied their rights to counsel, when they are unrepresented during critical periods of their proceedings where their due process and liberty rights are at stake because no assigned counsel are available to represent them, when they are represented by overburdened and inattentive assigned counsel who fail to, or are unable to, perform the base tasks necessary to provide meaningful and effective representation, and when they must endure prolonged delays in Family and Criminal Court proceedings." *Id.* at *3 (quoting *NYCLA I*, 196 Misc. 2d at 784). This Court found that if "injunctive relief was not issued by this Court, the constitutional rights of children litigants and indigent adults would be violated. Said children and indigent adults would be subject to inadequate counsel, which would deprive them of the opportunity to have effective counsel in critical Family Court and Criminal Court proceedings . . . Pursuant to the injunctive relief, defendants would be required to increase compensation for assigned counsel, a responsibility that has been bestowed on them long before this Court's ruling." *Id.*

12. This Court also directed that, "[t]o avoid being in this position again," the State and the City "revisit and consider an increase in salary for assigned counsel, who represent children and indigent adults in Family Court, Criminal Court and other court proceedings in New York City, at the same rate and at the same time the federal assigned counsel receive an increase in compensation." *Id.* at *4.

13. The State has not appealed the grant of the injunction and has increased compensation to \$158 per hour for assigned counsel in the City. The City appealed, but has agreed to pay assigned counsel at the \$158 per hour rate in the meantime.

14. However, the State has refused to increase the rate paid to assigned counsel in the Counties. They continue to be compensated at the 2004 Rates.

15. The State's failure to increase the hourly rates of assigned counsel in the Counties since 2004, even in the face of the recent mounting inflation, has caused the assigned counsel systems in those Counties to deteriorate again to a point where they subject children and indigent adults to a severe and unacceptably high risk that meaningful and effective representation will not be provided in violation of their constitutional right to counsel and to due process of law. Children and indigent adults in the Counties should not be treated worse than children and indigent adults in the City, whose assigned counsel this Court has ordered should be paid at the \$158 per hour rate.

16. The number of assigned counsel willing to take on cases in the Counties' assigned counsel programs has again dropped precipitously. Lawyers who decide to participate are again being asked to take on more cases to meet the growing demand for assigned counsel. That again greatly increases the risk that they will not be able to give sufficient attention to any client. It again causes assigned counsel to have to refuse assignments. And it again causes delays in the administration of justice. As this Court held in 2003, and reaffirmed on July 25, 2022, with respect to assigned counsel in the City, the high—and still increasing—workloads of assigned counsel do not give those counsel enough time for each case. The State cannot create obligations, such as the CPL § 245 requirement to review discovery with clients, and then make it impossible to comply. 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; contesting improperly filed certificates of compliance; and monitoring compliance.

17. Former Chief Judge Janet DiFiore has repeatedly explained that the failure to increase the 2004 Rates has caused a statewide crisis, and has repeatedly urged the Governor and the leaders of the Legislature to address it. On February 26, 2019, she 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, she 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.

18. On March 2, 2021, former Chief Judge DiFiore renewed her plea for the Legislature to increase the 2004 Rates in a letter to then 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.

19. And in January 2022, then Chief Administrative Judge Lawrence Marks explained at a joint legislative hearing on Governor Kathy Hochul’s budget that, since 2018, there has been a decline of nearly 30% in the number of assigned counsel serving in the attorney for the child program alone. He stated this decline has led to “delays in adjudication that can jeopardize the rights and welfare of litigants, especially those who are disadvantaged and vulnerable.”

20. On February 1, 2022, the Association of Judges of the Family Court of the State of New York wrote to the Governor about the crisis faced by children and indigent adults: “Until assigned counsel are properly compensated for their services, indigent parties across the state will continue to receive inadequate representation in some of the most important matters that a family can face.” Former Judge Robert Mulroy of the Kings County and Queens County Family Courts wrote in his affidavit in *NYCLA II*: “[T]he lack of an adequate number of attorneys able to accept the assignment of cases compromises the litigant’s statutory right to counsel and constitutional right to due process of law. . . . It is clear that there is an urgent need to increase the number of panel attorneys available to take assignments. I believe that an effective way to accomplish this important goal is to increase the hourly pay for assigned counsel” NYSCEF Doc. No. 26, Affirm. of Robert Mulroy ¶ 5, in *NYCLA II*.

21. 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 has increased the need for assigned private counsel.

22. The majority of the children and indigent adults who are represented by assigned counsel are people of color. Kim Taylor-Thompson, Professor of Clinical Law Emerita at NYU School of Law, stated in her affidavit in *NYCLA II*:

Black youth in New York are 5.6 times more likely than their white peers to be detained or committed in juvenile facilities. While most states saw a decrease in the Black/white placement disparity between 2015 and 2019, New York saw the most modest decrease of all states of just two percent. Those who are assigned counsel under 18-B often face unnecessary delays while languishing in detention, the result of high caseloads and a lack of time to prepare for and appear in court, exacerbating the disproportionate harm inflicted on children and families by the assigned counsel system.

NYSCEF Doc. No. 37, Affirm. of Kim Taylor-Thompson ¶ 26, in *NYCLA II*. On September 13, 2021, then Deputy Administrative Judge of the New York City Family Courts Anne-Marie Jolly submitted testimony at the Chief Judge’s 2021 Hearing on Civil Legal Services in New York before then Chief Judge DiFiore, then Chief Administrative Judge Lawrence Marks, the Presiding Justices of the Appellate Divisions, and the President of the NYSBA that the crisis caused by the failure to increase the 2004 Rates has created a second-class system of justice for people of color and “perpetuate[s] a ‘dehumanizing experience’ that has had a disparate impact on Black and Latinx litigants”

23. 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, 531) 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).

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

24. In *NYCLA II*, this Court held that it will not “stray from precedent.” 2022 WL 2916783, at *2. This Court rejected the State and the City’s contentions that compensation paid to assigned counsel is a budgetary issue within the discretion of the legislative and executive branches, and ordered the State and the City immediately to increase assigned counsel compensation rates in the City to the federal level. *Id.* at *2-3.

25. This Court should now make that same determination as to the Counties. The State’s failure to increase the 2004 Rates paid to assigned private counsel in the Counties, 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 in the Counties are receiving inadequate legal representation in violation of the New York and United States Constitutions. The portions of § 722-b of the County Law, § 245 of the Family Court Act, and § 35 of the Judiciary Law that fix those rates and limits are unconstitutional as applied to the representation of children and indigent adults in the Counties. This Court should issue a preliminary injunction and a permanent injunction setting new rates at the federal level. That is necessary to ensure that qualified private counsel are available and able to provide children and indigent adults in the Counties with constitutionally adequate representation in Family and Criminal Court proceedings at the trial and appellate levels. This Court should also remove the current limits on compensation for private counsel who participate in the assigned counsel program. And this Court should require the State

to revisit and increase the assigned counsel rate in the Counties, as this Court has already required with respect to assigned counsel in the City, at the same time that the federal assigned counsel receive an increase in compensation and to the same rate.

PARTIES AND VENUE

26. NYSBA has been the voice of the legal profession in New York State for more than 140 years and is the largest voluntary state bar association in the United States. With members practicing in every county in the State, every state in the United States and throughout the world, NYSBA's mission includes shaping the development of the law and facilitating the administration of justice.

27. NYSBA and its members are committed to the fundamental principle that qualified private counsel must be available to children and indigent adults in New York's Family and Criminal Courts, and the compensation rate the State sets for participants in the assigned counsel program must be sufficient to ensure that their clients receive the meaningful and effective legal representation to which they are constitutionally entitled. Many NYSBA members serve, or have served, on assigned counsel panels across the state. Several NYSBA sections and committees, including its Committee on Mandated Representation, Committee on Legal Aid, Committee on Children and the Law, and Criminal Justice Section, are actively engaged in matters related to legal representation through assigned counsel in New York State.

28. Many of NYSBA's members reside and operate businesses in New York County.

29. 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 Family and Criminal Court proceedings in the Counties, as explained more fully below.

30. The State has not delegated and cannot delegate to the Counties its constitutional and statutory obligations to ensure that children and indigent adults receive meaningful and effective legal representation in Family and Criminal Court proceedings. The Counties are political subdivisions of the State. They act as agents of the State to the extent they perform the State's responsibilities and exercise its governmental powers.

31. Because Defendant does not pay or authorize sufficient compensation to assigned counsel in the Counties, Plaintiff's members who provide services as assigned counsel in the Counties — and Plaintiff on behalf of those members — have been and will be injured in connection with their representation of their past, current, and prospective clients in the Counties. To put an end to the countless constitutional violations happening every day, Defendant must authorize and pay assigned counsel in the Counties at a higher rate — at least equivalent to the rate paid to assigned counsel in federal court and directed by this court in *NYCLA II*.

32. The State and many of its elected officials and employees have offices in New York County and transact business there.

33. The past, current, and prospective clients of assigned counsel in the Counties 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.

34. 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.

BACKGROUND

A. The Right to Assigned Counsel in New York State

35. 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); *see also NYCLA II*, 2022 WL 2916783, at *3 (recognizing due process violations against children and indigent adults when assigned counsel receive inadequate compensation).

36. 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 ago, this Court reiterated the “requir[ement for] recurrent visitation by the Legislature” of the compensation rates of assigned counsel for children and indigent adults. *NYCLA I*, 196 Misc. 2d at 763-64. However, the Legislature has not followed this Court’s admonition. That failure has put children and indigent

adults in the Counties at unreasonable risk of being deprived of their constitutional right to counsel, just as they were in the City when this Court granted injunctive relief in *NYCLA I* and again in *NYCLA II*.

37. 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.

38. 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); *Payne v. Montano*, 166 A.D.3d 1342, 1345 (3d Dep't 2018); *In re Brian S.*, 141 A.D.3d 1145, 1147 (4th Dep't 2016); *In re Jamie TT*, 191 A.D.2d 132, 136-37 (3d Dep't 1993).

39. 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, and child custody proceedings, and proceedings to terminate parental rights pursuant to Social Services Law § 384-b. *See* N.Y. Fam. Ct. Act § 262.

40. 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.

41. 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).

42. 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.

43. 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*).

44. 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).

45. In 2003 and again earlier this year, 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. *See NYCLA I*, 196 Misc. 2d 761; *see also*

NYCLA I, 192 Misc. 2d 424, 425 (Sup. Ct. N.Y. Cnty. 2002); *NYCLA II*, 2022 WL 2916783, at *3-4.

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

46. 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. County Law §§ 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, Plaintiff 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. Plaintiff’s 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).

47. 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.

48. In 1974, the Legislature amended the Family Court Act to require the Appellate Divisions to designate programs for private counsel, and attorneys for the children, to represent indigent adults and children in Family Court proceedings. Assigned attorneys for children and

assigned private counsel for indigent adults in Family Court matters in the Counties are paid at the rates set by § 245 of the Family Court Act and § 35 of the Judiciary Law, and/or § 722-b of the County Law.

49. 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.

50. The Counties' respective departments of finance and/or the State pay the assigned counsel in the Counties who submit vouchers for professional services rendered. The State sets the compensation rates.

C. This Court's Prior Rulings That Assigned Counsel Compensation Rates Must Be Adequate

51. 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 increased these rates only twice over the next twenty years, but, as of 2001, had not done so since 1986. Thus, as of 2001, the State 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 cap of \$800 for all misdemeanor and Family Court cases and \$1,200 for felonies and appellate matters.

52. At the same time, in 2001, assigned private counsel pursuant to the Criminal Justice Act ("CJA") in the United States District Courts for the Southern, Eastern, Northern, and Western Districts of New York received \$75 per hour for time spent in and out of court. That was almost twice the rate the State paid for in-court time, and three times the rate the State paid for out-of-court time. By 2003, the compensation rate for in-court time in the Southern, Eastern,

Northern, and Western Districts had been increased to \$90 per hour. Counsel on the federal panels were permitted to receive up to \$3,500 for felony cases and \$1,000 for misdemeanor cases.

53. In 2001, NYCLA filed its complaint in this Court in *NYCLA I*. NYCLA sought redress on behalf of the many children and indigent adults in the City 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 the 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.

54. 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. *NYCLA I*, 188 Misc. 2d 776, 787 (Sup. Ct. N.Y. Cnty. 2001).

55. The defendants appealed to the First Department. A unanimous five-justice panel affirmed this Court's order. The First Department ruled that NYCLA's claims were 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." *NYCLA I*, 294 A.D.2d 69, 72 (1st Dep't 2002) (internal quotation marks 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.

56. 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 the 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.” *NYCLA I*, 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.

57. 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 I, 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 the 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.

58. This Court granted: (a) a declaration that the State 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 the City; (b) a declaration that the State’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 the 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 the City. *Id.* at 790. This 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.*

59. And this Court 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.

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 throughout the State. 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 from paying assigned private counsel at rates higher than those set forth in the statutes.

61. In the nearly two decades since 2004, the Legislature has ignored this Court’s admonition for “recurrent visitation” of the rates, and failed to increase them even once. During that same period the rate paid to assigned counsel in the federal court proceedings of “comparable importance” had been increased fifteen times to its current rate of \$158 per hour.

62. The *NYCLA II* lawsuit again sought redress on behalf of children and indigent adults who were being deprived of their constitutional right to the meaningful and effective assistance of counsel due to the inadequate compensation of assigned counsel.

63. On February 2, 2022, the *NYCLA II* plaintiffs moved for a preliminary injunction by order to show cause to prevent the State and the City from continuing to violate the constitutional rights of children and indigent adults to meaningful and effective legal representation by assigned private counsel in Family and Criminal Court proceedings in the City. Those plaintiffs asked the Court to order that the compensation rate for such counsel be increased immediately to the \$158 per hour rate paid to assigned counsel in the federal courts in the City.

64. The *NYCLA II* plaintiffs submitted in support of their motion for a preliminary injunction more than forty affirmations and affidavits including eight from retired judges, together with the testimony of three other judges; six from experts, together with a report from a seventh; and twenty-seven from present and former members of the assigned private counsel panels in the City. These affirmations and the other evidence submitted by the *NYCLA II* plaintiffs detailed the devastating consequences of the assigned counsel crisis, from indigent defendants facing incarceration and lengthy delays while waiting for the disposition of their charges to children being separated from their parents for longer than they should be. The motion also showed that the constitutional violation has a disparate impact on people of color.

65. Retired New York City Criminal Court Judge William Mogulescu explained that during his time on the bench he had

seen the ways in which assigned counsel have struggled, and the consequences to the quality of their representation, as a result of their low rates of compensation. . . . The State's failure to raise the assigned counsel panel rates for almost two decades has clearly led to the departure of many talented, experienced attorneys from the panel. . . . It was and continues to be my opinion that in the absence of . . . an adequate number of attorneys, there is a consistent and serious risk the quality of work will fall below the standards required of attorneys representing criminal defendants.

NYSCEF Doc. No. 25, Affirm. of William Mogulescu ¶¶ 10, 21, in *NYCLA II*. Professor Kim

Taylor-Thompson testified,

High caseloads that keep panel attorneys in court day after day also prevent those attorneys from conducting pre-trial investigations in their cases. Further, the statutory caps on compensation remove the incentive to dedicate sufficient time to out-of-court investigations. The current compensation scheme pressures assigned counsel to find ways to resolve cases quickly instead of discovering critical facts and evidence to establish reasonable doubt.

NYSCEF Doc. No. 37, Affirm. of Kim Taylor-Thompson ¶ 43, in *NYCLA II*.

66. On February 4, 2022, this Court issued an Order requiring the State and the City to show cause on April 1, 2022, why the requested injunction should not be granted. On March 2, 2022, two days before the State’s opposition was due, it asked the Court for a one-month extension. The State represented to this Court that because the requested pay raise was “part of the ongoing budgetary negotiations between the Executive and the Legislature in anticipation of passing the FY23 Enacted Budget on or before April 1, 2022 . . . the Enacted Budget may provide Plaintiffs with the requested relief.” NYSCEF Doc. No. 84, March 2, 2022 NYS Letter, in *NYCLA II*. The Court granted the extension, but the Legislature did not increase the assigned compensation rates.

67. On April 21, 2022, this Court heard oral arguments on the motion for injunctive relief. The State again asked for more time to negotiate a resolution with the Legislature. The State requested another “one to two weeks” to continue discussions “within the State with the parties.” Apr. 21, 2022 Tr. at 13:10-11. When the Court inquired how long the State would need, the State responded:

[L]et’s just say under the circumstances, that we are continuing as far as, you know, with the discussions as to between the two branches, as between the executive branch and also with the legislature. So, if you can give us *one to two weeks* [] to see what we can do [] under the circumstances [A]lso we would be discussing [] with counsel, as far as the updating them to, in order to provide us [] an opportunity to discuss [] both within the State with the parties as to see how this can go respectfully forward to ask as far as *a week or two weeks*

. . . .

[W]e all recognize, the budget has worked itself out. So now there is a more definitive opportunity as far as for the branches to work as far as on this at this point. There is more of an opportunity as far as the focus. As I said, I can’t undo [] what has occurred as far as in the past under the circumstances. I stand again as far as I say now my name is put on this so I have ownership . . . as far as saying to

the Court and to the parties and the commitment is here as far as to go forward

Again, what [Plaintiffs' counsel] indicated, you know, it speaks for itself. Again, I say it's unfortunate that it has not been done at this time. . . . We are committed as far as the State.

Id. at 13:7-18; 16:24-17:22 (emphasis added).

68. But once again — disregarding the ongoing constitutional violations, which were becoming increasingly grave in light of the factors described above, including the exodus of attorneys from the Counties' assigned counsel panels, and due to mounting inflation—the Legislature did not increase assigned counsel compensation even though Governor Hochul announced during the 2022 budget negotiations that the State had a substantial surplus—and as *The New York Times* put it, was “awash in money.” Luis Ferré-Sadurní & Grace Ashford, *Surprise in \$216 Billion Budget Plan: New York Is Awash in Money*, N.Y. Times, Jan. 18, 2022.

69. On July 25, 2022, this Court granted a preliminary injunction, finding that children and indigent adult litigants would suffer severe and irreparable harm if an injunction were not granted. This Court ordered the State and the City to increase the compensation of assigned counsel in the City to \$158 per hour—the rate currently paid to federal CJA panel attorneys—retroactive to February 2, 2022, the date the motion for a preliminary injunction was filed. Justice Headley concluded that “the quality of legal representation for children and indigent adults, as well as their due process rights would continue to decline without a preliminary injunction . . . [and] a decrease in the number of assigned counsel leads to an already overburdened assigned attorney having to assume an increased workload. Furthermore, . . . the overburdened workload affects the quality and time an assigned counsel spends on each child litigant or indigent adult's case.” *NYCLA II*, 2022 WL 2916783, at *3 (N.Y. Sup. Jul. 25, 2022). This Court reaffirmed that in order to comply with its constitutional duties, the State must compensate assigned counsel at

the same rate as their federal court counterparts. To ensure that constitutional obligation is met, this Court directed the State “to revisit and consider an increase in salary for assigned counsel, who represent children and indigent adults in Family Court, Criminal Court and other court proceedings in New York City, at the same rate and at the same time the federal assigned counsel receive an increase in compensation.” *Id* at *4.

70. While the compensation of assigned counsel in the City has been increased to \$158 per hour, the State has refused to increase the assigned counsel compensation rates in the Counties. They remain at the 2004 Rates that deprive children and indigent adults in the Counties of their constitutional rights.

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

71. 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 in the provision of legal representation by assigned private counsel to children and indigent adults in the Counties. Because the 2004 Rates provide “inadequate” compensation to assigned counsel, the number of attorneys actively participating on Criminal and Family Court panels in the Counties has declined.

72. 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.” Exec. Law § 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.

73. 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 throughout the Counties 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.

74. Witnesses who offered testimony in *NYCLA I* twenty years ago and again in *NYCLA II* earlier this year recognized the grave consequences of abysmally low assigned counsel compensation rates. 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 case loads.” *Id.* at 94:22-95:15.

75. In 2022, as part of the *NYCLA II* plaintiffs’ preliminary injunction motion, Lisa Bloch Rodwin, a retired New York State Family Court Judge for Erie County, testified: “It is obviously essential to have a sufficient number of attorneys available to take on representation in all of these cases. However, due to the low rate of \$75.00 per hour (set in 2004), this is no longer the case in our state. It is my honest belief that the attrition of experienced attorneys and the unwillingness of new attorneys to work on these cases is a direct result of the low rate of pay. . . . Additionally, panel attorneys are not compensated with benefits, health insurance, paid vacation or sick leave, office space professional insurance or pensions.” NYSCEF Doc. No. 28, Affirm. of Lisa Bloch Rodwin ¶ 4, in *NYCLA II*. Cynthia Godsoe, Professor of Law at Brooklyn Law School, similarly testified, “attorneys assigned to represent children and indigent adults in Family Court matters may receive up to \$75 per hour for their services and no more than \$4,400 per case. . . . These rates of pay, which have not been raised at all since 2004, are grossly insufficient for assigned counsel to afford the resources needed to maintain a law practice, hire staff, and develop the specialized skills required for effective family defense, all while trying to earn a living.” NYSCEF Doc. No. 33, Affirm. of Cynthia Godsoe ¶¶ 11-12, in *NYCLA II*.

76. Assigned counsel working today testified about these conditions in *NYCLA II*. Helen Pundurs Bua, a member of the Queens Family Court assigned counsel panel, testified, “Under the present circumstances, it is literally impossible to complete all of the work that could be done on every case, for every client, and a sort of legal triage occurs, whereby prioritizing and rationing is the only way to survive. I am embarrassed and ashamed to admit this, but it is true. It is deeply unsatisfying for the attorneys, and it is unfair to the clients.” NYSCEF Doc. No. 43, Affirm. of Helen Pundurs Bua ¶ 8, in *NYCLA II*. Vivian R. Cedeno of the New York City Criminal Court assigned counsel panel explained the crisis has a “devastating impact on a

defendant's right to effective assistance of counsel" because panels are so understaffed due to substandard compensation. NYSCEF Doc. No. 45, Affirm. of Vivian R. Cedeno ¶¶ 11-13, in *NYCLA II*.

77. Defendant's inadequate compensation of assigned counsel is having the same effect in the Counties 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.

78. Inadequate funding, along with the excessive caseloads it causes, compromises the quality of legal representation that even the most qualified assigned private counsel in the Counties can provide to their indigent clients. The State compromises their ability to meet obligations created by the State, such as the obligation to review discovery pursuant to CPL § 245 before a client enters a guilty plea. This risks serious and irreparable injury to indigent 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, and again in *NYCLA II* just months ago, that such deficiencies create a severe and unacceptably high risk that children and indigent adults are receiving inadequate legal representation in the City in violation of their constitutional and legal rights. The same is true of the ongoing crisis in the Counties.

79. 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 in the Counties. 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. Former Erie County Family Judge Lisa Bloch Rodwin testified in *NYCLA II* that she:

regularly observed the devastating impact of the inadequate supply of attorneys on the families and children who came before me. The constantly shrinking number of attorneys willing to work for these low fees have had to take on increasingly huge caseloads. . . . Petitioners and Respondents wait and wait to speak to their lawyers only to have the case adjourned by attorneys who have not had sufficient time to prepare to engage in pre trial discovery, independently investigate the case, prepare sufficiently to argue their client's positions, let alone litigate a hearing or trial. The basic right to meaningful advocacy has been lost.

NYSCEF Doc. No. 28, Affirm. of Lisa Bloch Rodwin ¶ 3, in *NYCLA II*. This Court found in

NYCLA II that “it is certain that a decrease in the number of assigned counsel leads to an already

overburdened assigned attorney having to assume an increased workload” and that the “quality of legal representation for children and indigent adults, as well as their due process rights would continue to decline without a preliminary injunction.” *NYCLA II*, 2022 WL 2916783, at *3.

That remains true in the Counties.

80. The failure to increase the 2004 Rates in the Counties 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.

81. 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.

82. As NYU Law Professor Taylor-Thompson explained in *NYCLA II*, “[t]hose who are assigned counsel under 18-B often face unnecessary delays while languishing in detention, the result of high caseloads and a lack of time to prepare for and appear in court, exacerbating the disproportionate harm inflicted on children and families by the assigned counsel system. NYSCEF Doc. No. 37, Affirm. of Kim Taylor-Thompson ¶ 26, in *NYCLA II*. This continues in the Counties.

83. 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 or review discovery. 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* and *NYCLA II* that these consequences of the inadequate compensation rates for assigned counsel and the concomitant inadequate staffing have created a severe and unacceptably high risk that the constitutional rights of children and indigent adults were being violated. That remains true in the Counties.

84. An ever smaller and overburdened group of private attorneys is handling felony, homicide, and misdemeanor cases filed in the Counties. 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.

85. The total compensation assigned counsel receive per case is paltry. The ILS October 30, 2020 report reflects that spending per weighted case in the assigned counsel programs is often significantly less than what the institutional providers receive per case.

86. By freezing the rates and the caps for almost two decades, Defendant has again caused the system of indigent representation in the Counties 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 and again in 2022, that Defendant's failure to provide adequate compensation is not constitutionally permitted. Yet Defendant persists in this failure today. The State'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.

87. 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

88. Members of the judiciary who oversee the administration of justice in the State, 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.

89. In her 2020 State of the Judiciary Address, former Chief Judge DiFiore urged legislators to remedy this “crisis.” The former Chief Judge explained that the “major exodus from our assigned counsel panels” as a result of the failure to increase assigned counsel compensation rates for eighteen 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. “[T]heir safety and welfare are at stake.”

90. Approximately two years earlier, former 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 State-wide Commission. The Commission comprised twenty members who held public hearings, considered advice from experts and sought input from members of the judiciary, parents, panel attorneys, and institutional providers.

91. 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.”

92. Judge Robert Mulroy, then 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.” Commission on Parental Legal Representation, Interim Report, Feb. 26, 2020 at 43.

93. Former Erie County Family Judge Lisa Bloch Rodwin explained in *NYCLA II* that she observed that the “basic right to meaningful advocacy has been lost” as a result of the deteriorating assigned counsel panels. NYSCEF Doc. No. 28, Affirm. of Lisa Bloch Rodwin ¶ 3, in *NYCLA II*. She testified, “[t]he low 18-B rates have resulted in a crisis in Family Courts across the state and a deplorable deprivation of the core constitutional right to meaningful representation for our most vulnerable citizens. The only answer is, I believe, to increase the rate of compensation for assigned counsel.” *Id.* at ¶ 6.

94. On January 27, 2022, the New York City Family Court Judges Association wrote to Governor Hochul, urging that compensation rates be raised for assigned counsel in Family Court. That letter described the exodus of attorneys from the assigned counsel panels in New York City due to low compensation rates, and explained that the few who remain struggle to perform critical tasks, such as meeting with clients before court appearances, maintaining contact with clients outside of court, engaging in pre-trial discovery practice, and independently investigating the case. The same is true in the Counties today.

95. On February 1, 2022, the Association of Judges of the Family Court of the State of New York wrote to Governor Hochul, also imploring the State to raise compensation rates for assigned counsel in Family Court proceedings. The letter explained that, as a result of low

compensation rates, assigned counsel panels have diminished dramatically and Family Court litigants have suffered the consequences. It described the persistent threat of parents being separated from their children for unnecessarily prolonged periods given the limited access they have to already overburdened assigned counsel. This threat continues in the Counties.

96. Then Deputy Administrative Judge of the New York City Family Court Anne-Marie Jolly testified on September 13, 2021 at the Hearing on Civil Legal Services:

[E]ven when the Court determines a party is entitled to a court assigned attorney, it is often difficult to find an attorney to assign. Over the course of the last several years, the New York City Family Court has seen a significant decrease in the number of attorneys on the 1st and 2nd Departments' assigned counsel panels. As of August 2021, there was a total of only 300 attorneys available to accept court assignments on custody and visitation cases city-wide. This is just far too few attorneys for the thousands of cases which require the assignment of counsel. The effect of this is that the caseloads of the panel attorneys have increased to the point where they are often unable to accept new assignments. This, in fact, is a statewide concern, since the 3rd and 4th Departments have also experienced a significant decrease in attorneys on their assigned counsel panels. ***This trend is primarily attributed to the fact that the compensation rate of \$75/hour has not changed over the last 17 years.***

The lack of qualified, available attorneys has a compounding negative impact on the experience of litigants who are entitled to assigned counsel. The unavailability of attorneys to assign to the cases results in needless delay of cases and additional court appearances. Once assigned, the attorneys are often overbooked and are not able to appear on all their cases, again causing delay. They attorneys also have limited time available to meet with and prepare their clients for their cases resulting in the parties feeling that their representation is inadequate . . . [H]aving available, high quality representation . . . would likely result in more meaningful final orders, greater litigant satisfaction, less potential for future court appearances on modification and/or violation petitions, and a reduction in court calendars." (Emphasis added).

97. The NYSBA has previously explained that rates of compensation to 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* <https://nysba.org/app/uploads/2021/09/NYSBA-Access-to-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.*

98. The American Bar Association has issued guidelines concerning workloads for public defense work. Those guidelines explain public defense attorneys must have ample time to: (i) interview and counsel clients, (ii) engage in prompt interviews of detained clients, (iii) seek release of incarcerated clients; (iv) pursue formal and informal discovery from the prosecution; (v) perform sufficient legal research; (vi) prepare sufficiently for pretrial hearings and trials; and (vii) prepare sufficiently for sentencing hearings. Eight Guidelines of Public Defense Related to Excessive Workloads, American Bar Association, at Guideline 1 (August 2009). Standard 5-2-4 of the ABA’s Criminal Justice Standards for Providing Defense Services calls for appointed attorneys to receive “compensation at a reasonable hourly rate . . . for all hours necessary” and reimbursement for “reasonable out-of-pocket expenses.” Defendant has failed to provide this.

99. The agreement by prominent judges responsible for the administration of justice in New York State, professional organizations, and practitioners that the 2004 Rates undermine the administration of justice underscores the urgency of Plaintiff’s request for relief here. Defendant should not be allowed to continue to ignore the constitutional crisis it has created for indigent men, women, and children in need of legal representation by private counsel in New York’s courts. Defendant’s failure to act requires a remedy not only in the City, as this Court ordered on July 25, 2022, but also throughout the State — 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

100. Other indicia show the 2004 Rates do not satisfy the requirement for “adequate” compensation to assigned counsel.

101. The rates paid in the Counties are significantly lower than the rates the federal government pays to assigned private counsel. In the United States District Courts for the Southern, Eastern, Northern, and Western Districts of New York, assigned private counsel receive \$158 per hour for time spent in and out of court. That is more than twice the 2004 Rates the State pays in the Counties. This Court found the disparity between federal and state rates for assigned counsel persuasive in *NYCLA I*, and again in *NYCLA II*—when this Court directed the State to revisit compensation rates for the City’s assigned counsel every time compensation rates for federal assigned counsel are increased. The enormous disparity in the Counties is equally persuasive today.

102. New York State also compensates assigned private counsel for children and indigent adults in the Counties 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 in the Counties.

103. New York State also compensates assigned private counsel for children and indigent adults in the Counties 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.

104. 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 in the Counties. *See id.*

105. 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.

106. The federal and state constitutions do not tolerate assigned counsel rates in the Counties that are almost universally far lower than rates paid to other court-appointed experts, assigned counsel in federal jurisdictions throughout New York, assigned counsel in the City, and counsel for city and state employees. Defendant's failure to pay adequate compensation to

assigned private counsel in the Counties 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, Plaintiff states 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)

107. Plaintiff repeats and realleges paragraphs 1 through 106 above.

108. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Family Court in the Counties 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.

109. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

110. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant 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 in the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

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

112. Plaintiff and children in proceedings implicating their liberty interests in the Counties have no adequate remedy at law for this failure.

113. Plaintiff and children in proceedings implicating their liberty in the Counties 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 in the Counties, and requiring Defendant 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)

114. Plaintiff repeats and realleges paragraphs 1 through 113 above.

115. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Family Court in the Counties 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.

116. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

117. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant 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 in the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

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

119. Plaintiff and children in proceedings implicating their liberty interests in the Counties have no adequate remedy at law for this failure.

120. Plaintiff 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 in the Counties, and requiring Defendant 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)

121. Plaintiff repeats and realleges paragraphs 1 through 120 above.

122. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused systemic deficiencies in the assigned counsel systems in Family Court and in matrimonial matters in the Supreme Court in the Counties

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.

123. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

124. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has a constitutional and statutory obligation to ensure that qualified assigned private counsel in the Counties are available and able to provide meaningful and effective representation to indigent adults in the Counties; that Defendant's 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 the Counties 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 the Counties.

125. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties 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 the Counties.

126. Plaintiff and indigent adults in proceedings in Family Court and in matrimonial matters in the Counties have no adequate remedy at law for this failure.

127. Plaintiff and indigent adults in proceedings in Family Court and in matrimonial matters in Supreme Court in the Counties 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 in the Counties, and requiring Defendant 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)

128. Plaintiff repeats and realleges paragraphs 1 through 127 above.

129. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused systemic deficiencies in the assigned counsel systems in Family Court and in matrimonial matters in the Supreme Court in the Counties 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.

130. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

131. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has 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 the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

132. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties 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 the Counties.

133. Plaintiff and indigent adults in proceedings in Family Court and in matrimonial matters in Supreme Court in the Counties have no adequate remedy at law for this failure.

134. Plaintiff and indigent adults in proceedings in Family Court and in matrimonial matters in the Supreme Court in the Counties 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 in the Counties, and requiring Defendant 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)

135. Plaintiff repeats and realleges paragraphs 1 through 134 above.

136. Defendant's failure to provide reasonable and sufficient compensation to assigned private counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Family Court in the Counties 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.

137. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

138. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has 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 the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

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

140. Plaintiff and juveniles in delinquency proceedings and appeals in the Counties have no adequate remedy at law for this failure.

141. Plaintiff and juveniles in delinquency proceedings and appeals in the Counties 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 in the Counties, and requiring Defendant 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)

142. Plaintiff repeats and realleges paragraphs 1 through 141 above.

143. Defendant's failure to provide reasonable and sufficient compensation to assigned private counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Family Court in the Counties 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.

144. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

145. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has a constitutional and statutory obligation to ensure that qualified assigned private counsel in the Counties are available and able to provide meaningful and effective representation to juveniles in delinquency proceedings and appeals in the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

146. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused and threatens to further cause

substantial irreparable harm to juveniles in delinquency proceedings and appeals in proceedings implicating their liberty interests.

147. Plaintiff and juveniles in delinquency proceedings and appeals in the Counties have no adequate remedy at law for this failure.

148. Plaintiff 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 in the Counties, and requiring Defendant 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)

149. Plaintiff repeats and realleges paragraphs 1 through 148 above.

150. Defendant’s failure to provide reasonable and sufficient compensation to assigned private counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Criminal Court proceedings at the trial and appellate levels in the Counties 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.

151. As a result of Defendant’s failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

152. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has a constitutional and statutory obligation to ensure that qualified assigned private counsel in the Counties are available and able to provide meaningful and effective representation to indigent

criminal defendants in the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

153. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused and threatens to further cause substantial irreparable harm to indigent criminal defendants.

154. Plaintiff and indigent criminal defendants in the Counties have no adequate remedy at law for this failure.

155. Plaintiff and indigent criminal defendants in the Counties 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 in the Counties, and requiring Defendant 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)

156. Plaintiff repeats and realleges paragraphs 1 through 155 above.

157. Defendant's failure to provide reasonable and sufficient compensation to assigned private counsel in the Counties has caused systemic deficiencies in the assigned counsel system in Criminal Court proceedings at the trial and appellate levels in the Counties 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.

158. As a result of Defendant's failure to increase the 2004 Rates in the Counties, there exists an actual and justiciable controversy between Plaintiff and Defendant.

159. By reason of the foregoing, Plaintiff is entitled to a declaration that Defendant has a constitutional and statutory obligation to ensure that qualified assigned private counsel in the Counties are available and able to provide meaningful and effective representation to indigent criminal defendants in the Counties; that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties.

160. Defendant's failure to provide reasonable and sufficient compensation to assigned private trial and appellate counsel in the Counties has caused and threatens to further cause substantial irreparable harm to indigent criminal defendants.

161. Plaintiff and indigent criminal defendants in the Counties have no adequate remedy at law for this failure.

162. Plaintiff and indigent criminal defendants in the Counties 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 in the Counties, and requiring Defendant to

establish a mechanism for reviewing and updating assigned counsel compensation rates on a regular basis.

WHEREFORE, plaintiff respectfully requests the following relief:

- (a) a declaratory judgment that, as this Court found in *New York County Lawyers Ass'n v. State of New York*, No. 156916/2021, 2022 WL 2916783 (Sup. Ct. N.Y. Cnty. Jul. 25, 2022), and in *New York County Lawyers' Ass'n v. State of New York*, 196 Misc. 2d 761 (Sup. Ct. N.Y. Cnty. 2003), with respect to the City, Defendant has a constitutional and statutory obligation to ensure that qualified assigned private counsel in the Counties are available and able to provide meaningful and effective representation to children and indigent adults in the Counties;
- (b) a declaratory judgment that Defendant's failure to increase the 2004 Rates paid to assigned private counsel in the Counties 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 the Counties 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 the Counties;
- (d) an injunction setting new rates and removing the current limits on compensation for private counsel who participate in the assigned counsel

program in the Counties. 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 the Counties with constitutionally adequate representation in Family and Criminal Court proceedings at the trial and appellate levels. Plaintiff requests that the Court issue such an injunction setting new rates against Defendant, order 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.

- (e) an injunction requiring Defendant to establish a mechanism for reviewing and updating assigned counsel compensation rates in the Counties on a regular basis;
- (f) an order retaining jurisdiction over this action to reset the assigned counsel compensation rates in the Counties whenever the CJA panel rates are increased unless and until Defendant establishes an effective mechanism to do so, or in the alternative based on increases in the cost of living or another appropriate index;
- (g) an award of Plaintiff's 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: November 30, 2022
New York, New York

KRAMER LEVIN NAFTALIS & FRANKEL LLP

By: /s/ Michael J. Dell
Michael J. Dell
Jason M. Moff
Nathan Schwartzberg
1177 Avenue of the Americas
New York, New York 10036
(212) 715-9100
mdell@kramerlevin.com

Attorneys for Plaintiff