

New York State Office of Indigent Legal Services

Funding Announcement

Upstate Model Family Representation Office Grant

NYS Office of Indigent Legal Services Request for Proposals

The Office of Indigent Legal Services (Office) and nine-member Indigent Legal Services Board (Board) were created by legislation enacted in 2010, found in Executive Law Article 30, sections 832 and 833. As part of its statutory mission “to monitor, study and make efforts to improve the quality of services provided pursuant to Article 18-B of the county law,” the Office, operating under the direction and pursuant to policies established by the Board, assists county governments in the exercise of their responsibility to provide effective and meaningful representation of persons who are legally entitled to counsel but cannot afford to hire an attorney. The assistance provided by the Office and Board includes distributing state funds and targeting grants to counties in support of innovative and cost-effective solutions to enhance the quality of indigent legal services.

Timelines for This Request for Proposals

RFP Release Date	Friday, May 24, 2019
Questions Due By	Friday, June 7, 2019 (Q & A period closed)
Answers Posted By	Friday, June 21, 2019
Proposal Due Date	Friday, July 19, 2019, 5:00 p.m. EST
Award Announcement	September 2019
Tentative Contract Start Date	October 2019

Intent of this Request for Proposals

The New York State Office of Indigent Legal Services (ILS) announces the availability of funds and solicits proposals from New York State counties for the establishment of a model Family Representation Office (the “Model Office”) in a county outside of New York City to provide legal representation to parents¹ in child protective proceedings under New York Family Court Act Article 10 and termination of parental rights proceedings (“state intervention cases”). **New York Counties, other than counties within New York City, are eligible to apply. Proposals**

¹ For ease of reference, in this RFP the term “parent” refers to a biological parent or other “legally responsible” person who is eligible for assigned counsel under New York Family Court Act § 262.

must be submitted by an authorized county official or designated employee of the governing body of the applicant county.²

The intent of this Request for Proposals ("RFP") is to improve the quality of indigent legal services by establishing, in a county outside of New York City, a demonstration project which will implement standards and best practices in state intervention cases as embodied in ILS' *Standards for Parental Representation in State Intervention Matters*.³

New York parents who cannot afford to hire a lawyer are constitutionally and statutorily entitled to publicly-funded legal representation in state intervention cases. *Matter of Ella B.*, 30 N.Y.2d 352 (1972); Family Court Act §§ 261, 262, and 1120; Surrogate's Court Procedure Act § 407. The central goal of effective parent representation in these cases is to maintain children safely within their families and prevent unnecessary and damaging disruption of the parent-child relationship.⁴

In accordance with the *ILS Parental Representation Standards*, the defining feature of this demonstration project is implementation of client-centered, holistic, and interdisciplinary representation that addresses both the legal and social service issues confronting parents affected by the child welfare system, at all critical stages of their interaction with the system. This "family defense" model, in which attorneys, social workers, parent advocates, paralegals, investigators, and experts work as a team, is deemed a best practices approach by the Children's Bureau of the United States Health and Human Services Department and the American Bar Association.⁵ The

² This grant may be used to benefit more than one county, with a single grantee county taking the lead position, upon the express agreement by the governing authority of the other county or counties to accept provision of the services by the grantee county as described herein.

³ *Standards for Parental Representation in State Intervention Matters*, New York State Office of Indigent Legal Services (effective December 2, 2015) (hereinafter *ILS Parental Representation Standards*), accessible at <https://www.ils.ny.gov/content/parent-representation-standards>.

⁴ Children's Bureau, "Strengthening families through primary prevention of child maltreatment and unnecessary parent-child separation," IM-18-05, (U.S. Department of health and Human Services, Administration for Children and Families) (November 16, 2018), <https://www.acf.hhs.gov/cb/resource/im1805>.

⁵ The federal government's indicators of whether parties are receiving "quality, effective representation" includes whether parents' attorneys have access to "other multi-disciplinary professionals as partners, team members or employees such as social workers, investigators, Court Appointed Special Advocates (CASAs), etc." *Indicators of Quality Legal Representation*, Program Instruction ACYF-CB-PI-12-02, Instructions for State Courts Applying for Court Improvement Program (CIP) Funds for Fiscal Years (FYs) 2012-2016, Attachment B (Children's Bureau, U.S. Department of Health and Human Services, Administration for Children and Families (January 11, 2012), <http://www.acf.hhs.gov/sites/default/files/cb/pi1202.pdf>. See also American Bar Association *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*, Standard 26 ("Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available."), http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/ABA-Parent-Attorney-Standards.authcheckdam.pdf, and *ABA National Project to Improve Parental Representation: An Investment That Makes Sense*, http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/At-a-glance%20final.authcheckdam.pdf. Most recently, in February 2019, the interdisciplinary approach was endorsed by the Family Justice Initiative, a collaboration of the ABA Center on Children and the Law, the Children's Law Center of California (CLC), the Center for Family Representation (CFR), and Casey Family Programs (CFP), in *Attributes of High Quality Legal Representation for Children and Parents in Child Welfare Proceedings*, accessible at https://www.americanbar.org/content/dam/aba/administrative/child_law/fji-attributes-2018.pdf.

family defense model was endorsed by the NYS Unified Court System’s Commission on Parental Legal Representation.⁶ The commission was established by Chief Judge Janet DiFiore in February 2018 “to examine the current state of mandated Family Court representation and determine how best to ensure the future delivery of quality, cost-effective parental representation.”⁷ A central recommendation of its February 2019 Interim Report to Judge DiFiore is the creation of a statewide network of interdisciplinary law offices “to ensure the delivery of client-centered, interdisciplinary, holistic representation throughout the State.”⁸

The DiFiore Commission’s recommendation for statewide implementation of the interdisciplinary law office approach is underscored by a study of the family defense system operated by New York City.⁹ That study found that children whose parents received interdisciplinary law office representation achieved overall permanency, reunification, and guardianship more quickly than children whose parents did not receive this type of representation.¹⁰

Implementation of this demonstration project is expected to improve the overall quality of parental representation in the grantee county, and thus, outcomes for child welfare involved children. Furthermore, consistent with the DiFiore Commission’s recommendation, this project will provide an opportunity to explore the potential benefit of expanding a formalized law office structure for delivering interdisciplinary parental representation across the state.

Section I: Background

A parent's interest in his or her child's care and custody is one of the oldest and most fundamental liberty interests recognized by law.¹¹ Depriving a parent of the right to raise one's child is "often . . .the more grievous" compared to a prison sentence.¹² The United States Supreme Court has emphasized that parents' fundamental liberty interest in associating with and raising their children "does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family

⁶ Commission on Parental Legal Representation, *Interim Report to the Chief Judge*, at 16-23, New York State Unified Court System (hereafter the “DiFiore Commission Interim Report”) (February 2019), accessible at <http://www.nycourts.gov/ip/Parental-Legal-Rep/PDFs/InterimReport-FINAL.pdf>.

⁷ Janet DiFiore, Chief Judge of the State of New York Court of Appeals, Chief Judge of the State of New York, NYS Unified Court System, *The State of Our Judiciary 2018*, (February 6, 2018), accessible at <http://www.nycourts.gov/ctapps/news/soj2018.pdf>.

⁸ *DiFiore Commission Interim Report*, *supra* note 6 at 44.

⁹ The New York City interdisciplinary family defense model is described herein at 6-7.

¹⁰ L.A. Gerber, Y.C. Pang, T. Ross, et al., *Effects of an interdisciplinary approach to parental representation in child welfare*, *Children and Youth Services Review*, 42-55 (May 2019), accessible at <https://www.sciencedirect.com/science/article/pii/S019074091930088X>.

¹¹ *Troxel v. Granville*, 530 U.S. 57, 65 (2000).

¹² *Lassister v. Department of Social Services*, 452 U.S. 18, 59 (1981) (Stevens, J., dissenting).

life."¹³ Moreover, a child has her own legal interest and right to be raised within her family.¹⁴ Indeed, while the objective of CPS intervention is the protection of children thought to be abused or neglected, social science evidence suggests that children are better off with their families even in "marginal" cases where CPS investigators disagree about whether a child should be taken into state custody.¹⁵

Recognizing the need for a check on government interference with the fundamental liberty interests of family integrity and family autonomy, in 1972 the New York State Court of Appeals held that poor parents accused of child maltreatment by the government have a constitutional right to publicly-funded legal representation.¹⁶ Citing the "gross inherent imbalance of experience and expertise" between the State and an unrepresented parent, the *Ella B.* Court held that principles of fundamental fairness, due process, and equal protection require that a parent of limited means be given a publicly-funded lawyer when the State seeks to take that parent's child into protective custody. The Court stressed that "[a] parent's concern for the liberty of the child, as well as for his care and control, involves too fundamental an interest and right to be relinquished to the State without the opportunity for a hearing, with assigned counsel if the parent lacks the means to retain a lawyer."¹⁷

In 1975, the New York State legislature codified the *Ella B.* decision in §§ 261 and 262 of the New York Family Court Act. Emphasizing the "fundamental interests and rights" implicated in various types of family law cases, the Legislature declared in Family Court Act § 261 that legal counsel is "indispensable" in ensuring the "practical realization of due process of law" and in assisting the court in making "reasoned determinations of fact and proper orders of disposition." The courts have made it clear that the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings under the New York State Constitution is equally applicable in state intervention cases.¹⁸

¹³ *Santosky v. Kramer*, 455 U.S. 745, 753 (1982).

¹⁴ Assessing the private interests at stake in the fact-finding stage of a child protective case, the *Santosky* Court observed that "the State cannot presume that a child and his parents are adversaries," and that, until the State proves parental unfitness, "the child and his parents share a vital interest in preventing erroneous termination of their natural relationship." *Id.* at 760.

¹⁵ Joseph J. Doyle, Jr., *Child Protection and Child Outcomes: Measuring the Effect of Foster Care*, 97 *Amer. Econ. Rev.* 1583, 1584 (2007) (suggesting that "significant benefits from foster care placement . . . appear unlikely for children at the margin of foster care."), accessible at http://www.mit.edu/~jdoyle/fostercare_aer.pdf; see also Joseph J. Doyle, Jr., *Child Protection and Adult Crime: Using Investigator Assessment to Estimate Causal Effects of Foster Care*, 116(4), *J. of Pol. Econ.* 746 (2008), accessible at http://www.mit.edu/~jdoyle/doyle_jpe_aug08.pdf.

¹⁶ *Matter of Ella B.*, 30 N.Y.2d 352 (1972).

¹⁷ *Id.* at 356-357 (cites omitted).

¹⁸ *Brown v. Gandy*, 3 N.Y.S.3d 486 (4th Dept. 2015) (" . . . because the potential consequences are so drastic, the Family Court Act affords protections equivalent to the constitutional standard of effective assistance of counsel afforded defendants in criminal proceedings;" previous decisions requiring a showing of "actual prejudice to prevail on a claim of ineffective assistance of counsel under the New York Constitution" are no longer to be followed); see also *Matter of Jaikob O.*, 931 N.Y.S.2d 156 (3rd Dept. 2011); *Matter of Eileen R.*, 912 N.Y.S.2d 350 (3rd Dep't 2010); *Matter of Alfred C.*, 655 N.Y.S.2d 589 (2^d Dept. 1997).

For CPS-involved parents, effective assistance of counsel can mean the difference between family preservation and the termination of parental rights, which some have called "the family law equivalent of the death penalty in a criminal case."¹⁹ Given the complex dynamic of legal and social work issues involved, the American Bar Association and the federal Administration for Children and Families recognizes that an interdisciplinary approach is key to effective parental representation in state intervention cases.²⁰ Strongly endorsed by the DiFiore Commission for implementation statewide,²¹ interdisciplinary parental representation in state intervention cases is increasingly prevalent,²² and is the foundational component of this demonstration project.

In New York, interdisciplinary representation has long been recognized as essential for constitutionally effective parental representation. For example, in a 2000 report, *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings*, the New York City Public Advocate argued that New York's "statutory and constitutional duties of providing representation to indigent adults involved in Family Court matters" would be best met by establishing an interdisciplinary law office that would combine "accountability, specialization, social work support services and institutional resources."²³ The report concluded that "[i]f parents have access to adequate representation, everyone will gain: money will be saved, Family Court will function more effectively, and children will receive the stability and permanence to which they are entitled."²⁴ The Committee envisioned a model with "[s]taff attorneys who work in conjunction with parent advocates, paralegals or social workers who can

¹⁹ E.g., Stephanie N. Gwillim, *The Death Penalty of Civil Cases: The Need for Individualized Assessment and Judicial Education When Terminating Parental Rights of Mentally Ill Individuals*, 29 St. Louis U. Pub. L. Rev. 341 (2009) (citing *In re K.A.W.*, 133 S.W.3d 1, 12 (Sup. Ct., Mo. 2004); see also *In re Smith*, 77 Ohio A at 3d 1, 16 (1991) ("A termination of parental rights is the family law equivalent of the death penalty in a criminal case. The parties to such an action must be afforded every procedural and substantive protection the law allows."))

²⁰ See, e.g., *High Quality Legal Representation for All Parties in Child Welfare Proceedings*, at 10-11, United States Health and Human Services, Administration for Children and Families, Children's Bureau (Information Memorandum ACYF-CB-IM-17-02, January 17, 2017) (hereinafter *High Quality Legal Representation*); *Indicators of Success for Parent Representation*, American Bar Association, Center on Children and the Law (2015) (hereafter *Indicators of Success*), accessible at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentRep/Indicators-of-Success.authcheckdam.pdf; *Instructions for State Courts Applying for Court Improvement Program (CIP) Funds, Fiscal Years 2012-2016*, at 7 and Attachment B, *Indicators of Quality Legal Representation*, U.S. Dep't of Health and Human Services, Administration for Children and Families (2012); see also *ILS Parental Representation Standards*, *supra* note 3, Standard G (Model of Representation - Multidisciplinary Practice).

²¹ *DiFiore Commission Interim Report*, *supra* note 6, at 13-14.

²² Examples include the Vermont Parent Representation Center, Inc. (<http://vtprc.org/>); the Detroit Center for Family Advocacy (<https://www.law.umich.edu/centersandprograms/pcl/cfa/Pages/default.aspx>); the Family Defense Center (Chicago) (<http://www.familydefensecenter.net/>); the New Jersey Office of the Public Defender, Office of Parental Representation (<http://www.state.nj.us/defender/structure/opr/>); and the Washington State Office of Public Defense, Parent Representation Program (<http://www.opd.wa.gov/index.php/program/parents-representation>).

²³ Mark Green & Child Planning & Advocacy Now (C-PLAN), *Justice Denied: The Crisis in Legal Representation of Birth Parents in Child Protective Proceedings*, at 44-45 (May 2000) (hereinafter *Justice Denied*).

²⁴ *Id.* at 46.

educate and assist the parents."²⁵ In 2001, the First Judicial Department's Committee on Representation of the Poor echoed the *Justice Denied* report, observing that "the need for interdisciplinary services involving at least a social worker in addition to an attorney suggests that an institutional provider to represent parents in Family Court should be established."²⁶

Observers have also noted the need for comprehensive, holistic advocacy for parents. As explained by the First Judicial Department Committee, "the need for more holistic representation is acute in the area of family law" because child welfare-involved families "often have other needs that affect their ability to resolve the Family Court proceedings successfully."²⁷ The Committee proposed an institutional law office that would engage in legal and advocacy strategies beyond defending the allegations made against the parent. "To be truly effective, the institutional provider for parents should have the staffing capability to reach out to community services, mental health facilities, parent education, and drug counseling programs. It should also have access to other attorneys who could advise or represent parents in housing, public assistance, disability, and domestic violence problems."²⁸

In the wake of similar calls for an institutional, interdisciplinary, and holistic approach to parental defense by legislators, court-appointed task forces, bar association committees, parents' attorneys and others,²⁹ beginning in 2007 the New York City Mayor's Office of Criminal Justice entered into multi-year contracts with several organizations.³⁰ Through these contracts, New

²⁵ *Id.* at 45.

²⁶ First Judicial Department Committee on Representation of the Poor, *Crisis in the Legal Representation of the Poor: Recommendations for a Revised Plan to Implement Mandated Governmentally Funded Legal Representation of Persons Who Cannot Afford Counsel*, at 12 (March 2001) (hereafter *Crisis in Legal Representation of the Poor*), accessible at http://www.courts.state.ny.us/press/old_keep/1AD-rep-poor.shtml.

²⁷ *Id.* at 14.; see also Roger L. Green and William L. Parment, *Legislative Report: Losing Our Children: An Examination of New York's Foster Care System*, New York State Assembly, Committee on Children and Families and Committee on Oversight, Analysis and Investigation (July 1999) (hereinafter *Losing Our Children*) (supporting funding for programs to provide "comprehensive representation" for parents including "legal assistance to help families with their housing, public assistance and domestic relations problems to alleviate any conditions which may have caused abuse or neglect.")

²⁸ *Crisis in Legal Representation of the Poor*, *supra* note 26, at 14.

²⁹ See, e.g., *Families in Limbo: Crisis in Family Court, Recommendations & Solutions*, Child Welfare Watch (Winter 1999); Sherie Bonstelle and Christine Schessler, *Adjourning Justice: New York State's Failure to Support Assigned Counsel Violates the Rights of Families in Child Abuse and Neglect Proceedings*, 28 *Fordham Urb. L. J.* 1151 (2001) (hereinafter *Adjourning Justice*); Special Child Welfare Advisory Panel, *Advisory Report on Front Line and Supervisory Practice: Special Report On Family Court*, Annie E. Casey Foundation (2000), accessible at <http://files.eric.ed.gov/fulltext/ED439189.pdf> (hereinafter *Special Report on Family Court*); Julia Vitullo-Martin and Brian Maxey, *New York Family Court: Court User Perspectives*, Vera Institute of Justice (January 2000), accessible at <http://www.vera.org/sites/default/files/resources/downloads/nyfamilycourt.pdf>; Beth Harrow and Sue Jacobs, *Report of the Parent Representation Working Group*, 70 *Fordham L. Rev.* 399 (2001); see also Ann Moynihan, et. al, *Foreword, Fordham Multidisciplinary Conference - Achieving Justice: Parents and the Child Welfare System*, 70 *Fordham L. Rev.* 287, 309-313 (2001).

³⁰ Heather Appel, *New Influx of Lawyers Coming to Family Court*, *City Limits*, April 16, 2007, accessible at <http://citylimits.org/2007/04/16/new-influx-of-lawyerscoming-to-family-court/>; Testimony of John Feinblatt, New York City Criminal Justice Coordinator, before the City Council, City of New York, Committee on General Welfare (Hearing Transcript, January 11, 2007, at 13-14) (noting issuance of RFP by NYC and awards to legal services providers of contracts that require both legal and social services for parents), accessible at

York City has institutionalized an interdisciplinary model of family defense, including social workers, paralegals, investigators, experts and parent advocates working alongside parent attorneys.³¹ Currently, the Center for Family Representation, Inc., Brooklyn Defender Services, the Bronx Defenders, and the Neighborhood Defender Service of Harlem are the primary providers for the majority of state intervention cases in New York City.³²

Consistent with its statutory requirement to improve the quality of legally mandated public defense services throughout the state, the Office of Indigent Legal Services seeks to refine and evaluate the efficacy of the interdisciplinary law office approach to parent representation outside of New York City. As described below, this approach is complemented by an emphasis on timely access to counsel, starting with representation during CPS investigations and ensuring that parents have counsel at their first appearance in court. The project establishes reasonable caseload caps to ensure Model Office staff have the time necessary to provide high quality representation in accordance with prevailing standards and best practices.³³

A. Interdisciplinary and Holistic Representation

Interdisciplinary representation: Child welfare cases are complex, involving multiple and intertwined legal and social issues. The stress experienced by parents and families entangled in the child welfare and family court systems is exacerbated by the highly compressed, federally mandated deadline by which a child welfare agency must initiate a termination of parental rights proceeding.³⁴ Such multifaceted pressures demand a multifaceted approach.

This RFP therefore contemplates an interdisciplinary team approach in which a lawyer and social work staff work (social worker, parent advocate) help parents navigate the demands of the child welfare and court systems.³⁵ The lawyer will provide expert legal advocacy, both in and out of

<http://legistar.council.nyc.gov/LegislationDetail.aspx?ID=446645&GUID=58889C26-F4EB-41FD-9C85-BBB1F960475E&Options=&Search=>.

³¹ The City of New York Criminal Justice Coordinator's Office, *Request for Proposals for Indigent Family Court Legal Services for Respondents in Article 10 Cases* (2007) (on file with ILS).

³² See Report on the Fiscal Year 2015 Executive Budget for the Mayor's Office of Criminal Justice, The Council of the City of New York (May 20, 2014), accessible at <http://council.nyc.gov/downloads/pdf/budget/2015/15/eb/cjc.pdf>.

³³ See *DiFiore Commission Interim Report*, *supra* note 6 at 34-39 (recommending a caseload cap of no more than 50-60 pending clients for parental representation attorneys, and discussing problems associated with excessive caseloads, including inadequate representation; denial of parents' due process rights; and interference with "judges' ability to make fully informed, just decisions for families.")

³⁴ With certain exceptions, child welfare agencies must initiate a termination of parental rights proceeding once a child has been in foster care for 15 of the previous 22 months. N.Y. Soc. Services Law §384-B(1)(i) (enacting provisions of the federal Adoption and Safe Families Act of 1997, 42 U.S.C. § 675(4)(E)).

³⁵ See *ILS Parental Representation Standards*, *supra* note 3, Standard G (Model of Representation - Multidisciplinary Practice); see generally Martin Guggenheim and Susan Jacobs, *A New National Movement in Parent Representation*, Clearinghouse Review, Journal of Poverty Law and Policy, Vol. 47, at 36-46 (May-June 2013); University of Michigan Law School, *Detroit Center for Family Advocacy Pilot Evaluation Report, 7/2009-6/2012*, p. 2 (February 2013); see also Vermont Parent Representation Center, Inc., *Program Model*, <http://vtprc.org/program-model/>; Diane Boyd Rauber, *From the Courthouse to the Statehouse: Parents as Partners in Child Welfare*, Child Law Practice, Vol. 28, No. 10 (American Bar Association, December 2009) (describing

court, and will guide the parent through negotiation and decision-making in relation to the complex laws and procedures governing the legal case. As described in the next section (Holistic Representation), the lawyer will also coordinate legal representation for the parent on related issues that may impact the family’s ability to maintain a child safely within his or her family.

The social worker will assess the strengths and needs of the parent and the family, provide case and crisis management, and work to access appropriate supports and resources to meet parent objectives. The parent advocate – a parent who has successfully navigated the child welfare system – will provide peer-to-peer support; accompany the parent to meetings; assist with interactions with system actors, as needed; and support the parent’s productive engagement with supportive programs.

Holistic representation: Allegations of child maltreatment are commonly precipitated by or intertwined with family circumstances and challenges related to other legal issues, including, for example, housing, paternity, child support, domestic violence, and divorce. Criminal justice involvement, poverty-related issues such as lack of access to childcare and medical services, and mental health or addiction challenges may impact a parent’s ability to safely keep or regain custody of a child. Likewise, immigration status may threaten the autonomy and integrity of families involved in the child welfare system.³⁶ Thus, in addition to providing direct legal services in the state intervention case, the Model Office will be expected to provide or coordinate legal representation in collateral legal and administrative proceedings that may affect family unity.³⁷

On-going community engagement, including the development of a comprehensive understanding of community strengths, resources, needs, and challenges, is an essential component of holistic representation. Consequently, this RFP contemplates that Model Office staff will engage in community education, outreach, and collaboration with individuals and organizations, including other mandated legal representation and civil legal services providers, to identify and address systemic issues affecting families involved with or at risk of CPS involvement.

parent advocate programs operating around the country), *accessible at* http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/parentpartner1.pdf; Diane Boyd Rauber, *Working With Parent Partners to Achieve Better Case Outcomes for Families*, Child Law Practice, Vol. 28, no. 11 (American Bar Association, January 2010) (providing suggestions to parents’ attorneys for working with parent advocates and parents), *accessible at* http://www.hunter.cuny.edu/socwork/nrcfcpp/info_services/parentpartner2.pdf.

³⁶ *E.g.*, New York State Unified Court System Advisory Council on Immigration Issues in Family Court, *Adverse Consequences to Family Court Dispositions*, (October 2017) (providing “guidance to New York Family Court practitioners and jurists in understanding possible adverse immigration consequences resulting from dispositions, rulings, findings and orders that are commonly issued in family court matters.”) *accessible at* <http://nycourts.gov/ip/Immigration-in-FamilyCourt/publications&materials.shtml>; U.S. Immigration and Customs Enforcement (ICE), *Detention and Removal of Alien Parents or Legal Guardians* (“Detained Parents Directive”) (providing guidance regarding the detention and removal of parents and legal guardians of a minor child(ren), including those who have a direct interest in family court or child welfare proceedings in the United States), *accessible at* <https://www.ice.gov/parental-interest>; *see also* *Immigration and Child Welfare*, Child Welfare Information Gateway, *accessible at* <https://www.childwelfare.gov/pubPDFs/immigration.pdf>.

³⁷ *See ILS Parental Representation Standards, supra* note 3, Standard H (Breadth of Representation).

B. Timely Access to Counsel

The child welfare system's goal of keeping families together is best served when parents, children, and the child welfare agency are represented from the earliest stages of a CPS matter. Federal guidelines advise states to provide representation for all parties “very early in the State intervention process, but no later than the point at which legal proceedings are initiated.”³⁸

Timely access by parents to legal representation promises many benefits. As noted by the DiFiore Commission, “Giving parents representation when it matters – before they appear in court – is consistent with principles of equal protection and due process; can prevent unnecessary and prolonged separation of children from their parents; and can mitigate the disruption and trauma that accompanies State intervention into the family. Timely access to counsel may also help reduce the disproportionate percentage of children of color in New York’s foster care system.”³⁹ Other benefits include timely and appropriate permanency decisions for children, and conservation of agency and judicial resources.⁴⁰

Currently, parents of limited means in New York do not receive public legal representation during CPS investigations. In fact, the DiFiore Commission found that they “sometimes are not provided with legal representation at critical stages when it is constitutionally promised – during court hearings at which a judge decides whether to remove a child into government custody or to continue an extrajudicial CPS removal that has already occurred.”⁴¹ The lack of timely representation for parents often results in unnecessary separation of children from their families.⁴²

As a matter of course, the child welfare agency has legal representation from the inception of its investigation into a family. Children are also guaranteed timely legal representation in state intervention proceedings, as New York law requires appointment of an attorney for a child at the earliest occurrence of: the court receiving notice of an extra-judicial emergency removal; the filing of an application for a pre-petition order of removal; or the filing of a petition alleging abuse or neglect.⁴³

³⁸ Donald N. Duquette and Mark Hardin, *Adoption 2002: The President’s Initiative on Adoption and Foster Care: Guidelines for Public Policy and State Legislation Governing Permanence for Children*, p. VII-1 (U.S. Dep’t of Health and Human Services, Administration for Children and Families, Children’s Bureau (June, 1999), accessible at <http://archive.org/details/guidelinesforpub00duqu> (“ACF Guidelines”).

³⁹ *DiFiore Commission Interim Report*, *supra* note 6, at 16.

⁴⁰ United States Administration for Children and Families, *High Quality Legal Representation*, *supra* note 20, at 6-7.

⁴¹ *DiFiore Commission Interim Report*, *supra* note 6, at 17-18.

⁴² See, e.g., Yasmin Khan, “Family Separations in Our Midst,” WNYC, April 17, 2019, accessible at <https://www.wnyc.org/story/child-removals-emergency-powers/> (“When the city removes a child without any court process . . . the city bypasses protections afforded by due process, namely legal representation. Parents and children do not get access to an attorney until a case is filed in family court, unless they can afford to hire one.”)

⁴³ NY Family Court Act § 1016.

In contrast, a parent is typically advised of the right to a publicly-funded lawyer only when he or she “first appears in court.”⁴⁴ As a result, many parents do not have legal representation until days, weeks, or sometimes months after having their children taken into state custody.⁴⁵ As stressed many years ago in a highly influential New York State Senate committee report, “a number of highly significant events occur prior to the initial appearance and prior to the initial appointment of representation for the respondent. All of these events occur on an ex parte basis and many of the events are of a magnitude to shake the family structure of the respondent.”⁴⁶ As detailed below, this RFP therefore contemplates that Model Office staff will represent clients from the earliest point possible and continuously throughout the duration of the parent’s involvement with CPS.

Investigation Representation. Child welfare agencies are prohibited from forcibly taking children into custody without a court order unless there is an “imminent danger to the child’s life or health.”⁴⁷ Unfortunately, experience has shown that agencies too often wield their emergency removal power in situations where such drastic state action is unnecessary,⁴⁸ and without first attempting to address the issues that brought the family to the agency’s attention.⁴⁹ Access to

⁴⁴ Family Ct. Act § 262. “Parents must appear at court in order to have an attorney assigned. (Thus, for example, a parent who does not appear the day after a child is removed, and therefore is not provided with an attorney, is unlikely to learn that she has a right to demand a hearing to review the removal.)” *Special Report on Family Court, supra* note 29, at 46.

⁴⁵ Jules Kerness and Constance R. Warden, *Child Protection and the Family Court: A Study of the Processes, Procedures, and Outcomes Under Article Ten of the New York Family Court Act*, at 131-132, New York State Senate Standing Committee on Child Care, (Sen. Mary Goodhue, Chair) (National Center on Child Abuse and Neglect, December 1989) (hereinafter the *1989 Article Ten Study*), accessible at <https://www.ncjrs.gov/pdffiles1/Digitization/126665NCJRS.pdf>.

⁴⁶ *Id.* at 131-132 (emphasis added). This Study led to the enactment in the 1990 legislative session of a consolidated 17 bill package addressing child abuse and neglect proceedings in New York State family courts. These new laws “were the result of the committee’s federally funded 1988-89 study of 500 Family Court case histories . . . Important elements of the package include authority for comprehensive law guardian representation of abuse children, thorough monitoring of implementation of Family Court orders, and clear standards for supervision of abused children and their families.” *1990 Annual Report of the New York State Senate Standing Committee on Child Care*, p. 2, accessible at <https://www.ncjrs.gov/pdffiles1/Digitization/129495NCJRS.pdf>. “The conclusions of the study were dramatic and sobering: children and their parents often are denied important due process protections in child abuse proceedings; child protective agencies charged with assisting and monitoring the conduct of abusive families cannot fully perform their duties, and, most important, family court orders in abuse and neglect proceedings are rarely monitored by the court . . . Implementation of the new laws will mean that courts as well as the Child Protective systems will have an enhanced capacity to ensure that children are protected and that families receive needed services.” *Id.* at 6-7.

⁴⁷ Family Ct. Act § 1024(a).

⁴⁸ See, e.g., Vivek Sankaran & Christopher Church, *Easy Come, Easy Go: The Plight of Children Who Spend Less Than Thirty Days in Foster Care*, 19 U. Pa. L. J. & Soc. Change 205 (2016); *An Examination of the Child and Family Services Agency’s Performance When it Removes Children from and Quickly Returns them to their Families: Findings and Recommendations from the Citizens Review Panel*, The District of Columbia Citizen Review Panel, September 2011, accessible at http://www.dc-crp.org/Citizen_Review_Panel_CFSA_Quick_Exits_Study.pdf; Kerness & Warden, *1989 Article Ten Study, supra* note 43 at 58-80, 88-93; Green & C-Plan, *Justice Denied, supra* note 21, at 4.

⁴⁹ See, e.g., Special Child Welfare Advisory Panel, *Special Report on Family Court, supra* note 29, at 47.

counsel during a CPS investigation provides parents a safeguard against unwarranted government interference in family autonomy.⁵⁰

Members of the New York State judiciary, the New York State Bar Association, and, most recently, the DiFiore Commission on Parental Legal Representation have recognized the need for state-financed representation for individuals during government investigations.⁵¹ Investigation representation not only helps avoid unnecessary child removals: it can save significant amounts of taxpayer money that would otherwise be spent on the most expensive child welfare intervention - foster care.⁵²

Thus, in accordance with prevailing standards and best practices, the Model Office will be expected to provide representation to parents during CPS investigations.⁵³ Clients needing assistance may be identified through walk-ins, an in-house Helpline, referrals from criminal defense or civil legal services providers, community-based organizations or service providers, arrangements with the Family Court and/or the child welfare agency, or other means of connecting with parents at risk of CPS intervention.⁵⁴ The local child welfare agency may appreciate the value of legal representation for parents during an investigation, and may agree to

⁵⁰ See *ACF Guidelines*, *supra* note 38, at VII-8 (“A danger exists in child protection cases that personal rights of parents and children will be infringed in the well-intentioned zeal to help children and parents. Even before an attorney is appointed to represent the parents, government intervention in the family may have been initiated that has not been reviewed by any court or magistrate. The goals of the child protection system do not alter the need to recognize and respect the personal integrity and autonomy of parents. Protective State intentions do not justify any relaxation of legal safeguards or procedural protections for parents or children.”)

⁵¹ See *DiFiore Commission Interim Report*, *supra* note 6 at 16-23 (Recommending that “parents be timely provided with relevant information about the right to counsel, and that parents be granted access to counsel during a child protective agency investigation and sufficiently in advance of the first court appearance.”); First Judicial Department Committee, *Crisis in Legal Representation of the Poor*, *supra* note 26, at 14 (“While there may be difficult administrative issues for compensating assigned counsel for pre-arrest representation, an effort should be made, perhaps through a resource center or a referral mechanism, to make pre-arrest representation generally available to indigent persons.”); Committee to Ensure the Quality of Mandated Representation, *2015 Revised Standards for Providing Mandated Representation*, New York State Bar Association, Standard B (“Effective representation should be available for every eligible person whenever counsel is requested during government investigation or when the individual is in custody. Provision of counsel shall not be delayed while a person’s eligibility for mandated representation is being determined or verified.”).

⁵² See, e.g., Vivek Sankaren, *Using Preventive Legal Advocacy to Keep Children from Entering Foster Care*, 40 Wm. Mitchell L. Rev. 1036 (2014), accessible at <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1946&context=articles>.

⁵³ See *ILS Parental Representation Standards*, *supra* note 3, Standard I, Representation prior to court intervention; see also American Bar Association, *Standards of Practice for Attorneys Representing Parents in Child Abuse and Neglect Cases*, Standard 4 (2006) (describing goals of pre-petition representation) , accessible at http://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf.

⁵⁴ *Indicators of Success*, *supra* note 18, at 9-10 (“In some jurisdictions attorney referral might be based on cases deemed “high risk” but where safety is currently controlled. This may be based on agency safety/risk assessment tools. Cases may also be assigned to attorneys when particular risk categories are established where a parents’ attorney may be helpful in preventing removal by dealing with legal issues that might impact the parent’s ability to keep children at home, for example, legal assistance for special education, housing, or relative custody.”)

refer parents in need of such representation to the Model Office.⁵⁵ However, interested applicants are not required to secure any promises or cooperation agreement from CPS to be awarded this grant.

As previously mentioned, any number of circumstances or conditions may affect a parent's ability to maintain a child safely in the home (*e.g.*, homelessness, inadequate or unsafe housing conditions, domestic violence, addiction or mental health challenges, etc.),⁵⁶ and some populations may be particularly vulnerable to CPS intervention (for example, mothers of newborns who test positive for drugs).⁵⁷ In all cases, the goal of investigation representation by the Model Office will be to prevent unnecessary removals and to assist the parent to obtain necessary and appropriate services that will keep the family together safely.⁵⁸

Model Office staff will advise and counsel parents about the exercise of their rights during a CPS investigation and provide or coordinate legal representation on matters affecting the child's safety and the family's stability. The staff may provide other types of assistance, as appropriate, including: preparing the parent for and/or accompanying the parent at CPS interviews and meetings; advising and counseling the parent regarding voluntary placement of the child with relatives or other suitable caretakers; and advocating for reasonable and realistic service plans.⁵⁹

⁵⁵ For example, through a collaboration with the Wayne County, Michigan Department of Human Services and the Juvenile Court, between July 2009 and June 2012, the Detroit Center for Family Advocacy (CFA) represented parents in "preventive cases," the goal of which was to "eliminate legal barriers that would allow a child to safely remain within the family, thereby diverting foster care placement." Nearly 90 percent of CFA's referrals for preventive cases came directly from the Michigan Department of Human Services, and CFA achieved its legal objectives in 98.2 percent of cases. None of the children whose parents were represented by CFA entered foster care. Detroit Center for Family Advocacy, *Promoting Safe and Stable Families*, accessible at <https://artscimedia.case.edu/wp-content/uploads/sites/35/2014/02/14194055/CFAReport.pdf>. Another example of collaboration between a local CPS agency and parental representation provider is the Family Preservation Project of the Neighborhood Legal Services Program, Washington, D.C., which was established with a grant from the District of Columbia Child and Family Services Agency (CFSA). The program provides "critical legal advocacy to low-income families at risk of entering the abuse and neglect system and potentially having a child removed from the home." Family Preservation Project of the Neighborhood Legal Services Program, Washington, D.C. (April 10, 2014), <http://www.nlsp.org/resource-center/news/family-preservation-project>. See "NLSP Announces Family Preservation Project," April 10, 2014, accessible at <http://www.nlsp.org/resource-center/news/family-preservation-project>.

⁵⁶ See, *e.g.*, Robbin C. Pott, *The Detroit Center for Family Advocacy: A Call for Replicating an Effective Model*, American Bar Association (January 14, 2014), accessible at <http://apps.americanbar.org/litigation/committees/childrights/content/articles/winter2014-0114-detroit-cfa-replicating-effective-model.html> and the Family Preservation Project of the Neighborhood Legal Services Program, Washington, D.C. (April 10, 2014), <http://www.nlsp.org/resource-center/news/family-preservation-project>.

⁵⁷ See, *e.g.*, Vermont Parent Representation Center, <http://vtprc.org/>; The Bronx Defenders, Family Defense Practice, <http://www.bronxdefenders.org/our-work/family-defense-practice/>.

⁵⁸ See *ILS Parental Representation Standards*, *supra* note 3, Standard I (Representation prior to court intervention).

⁵⁹ See Trine Bech and Mark Briggs, et al., *The Importance of Early Attorney Involvement in Child Welfare Cases: Representation of Parents in Pre-Petition Proceedings*, at 4 (American Bar Association Second National Parents' Attorney Conference, July 2011) (accessible at http://www.americanbar.org/groups/child_law/what_we_do/projects/parentrepresentation/conference_materials.html) see also Elizabeth Fassler and Wanjiro Gethaiga, *Representing Parents During Child Welfare Investigations: Precourt Advocacy Strategies*, 30 Child Law Practice 2, American Bar Association (April 2011) (accessible at <https://www.cfrny.org/news-blog/original-publications/>).

Court Action Representation: Access by an accused parent to meaningful legal representation in advance of the first court appearance is crucial to effective representation.⁶⁰ At the hearing after a child has been involuntarily removed from his or her family, a judge must decide the critical question of whether, based on evidence presented, there is an "imminent risk" to a child's life or health to justify the removal. This hearing is a "critical stage" of state intervention litigation.⁶¹ Model Office staff will therefore be expected to meet with clients sufficiently in advance of such hearings, and actively participate in the hearings as necessary to protect the parent's interests and advance the parent's goals.⁶²

To ensure timely access to counsel for parents, Model Office representation of clients will begin as soon as possible. Because a poor person's right to counsel in Family Court matters is not contingent upon a judge's order of appointment,⁶³ Model Office staff will represent a client upon its own determination that the person is financially eligible for representation.⁶⁴

In sum, to ensure that parents' rights and interests are protected, and that the attorney has the best opportunity to provide meaningful and effective assistance of counsel, this RFP contemplates that the Model Office will determine and refine mechanisms to ensure that parents have access to counsel from the earliest stages of a state intervention case, including during a CPS investigation; upon notice to the Family Court of an imminent or actual extra-judicial removal of a child by the agency; upon the filing of an application by the agency requesting an order of removal; and, at the very latest, upon the filing with the court of a petition alleging abuse or neglect.

⁶⁰ United States Administration for Children and Families, *High Quality Legal Representation*, *supra* note 20, at 6-7.

⁶¹ *ACF Guidelines*, *supra* note 38, at 101.

⁶² *ILS Parental Representation Standards*, *supra* note 3, Standard K (Preliminary Court Proceedings).

⁶³ In recognition of the need for timely access to counsel for child-welfare involved parents, the DiFiore Commission Interim Report recommends "that standards for determining eligibility in Family Court matters include a rebuttable presumption of eligibility for counsel for all parents involved in child welfare proceedings, whether a petition has been filed, or the parents are being investigated by CPS and a petition has not yet been filed." *DiFiore Commission Interim Report*, *supra* note 6 at 32. See also *ILS Parental Representation Standards*, Standard 5 (requiring attorneys and programs to provide representation "for every eligible person at the earliest possible time and begin advocating for every client without delay, including while client eligibility is being determined or verified."); New York State Bar Association Revised Standards for Providing Mandated Representation (2015), Standard B (Early Entry of Representation) ("Systematic procedures shall be implemented to ensure that prompt mandated representation is available to all eligible persons, particularly those held in detention facilities and where a child has been removed by a governmental agency from the person's home."). See also *People v. Rankin*, 998 N.Y.S.2d 573, 802 (County Court, Monroe County, 2014) ("New York State Bar Association Revised Standards for Providing Mandated Representation], applicable to all attorneys tasked with representing indigent individuals, demonstrate, objectively, that effective representation for indigent individuals entails representation without delay pending the judge's eligibility determination . . . there is no scenario under which indigent individuals would not be afforded an impaired quality of representation where the Public Defender's function as counsel is effectively disabled pending receipt of a judge's order of appointment.")

⁶⁴ *ILS Parental Representation Standards*, *supra* note 3, Standard I-5 (Assignment as soon as possible); see also *ACF Guidelines*, *supra* note 38, at 107-109.

C. Reasonable Attorney Caseloads

Noting that its “vision for transforming parental representation in New York cannot be accomplished without sound caseload standards,” the DiFiore Commission pointed out in its February 2019 Interim Report that “[u]manageable caseloads often prevent attorneys from carrying out even basic lawyering tasks, with negative effects on the attorney-client relationship, judicial case management and decisions-making, and outcomes for children.”⁶⁵

Caseload limits are essential to enable attorneys to comply with their full ethical responsibilities. State intervention matters are complicated and labor intensive. Contributing factors include multiple, sometimes geographically dispersed parties; multiple attorneys; expert witnesses; complex substantive law; procedural complexity; and extensive discovery. They generally require more court appearances; interim appeals may be necessary in some matters; and very often other proceedings such as custody, guardianship, family offense or paternity proceedings may be initiated during the pendency of the case, further complicating the representation. Because significant social supports and related legal issues often must be addressed, effective parental representation demands active in-court and out-of-court advocacy, and regular communication with the client, family members, and other professionals.

This RFP therefore contemplates an office average of no more than 50 clients per attorney at any given time.⁶⁶ This flexible range reflects an understanding that the workload of individual attorneys will vary depending on such things as the attorney's experience and expertise; differences among the types, complexity, and duration of cases comprising the workload of the office; and the number of active cases in the office. Other factors may also affect workloads, such as the level of activity required at different phases of a case; the availability of multidisciplinary professionals; representation of clients on collateral issues; and engagement in community and professional activities.⁶⁷ As such, the grantee of this RFP will establish protocols to ensure that the average Model Office caseload does not exceed 50 clients per attorney at any given time.

⁶⁵ *DiFiore Commission Interim Report*, *supra* note 6 at 35; *see also* United States Administration for Children and Families, *High Quality Legal Representation*, *supra* note 20, at 8-10; New York State Office of Indigent Legal Services, *Standards and Criteria for the Provision of Mandated Representation in Cases Involving a Conflict of Interest*, Standard 2 (“Counties must ensure . . . that attorneys and programs providing mandated legal services . . . [m]aintain . . . manageable workloads that ensure the capacity to provide quality representation.”); American Bar Association, *Ten Principles of a Public Defense Delivery System*, Principle Five (2002)(“Defense counsel’s workload is controlled to permit the rendering of quality representation.”); and the New York State Bar Association’s Committee to Ensure Quality of Mandated Representation, *Revised Standards for Providing Mandated Representation* (2015), Standard G-1 (“To permit counsel to satisfy their ethical obligations to their clients, every institutional provider of mandated representation and every assigned counsel plan shall establish workload limits for individual attorneys.”), *accessible at* <http://www.nysba.org/WorkArea/DownloadAsset.aspx?id=44644>).

⁶⁶ *See ILS Parental Representation Standards*, *supra* note 3, Standard D (Resources).

⁶⁷ *See e.g.*, Workload of the Attorney for the Child, Rule 127.5, Rules of the Chief Administrative Judge, New York State Unified Court System, Administrative Rules of the Unified Court System & Uniform Rules of the Trial Courts, *accessible at* <https://www.nycourts.gov/rules/chiefadmin/127.shtml#05>.

Section II: Project Description – What is this RFP seeking to achieve?

The superior effectiveness of client-centered, interdisciplinary, and holistic parental representation has been amply demonstrated in New York City and elsewhere. The New York State Unified Court System’s Commission on Parental Legal Representation, convened by Chief Judge Janet DiFiore, wholeheartedly endorses statewide implementation of this model. This demonstration project, with implementation of the approach by the state for the first time in a county outside of New York City, will allow for assessment of its potential for replication and sustainability statewide, as recommended by the DiFiore Commission on Parental Legal Representation. This RFP therefore solicits proposals for interdisciplinary law office parental representation throughout all phases of a CPS matter.

The grantee will consult with ILS staff regarding hiring, assessment of the need for technical assistance, and identification of providers for consultations, trainings and/or workshops about special issues such as interdisciplinary team dynamics, investigation representation, parent engagement, community outreach, and reunification advocacy, as well as administrative, operational, informational systems, and/or fiscal management.

Proposals must be developed in consultation with representatives of each County Law Article 18-B Family Court mandated representation provider in the applicant's county, including the person with administrative responsibility for overseeing the county’s Assigned Counsel Plan.

No county may submit more than one proposal.

Proposals that rely on statutory changes for their implementation will not be funded.

Proposed projects must comply with New York County Law 18-B, Section 722.

Section III: Funding and Contract Period

The total available funds for award are \$2,610,417 (\$870,139 per year for each of three years). Not more than one award will be made by the Office. The selected applicant is **not** guaranteed the entire amount requested.

The grant will be issued for a period of three years. The Office reserves the right to reduce the award amount of any application based on reasons that include but are not limited to: cost effectiveness and reasonableness of proposed budget, demonstrated need, or inconsistent appropriation levels.

Section IV: Who is Eligible to Apply for this Request for Proposals

Only New York State counties, other than counties within New York City, are eligible to apply. Proposals must be submitted by an authorized county official or designated employee of the governing body of the applicant county. There is no funding match or any other cost to the county to participate in this project.

Section V: Instructions for Completing this Request for Proposals

The RFP is available online at www.ils.ny.gov (hit: Ctrl + (right) Click to follow link or copy and paste link into your web browser). Requests for the RFP may be made by e-mail to RFP@ils.ny.gov (hit: Ctrl + (right) Click to follow link in Outlook) or by telephone at (518) 486-9713 or (518) 486-2028.

No responses will be provided to inquiries made by telephone other than to request a copy of this RFP.

RFP Questions and Updates

Questions or requests for clarification regarding the RFP should be submitted via email, citing the RFP page and section, by Friday, June 7, 2019 to QA@ils.ny.gov (hit: Ctrl + (right) Click to follow link in Outlook).

No responses will be provided to inquiries made by telephone other than to request a copy of this RFP.

Questions will not be accepted orally.

Questions received after the deadline may not be answered.

When corresponding by e-mail, clearly indicate the subject as: “Upstate Model Family Representation Office RFP”. The name of the party submitting the question will not be posted.

Questions and answers will be posted on the “*Questions Posted By*” date as stated on the cover of this RFP (Friday, June 21, 2019) at the following URL webpage address: <https://www.ils.ny.gov/content/family-court-representation> (hit: Ctrl + (right) Click to follow link or copy and paste link into your web browser).

Instructions for Completing this Request for Proposals

Application Submission (*mail, email, or hand delivery*).

All submissions must contain the complete application.

All applications must be received by Friday, July 19, 2019 by 5:00 p.m. Eastern Standard Time (EST). Late applications will not be considered.

If submitting an application by mail or hand delivery, this RFP requires the submission of **one (1) original, and four (4) copies (for a total of five)**.

Applications must be delivered to:

By mail: Jennifer Colvin, Grants Manager
Office of Indigent Legal Services
Alfred E. Smith Bldg., 11th Floor
80 South Swan Street
Albany, NY 12210

Hand delivery: *Please call the Office of Indigent Legal Services in advance to arrange for building security clearance (518-486-2028 or 518-486-9713).*

Office of Indigent Legal Services
Alfred E. Smith Building (*directly behind the State Capitol Building*)
11th Floor, Suite 1147
80 South Swan Street
Albany, NY 12210

Electronic applications: Electronic applications will be accepted.

Electronically submitted proposal applications must be submitted to RFP@ils.ny.gov (hit: Ctrl + (right) Click to follow link in Outlook). All required documents or attachments must be included in the electronic submission.

Indicate in the *Subject* area of the electronic transmission that the submission is for the “Upstate Model Family Representation Office Grant”.

After you submit your application at RFP@ils.ny.gov (hit: Ctrl + (right) Click to follow link in Outlook), you will receive an e-mail confirming receipt of the application. If you do not receive an e-mail confirming receipt, contact Jennifer Colvin at (518) 486-9713.

Application Format:

The following components must be included in the application for the submission to be complete:

1. Project Summary (not more than two (2) pages in length)
2. Proposal Narrative (not more than twenty-five (25) pages in length)
3. Budget and Justification (See Attachment A of this RFP)

Applications must be received by Friday, July 19, 2019 by 5:00 p.m. Eastern Standard (EST). Late applications will not be considered.

Only complete applications will be reviewed and evaluated.

Section VI: Proposal Application

A. PROJECT SUMMARY (not scored): Provide a summary of your proposal which includes the information listed below. **To ensure uniformity, please limit the length of this summary to no more than two (2) double-spaced pages, with margins of 1 inch on all sides, using no less than a 12-point font.**

1. Identify the requesting county.
2. Identify the authorized county official or designated employee of the applicant county's governing body to whom notification of a grant award shall be sent. Please include contact information; name, title, phone number, address, and email address.
3. Fiscal intermediary name and address (identify the department and/or individual responsible for fiscal reporting for this project).
4. Name of contact person, telephone, fax, and email for the lead county representative who will be responsible for overseeing the administration of the grant and its reporting requirements.
5. Amount of funding requested.
6. A concise summary describing the proposed project (i.e. goal(s), objectives, overall approach, significant partnerships, anticipated outcomes, etc.).
7. A description of the extent to which the leader of each provider of Family Court representation under Article 18B of the County Law was consulted in developing the proposal, and the methods used for consulting with each (e.g., telephone, email, etc.).
8. A description of the extent to which other stakeholders (e.g., Family Court, local department of social services, civil legal services providers, etc.) were involved in developing the proposal.
9. Describe the nature of any commitment by other agencies, entities, or organizations to cooperate in the implementation of this project. Provide documentation of any such commitment, if available.

B. PROPOSAL NARRATIVE (200 total points)

Provide a clear, concise narrative addressing the following questions. Answer all questions in the order in which they are presented. Please do not submit any information not specifically requested. **Please limit the length to no more than 25 (twenty-five) double-spaced pages, with margins of 1 inch on all sides, using no less than a 12-point font.**

I. PLAN OF ACTION (160 points)

Organizational Infrastructure, Personnel and Start-up Activities (28 points)

1. State the name and provide a description of the entity that will be responsible for providing the services described in this RFP (the "proposed provider"). **(2 points)**
2. State the location of the daily operations of the project and how these operations will be supported and supervised. If a site for the project is not yet secured, specifically

address how space for the project will be secured prior to the contract start date. **(2 points)**

3. If the proposed provider is an existing entity, explain how the activities and services described in this RFP will fit into the proposed provider's present organizational infrastructure. **(2 points)**
4. Describe: **(a)** the personnel needed to perform the activities and provide the services described in this RFP, **(b)** the minimum qualifications that will be required for each position, and **(c)** the process that will be used to recruit and hire qualified staff. **(10 points)**
5. **(a)** List the essential start-up tasks necessary to implement the proposed provider's plan of action and **(b)** provide a timetable listing the start and end dates for each activity associated with the proposed program start-up. **(10 points)**
6. Identify any resources necessary for start-up that are not currently in place and describe the steps that will be taken to resolve these matters. **(2 points)**

Applicant Capability (15 points)

7. Attach at least **three (3) letters** of support for the proposed provider from several references (e.g., judges, other family court mandated representation providers [i.e., public defender/legal aid society, 18-B attorney], civil legal services attorney, DSS attorney or Attorney for the Child, service providers, community-based organizations, etc.). **Letters must include:** **(a)** the name of the reference entity, **(b)** a brief statement describing the relationship between the proposed provider and the reference entity, **(c)** the reasons the reference entity supports the proposed provider's involvement in this project, and **(d)** the name, title, and telephone number of a contact person for the reference entity. **(3 points)**
8. Describe how the proposed provider will ensure that all staff members will possess the requisite knowledge, experience and/or training necessary to fulfill the goals and provide the services described in this RFP with respect to: **(a)** New York State family court practice; **(b)** client-centered, multidisciplinary, holistic, parental defense in state intervention cases; and **(c)** related family, civil, criminal and administrative matters. **(3 points)**
9. Describe how the grantee will consult with ILS staff regarding hiring, assessment of the need for technical assistance, and identification of providers for consultations, trainings and/or workshops about special issues such as multidisciplinary team dynamics, investigation representation, parent engagement, community outreach, and reunification advocacy, as well as administrative, operational, informational systems and/or fiscal management. **(3 points)**
10. Explain how the need for training and technical assistance for staff of the proposed provider will be assessed, and how providers of such training and technical assistance will be identified and secured. **(3 points)**

11. Describe the steps that will be taken by the proposed provider, including any in-house expertise and/or collaboration with other entities, to ensure the availability of legal representation for parents in collateral matters that may affect clients' state intervention case (e.g., criminal defense, housing, education, public benefits, etc.). (3 points)

Client Screening and Intake: CPS Investigation (15 points)

12. Describe the anticipated or target client population for **CPS investigation representation**, including any specific or unique characteristics or needs of this population, and how these characteristics and/or needs will be addressed by the Model Office. (3 points)
13. Describe the criteria and procedures that will be used to select CPS investigation clients. (3 points)
14. (a) Describe how potential CPS investigation clients will be identified (e.g., in-house telephone helpline; walk-ins; informal referrals from criminal defense or civil legal services providers; community-based organizations or service providers; formal or informal arrangements with Family Court and/or the child welfare agency; or other means of connecting with parents who are at risk of or under investigation by CPS), and (b) if available, attach any Memoranda of Understanding, letters of commitment or other such documentation from cooperating entities, agencies or organizations regarding their intent to refer potential pre-petition clients to the proposed provider. (4 points)
15. Describe the services that will be provided to clients during CPS investigation representation. (5 points)

Client Screening and Intake: Court Proceedings (12 points)

16. Describe the anticipated or target client population for **court intervention representation**, including any unique characteristics or needs of this population, and how these characteristics and/or needs will be addressed by the Model Office. (3 points)
17. (a) Describe the criteria and procedures by which appointment to represent clients at the court intervention stage will be secured, and (b) include a description of how the proposed provider will ensure notification by the Family Court of the appointment as early as possible before the initial appearance by a client. (4 points)
18. Describe the services that will be provided to clients during the litigation. (5 points)

Stakeholder Collaboration and Community Engagement (10 points)

18. Describe how relationships with agencies and entities involved in various aspects of the child welfare system (such as courts, CPS, law enforcement, social services and

foster care providers, department of education, etc.) will be built upon or developed to support the work of the Model Office. **(5 points)**

19. Describe the community outreach and education that will be conducted by the Model Office, and what activities the proposed provider will engage in with organizations and individuals, including other mandated legal representation and civil legal services providers, to support families who are involved, or are at risk of involvement, with CPS. **(5 points)**

Model of Representation (35 points)

20. **Interdisciplinary Team Model:** Describe how the multidisciplinary team model described in this RFP will be implemented, including a description of the roles and working relationships among attorney, social work, and parent advocate staff, and how the need for social work and parent advocate staffing will be assessed in each case. **(10 points)**
21. **Holistic Representation:** Describe how the proposed provider will ensure that it has the institutional capacity and flexibility to provide or coordinate legal representation in collateral legal and administrative proceedings that may impact the client's state intervention case, such as criminal, housing, health insurance, immigration, child support, public benefits, education, mental health, and state central registry fair hearings. **(5 points)**
22. **Vertical Representation:** Describe how the proposed provider will ensure continuous, vertical representation for clients by the same interdisciplinary team through all phases of each case. **(4 points)**
23. **Appellate Representation:** Describe how the proposed provider will provide or collaborate with other entities to secure appellate representation, including interlocutory appeals, filing notices of appeal, preparing the record on appeal, and briefing and arguing cases. **(5 points)**
24. **Supportive Services:** Describe the criteria and procedures by which the proposed provider will, in any given case, assess the need and provide for supportive services, for example, investigator or expert services. **(3 points)**
25. **Cultural and Language Sensitivity:** Describe how issues of cultural sensitivity and the unique needs of sign language, non-English speaking, and immigrant clients will be addressed. **(3 points)**
26. **Supervision, Training and Oversight:** Describe the supervision, training and oversight procedures that will be used to ensure that all staff adhere to relevant standards, best practices, and rules of ethics and professional responsibility. **(5 points)**

Caseload and Workload Management (15 points)

27. (a) Estimate the number of **prepetition, CPS investigatory** clients that will be accepted in each grant year, and (b) Explain how you arrived at the estimated number of prepetition, CPS investigatory clients that will be accepted in each grant year. **(2 points)**
28. (a) Estimate the number of **court intervention** clients that will be accepted in each grant year, and (b) Explain how you arrived at the estimated number of court intervention clients that will be accepted in each grant year. **(2 points)**
29. Describe the manner in which legal and non-legal staff will be deployed to handle the estimated caseload, including, but not limited to: (a) How resources will be allocated to assure compliance with the office average of not more than 50 clients per attorney at any given time set out in Section I.C., herein; (b) How the ratio of supervising attorneys to attorney staff will be structured to ensure necessary supervision; and (c) How the ratio of attorneys to social work, parent advocate, investigatory, and paralegal staff will be structured to ensure high quality representation. **(6 points)**
30. (a) Describe how the average office caseload will be monitored on a continuing basis to ensure that it does not exceed the office average of not more than 50 clients per attorney at any given time as set out in Section I.C., herein, and (b) Describe the procedures and safeguards that will be established to immediately remedy any noncompliance with those limits. **(5 points)**

Plan Objectives (15 points)

31. Describe how the project will improve the quality of representation for state intervention clients, including how it will achieve greater compliance with the *ILS Standards for Parental Representation in State Intervention Matters* (<https://www.ils.ny.gov/files/ParentalRepresentationStandards>). **(15 points)**

C. Data Collection, Performance Measurement, and Evaluation (15 points)

This section discusses how the impact of the project will be measured and evaluated. (The type of data to be collected and reported to this Office on an annual basis is set out under Question 5, below.)

1. Describe the proposed provider's present state of data collection, including the nature of any "baseline" case and client information. **(2 points)**
2. Describe the proposed provider's existing or contemplated database and/or system for tracking client information, caseloads, non-legal staff assignments, client contacts, attorney appearances, and case outcomes. **(2 points)**
3. Describe the proposed process for collecting and analyzing feedback from relevant stakeholders (e.g., clients, the courts, the child welfare agency, service providers, community-based organizations, civil legal services organizations, etc.)

about the project's services and activities, and how the feedback will be used to identify, inform, and make necessary operational adjustments and modifications. **(4 points)**

4. Describe any changes to the proposer's current infrastructure that will be needed to track the required data described in Question 5, below, and how these changes will be accomplished. **(2 points)**
5. Describe how the data described below (“Data Collection”) will be collected and recorded in ways that are valid, accurate, and reliable. Explain who will be responsible for gathering and recording the requested data. **(5 points)**

Data Collection - The grantee of this RFP will be expected to provide both quantitative and qualitative data to ILS demonstrating the impact of its work on the quality of representation provided and on resulting outcomes. The grantees will annually report to ILS the following data:

1. **Aggregated demographic information on each client's:**

- Race
- Ethnicity
- Age
- Immigration status
- Relation to child(ren)

2. **Investigation Representation**

- a. The total number of new CPS investigatory cases opened during the contract period, broken down into:
 - i. Those in which a child protective petition was subsequently filed.
 - ii. Those in which no child protective petition was subsequently filed.

3. **Court Intervention Representation**

- a. The total number of new court intervention cases opened during the contract period broken down by number of petitions in each of the following categories:
 - i. Abuse
 - ii. Neglect
 - iii. Permanency
 - iv. Termination of parental rights
 - v. Other case types (specify)
- b. Within the court intervention caseload, number of cases in which a child was:

- i. Not removed
 - ii. Removed pursuant to Fam. Ct. Act § 1021 (temporary removal with consent of parent)
 - iii. Removed pursuant to Fam. Ct. Act § 1022 (nonconsensual removal upon court order)
 - iv. Removal pursuant to Fam. Ct. Act § 1024 (emergency removal without court order)
 - v. Other (specify)
- c. The number of Family Court Act §1027 hearings conducted during the contract period, broken down by number of hearings resulting in:
- i. Child remained at home (no out-of-home placement)
 - ii. Child placed with relative or suitable person
 - iii. Child placed in non-relative foster care
 - iv. Child placed with authorized agency
 - v. Other (specify)
- d. The number of Family Court Act § 1028 hearings conducted during the contract period broken down whether the child was:
- i. returned home
 - ii. continued in out-of-home care
 - iii. Other (specify)
- e. In removal cases, the number of cases in which reunification with the client occurs within: (a) 6 months and (b) within 1 year of removal.
- f. In cases in which the child was not removed, or was returned to the client after removal, the number of cases in which the child was subsequently placed in out- of-home care during the contract period (i.e., re-entry into foster care).

4. **Caseload and Workload**

- a. The number of new CPS **investigation representation** cases assigned to each attorney during the contract period.
- b. The number of new **state intervention court** cases assigned to each attorney during the contract period.
- c. The number of collateral legal **cases** assigned to each attorney during the contract period (i.e., related family court cases such as family offense, custody, visitation, paternity, etc. and other related matters, e.g., other civil, criminal, or administrative matters).
- d. The average number of open **state intervention** cases per attorney at the end of the contract period.
- e. The average number of open collateral legal cases per attorney at the end of the contract period.

- f. The number of new clients assigned to each social worker, and to each parent advocate during the contract period.
- g. The average number of clients assigned to each social worker and to each parent advocate at the end of the contract period.

5. **Case Outcomes**

- a. Outcome of **abuse** petitions by disposition, i.e.:
 - i. dismissed before trial
 - ii. settled before trial
 - iii. allegations established after trial
 - iv. allegations established by admission
 - v. allegations established by consent
 - vi. allegations not established
 - vii. Other (specify)

- b. Outcome of **neglect** petitions by disposition, i.e.:
 - i. dismissed before trial
 - ii. settled before trial
 - iii. allegations established after trial
 - iv. allegations established by admission
 - v. allegations established by consent
 - vi. allegations not established after fact-finding
 - vii. Other (specify)

- c. Outcome of **termination of parental rights** petitions, i.e.:
 - i. Petition dismissed before fact-finding
 - ii. Petition dismissed after fact-finding (allegations not established)
 - iii. Petition granted (allegations established, parental rights terminated)
 - iv. Suspended judgment
 - v. Other (specify)

6. **Interdisciplinary and Holistic Representation**

- a. The number of cases in which a support staff was assigned, broken down by type of staff (e.g., social worker, parent advocate, investigator, expert, etc.).
- b. The number and nature of any stays, interlocutory/interim appeals and outcomes of each.
- c. The number and nature of direct appeals, and outcomes of each.
- d. The number and nature of any legal representation provided or obtained with respect to matters collateral to the state intervention case, **and a brief narrative** describing the impact of such representation on the related state-intervention case.

- e. The number and nature of any non-legal assistance obtained for clients as a result of Model Office staff advocacy (*e.g.*, mental health, employment, child care, etc).

II. Budget and Cost (40 points)

Grant applications will be evaluated and rated on efficient use of funds and overall cost-effectiveness, which includes budget plans that are consistent with the proposed action plan, administrative costs, justification for each requested budget line and cost benefit. Complete the attached Budget Form and return with the proposal, being sure to address the following:

1. *Budget*: Provide a detailed, **annualized three-year budget** containing reasonable and necessary costs. The budget for the proposed project must be consistent with the terms of the RFP and provide a justification for all expenses. **(15 points)**
2. *Subcontracting*: Describe whether the proposed budget will include subcontracting with another service provider to complete the terms described in this RFP and, if so, provide a brief description of the purpose of the subcontract. **(5 points)**
3. *Budget Justification*: Include a narrative for each budget line justifying the budget request and relating the requested line budget amount to the plan of action and expected results. The narrative should be mathematically sound and correspond with the expenditure budget line information and figures provided in the Budget Form. **(15 points)**
4. The *Budget Justification* must also describe how the county will monitor expenditures during the life of the grant to ensure that the project stays within the budget. **(5 points)**

Complete the attached Budget Form and return with the proposal.

Section VII: Review and Selection Process

The Office will conduct a two-level review process for all submitted proposals:

- The first level entails a Pass/Fail review, conducted by Office staff, of the submitted proposals to ensure that the application is responsive to the conditions set forth in the RFP. The Office will reject any applications that do not clearly and specifically address the purposes of this funding opportunity and/or fail to meet any of the following criteria:
 1. The RFP was submitted within the designated time frames;
 2. The RFP was submitted consistent with the format requested by the Office;
 3. The applicant is an eligible entity as specified within the RFP;
 4. The proposal purpose is for that intended by the RFP;
 5. The proposal included a budget submission.
- The second level consists of a scored comprehensive proposal review that involves a thorough review of the submitted proposal specifically related to the project work plan,

performance measurement and evaluation, organizational capability, overall strength of plan, and the budget and corresponding budget narrative. The proposal review and rating will be conducted using the criteria stated in this Funding Announcement. The Office will typically use staff, and others with expertise in the RFP topic area, to comprise the proposal review team. Each reviewer will assign a score up to a maximum of 200 points to each application; individual scores will be averaged to determine the applicant's score. Applicants' scores will be ranked order. The Office reserves the right to conduct follow-up discussions with applicants to clarify information in the submitted proposal. In addition, in the event there are any remaining funds after making awards in accordance with the Review and Selection Process, the Office reserves the right to allocate the grant funds in a manner that best suits program needs as determined by the Office. Such a plan will be subject to review and approval by the Office of the State Comptroller.

Awarding Grants

Contract Development Process

It is anticipated that applications will be reviewed and that successful applicants will be notified of funding decisions on or about September 2019. All commitments are subject to the availability of state funds. The proposal review team will recommend to the Office the highest ranked proposal that fully meet the terms of the RFP. The final total applicant score will be the cumulative total of the second level review.

The contract process and final contracts are subject to the approval of the State Attorney General and the Office of State Comptroller (OSC). Upon such approvals, the grant process will begin, and all terms of the contract become public information.

As part of the grant award process, the grantee and the Office will establish a mutually agreed upon final budget and work plan, which become the contract deliverables.

As part of the contract with the Office, grantees will be required to submit annual progress reports to the office. These reports should include narrative descriptions of successes achieved, obstacles encountered during implementation, and efforts to overcome these obstacles. Additionally, applicants should anticipate that data collected by the program in accordance with the requirements of section B of the proposal will be required to be reported in aggregate form to the office as a means of understanding the impact of the program, its successes, and the challenges that remain. ILS staff will be available to assist grant recipients with how to best collect these data in ways that are convenient to the program's capabilities, clearly assess the goals of the project, and assure the collection of information that is of the highest possible quality. The Office may suggest the use of a specific data collection protocol, or work with programs to employ existing, in-house case tracking software to produce data.

The Office reserves the right to:

- Negotiate with applicants, prior to award, regarding work plans, budget line levels, and other issues raised within the RFP review to achieve maximum impact from the grant award, and serve the best interests of New York State and ensure that budgets are consistent with proposed action plans; and

- If unable to negotiate the contract with the selected applicants within 60 days, the Office may begin contract negotiations with the next highest scoring qualified applicant(s).

Payment

Each county will be reimbursed for expenses incurred pursuant to grant related activities including salary, benefits, travel, and related expenses. No payments will be made until the contract is fully executed and approved by the State Attorney General and the State Comptroller.

Funding Requirements

Indigent Legal Services funds distributed by the Office of Indigent Legal Services are intended to supplement county resources for supplying indigent defense services and to ensure proper legal representation for indigent defendants pursuant to Article 18-B of the County Law.

Supplanting is prohibited: Any funds awarded to a county pursuant to this RFP shall be used to supplement and not supplant any local funds, as defined in paragraph (c) of subdivision 2 of section 98-b of the State Finance Law, or state funds, including any funds distributed by the Office of Indigent Legal Services, which such County would otherwise have had to expend for the provision of counsel and expert, investigative and other services pursuant to Article 18-B of the County Law.

The issuance of this request for proposals does not obligate the Office of Indigent Legal Services to award grants.

Budget Form

County	
Budget Contact Person's Name	
Phone	
E-mail address	

Line Item	Year 1	Year 2	Year 3
Personal Service: Position (specify) Salary: Fringe Benefits:			
Personal Service Subtotal			
Contractual Services			
Contractual Subtotal			
Equipment (specify)			
Equipment Subtotal			
Other Than Personal Service (OTPS) (specify)			
OTPS Subtotal			
Miscellaneous			
Miscellaneous Subtotal			
TOTAL			
TOTAL THREE-YEAR BUDGET			