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SUPREME COURT, APPELLATE DIVISION
THIRD JUDICIAL DEPARTMENT

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**IMPORTANT NOTICE TO ALL ATTORNEYS FOR CHILDREN,
THIRD DEPARTMENT
AMNESTY PROGRAM FOR OVERDUE VOUCHERS
OPEN THROUGH SEPTEMBER 30, 2020**

As you know, the NY State budget has been and will be severely affected by the pandemic, which has caused significant financial impact. Due in part to this fiscal reality, the AFC program has undertaken a policy of more strictly enforcing the long-standing interim billing rules, which had been developed, explained and generally accepted through the years, but which had previously been enforced with a greater exercise of discretion to permit some partial payments for untimely vouchers. Although most of you reading this have been complying with and meeting the billing requirements, the impact of voucher cuts on those individuals who have not been complying has been most difficult and painful; they have had payment for late vouchers substantially reduced.

I am reaching out now with this important message, to each and all of you, whether you have been directly affected by this enforcement, or not, to clarify our strict enforcement policy going forward. We are sending this message by postal mail, email, on our website, and through the liaisons, attempting to reach every attorney who performs AFC legal services within the Third Department. Please share this message with each other, widely and broadly. Please speak with your fellow AFCs in your community to help ensure that they have received this and are aware of it. This message seeks, among other things, to clearly reiterate what the interim billing rule provides, and how it operates, and to clearly advise that it will be strictly enforced in the future.

But there is also good news. Those of you who have been recently and directly affected have raised and presented your grave, and often deeply personal concerns, and the circumstances resulting from enforcement of the Rule. You have been heard. **I have sought and obtained authorization to offer a one-time, last chance period of amnesty to make some additional payment for untimely vouchers and those that have recently been cut.** How much? That remains still unclear - as will be explained below, in attempting to address the concerns of everyone in a fair and comprehensive manner, we must first create a process in which **ALL** of the eligible outstanding claims may be brought forward.

Before turning to the details of this process, please allow me to reiterate, on behalf of both our Court and the trial courts in which you appear, our gratitude for the challenging and critical work you all do as AFCs, representing some of the most vulnerable individuals who come before us. As some of you have read in my individual correspondence, due to that deep appreciation for your dedication to this uniquely difficult and important work, I profoundly regret every single instance when we cut a voucher for work performed due to failure to comply with billing rules. As I have stated to some of you recently, these cuts do NOT reveal any devaluation or lack of respect for the work you do. The reductions DO reflect the Third Department's responsibility, as a governmental organization, to budget appropriately each year - an obligation rendered particularly important now, as we meet and contend with increasing financial constraints - and to carefully safeguard the public funds with which we have been entrusted.

As you know, Rule 835.5 requires vouchers seeking fee payments to be submitted "every 12-14 months from the date of first activity, and every 12-14 months thereafter." The Rule further expressly provides that "[t]he Appellate Division reserves the right to deny any voucher submitted outside the prescribed time frame." The underlying interim voucher policy has been increasingly encouraged since 2012, became a **mandatory** policy in 2015, and was subsequently incorporated as a formal Court Rule in 2018. This Rule originated as an attempt to allow better budgetary practices, but *also*, and quite importantly, to allow more prompt and frequent payments for the benefit of AFCs.

As most of you fully recognize, there has been a significant and concerted effort to communicate this interim billing rule. Our Office of Attorneys for Children has regularly publicized the rule, has repeatedly asked the liaisons to discuss and share it with their colleagues, has required all AFCs to affirm their understanding of the billing rules on their individual re-designation forms, has been making note of the Rule at every CLE presentation, and has issued other repeated direct communications to individual panel members. By and

large, these efforts have been effective; the vast majority of our AFCs have complied with the rule since its adoption. Although I do recognize the challenges of managing a law practice, this demonstrates that full compliance is not simply a necessary goal, but it is also an achievable goal.

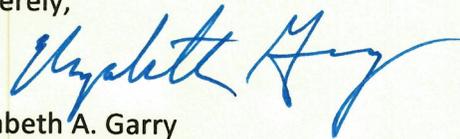
Going forward, please be advised that this Rule must be, and will be, strictly enforced. It is my hope that in this communication we may eliminate any potential remaining confusion as to the terms and the requirements; and thus, I most sincerely hope to eliminate the pain and frustration arising from voucher cuts. If you do not understand the Rule, please reach out with any questions as soon as you can. But most importantly, if you have not yet done so, you **MUST** now undertake some practice of calendaring, to ensure that you are able to submit your requests for payment on a regular and timely basis. Upon assignment of a case, as you open the file, please take a moment to calendar that case one year out for voucher submission. Or keep a running list, as I once did in my own law office to avoid missing statutory deadlines and other critical dates. Or set time aside weekly, monthly, or at least quarterly to perform a review of your open file assignment dates. Whatever strategy you may choose to address this requirement, it is critically important that you do so - **you must calendar your cases for billing 12 months after receiving an assignment on a matter, and then submit your voucher before 14 months have elapsed. Vouchers submitted beyond that time will be denied, with no partial payment provided.**

At this time, we are offering a **one-time, last chance period of amnesty for untimely vouchers**. As discussed above, we will be able to determine the extent of our ability to exercise discretion and make payments in a fair and comprehensive manner only once we are able to conduct a full and final assessment of all outstanding untimely vouchers. **If you wish to have untimely vouchers considered for partial payment, you must submit all overdue vouchers by September 30, 2020.** Vouchers must be submitted in the e-voucher system, signed and in the mail to Family Court **on or before September 30**. This applies to vouchers that have not yet been submitted, as well as those that were submitted and cut after April 1, 2020. Put another way, the recently cut vouchers – even those which I reconsidered upon request – are eligible for this one-time amnesty. If you have a pending request for payment of an overdue voucher, or a pending request for my reconsideration, those requests will be considered as part of this initiative, without further action required on your part. **HOWEVER**, if you have any **ADDITIONAL** outstanding untimely vouchers, these must be submitted before September 30 to be eligible for consideration. Kindly note that work performed more than two years ago (i.e. prior to September 30, 2018) will not be considered for partial payment. And again, be advised that all late vouchers must be submitted by September 30, and absolutely none submitted after that time will be considered.

As always, vouchers must represent the actual date of commencement of services. Manipulating the start date to create an appearance of compliance is not permitted. Please note that we do not expect, unfortunately, to be able to make full payment for these untimely vouchers. We are seeking and hoping to make less severe adjustments than some of you have incurred, and as strict enforcement of the Rule would - and will in the future - require.

I am very hopeful that this one-time, last chance amnesty program will provide some assistance during this exceptionally difficult time, when many of you are struggling with other effects of the pandemic, and allow us to move forward productively together. I am further hopeful that this may help to heal the apparent misapprehension that some of you have expressed regarding the role of our AFC office. The office is quite well - albeit minimally - staffed with good, hard working people who deeply care about the underlying work and mission. The purpose and role of our Office of Attorneys for Children is and has consistently been to help, serve, and advise, as well as to maintain the standards of practice in this important realm of law. In short, the Office exists to provide help and assistance to the AFCs doing this good work and fulfilling this mission. I have seen with dismay the communications from some panel members, and I most sincerely hope that this message may promote a better understanding our shared efforts in the future. As always, if you have any questions at all regarding the billing rules or their enforcement, please contact our Office of Attorneys for Children at (518) 471-4825 or ad3oac@nycourts.gov.

Sincerely,



Elizabeth A. Garry
Presiding Justice

Date: August 20, 2020