

**New York Senate Standing Committee on Crime Victims, Crime and Correction
New York Senate Standing Committee Judiciary
New York Senate Standing Committee on Codes
New York Senate Standing Committee Veterans and Military Affairs**

Joint Hearing on IOLA and the Future of Legal Services in New York State

December 9, 2009

TESTIMONY OF BENITO ROMANO

CHAIR, BOARD OF TRUSTEES

THE INTEREST ON LAWYER ACCOUNT FUND OF THE STATE OF NEW YORK

Good afternoon, my name is Benito Romano and I am the Board Chair for the IOLA Fund of the State of New York.

I would like to first thank Senators Hassell-Thompson and Sampson for their leadership in organizing these hearings and calling attention to the crisis in IOLA funding and the impact it will have on low-income New Yorkers who desperately need civil legal services to keep their homes, obtain food stamps to feed their families, or receive Medicaid payments to provide vital health care.

We are grateful to Chief Judge Lippman for including funding for IOLA in OCA's budget, but we are also mindful that until the budget is ratified by the legislature the immediate crisis still exists.

During the course of today's hearings you will hear directly from many of the people who will be affected if IOLA's funding drops precipitously, as well as from many of the organizations that IOLA funds that provide legal services to at-risk New Yorkers. In my testimony I want to provide the panel with a brief history of IOLA, describe how IOLA works, and detail the current funding crisis facing IOLA. It is my hope that my testimony will provide the Senators who comprise this panel with the information necessary to place IOLA's current funding crisis in the broader context of how civil legal services are provided to low-income New Yorkers, and help in the discussion of what actions can be taken to ensure that IOLA will not face this crisis in funding again, so that civil legal services in New York will always be available to those who most need legal help.

IOLA itself is a product of a funding crisis in civil legal services. In 1982 federal funding for the Legal Services Corporation, the major national funding source for civil legal services for the poor, was slashed by more than 30%. In response the American Bar Association, and the New York State Bar Association, mindful of the ethical responsibility of the legal profession to ensure availability of legal services for the poor, created task forces to study alternative funding sources for these services. The New York

State Bar Association recommended the creation of the IOLA Fund, and with the enthusiastic support of the New York State Legislature, IOLA came into existence in 1983, and began operations in 1984. New York was the 15th state to create an IOLA type program, and they are now in existence in all 50 states.

IOLA was classified as an independent agency within the executive branch, and it was decided that IOLA would be governed by a 15 member Board of Directors appointed by the Governor, with recommendations from the court of appeals, the president pro tem of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly. The bi-partisan approach to the selection of the Board has fostered a culture on the Board of administering the fund in a non-partisan manner, focusing solely on IOLA's mission. This has been true regardless of whether the Board was appointed by a Republican or Democratic Governor. I am proud to say that spirit continues to guide the IOLA Fund's Board today, and I believe has played a crucial role in IOLA's success.

For the 25 years of its existence IOLA has received no tax dollars and has been financed solely by the interest earned on small or short-term funds held by New York attorneys in IOLA escrow accounts. Currently, there are approximately 48,000 IOLA accounts in New York holding over \$3 billion dollars. The interest generated from these accounts is then swept into a common fund, which IOLA distributes in the form of grants. Currently, IOLA funds 71 organizations in New York State. The IOLA grantees are divided among 5 Geographic Units that cover every county in New York.

By statute, at least 75% of IOLA's funding is allocated to Civil Legal Services, or CLS grants, which are programs that provide direct civil legal services to clients living at or below 125% of the federal poverty level. CLS grants are apportioned by the number of indigent residents in each of IOLA's 5 Geographic Units. Up to 25% of IOLA funding is allocated to Administration of Justice, or AOJ grants, and these are for programs that serve clients who have special legal needs such as domestic violence victims and the elderly. AOJ grants are also used to enhance the services provided to the poor through innovative and cost-effective means such as volunteer lawyer programs and support and training services.

The grant-making process is rigorous. IOLA has been a leader in gathering data from the organizations we support, and is one of only 5 states that measure specific outcomes for clients in particular substantive areas such as housing or education. This information is extremely valuable not only in helping IOLA make sure that it is distributing its funds in a way to maximize their impact, but is also helpful to our grantees, allowing them to use these resources most effectively.

The legal assistance provided by IOLA grantees is nothing short of remarkable. In 2008, when we distributed a total of \$24 million dollars over 500,000 clients received direct legal assistance. An additional 1,079,000 received other forms of assistance including help with self-representation in court, community legal education, hotline services and referrals, as well as several million hits to websites maintained by IOLA grantees that

provide valuable legal information and reference material. In addition 12,514 attorneys donated pro bono services through IOLA grantee's program, providing 416,000 hours of legal service valued at over \$83 million dollars.

Clients of IOLA grantees bring much needed resources into New York State, which when spent in their communities benefits all New Yorkers. In 2008 the clients served by IOLA grantees obtained nearly \$250 million dollars in wrongfully denied federal benefits, child support, alimony, and affirmative judgments.

The \$250 million only captures some of the direct economic benefits to the State. New York realizes millions of more dollars in savings as a result of civil legal services. To give just one example, if a legal intervention permits families to maintain their public housing and avoid having to move into emergency shelter, New York State and local governments avoid tens of thousands of dollars in emergency expenses.

Likewise, a home care provider who is prevented from illegally discontinuing long-term care that allows a senior citizen to remain in her home rather than a nursing home, results in significant savings for the State.

And of course there are the jobs created by the civil legal service providers themselves, jobs that would be imperiled in the face of IOLA cutbacks.

By any measure IOLA has been a tremendous success, becoming the single largest funder of civil legal services in the State, making over \$285 million dollars in grants during its 25 years of existence, and greatly improving the lives of New Yorkers in need.

However there is one major flaw in the IOLA model and this flaw is at the heart of the current crisis. To generate revenue the IOLA fund relies on the interest rate provided by the banks holding IOLA accounts, and interest rates can be extremely volatile. Compounding this problem, a decrease in the interest rate is often associated with a downturn in the economy, and thus during periods when both the need for civil legal services, and the actual number of indigent New Yorkers increases, the IOLA fund's ability to fund those services decreases.

This scenario is exactly what is happening to IOLA and its grantees now. Last year at this time IOLA had nearly \$32 million dollars available to fund its 71 grantees. This year that figure has decreased more than 75% to under \$ 8 million dollars. This decline is a result of the historic drop in interest rates precipitated by the economic crisis and the seizure of the credit markets that began last fall.

To put it in concrete terms, as of the end of October 2009 the 11 largest financial institutions holding IOLA accounts were providing an average interest rate of .31% or 31 basis points. A year ago that figure was just over 1% and in 2007 the rate was nearly 2.25%, representing a nearly 8 fold decrease in the interest rate over two years. And this is not the first time that this has occurred, in IOLA's history. Previously IOLA has

experienced a year to year drop of over 40% in revenue, and a 66% decline over two years.

The problems facing us are stark, in at least two significant respects. First how can we deal with the present funding crisis? Fortunately, Judge Lippman has provided a means in the OCA budget which, if enacted, will cover most of the IOLA shortfall for fiscal year 2010-2011. The second part of the problem is more complex. Given IOLA's structural dependence on interest rates to generate revenue, how can we ensure that this current crisis is not repeated every time there is a significant decrease in interest rates?

I know a number of people today will speak to this issue, and that in other states some of the proposed solutions have included a needs-based increase in filing fees, or increased attorney registration fees, or a whole host of revenue generating ideas. As the beneficiary of many of these proposals the IOLA fund feels that it is the province of the Legislature, members of the Judiciary, or members of various Bar groups to determine the best solutions.

However, one potential area for new revenue that IOLA considers it appropriate to explore are the public or private sector funds that, like attorney escrow accounts pre-IOLA, exist but are currently not being used to generate interest for the benefit of any individuals, and could be used to generate additional revenue for IOLA.

Interest rates will rise again, and if history is a guide, when they do they may rise substantially. Higher interest rates coupled with comparability regulations enacted by IOLA in 2007 would result in significant revenue increases for IOLA. In several other states IOLA-like funds are structured so that they can create reserves during periods of enhanced revenue, and this is another option that might help ameliorate the problems caused by fluctuating interest rates.

I know that there are many speakers, both legal service providers and their clients, who are eager to testify today before the panel and offer compelling proof of the importance of providing civil legal services for low-income New Yorkers. IOLA is very proud of the role it plays in funding these services and is grateful to this Panel for its leadership in holding these hearings to develop a course of action so that New York's most vulnerable citizens will not face this type of crisis again.