

February 12, 2024

By Email and Mail

Hon. Kathleen Hochul
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Dear Governor Hochul,

We write as the leaders of large law firms and corporate legal departments in New York to urge you to issue a 30-day amendment to the FY25 Executive Budget that rescinds the proposed transfer of \$100 million from the IOLA Private Contribution Account to the State General Fund. *See* Part X, §3, Governor's Public Protection and General Government Article VII budget bill (S.8305/A.8805). We are deeply concerned that this unprecedented diversion of funds would impose lasting harm on low-income New Yorkers by taking money from legal aid organizations, would severely undermine the stability of a critical source of financial support for legal services, and would violate the statute that created IOLA.

First, we believe this proposal, if enacted, would create an existential threat to a primary funding stream for essential civil legal services while simultaneously robbing the IOLA Fund of a unique opportunity to create a reserve that could permanently protect the Fund's ability to support those services regardless of fluctuations in the interest rate. It took twelve years after the 2008 economic crisis for IOLA Fund revenue to return to its 2007 level. The prolonged drop in interest rates created a crisis in legal services funding that a reserve fund could prevent from recurring in the future. As Chief Judge Wilson has pointed out, the State of New York is at least a *billion* dollars short of where it needs to be to assure access to justice for low-income New Yorkers. Taking \$100 million from the IOLA fund would undermine its stability, exacerbate the existing shortage of funds, and further harm vulnerable New Yorkers while also setting a dangerous precedent in state budget policy.

As IOLA has reported, in FY23, 81 IOLA grantees closed over 307,000 cases benefitting more than 639,000 New Yorkers. The vast majority of those cases helped low-income New Yorkers obtain necessary essentials – food, shelter, jobs, health care, and education. Moreover, the benefits from the IOLA fund extend beyond the individual clients. The overall financial benefit of all IOLA grantee work to the New York economy in FY23 topped \$3.5 billion and 8,000 jobs, as calculated by the New York Permanent Commission on Access to Justice. IOLA funding gives grantees flexibility to provide broader-based services (*e.g.*, social work support, community partnerships with non-legal nonprofits), and absent those services, the burden will fall on other providers or local or state government.

Further, as firms and corporate legal departments with significant pro bono practices, we have an interest in the funding of IOLA grantees. The pro bono work done by attorneys at law firms, solo practices, and corporate law departments relies on the identification and screening of clients and the expertise provided by public interest lawyers at IOLA grantees. Any loss of IOLA funding by the grantees would result not only in reduced services by the legal services providers, but also in a significant decrease in the amount of pro bono work that our lawyers will be able to provide.

Second, the proposal undermines a program that has undergirded the practice of law in New York for four decades – by using an IOLA escrow account, attorneys can facilitate efficient law office operations while complying with their ethical obligations (22 NYCRR Part 1200, Rule 1.15). Legal ethics rulings support the IOLA program *because* the funds support legal services for low-income people. Diverting IOLA funds to the state's general coffers creates ethical uncertainty that could result in lawyers declining to use IOLA accounts.

Third, the proposal to divert this money to the General Fund is contrary to the purpose of IOLA as a dedicated fiduciary fund earmarked exclusively to support civil legal aid. Money in the IOLA Fund is derived solely from interest on attorney escrow accounts – not from taxpayers. The legislative intent of the 1983 law that created IOLA could not have been more clear: “the purpose of this act is to provide funding for the providers of civil legal services in order to ensure effective access to the judicial system for all citizens of the state to the extent practicable” and “the beneficial interest in [the revenue generated from IOLA accounts] will be held by the IOLA fund exclusively for charitable purposes.” L 1983, ch. 659, §1.

In sum, the idea of “sweeping” money from the IOLA Fund strikes at our profession’s commitment – indeed, obligation – to support “*pro bono publico*,” the public good and at the autonomy of the legal profession. We urge you to amend the FY25 Executive Budget to rescind this proposal.

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