

Testimony of the New York State Bar Association

Submitted to the Joint Legislative Hearing on the FY 2024-25 Public Protection Budget New York State Bar Association President Richard Lewis

On behalf of the New York State Bar Association, the nation's oldest and largest voluntary bar association, I write to stress the importance of ensuring continued support for access to justice, and to express the organization's strong opposition to the Executive's proposal to move \$100 million from the Interest on Lawyers Account (IOLA) and \$120 million from the Indigent Legal Services (ILS) Fund, to the General Fund. Authorizing these transfers is incompatible and violative of the underlying statutes. Moreover, doing so will impede access to justice and disproportionately impact vulnerable New Yorkers who are in desperate need of qualified and effective counsel.

Oppose the Unfounded, Sweeps from Funds Intended to Aid Access to Justice

These funds need to be invested in New Yorkers who are about to lose their homes, who are seeking lifesaving medical treatment, who need help recovering from crushing debt or are facing other life-changing civil legal challenges. Money under the purview of the IOLA Fund supports 81 non-profit legal services organizations that help New Yorkers in their time of greatest need. IOLA's authorizing statute simply does not allow for these dollars — which come from escrow on attorney accounts and not from the taxpayers — to be diverted to the state's general fund.

At a time when New York is facing multiple crises — from a rise in homelessness exacerbated by the recent influx of migrants to a dramatic lack in availability of affordable housing to an increase in deaths and crime caused by deadly opioids — vulnerable individuals across the state need quality legal representation more than ever before.

The New York State Permanent Commission on Access to Justice Funding Work Group has [estimated that up to \\$1 billion](#) is a realistic estimate of the additional funding necessary to close the civil justice gap for low-income New Yorkers involved in legal matters impacting life essentials including but not limited to housing, access to healthcare, employment, and food.

Yet the number of attorneys willing and able to provide these integral services is dwindling. The Legal Aid Society, the largest provider of criminal and civil services for indigent individuals, for example, had as of June 2022, [reportedly lost](#) 10 percent of its staff — about 200 employees — over a one-year period. This was a significant jump for the organization's attrition rate from the previous year, and a phenomenon matched or even exceeded by other defender organizations across New York City's five boroughs.

Meanwhile, the state's rural regions are [facing a marked shortage](#) of attorneys as older lawyers retire and are not replaced by younger practitioners who are perhaps lured by the faster pace

and higher salaries available in urban centers. The years-long lack of an increase in assigned counsel (18-B) pay for criminal matters, which this Association challenged in court and has only been partially addressed, disincentivized attorneys from taking on these cases, leaving some less populated areas of the state nearly devoid of representation. All the while, civil legal services salaries continue to lag – something the \$100 million in IOLA funds that the Executive intends to reappropriate can and should be used to address.

The Empire State has expanded the [right-to-counsel in a wide variety](#) of civil cases – including but not limited to involuntary commitment proceedings, family law matters, medical treatment [and more](#) - through a series of statutes and judicial decisions.

New York's IOLA Fund was established in 1983 under [New York State Finance Law \(§ 97-v\)](#) with the lone purpose of paying for civil legal assistance for individuals who could not afford to retain private counsel. The Legislature specifically stated that access to civil legal services to indigent New Yorkers "is essential to the due administration of justice" and that the IOLA account was created to provide a funding stream to nonprofit providers of such services and was intended to be used "exclusively for charitable purposes." The fund is in the custody of the state comptroller and administered by a 15-member Board of Trustees, all appointed by the governor.

By statute, no less than 75 percent of the total IOLA funds distributed in a single year must be allocated to nonprofit, tax-exempt providers who deliver civil legal services to the poor. The remaining funds, the law states, "shall be allocated for purposes related to the improvement of administration of justice, including, but not limited to, the provision of civil legal services to groups currently underserved by legal services, such as the elderly and the disabled, and the enhancement of civil legal services to the poor through innovative and cost-effective means, such as volunteer lawyer programs and support and training services."

IOLA funds have never before been used for any purpose other than their statutory intent: to provide civil legal services to low-income New Yorkers. Even in the face of the state's most extreme financial crises – including at the height of the COVID pandemic – the State has never transferred IOLA funds in the manner that is currently proposed.

Though the IOLA Fund currently has a large fund balance thanks to several years of high interest rates, that amount – and interest rates themselves - historically has fluctuated widely. In fact, the Federal Reserve [has signaled its intent](#) to lower interest rates in the coming month as inflation continues to fall and both the economy and job growth have remained strong. When interest rates come down, the IOLA Fund balance will be diminished.

The Executive's proposal also includes authorization for the State to transfer \$234 million from the Indigent Legal Services (ILS) Fund, established via [State Finance Law § 98-b](#), to the General Fund. This action is similarly disastrous for the justice system. \$114 million of ILS Fund is intended to fund increased assigned counsel costs, including the State's reimbursement of 50 percent of the expenditures on the part of counties and New York City for the increase. There is

no stated public defense purpose for the remaining \$120 million of the full \$234 million the Executive signaled in her FY 2024-25 spending plan to sweep from the ILS Fund, which is statutorily intended to pay for improvements in criminal and Family Court representation.

Supporting Assigned Counsel

The Association also supports the Executive's proposed appropriation of \$92 million to fund the State's reimbursement of 50 percent of local expenditures related to [the increase](#) in the enacted FY 2023-24 State Budget in assigned counsel hourly rates.

Support for the Hate Crimes Modernization Act

The New York State Bar Association strongly supports the Hate Crimes Modernization Act and commends the Governor for including language consistent with S.7737/A.8261 in the PPGG Art. VII bill. The Association also applauds the Governor's investment of \$60 million into the effort of prosecuting hate crimes — \$25 million announced last year and another \$35 million announced as part of this year's budget proposal. The New York State Bar Association's Task Force on Combatting Anti-Semitism and Anti-Asian Hate report calls for the passage of the Hate Crimes Modernization Act. The Hate Crimes Modernization Act, which would expand the list of offenses eligible for hate crime prosecution, would bring the New York statute closer in alignment with the federal statute, in which "[t]he hate crime enhancements are available for virtually any serious federal offense, even for violations of statutes generally not considered hate crime laws," and would align New York's laws with those of most other states. This statutory change and corresponding investment would help to combat these heinous crimes. The New York State Bar Association supports the Governor's budget proposal to enact the Hate Crimes Modernization Act and invest an additional \$35 million in prosecuting hate crimes.

Conclusion

We urge the Legislature to reject the ill-advised and legally questionable sweeps of the IOLA and ILD funds in their respective legislative budget resolutions. Additionally, the Association staunchly supports all efforts to ensure that access to representation for the most vulnerable residents of this state is both protected and strengthened and true progress is made in closing the civil justice gap. If you have any questions, please contact NYSBA General Counsel David P. Miranda at 518-487-5524 or dmiranda@nysba.org.