

THURSDAY JANUARY 25, 2024

TESTIMONY OF THE NEW YORK LEGAL SERVICES COALITION

**PRESENTED TO THE NEW YORK STATE SENATE FINANCE COMMITTEE AND
THE ASSEMBLY WAYS & MEANS COMMITTEE**

JOINT LEGISLATIVE BUDGET HEARING ON PUBLIC PROTECTION

Thank you, Chair Krueger and Chair Weinstein, for the opportunity to submit this testimony to the Joint Legislative Budget Hearing on Public Protection. I am Tina Monshipour Foster, the Executive Director of JustCause and the Board President of the New York Legal Services Coalition (NYLSC), which represents civil legal services providers and their clients. Collectively, NYLSC members provide representation to low-income New Yorkers in each region of the state in the areas of family law, domestic violence, immigration, housing, public benefits, consumer issues, elder law, and LGBTQIA + rights.

The Coalition and our members are driven by one core mission: advancing access to justice. This means ensuring that all New Yorkers – particularly low-income populations and communities of color – have legal representation when they need it. While we have made strides in this area, thanks to our partners in the Court System, legislature, Attorney General’s Office, and Executive, there is much more work to be done.

In order to close the justice gap, we must focus on strengthening the foundation of civil legal services – our professional workforce. Across the state, organizations are struggling to hire and retain attorneys. This is largely due to the inability of organizations to offer competitive salary and benefits package, especially when compared to comparable positions in state and municipal government, as well as the private sector. In 2023, NYLSC undertook a project comparing the pay of civil legal services attorneys to comparable Assistant Attorney General (AAG) positions within the Attorney General’s Office (see attached white paper and one-pager).

The results demonstrate a shocking chasm:

- In NYC, an AAG makes a starting salary of \$90,000 compared to the average of \$69,000 for the same position at a CLS provider. After 10 years, an AAG earns \$134,000 per year, while the 10-year veteran at a CLS organization earns \$92,000.
- In “rest of state”, the gap is even wider. A first-year AAG makes \$87,000 to a civil legal services attorneys \$59,000 salary. After 10 years, an AAG earns \$131,000 compared to a \$74,000 annual wage for the CLS attorney.

Simply put, entry level pay is 30% to 45% lower than their government counterparts. Those inequities grow as careers advance – at ten years of service, the gaps in pay between civil legal services attorneys and AAGs are as much as 75% in some areas of the state. We are therefore calling for pay equity to justly compensate our workforce. It is the only way that we will ever make great strides in closing the justice gap.

I now note our positions on the SFY 2025 Executive Budget:

- Support the modest increases for civil legal services through the Office of Court Administration (OCA) budget. Specifically, the proposed 6% increase in the Judiciary Civil Legal Services appropriation and the 3% Cost-of-Living Adjustment (COLA) being applied to the Interest on Lawyers Account (IOLA).
- Restore traditional legislative additions for civil legal services, including designated funding for domestic violence legal services.
- Redirect \$2.5 million of the revenue from the Legal Services Assistance Fund (LSAF) to its original purpose to support civil legal service programs with budget language assuring the same.
- Strongly oppose and urge that the legislature reject the proposed sweep of \$100M from the IOLA Private Contribution Account to the General Fund (PPGG, Part X).

I underscore that the proposed sweep of \$100M from IOLA will directly block access to justice efforts from moving forward. The NY Legal Services Coalition is deeply concerned about the Executive Budget proposal to sweep \$100 million from the Interest on Lawyers Account to the general fund. IOLA funding not only supports essential services that help low-income New Yorkers obtain help with civil legal problems affecting their most basic needs, such as food, shelter, jobs and access to health care, it is a critical source of infrastructure dollars that the civil legal services community is in desperate need of. These funds are accumulated for distribution at the next round of grants to civil legal services providers, which are intended to assist in addressing the dual crises of an estimated \$ 1 billion civil justice gap and community wide salaries that are at least 30% below counterparts in similar public interest and public sector fields.

New York's IOLA Fund was established in 1983, under New York State Finance Law (§ 97-v). With the recognition of the vast need to fund civil legal services, these funds were created for the sole purpose of funding civil legal assistance. The legislative intent was as follows:

Legislative findings and declaration. The legislature finds that the availability of civil legal services to poor persons is essential to the due administration of justice. ***The purpose of this act is to provide funding for providers of civil legal services*** (emphasis added) in order to ensure effective access to the judicial system for all citizens of the state to extent practicable within the means available for that purpose.

The Interest on Lawyers Account (IOLA) fund established by this act will be authorized to receive funds from any source for disbursement to nonprofit legal services providers for charitable purposes, including the delivery of legal services in civil matter to poor persons. The IOLA fund will receive the interest earned by qualified client funds held by attorneys in unsegregated interest-bearing accounts designated IOLA accounts. Funds which qualify for deposit in IOLA accounts are those which, in current practice, attorneys do not deposit in segregated accounts because insufficient interest would be earned to justify the expense of administration. When pooled in an IOLA account, funds which would be unproductive as individual accounts will generate income, the ***beneficial interest in which will be held by the IOLA fund exclusively for charitable purposes*** (emphasis added) [11](#).

Even during the most extreme financial crises in the past, IOLA funds have never been swept or used for any other purpose than to provide civil legal services to low income New Yorkers. Now is not the time to divert or undermine the purpose of this critical resource.

IOLA distributes the accumulated interest dollars through competitive requests for proposals issued every two years. IOLA also collects and distributes outcomes from the services. In 2023, IOLA grantees closed over 307,000 client cases, benefiting over 639,000 low-income New Yorkers. The top five areas of service from 2023 are housing, immigration, family law, education and health.

Since its inception, interest rates have fluctuated wildly, in the early days, this resulted in wild swings in funding for civil legal services, causing uncertainty and financial crisis for providers. To guard against this, IOLA rightly shifted to a “rainy day” approach that creates a reserve of funds that can be used to avoid cuts in funding and thus civil legal services during periods where interest rates and thus earnings are low.

Furthermore, this attempted sweep could not come at a worse time. The civil legal services community faces a complex crisis. The value of and need for civil legal services has never been more front of mind in our state. Recognition that there is no civil Gideon for folks facing bankruptcy, loss of home, healthcare – the essentials of life – has grown among the public and policy makers as a result of educational efforts. The Access to Justice Gap, the space between the civil legal needs of low-income New Yorkers and the resources available to meet those needs has now been documented and assessed at a \$1 billion over what is currently in the system. As noted in the Permanent Commission on Access to Justice’s 2023 report to the Chief Judge, “the Permanent Commission recently adopted its Funding Working Group’s report finding that between \$842 million and \$1 billion is a realistic estimate of the additional annual funding, over and above existing funding, to close the justice gap.”¹² Notably, this analysis focuses only on those earning up to 250% of poverty and does not include immigration related legal services.

Demand and need for our community’s services is vast, but the resources are not there, leaving far too many New Yorkers facing life altering legal junctures without an attorney who understands the process. At the same time, salaries, in comparison to any other government

funded attorney services are so low, it is becoming impossible to compete with state, county and city positions. With the well-deserved and long overdue increase in rates for assigned counsel in criminal matters, civil legal services salaries have fallen even further behind. These funds are slated to help address these very issues.

In addition, IOLA has just launched a multi-year Justice Infrastructure project that will assist our under-resourced community with improving the delivery of services and create efficiencies across programs. The accumulated funds are what made it possible for the IOLA Fund to pursue this project.

We need the legislature's support in addressing the needs of our client community through rejecting the proposal in the executive budget to sweep funding from IOLA. These funds, along with OCA's efforts are essential to our community's ability to make gains against the justice gap.

Thank you again for the opportunity to speak today. I look forward to answering any questions that you may have.

Tina Monshipour Foster
Board President, NY Legal Services Coalition
Executive Director, JustCause