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**Testimony of McGregor Smyth, Executive Director of
New York Lawyers for the Public Interest
Submitted to the New York State Senate Finance Committee and the
Assembly Ways and Means Committee
Joint Legislative Budget Hearing on Public Protection
On Thursday, January 25, 2024**

Thank you, Chair Krueger and Chair Weinstein and members of the committees for the opportunity to submit this testimony to the Joint Legislative Budget Hearing on Public Protection.

Founded nearly 50 years ago by leaders of the bar, New York Lawyers for the Public Interest (NYLPI) is a community-driven civil rights organization that pursues justice for all New Yorkers. NYLPI works toward a New York where all people can thrive in their communities, with quality healthcare and housing, safe jobs, good schools, and healthy neighborhoods. In our vision, all New Yorkers live with dignity and independence, with the resources they need to succeed. We seek lasting change through litigation, community organizing, policy advocacy, pro bono service, and education.

NYLPI joins with the New York Legal Services Coalition in strongly opposing the Executive Budget proposal to re-direct \$100 million from the Interest on Lawyers Account (IOLA) Fund to the general fund.

IOLA funding is critical to NYLPI's clients. The communities that we serve struggle with the ways that systems disadvantage people based on poverty, race, disability, and immigration status, and limit access to healthcare, shelter, education, and other basic services. These communities face unjust and unlawful barriers to services and to their basic rights to dignity and independence. With health, economic, and climate crises deepening systemic inequality and threatening our communities, the need has rarely been greater for complex, affirmative efforts to protect both rights and basic needs. The IOLA Fund forms a critical part of the solution, supporting multidisciplinary, broad-based approaches.

New York's IOLA Fund, which was established in 1983 pursuant to Section 97-v of New York's Finance Law, accumulates funds for distribution to civil legal services providers. These providers face the dual crises of an estimated \$1 billion civil justice gap and community-wide

salaries that are at least 30% below those of their counterparts in similar public sector fields. The legislative intent of the IOLA Fund was as follows:

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].

IOLA distributes the accumulated interest dollars through competitive requests for proposals issued every two years. IOLA also collects and publicizes outcomes from the services. In 2023, IOLA grantees closed more than 300,000 individual client cases, benefiting nearly 640,000 low-income New Yorkers. The top five areas of service in 2023 were housing, immigration, family law, education and health.

Since the inception of the IOLA program, 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 when interest rates, and correlatively earnings, are low.

Even during the most extreme financial crises in the past, IOLA funds were never re-directed for any other purpose than to provide civil legal services to low-income New Yorkers. And now of all times is not the moment to undermine the purpose of this critical resource.

The civil legal services community currently faces a profound and complex crisis. The value of, and need for, civil legal services has never been more front of mind in our state, especially without a civil Gideon right for individuals facing bankruptcy, loss of home, healthcare – many essentials of life. Experts conclude that up to an additional \$1 billion in funding is needed to bridge 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.¹ Notably, this analysis focuses only on those earning up to 250% of poverty, and does not include immigration-related legal services. 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. By proposing to sweep \$100 million from the IOLA Fund, the Governor is disrupting a shared vision for pay parity and infrastructure investment between IOLA and the civil legal services programs they fund.

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 for legal services providers, in comparison to those of any other government-funded attorney service, are so low, it is becoming impossible to compete. 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. The IOLA funds are slated to help address these issues.

Legal representation is crucial to assist individuals in navigating complex legal processes and bureaucratic systems. With IOLA-funded programs, our clients can receive individual advocacy and representation to overcome barriers and access basic human needs. IOLA funds support community-based legal services and enhance our capacity, and the capacity of our partner organizations, to reach underrepresented and marginalized communities and protect their legal rights.

With the support of the IOLA Fund last year, NYLPI provided direct legal services, education, and training, and accomplished significant impact achievements improving the lives of more than 3.5 million New Yorkers. Where direct benefits and cost savings were measured, the value to clients was over \$1.4 million. In addition, our trainings and legal resources for community groups and stakeholders empowered more than 100,000 New Yorkers to better advocate for themselves.

IOLA funds have allowed NYLPI clients to gain access to lifesaving and gender-affirming healthcare, achieve safety through immigration representation, and secure accessible housing, education, and transportation for countless persons with disabilities. The experiences of our clients exemplify the power and necessity of robust IOLA support. For example:

NYLPI's client E was diagnosed with end stage renal failure, meaning his kidneys had stopped working and he was using dialysis three times a week to treat the condition. Dialysis is costly and taxing on the body, and the situation was becoming unsustainable for him. E reached out to NYLPI with the hope of getting health insurance so he could receive a kidney transplant. An organ transplant is the preferred treatment for end stage renal failure, but they are very inaccessible for those who are undocumented and uninsured. Through immigration and holistic representation, NYLPI was able to enroll E in state health insurance to begin the transplant evaluation process at SUNY Downstate Medical Center. He ultimately received the much-needed kidney transplant and is currently recovering comfortably. To help other similarly situated individuals, NYLPI, with the help of IOLA funding, has partnered with SUNY Downstate Medical Center to establish a pipeline that can refer individuals to NYLPI for legal representation and advocacy to access insurance and lifesaving treatments.

Our clients R and Z, partners fleeing persecution in Honduras that they experienced as a result of their gender identity and HIV-positive status, arrived in New York eligible for

Medicaid and housing services through the HIV/AIDS Services Administration, yet their applications for these benefits were wrongfully denied numerous times. They were left without access to critical healthcare and stable housing. R and Z contacted NYLPI, and we successfully appealed their wrongful denials. R and Z now have stable housing and access to gender-affirming healthcare, and NYLPI continues to represent them in their asylum applications.

Our client S, a recent immigrant and elementary school student, was receiving special education services before she and her family moved to New York City. S's special education Individualized Education Plan indicated she was to be educated in a 12:1 classroom, but her school never honored this placement. During the pandemic, S's struggles continued, and when in-person classes started, she was placed in an inappropriate, much larger class. S fell behind academically, and, after numerous efforts to advocate for S on her own, S's mother contacted NYLPI for assistance. NYLPI secured both extensive evaluations for S, as well as an appropriate placement where S is thriving. Together with a pro bono firm, NYLPI continues to assist S by seeking "compensatory education" via an administrative hearing.

We implore the Legislature to support indigent individuals across the state by rejecting the executive budget proposal 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 for your consideration.

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