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**Testimony to the New York State Legislature
Joint Hearings of the Senate Finance and
Assembly Ways & Means Committees**

2024-2025 Executive Budget

Topic: Mental Hygiene

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Thank you, Chair Krueger and Chair Weinstein, for the opportunity to submit this testimony to the Joint Legislative Budget Hearing on Mental Hygiene. The Center for Elder Law & Justice (“CELJ”) has been serving the Western New York region for over 40 years, providing free civil legal services to older adults, persons with disabilities, and low - income families. CELJ’s primary goal is to use the legal system to assure that individuals may live independently and with dignity. CELJ also advocates for policy and systems change, particularly in the areas of housing, elder abuse prevention, nursing home reform, and consumer protection. Currently CELJ provides full legal representation in ten counties of Western New York and CELJ’s Free Senior Legal Advice Helpline is open to all of New York State. CELJ operates a central office in downtown Buffalo, with three additional offices in Cattaraugus, Chautauqua, and Niagara counties.

The FY 2025 Executive Budget proposal fails to include the \$1 million in guardianship funding, appropriated under the FY 2024 Enacted Budget, that helped launch the Guardianship Prevention and Support Helpline and fund direct guardianship services for incapacitated adults, some of which are being carried out by CELJ in Western New York. **CELJ urges the Legislature to not only restore the FY 2024 allocation but increase it by \$4 million for \$5 million total in the FY 2025 State Budget. These funds are essential to support and expand a robust statewide network of guardianship providers to meet the needs of the one of the state’s most vulnerable populations.**

New York has strong legal protections that entitle individuals access to adult guardianship services when a court finds the appointment of a guardian is necessary. However, this mandate is underfunded. Without a direct and sustainable funding stream to ensure the availability of high-quality guardianship services, persons who have been determined by a court to need a guardian are at risk.

While the Mental Hygiene Law Article 81 statute prefers that the appointed guardian is a family member or other community support, such as a friend or neighbor, in many cases there are no such available or appropriate family members or community support to act as guardian. As such, courts must look to nonprofit organizations, county social services districts and private attorneys to provide this invaluable service. However, there is inconsistency in the available resources

throughout New York State and the demand for assistance greatly outpaces capacity. In some regions, there is no access to these resources at all, especially for low-income New Yorkers.

CELJ and other nonprofits have stepped up to try to fill the gap and serve as guardian. However, with few reliable and sustainable funding sources, the long-term viability of these appointments are precarious, at best.

The importance of an effective guardian to ensure the individual can live with dignity and in safety cannot be understated. Guardianship services are multidisciplinary, often encompassing civil legal services, financial management and healthcare coordination, and other tasks to promote the health, well-being, and stability of the individual. An appointed guardian of person and property is responsible for the management of all the financial affairs of the person over whom they are appointed, including, paying bills, marshalling assets, applying for all government benefits, preparing tax returns, and reporting to agencies such as the Veteran's Administration, the Social Security Administration, the NYS Court system, and many others. Guardians are also responsible for health care coordination and decision-making, securing and maintaining appropriate and safe housing, and ensuring access to food, transportation and other necessities for the person under guardianship, many of whom are victims of financial or other abuse, or otherwise vulnerable due to age and cognitive condition.

An effective guardian, and in some cases a guardianship team, works to prevent institutionalization and support these populations rights in their own communities. Not only do these efforts support the local economy by redirecting income and resources back into the community, but guardianship also saves public dollars by decreasing unnecessary Medicaid spending on avoidable hospitalizations or higher levels of care provided in nursing home or similar skilled settings. Most importantly, an effective guardian ensures that the person can live with dignity, in safety, and with supports.

In 2022, Guardianship Access New York (GANY)¹ was established as a coalition of interested stakeholders to reform and improve New York's adult guardianship system, ensuring equitable access to services for every resident. CELJ is a member of the GANY Coalition and joins in a collective belief that every individual who needs a guardian should receive a high-quality guardian for as long as necessary, regardless of their ability to pay. The best way to achieve this goal is through funding and expanding the existing network of nonprofit organizations already providing guardianship services. The reasons for this are numerous:

- (1) Nonprofits have specialized expertise with multidisciplinary teams** to address the myriad issues affecting individuals under guardianship. Their teams of attorneys, social workers, finance managers, benefits specialists, etc., accomplish significant positive outcomes such as effectuating difficult discharges from hospitals and nursing homes, obtaining public benefits including 24-hour home health services, securing PRUCOL status for undocumented immigrants, procuring supportive and affordable housing placements, fighting fraud and reestablishing deed ownership, and reuniting individuals with loved ones.

¹ GANY Coalition members: Center for Elder Law & Justice, EAC Network, Guardianship Corp., Hon. Arthur M. Diamond, J.S.C, Retired, Lifespan of Greater Rochester, Project Guardianship

- (2) **Nonprofits are mission driven.** Nonprofit programs aim to provide services in the least restrictive, most person-centered way possible. They keep people at home and out of institutions for as long as possible, engage in shared decision-making with clients and family members, serve as co-guardian, accept low- to no-fee cases, learn the values and wishes of their clients, and participate in end-of-life decision-making.
- (3) **Nonprofits work to prevent and end guardianships** by engaging in efforts to ensure guardianship is utilized only as a last resort and to prevent guardianship when possible. They have programs to offer individuals and families less restrictive alternatives. They are incentivized to stabilize clients to the point where they can seek to terminate the guardianship, freeing up capacity to serve as guardian for others who need it.
- (4) **Nonprofits provide data and oversight.** Nonprofits have been collecting data on their guardianship clients for decades. Together as a network, they would offer collective data on agency guardianships across the state. They will leverage data collection and shared technology to communicate and collaborate with partners statewide, always striving to improve outcomes for guardianship clients.
- (5) **Nonprofits are nimble.** Nonprofits are generally more agile in responding to the needs of community and have more flexibility in terms of approach. They can also be more innovative in their service delivery and explore alternative approaches, such as the use of technology, community-based support networks, etc.
- (6) **Nonprofits are diverse and more racially equitable.** Nonprofits have localized knowledge and strong community ties, including with communities of color, LGBTQ communities, people living with mental illness and disabilities, people living with housing instability, and immigrant communities.
- (7) **Nonprofits can leverage pro bono and volunteer support** to increase the scope and impact of services available.
- (8) **Nonprofits are more cost-effective, transparent, and accountable.** Nonprofits often have lower administrative costs compared to government agencies. They are required to post public disclosures, including their audited financials and annual IRS 990 filings and must also comply with funder grant and outcomes reporting.

A nonprofit serving as guardian can make major difference for the life of a person who has been determined by the court to need a guardian. For example: “Bernard” was referred to CELJ from his local Adult Protective Services Agency (“APS”). Bernard had in recent years suffered a cognitive decline and the loss of his longtime partner, with whom he shared a home. A family member began exploiting his diminished cognition and over the course of 6 months to a year, became remainder person on his home, and had drained nearly \$300,000.00 from various bank accounts for her own personal benefit. Bernard was unkempt, malnourished, and unattended to medically when APS became involved. Through CELJ’s multidisciplinary efforts as guardian, we found him safe and secure housing away from his alleged abuser, prevented any ongoing access

to his funds by unauthorized actors, maximized his benefits and entitlements, helped him access appropriate and ongoing medical care, and are involved in civil and criminal proceedings related to the alleged financial abuse. Bernard's cognition is such that he cannot attend to these matters on his own behalf and requires a guardian to assert his rights for him. Without a high-quality guardian, it is likely that Bernard's quality of life would be diminished further; he may have been placed in a nursing facility (a higher level of care than is appropriate for his needs); his medical needs continued to be neglected; and his finances further exploited. Bernard deserves to age with dignity and have an advocate in his corner. CELJ, serving as guardian, is making that happen.

Bernard's situation is unfortunately not unique. The need for guardianship services far outpaces the capacity of the existing systems. CELJ can accept only a very limited number of guardianship appointments each year and typically focuses on the cases of elder abuse, or financial mismanagement. We regularly turn away additional requests because of limited funding. As our population continues to age, this problem will only be exacerbated.

An increased appropriation to \$5 million would allow us to take additional cases in Western New York and alleviate the administrative burden on existing government entities and the court system, which is often at a loss to find an appropriate guardian.

In addition to the \$5 million allocation to support and expand a robust statewide network of nonprofit guardianship providers, **we urge the Legislature to reject the Governor's proposal to sweep \$100 million from the IOLA Fund into the General fund.**

CELJ is deeply concerned about the unprecedented 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.

CELJ Opposes the Sweep of \$100 Million from the IOLA Fund into the General Fund

At CELJ, our guardianship efforts are partially subsidized by our core funding from the IOLA Fund. 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 pc 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).²

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 individuals 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.”³ 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 sweeping 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.

² Chapter 659 of the Laws of 1983.

³ Permanent Commission on Access to Justice’s 2023 report to the Chief Judge, November 2023. https://www.nycourts.gov/LegacyPDFS/accesstojusticecommission/23_ATJ-Comission_Report.pdf

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.

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 now Moreover, our extremely low salaries are interfering with our Diversity, Inclusion and Equity (DEI) efforts. impossible to compete with state, county and city positions. CELJ is not an attractive option to attorneys of color and we have been unable to retain any diverse attorneys for longer than three years. Exit interviews with former employees of color indicate that while the work and culture of a legal services job is incredibly satisfying, the salaries at government jobs (which also have federal loan forgiveness) simply make the option of staying at CELJ untenable.

Moreover, 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. CELJ attorneys start at \$60,000, or \$28.85 per hour. Compare that to the Assigned Counsel rate of \$158 per hour.

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. In addition, we ask that this committee support a proposed \$5 million dollar allocation to support the guardianship services in New York State.

Thank you for the opportunity to submit this testimony. CELJ is available to answer any questions and provide additional information.

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