

The logo for the New York City Bar, featuring the text "NEW YORK CITY BAR" in a bold, serif font, centered between two horizontal blue bars.

**NEW YORK
CITY BAR**

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

**New York State Senate Public Hearing
IOLA and the Future of Civil Legal Services in New York State
December 9, 2009
New York University School of Law**

Testimony of the Association of the Bar of the City of New York
By: Stacey O'Haire Fahey, Chair, Pro Bono and Legal Services Committee

Thank you for the invitation to testify on the crisis in IOLA and the future of civil legal services in New York State. My name is Stacey O'Haire Fahey and I am the Chair of the Pro Bono and Legal Services Committee at the Association of the Bar of the City of New York. In addition to chairing the Committee, I am Pro Bono Counsel at Proskauer.

The City Bar is an organization of over 23,000 lawyers and judges dedicated to improving the administration of justice. The Pro Bono and Legal Services Committee I chair is comprised of legal services lawyers, pro bono lawyer volunteers, and practitioners working in law firms and corporations, many of whom oversee their firm's pro bono program. In addition to having members who are active in legal services, the Association has a public service affiliate - the City Bar Justice Center - whose mission is to leverage the resources of the New York City legal community to increase access to justice for low-income individuals. The Justice Center does this by using a small staff to administer a program matching pro bono lawyers with hundreds of clients, training them and supervising their work. The Justice Center assists more than 25,000 clients a year.

Clients find the Justice Center through court referrals, the LawHelp website and a hotline which handles over 1,000 calls a month. The demand for our services is increasing, notably in

the areas of consumer credit and foreclosure, reflecting the desperation in the community as people fall behind in their bills and in paying their mortgages. At the same time, more and more attorneys are looking to volunteer. Pro bono trainings are now routinely over-subscribed. The potential to mobilize these volunteers and provide services is great. For example, since June 2008, we have trained over 350 attorneys to handle foreclosure matters including 60 from the Queens County Bar Association who are willing to handle court conferences in Queens. Without these volunteers, the homeowners would most likely be unrepresented, putting themselves at a disadvantage and burdening court employees.

Like other providers in this economic downturn, the Justice Center has created programs in the past two years that target what we believe are the greatest areas of unmet civil legal need. These include a Veterans' Advocacy Project, a Foreclosure Project, and an Immigrant Outreach Project. In addition, we have expanded our Consumer Bankruptcy Project. These projects ultimately help save taxpayer dollars by efficiently mobilizing private resources to help individuals get their lives stabilized and regain their footing. Indeed, pro bono providers like the Justice Center are able to move flexibly and nimbly to meet needs as they emerge and to scale up or down as needed quickly. For every \$1 of funding, pro bono providers are able to leverage \$9 in free legal services to New Yorkers.

The Justice Center and other legal services providers work with thousands of lawyer volunteers to provide these important services all over New York State. Volunteer legal services effectively complement the vital work of those lawyers who are employed full-time in providing legal services to the poor. However, to expand substantially the volunteer efforts, resources are needed to support the training and supervision these volunteers need. And much of this support has come from the IOLA Fund.

IOLA FUNDING

Since 1983, the Interest on Lawyer Account Fund has played a vital role in providing funding to civil legal services statewide, and, two years ago, when former Governor Spitzer promulgated comparability rates for IOLA Accounts, the fund briefly enjoyed an appreciable increase. However, with the decline in the housing market and historically low interest rates over the past several months, this source of funding is seeing a steep decrease in revenue – in December 2008, IOLA made grants totaling over \$31 million covering a 15-month period (\$24.8 million annualized over 12 months); it may have less than half this amount to distribute for the next funding cycle.

Every day, legal services programs provide for thousands of vulnerable New Yorkers a lifeline for basic survival. And the situation their clients are facing – loss of jobs, foreclosure, eviction – are the grim hallmarks of this current fiscal crisis. The work performed by legal services programs and funded through IOLA saves New York State millions of dollars a year and is a proven, tested and wise investment. Last year, for example:

- millions of public dollars were saved by legal services programs because they were able to preserve homes, avert homelessness for New Yorkers, and keep families together;
- legal services programs garnered \$24,494,483 in retroactive federal disability awards for clients and \$131 million in total benefits for clients;
- the monthly disability benefits, Earned Income Tax Credit refunds, and Unemployment Insurance benefits legal services organizations obtained for New York residents were spent in their communities, stimulating the economies of those communities; and
- these community investments, in turn, sustained jobs and additional economic activity.

Indeed, with the increase in the unemployment rate, increased foreclosure filings, and increased bankruptcy filings New York State has experienced over the past year, the work performed by civil legal services programs is critically needed by New York City's poor now more than ever.

Through the legal services initiatives of the New York City Bar and through our work with a variety of legal services organizations, we witness firsthand and on a daily basis the vast unmet legal needs of New York's poor. We also witness firsthand the tremendous impact that these programs can have on the lives of these most vulnerable members of our society. Based on our experience, we believe it is imperative that IOLA receive an emergency infusion of \$15 million in the FY2010-2011 budget (which we understand has been included in the Judiciary Budget that has been submitted and which we are grateful for); and, if interest rates remain low and IOLA Account transactions remain at reduced levels, that another emergency allocation to IOLA be considered for FY2011-2012.

Ultimately, without a steady funding stream, a dramatic loss of funding to New York State's legal services programs could happen at any time. This would result in thousands of New Yorkers unable to receive legal assistance. The cost to households – and to the State – when adequate legal services are denied is reflected in homelessness, broken families, lack of medical care and education and other essential public benefits.

THE CALIFORNIA APPROACH AND CIVIL GIDEON

The City Bar has long supported the right to counsel in civil matters affecting basic human needs. In 2006, we co-sponsored an ABA Resolution urging “federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined

by each jurisdiction.” Just this fall we issued a report urging the right to counsel for detained immigrants in removal proceedings.

California has now taken a major step toward providing limited civil Gideon rights. AB 590 establishes a 6-year pilot program (in two 3-year increments), which is funded by diverting \$10 from each of certain court filing fees, primarily affecting post-judgment filings, into a Trial Court Trust Fund, which is earmarked to be used for the implementation and administration of the civil representation pilot program. The projects will allow for litigants in certain civil cases to be screened and have the opportunity to receive free legal counsel.

Our committee is in the process of considering California’s approach taken as well as other ideas designed to implement the right to counsel where appropriate in civil cases. We will be pleased to report our findings to the Senate.

CONCLUSION

This is a time for New York State to step up to assist persons with pressing civil legal needs who cannot afford an attorney. The prospects of even less state funding in the future is particularly daunting given that the financial and legal markets are shedding workers and cutting their own private giving. Therefore, we urge the Legislature to do all it possibly can to assure sustained funding to pro bono and legal services programs, and we are happy to provide whatever assistance we can to help you in this endeavor.

Thank you for your attention to this important issue and thank you for giving me the opportunity to testify on behalf of the New York City Bar.