

February 15, 2024*

By Email

Mary Rothwell Davis, Chair of the Board of Trustees
Christopher B. O'Malley, Executive Director
IOLA Fund of the State of New York
11 East 44th Street, Suite 1406
New York, NY 10017

Re: Governor's Proposal to Divert IOLA Funds to State General Fund

Dear Ms. Davis and Mr. O'Malley,

We write to you as lawyers licensed to practice in New York who are deeply concerned about the proposal contained in Part X of the Governor's Public Protection and General Government Article VII budget bill (S.8305/A.8805), which would transfer \$100 million from the IOLA Private Contribution Account to the State General Fund.

We are law firm leaders, managing partners, pro bono professionals, in-house counsel, bar association leaders, small and midsize law firm lawyers, solo practitioners, and nonprofit and legal services lawyers. From our collective vantage point, this proposal is extremely misguided. It will undercut a program the premise of which has undergirded the practice of law in New York for four decades – i.e., that a lawyer's use of an IOLA escrow account will support the delivery of civil legal services to low-income New Yorkers, in a manner that comports with ethical obligations (22 NYCRR Part 1200, Rule 1.15) and facilitates efficient law office operations. We are deeply concerned that the proposal undermines the independence of our profession and, as a practical matter, would complicate longstanding attorney and law firm accounting. Further, the potential ethical uncertainty that diversion of IOLA funds may occasion could lead members of our profession to question whether they should use IOLA accounts at all, creating an existential threat to a primary funding stream for civil legal services in New York.

Indeed, the NYS Budget proposal to divert money from the IOLA Fund, money derived solely from interest on attorney escrow accounts and not from taxpayers, is contrary to the purpose of IOLA as a dedicated fiduciary fund earmarked exclusively to support civil legal aid. The legislative intent of the 1983 law that created IOLA could not have been clearer: “the purpose of this act is to provide funding for the providers of civil legal services in order to ensure effective access to the judicial system for all citizens of the state to the extent practicable” and “the beneficial interest in [the revenue generated from IOLA accounts] will be held by the IOLA fund exclusively for charitable purposes.” L 1983, ch 659, §1.

Moreover, this proposal risks harm to vulnerable New Yorkers, which is a concern for us all. As IOLA has reported, in FY2023, 81 IOLA grantees closed over 307,000 cases benefiting more than 639,000 New Yorkers, the vast majority of whom faced challenges involving the essentials of life – food, shelter, jobs, access to health care and education. The benefits go further, however. As reported by IOLA, the overall financial benefit of all IOLA grantee work to the New York economy in FY23 topped \$3.5 billion and 8,000 jobs. IOLA grantees also report that

uncertainty over IOLA funding, which gives them flexibility to provide broader-based services (e.g., social work support, community partnerships with non-legal nonprofits), risks simply diverting vulnerable New Yorkers' needs onto other providers or onto local or state government.

Many of the cases handled by IOLA grantees are done in partnership with pro bono attorneys at law firms, solo practices and at corporate law departments. Our pro bono practices are integral parts of our firms because we believe deeply in contributing to the representation of New Yorkers who cannot afford counsel.

In sum, the idea of "sweeping" money from the IOLA Fund strikes at the very autonomy of the legal profession and our profession's commitment – indeed, obligation – to support "pro bono publico," the public good. We stand ready to assist IOLA in any efforts to see that this proposal is withdrawn.

Respectfully,*

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**This is a reissued letter, updating the signatories added as of February 15, 2024. The original letter was sent on February 12, 2024.*