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The IOLA Fund and LSC Restrictions

Lorna K. Blake[†]

I. IOLTA AND LSC

Interest on Lawyer Trust Account (IOLTA) programs in this country were created in response to the Legal Services Corporation (LSC) funding cutbacks in the 1980s and have in the years since become a key source of support for civil legal services programs. In 1997, IOLTA programs across the country provided approximately \$108 million compared to LSC's fiscal year 1998 \$274.4 million.

While the LSC is a national program with national standards, funding priorities, systems, and procedures, the IOLTA community is a decentralized, state-based group of funders who are defined as much by their differences as by their similarities. Because every IOLTA program is a variation on those that came before, it reflects not only the template shared by replicated models, but the unique character, complexities and concerns of each state.

Nevertheless, all IOLTA programs have this feature in common: their dollars supplement LSC funded programs, and their state's legal services delivery system is powerfully influenced by LSC funding decisions, policy decisions and, most notably since 1996, restrictions on the type and manner of legal services that can be provided with federal funding. The LSC appropriations legislation of the past three years enormously complicated the LSC/IOLTA funding relationship by extending these restrictions to all funds received by a program which accepts LSC funds, including other public funds and all private funds, and including IOLTA.

II. WHAT IS THE IOLA FUND?

The Interest on Lawyer Account Fund (IOLA) was established by the New York State Legislature in 1983 to support non-profit organizations that provide legal services to the poor and programs that improve the administration of justice in New York State. IOLA revenue is derived from the interest income generated from lawyers' client trust accounts for funds that are too small in amount, or held for too short a period of time,

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to generate sufficient interest to offset the costs of opening an individual trust account on the client's behalf. Prior to the establishment of the IOLA program, these nominal or short term deposits generally did not earn interest and benefited only the banks who had them on deposit.

The statute that created the IOLA Fund requires that at least seventy-five percent of the Fund's revenue be used to support programs that provide direct civil legal services for poor people. This portion of the funds is allocated according to the geographical distribution of the poor throughout the state, based on the latest census figures. The remaining twenty-five percent is allocated for a variety of other projects, including pro bono programs, law school student stipends, alternative dispute resolution programs, statewide support programs, and programs serving the special legal needs of groups, such as children, the elderly, the disabled, immigrants, refugees, and migrant farmworkers. In its most recent annual grant cycle, the IOLA Fund awarded approximately ten million dollars to 104 grantees, eighteen of which are also LSC-funded programs.

III. RESPONSE TO THE 1996 RESTRICTIONS

In September of 1995, when the IOLA Grants Committee began its annual application review process for the 1996 grants program, it faced the following possible scenarios:

- the elimination of the LSC and drastically reduced funds given in block grants to the states;
- an LSC funding cutback of thirty percent, resulting in a nine million dollar funding loss for LSC/IOLA grantees;
- the elimination of LSC funding to the three statewide support centers, the migrant farmworker program, and the three national support centers located in New York State; and
- application of the LSC restrictions to all IOLA funds awarded to LSC programs.

In 1995, the LSC-funded programs received seventy-five percent of all IOLA funding. This meant that if IOLA did nothing but renew those grants, Congress would restrict \$7.5 million of the Fund's ten million dollar grant allocation in ways the IOLA Board of Trustees determined conflicted with the Fund's statutory mandate and its mission to support a full array of legal services. LSC imposed limitations on substantive areas of the law and on the legal strategies programs could pursue in the representation of their clients. These limitations led IOLA to encourage programs to develop new approaches to service delivery and to find alternatives to supplement the work of the LSC programs that would continue to serve clients in areas unrestricted by LSC. In the meantime, LSC-funded programs began to re-examine some fundamental assumptions:

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whether to accept LSC funding at all, whether to consolidate with other programs, or whether to reconfigure service areas and rebalance resources.

The IOLA Board of Trustees decided to preserve the statewide support centers and farmworker programs while those programs sought replacement funding. IOLA also reserved ten percent of civil legal services grant funds for new programs responding to the restrictions and held a supplemental Special Grant Cycle for this purpose. In June 1996, IOLA issued a request for proposals calling for, but not limited to, the following:

- technological innovations such as hotlines, single point of entry intake systems, electronic task forces, and other computer applications;
- companion delivery systems such as collaborative arrangements between legal services funded programs and independently funded programs to coordinate the provision of restricted and unrestricted services in a geographic area to the extent permitted under the new federal restrictions;
- law school poverty law clinics to work with local programs to provide restricted services, litigation, and advocacy;
- regional centers to coordinate the work of a number of programs in a particular geographic area and also provide support, research, technical assistance, and training in a substantive area of unmet need;
- regional reorganization of existing providers to alter the delivery structure in a given geographic area to ensure continuity and availability of a full range of civil legal services to low-income clients; and
- pro se clinics and other volunteer and self-help arrangements.

IV. FUNDING PRIORITIES

The fund gave priority to innovative programs and those that stressed collaboration with other agencies. It looked for programs with considerable staff expertise and considerable non-IOLA funding. The Fund also gave priority to statewide client-centered programs.

V. RESULTS

The Special Grant Cycle resulted in eight new civil legal services grants to five existing and three new programs. Four programs were funded to operate companion delivery systems. Two new multi-task centers were established, one with a focus on rural issues and one with a fo-

cus on technology. One program developed a citywide intake and referral system, and a new law school fellowship program allowed four senior legal services attorneys to transfer from LSC offices and continue to handle restricted work.

These programs were selected because each one met a fundamental criterion set by IOLA: that new programs add value to the legal services community even if the LSC restrictions were eliminated. Each of the new programs had a plan to handle restricted work, but equally important was a focus on innovation, re-deployment of staff expertise, or integration of existing services. IOLA's goal was to engage a wider variety of institutions—bar associations, law schools, pro bono programs, LSC-funded and IOLA-funded grantees—in the delivery of legal services. The Fund also sought to avoid creating new entities by building on existing structures whenever possible. As a result, the civil legal services grant program now includes both LSC and non-LSC funded providers engaged in unrestricted and restricted work.

IOLA's Administration of Justice grants program continues to support pro bono programs, stipends for law students staffing summer clinics, hotlines in the areas of health, immigration and employment, and a number of statewide support programs as well as the formerly LSC funded centers. The Fund supports a variety of program models, from staff attorney and pro bono programs to multi-service centers such as The Door, a center for youth, and Northern Manhattan Improvement Corporation, which offers client representation, adult-education courses, and job training services. Legal services are also provided through community mediation centers and court-appointed special advocate programs. Collaborative efforts continue in both IOLA grant programs: the Immigration Representation Project, a consortium of five providers who receive a joint grant to staff the Immigration Court one day a week, and the New York Legal Assistance Group's Domestic Violence Program. Other IOLA grantees offer legal services in venues such as hospitals, soup kitchens, shelters, and public libraries.

IOLA's civil legal services and Administration of Justice grants program together made up a patchwork quilt of services even before the LSC restrictions were enacted. The new approaches and models that emerged from the Special Grant Cycle complement and build upon what is already in place. IOLA is committed to a grant-making philosophy that fosters diversity and creativity while maintaining core services in civil legal services programs. The new programs in New York are part of that effort. They serve as a bridge between the two grant programs, facilitating the exchange of information, resources, and expertise. The challenge for New York is to avoid the fragmentation of our numerous programs,

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models, and approaches by creating opportunities for communication and collaboration. IOLA plays an important role in that effort by introducing grantees to one another and identifying potential alliances among grantees. Even when funding is static, the Fund solicits concept papers from individual grantees or groups of grantees to keep alive the flow of ideas. It also hosts or staffs briefings on legal services issues for other funders.

VI. FUTURE PLANS

Currently all IOLA grantees are engaged in a comprehensive state-wide planning process to enhance the delivery of civil legal services in the state. The purpose of this project is to provide an all-grantee vehicle for examining key issues in the delivery of services. We hope to devise means of improving delivery, open avenues for collaboration among programs, and better coordinate existing efforts. A copy of the preliminary planning document is available on the Internet at the Western New York Law Center's web site, "www.wnylc.com." Law students also can access information on New York's programs through Pro Bono Students America.

In a testament to the triumph of hope over experience, New York's community of advocates continues its work, undeterred by recent setbacks such as the loss of state and city funding and the recent ruling from the United States Supreme Court in *Phillips v. Washington Legal Foundation*.¹ Yet we are reminded daily of Yogi Berra's observation that "the future ain't what it used to be."

1. On June 15, 1998, the Supreme Court held by a 5-4 vote that interest income generated by funds held in IOLTA accounts is the private property of the owner of the principal. However, the Court expressly took no position on whether IOLTA funds constitute a taking under Fifth Amendment jurisprudence. These issues were remanded to the Fifth Circuit. See *Phillips v. Washington Legal Foundation*, 118 S. Ct. 1925 (1998).

