



**Testimony of John R. Dunne  
Vice Chair  
The Committee for Modern Courts**

**Hearings on  
IOLA and the  
Future of Civil Legal Service in New York State**

**Before the  
Senate Standing Committee on Crime Victims, Crime and Corrections  
Senate Standing Committee on Judiciary  
Assembly Standing Committee on Judiciary  
Senate Standing Committee on Codes  
Senate Standing Committee Veterans and Military Affairs**

**Albany Hearings  
January 7, 2010**



I want to thank the Committees for providing Modern Courts with the opportunity to present testimony today on this critically important issue - funding for civil legal services. By holding these joint hearings you not only recognize that government must guarantee access to justice for low income New Yorkers, but you also show support for the tireless work of civil legal service providers across this state. Continuing that support will avoid enormous further burdens to our court system and the administration of justice.

Modern Courts is an independent nonpartisan statewide court reform organization committed to improving the court system for all New Yorkers, supports a judiciary that provides for the fair administration of justice, and equal access to the courts. By research, public outreach, education and lobbying efforts, Modern Courts seeks to advance these goals.

To date, your hearings have offered a wealth of testimony. Everyone agrees that, in strong economic times, the Interest on Lawyer Accounts (“IOLA”) is an adequate source of funding. Although the emergency bailout of IOLA, although critical - and we thank you for your persuasive efforts to make that happen during these difficult budgetary negotiations – it may only be a “one shot deal,” and it is now imperative to review alternative and additional ways to fund civil legal services. We believe that this crisis can generate new and thoughtful ideas, provide

an opportunity to be creative, and, ever mindful of economic and budgetary realities, forward thinking in our approach so that this crisis does not cause debilitating results for the most vulnerable.

The opportunity to examine the various possibilities for secure and consistent funding is clearly the priority of government leadership and all interested stakeholders from today forward. As an organization that includes many members of the legal community, Modern Courts supports more than immediate access to justice - we support a process that will allow government and stakeholders to prepare for the future. The goal of providing low income New Yorkers access to equal and fair justice can only be met when the state offers secure and consistent funding for civil legal services as a core program of the state, one which will allow providers to plan for the future.

Providing sufficient resources for that goal is difficult. It requires the continuation of the support generously offered by legislators at these hearings, the continued support of the Judiciary and the Governor. As we mutually seek to benefit the future of civil legal services, no funding resource idea should be dismissed nor determined as off the table.

New York needs to keep an open mind about how to add resources to civil legal services. In our previous testimony, Victor A. Kovner, the Chair of Modern Courts, outlined a study recently commenced by Modern Courts which compares civil access to justice funding initiatives of various states across the country. The genesis of this report was our belief that New York could benefit from a comparative review of the actions of other states – what are we missing, what might benefit New York and what new ideas have proven successful. Our written

submitted written testimony provided an analysis and statutory references for Pennsylvania, Michigan, Ohio and California and gave a snapshot of Kentucky, Missouri, Maryland and Nebraska. I will not repeat that testimony but simply highlight some similarities.

Many states have discovered that funding of civil legal services at the state level is the most effective way to ensure that the problem does not worsen when federal funding diminishes and economic factors conspire to drain other sources of revenue. In addition to IOLA, which is employed by all 50 states, all of the analyzed states generate a significant portion of funding by directing a portion of court fees to civil legal services. While no state has completely solved the problem of funding, those who have taken aggressive have almost uniformly turned to increases in court fees or to court fee surcharges in order to generate additional revenue. Many states also use supplemental fees, such as a surcharge on attorney registration fees, to augment funding for civil legal services. And, many states have turned to additional fee increases to weather the funding crunch caused by the increasing demand for civil legal services.

Consider the California Commission on Access to Justice which has engaged both the legal and at-large community in addressing the legal needs of the poor. The 25-member commission of lawyers and judges, as well as academic, business, labor and community leaders, was established to explore ways to improve access for low and moderate income Californians and is dedicated to finding long-term solutions to the chronic lack of resources for legal assistance.<sup>1</sup> As mentioned in the notice for today's hearing, a recent recommendation of that Commission which offers a dedicated resource for legal services from fees charged on post

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<sup>1</sup> <http://www.calbar.ca.gov/calbar/pdfs/comcom/CCAJ-Brochure.pdf>

judgment filings became a pilot program in California and while we review the effectiveness of this law, New York could benefit from establishing a similar broad based commission.

Cooperation toward a common goal could advance the many ideas developed during these important hearings – not delay decisions, but provide meaningful solutions and recommendations for action!

Our justice system cannot function efficiently and effectively when there is a lack of consistent and secure resources for civil legal service providers. Legal representation to low income New Yorkers benefits clients, the justice system, and helps prevent costly “crisis” services.

Modern Courts will continue its analysis the progress in other states and will work with other organizations, like the State Bar Association, which have the common goal of supporting civil legal services.

Thank you for your leadership on these issues.

Respectfully submitted,

John R. Dunne  
Vice Chair, The Committee for Modern Courts