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Testimony

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New York State Bar Association

Joint Legislative Public Hearing

on the

Proposed 2016-17 Public Protection Budget

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I am David P. Miranda, President of the New York State Bar Association, the largest voluntary state bar association in the nation. On behalf of our 74,000 members, I thank you for the opportunity to submit testimony regarding the Unified Court System's budget proposal and other issues of importance to both the public and the legal profession.

The State Bar Association, with members skilled in all disciplines of the law, is a statewide voice for the quarter-million attorneys licensed to practice in New York and an advocate for the public interest. Our members are involved in every aspect of the legal system, enabling us to speak from a broad and balanced perspective. We hope you will find our comments constructive as you face the challenges of this budget cycle.

BUDGET OF THE UNIFIED COURT SYSTEM

New York's courts adjudicate millions of disputes, both great and small, and guarantee a "day in court" to everyone, including the weak, the poor and the unpopular serve to resolve business and commercial disputes, which is important to the state's economy and to ensuring that New York continues to be the business, financial and legal center of the world. The courts are also central to our criminal justice system and, and they oversee many varied matters involving family relationships. In short, the court system is crucial to maintaining an orderly society.

New York's courts make up one of the largest and busiest court systems, recognized as the gold standard, not only in the United States, but in the world. The State Bar Association reiterates its longstanding support for an independent and properly compensated judiciary.

We should all be proud of their ability to hear and resolve so many cases in so many different areas of the law.

JUDICIARY BUDGET REQUEST

The Judiciary budget currently seeks cash funding of \$1.9 billion for General Fund State Operations to support court operations.

The State Bar supports funding to ensure full and efficient operation of courthouses. Our courts need to be able to fill critical positions needed to provide effective service to the public, including clerks and court officers. An urgent concern of the State Bar in recent years has been the impact of budget cuts that have resulted in the Judiciary's inability to keep courtrooms open beyond 4:30 pm.

We recognize that keeping courtrooms open later necessarily requires some overtime costs. However, during trials and other courtroom proceedings, there are significant and detrimental costs, especially to those participating in these proceedings resulting from closing the courtroom at 4:30 pm. Further, we have heard from practitioners on the difficulties in recent years of getting their matters heard in anything close to a reasonably timely basis. This is due to significant delays in such routine functions as moving papers and calendaring cases.

Accordingly, the Judiciary's budget for the upcoming fiscal year should provide the resources necessary to ensure that proceedings will not be unduly delayed by staff shortages or be disrupted due to the need to avoid overtime costs.

The Judiciary reports that in recent years the non-judicial workforce has been reduced by approximately 2,000 employees. This reduction has clearly had a significant impact on court security. In many courthouses there have been insufficient court officers and court clerks to fully staff all courtrooms, with a reduction in security and resulting delays in courtroom proceedings. At times back office staff has been needed to open courtrooms, with the result that back office functions are deferred, causing a growing backlog in the processing of judgments and motions. Consequently, budgets in recent years have had a real impact on court operations – an impact felt by litigants and their counsel, by jurors, and by judges and court personnel.

In sum, we urge funding that addresses the severe impact of previous budget cuts on New York's courts and that ensures adequate access for all to the justice system.

Funding Civil Legal Services

I turn now to an issue that has been among the State Bar's highest priorities for many years: funding for civil legal services. Unfortunately, the need for civil legal services continues to be a significant concern.

New York's lawyers have shown their commitment to voluntary pro bono efforts, but proper funding of critically-needed programs and resources is necessary. Pro bono efforts by the bar have been extensive. The bar contributes an estimated two and one-half million hours each year in voluntary pro bono legal services to the indigent. However, these voluntary efforts alone are insufficient to meet current needs. Ultimately, society as a whole, acting through its government, must provide adequate public funding.

In an era when some members of Congress continue efforts to defund the Legal Services Corporation, the need for responsible action in New York State is all the more critical. New York must provide a steady source of funding targeted to ensuring legal representation to protect the "essentials of life" – housing, preventing or escaping from domestic violence, access to health care – reliably and quickly. The New York State Bar Association strongly supports the Judiciary's \$100 million request for civil legal services.

Support for IOLA

The State Bar was one of the original advocates for the formation of the Interest on Lawyer Account ("IOLA") Fund. The IOLA Fund, which was created by the Legislature in 1983, is funded by the interest earned on moneys held by attorneys for clients and deposited in interest-bearing accounts at the discretion of attorneys and law firms. The accumulated interest is transferred to the IOLA Fund, where it is used to provide grants to legal service providers around the state. Concern in recent years has stemmed from the impact that low interest rates have had on the Fund.

For the past several years the Judiciary budget has included a \$15-million allocation for the IOLA Fund to help offset the low revenues due to low interest rates and the number of real estate transactions. We support the inclusion of this item in this year's budget and appreciate the Legislature for its having recognized the importance of this funding in previous years. We strongly urge you to continue your support for this appropriation.

PROPOSED EXECUTIVE BUDGET

INDIGENT CRIMINAL DEFENSE

On January 14, our association was pleased to join with Senator John DeFrancisco and Assemblywoman Pat Fahy to express the Association's support for their legislation -- S.6341/A.6202-B -- regarding funding and oversight of indigent criminal defense services.

Our Association has long been a leader in advocating for the provision of legal services for the poor and otherwise disadvantaged. Over 100 years ago, NYSBA created a special committee dedicated to that issue and endorsed the concept of public defenders to provide representation to indigent criminal defendants.

In 2004, then-Chief Judge Judith S. Kaye created the Commission on the Future of Indigent Defense Services to examine New York State's indigent criminal defense system.

The Commission's 2006 report concluded that there is "a crisis in the delivery of defense services to the indigent throughout New York State and that the right to the effective assistance of counsel, guaranteed by both the federal and state constitutions, is not being provided to a large portion of those who are entitled to it." This finding was both alarming and disheartening.

Since then, there have been developments in New York State to address this issue. In 2010 state leaders created the Office of Indigent Legal Services, an important step that the State Bar Association strongly supported. In 2014 the state entered into settlement in the case of Hurrell-Harring v State of New York, assuming adequate funding in five of New York's 57 counties outside of the City of New York.

The Association continues to urge independent oversight of public defense, quality assurance, support and resources to providers of mandated representation, and continued efforts to assure appropriate funding and reform.

The cornerstone of our system of justice is the principle that all men and women will be treated fairly and equally before the law. As Martin Luther King, whose life we celebrated a short time ago, said, "Injustice anywhere is a threat to justice everywhere."

I continue to urge that the Legislature and the Governor take the next critical step for indigent criminal defense by enacting the Fahy/DeFrancisco bill, as part of the 2016-17 budget, in order to provide state funding to all fifty seven counties outside of New York City and ensure rules and standards for the provision of indigent defense services.

RAISING THE AGE OF CRIMINAL RESPONSIBILITY

New York is one of only two states in which children who are age 16 and over cannot be prosecuted as juvenile delinquents and, consequently, must be prosecuted as adults in the criminal justice system. In all but two states, most children cannot be charged criminally as adults until they attain age 18. The New York Family Court Act's establishment of age 16 as the threshold of adult criminal jurisdiction was deemed to be "tentative" by the relevant Constitutional Convention Commission and subject to change. Recent research has proven conclusively that children under the age of 18 have significantly diminished judgmental capabilities. Children in New York 16 years and over could benefit from programs and services available only for children found to be delinquent in Family Court and hence not convicted in a criminal court.

Last year, The Governor's Commission on Youth, Public Safety and Justice recommended raising the age of criminal responsibility, prosecuting nonviolent youths in Family Court instead of criminal courts, removing minors from adult prisons and making it easier for some juvenile offenders to forever seal their criminal cases. In particular, the plan would provide that the age of criminal responsibility would be phased in in the coming years. This report serves as an excellent basis for resolution of this critical matter.

We recognize that significant budget issues must be addressed in connection with reforms to raise the age of criminal responsibility in New York State. We strongly urge that the Legislature work with the Governor during the current budget process to take the necessary steps to accomplish this long-overdue reform.

FUNDING OF PREPARATORY COMMISSION RE CONSTITUTIONAL CONVENTION

We are pleased that the Governor has recognized the importance of preparing for a possible constitutional convention by including \$1 million in his budget proposal for a preparatory commission.

The people of the state will vote in 2017 on the question of whether to hold a constitutional convention. Such a vote occurs every twenty years under a provision contained in the constitution. Before each vote and convention in the twentieth century, a preparatory commission such as the one proposed by the State Bar Association was established. This occurred in 1914, 1937, 1956, 1965 and 1993.

At its meeting held on November 7, the House of Delegates, the policymaking body of our Association, adopted a report and recommendation from its Committee on the New York State Constitution calling for the state to create a commission to prepare for a convention. A copy of that report may be viewed on the NYSBA website via the following link:
<http://www.nysba.org/nysconstitutionreport>

Historically, commissions did the significant advance work needed to prepare for a convention. In fact, no convention could possibly succeed without such a commission. Many of these commissions did the comprehensive preparatory research necessary, defined the significant issues, issued impartial background papers, and, in some cases, educated the public prior to a vote. I note that the last commission established was in 1993, four years before the 1997 vote.

Time is of the essence. We urge you to work to create a preparatory commission as soon as possible, because we are now less than two years away from the vote.

The State Bar Association is not advocating for or against the holding of a convention. What we are advocating is that the state do all that is necessary to prepare for a convention should the people vote to hold one. Presumably, a majority vote to hold a convention would assume a meaningful convention, and a great deal of preparatory work is required to achieve this objective. Thus, there is a need to act now.

Your approval of sufficient funding for such a commission would be an appropriate step to ensure that any convention would be successfully conducted. With your approval of such a budget, the state would, we hope, be in a position to have a commission begin its work quickly.

PRISONERS LEGAL SERVICES (PLS)

The Governor has included in his proposed Executive Budget funding for an important program that the Association helped initiate after the Attica riot -- Prisoners Legal Services ("PLS").

Based on the concern that prisoners in New York State lacked access to lawyers in order to deal with civil legal matters, the Association, in 1976, helped establish PLS. One year later, the Supreme Court of the United States ruled that the states have an affirmative obligation to ensure that convicted felons have adequate, effective and meaningful access to courts, *Bounds v. Smith*, 430 U.S. 817 (1977). In 1978, the State of New York began to fund PLS as a state program.

PLS helps to provide equal access to our system of justice for those who are incarcerated and would otherwise be deprived of such access. The program reflects one of the State Bar's highest priorities -- the concept that the impoverished or unpopular individuals should be able to invoke the power of the world's most advanced legal system to protect their rights.

We believe that PLS helps inmates resolve problems and that it reduces tensions associated with incarceration. We also believe that PLS helps to foster a sense of fairness, thereby enhancing the positive attitudes and behavior of prisoners. It also helps in the development of sound correctional policy. One of the greatest values of PLS is that it works to avoid the conditions of confinement that resulted in the devastating Attica riot.

PLS is -- and should remain -- a vital, integral part of the state's correctional structure and a critical component of public safety.

We are pleased the Governor has included \$2.2 million for PLS in his proposed budget and we respectfully urge that the Legislature approve adequate funding for PLS in the 2016-17 budget.

CONCLUSION

Access to justice has been the primary focus of my remarks, and it is the centerpiece of the Association's legislative priorities. We submit that the court system should be adequately funded to ensure access to justice for the poor, the weak, and the vulnerable. The ability of an impoverished or unpopular individual to invoke the power of the world's most prestigious legal system to protect his or

her rights is, and should continue to be, a source of great pride and great strength for all New Yorkers. We urge you to remain committed to protecting access to justice and to ensuring the public's trust and confidence in our justice system.