

IOLA Fund of the State of New York
Meeting of the Board of Trustees – New York, NY
March 13, 2024
DRAFT

Present: Chair Davis, Trustees Galowitz and Lindenauer
Public
Videoconference: Trustees Cirando, Dunham, Lopez-Soto, Madigan, Ross, and Villaverde
Staff: Agard, Fecko, and O'Malley
Guests: Laura Abel

1. Call to Order.

The meeting was called to order by Chair Davis at approximately 12:06 p.m.

2. Approval of the minutes of the meetings of the Board of Trustees held on December 6, 2023 and January 24, 2024.

The minutes of the above meetings were reviewed. Trustee Lindenauer moved to approve the minutes, seconded by Trustee Madigan, and the Board approved the motion unanimously.

3. Executive Report

Mr. O'Malley noted that the Governor had amended the FY25 Executive Budget to remove the proposed transfer of \$100 million from the IOLA Fund to the General Fund. In addition to the many individuals and organizations recognized in his report, he expressed his gratitude to the IOLA Board for their collective and individual efforts that brought about this positive result.

Mr. O'Malley also provided an update on the Justice Infrastructure Project, as summarized in his written report, including individual Grantee meetings and a meeting with Judge Richardson, Deputy Chief Administrative Judge for Justice Initiatives, who expressed her enthusiasm for the Project. Mr. O'Malley provided a detailed description of the Maryland Justice Passport, a tool the team learned about recently, and the status of our Listening Sessions with an update to his written report that Unit 7 had been scheduled for April 30. In response to a question, Mr. O'Malley indicated that Board members were welcome to attend the Listening Sessions and that the dates, times, and locations would be circulated. Finally, Mr. O'Malley described plans to do a modest procurement related to security improvements for our Grantees, which will be helpful for collaboration as the Project progresses.

4. Administrative and Financial Report

Ms. Agard reported that the cash on hand as of January 1 was about \$358 million with interest earnings in January of \$19.3 million, grant expenses of \$6.6 million, and administrative expenses of \$171k, leaving over \$371 million on hand as of February 1.

Turning to the interest data, Ms. Agard reported that 168 banks reported in January with a net yield of 2.60%. The \$19.3 million in earnings is a 31% increase over the same period last year and the year-to-date comparison is a 156% increase. The average daily balances and net yield have been holding fairly steady for the last six months.

Reporting on administrative expenses, Ms. Agard noted that the total for January was \$171k and year to date was \$1.831 million, out of a total annual budget of \$1.984 million. Ms. Agard explained that, due to unanticipated expenses related to the Justice Infrastructure Project, the cost of living adjustments, and the search firm, IOLA's total administrative expenses for the fiscal are anticipated to be \$2.1 million, which the Division of Budget had approved.

5. Counsel's Report

Ms. Fecko referenced her written report and highlighted a few items. As to grantee matters, Ms. Fecko noted that she continued to devote significant time to the Justice Infrastructure Project, which Mr. O'Malley already covered. Ms. Fecko noted her participation in now bi-weekly meetings of an ad hoc Newcomers Philanthropy Working Group, organized by the New York Community Trust, to share information about and coordinate support for recent migrants. She also reported on attending a Funders Convening focused on the Newest New Yorkers earlier in the week, hosted by the Economic Development Corporation, with close to 50 people participating from private philanthropy and NYC and NYS offices.

With regard to bar association matters, Ms. Fecko described the recent Fordham Law School symposium on access to justice, which brought in advocates from across the country and many leaders of IOLA Grantees. She noted that the panel on justice worker models offered a particularly helpful discussion about scaling access to justice. Ms. Fecko announced that she would be serving as a panelist on CLE programs on attorney escrow accounts for the NYC Bar (June 27) and the Onondaga County Bar (date TBD). Finally, she announced that the National Association of IOLTA Programs had won the ABA's 2024 Grassroots Award for its support of legal aid, which would be awarded in Washington D.C. in mid-April.

Turning to bank compliance, Ms. Fecko reported that compliance reviews had been completed for 6 more banks with a total annual estimated annual interest increase of \$400k.

Finally, Ms. Fecko referenced her efforts, with Mr. O'Malley, to develop and implement the strategy that mobilized the legal community to oppose the Executive Budget's proposed transfer from the IOLA Fund. She also introduced that, with the assistance of Lawyers Alliance, she has begun researching potential options for changes to IOLA's structure and governance, which will be discussed later in the agenda.

6. Executive Session

Chair Davis made a motion to enter into Executive Session to consider matters relating to the employment of a particular corporation, which was seconded by Trustee Cirando and approved without objection. While in Executive Session, Trustee Cirando made a motion to rescind the Board's decision to award a FY24 & FY25 grant to the Community Development Project, Inc. (d/b/a TakeRoot Justice), which was seconded by Trustee Lindenauer and approved by a vote of 7 in favor and 0 opposed, with Trustee Galowitz abstaining.

7. FY25 Appropriation

Mr. O'Malley described that, in light of increased IOLA revenue and advocacy from the IOLA Fund, the FY25 Executive Budget included an additional \$10 million appropriation for the IOLA Fund. As discussed at prior meetings, the IOLA Board had determined that these additional funds would be distributed as an across the board 10% increase to all current grantees,¹ recognizing that this funding will particularly aid grantees facing increased demands from the migrant crisis and help prepare grantees for the anticipated increase in the FY26 & FY27 grant cycle. Trustee Cirando made a motion to approve the proposed increases to the existing grant contracts, which was seconded by Trustee Lindenauer and approved without objection.

8. Executive Salary

Mr. O'Malley updated the Board on the issue of IOLA's executive salary. The Board's December 6, 2023 resolution on this issue, together with a letter from the IOLA Board Chair, were submitted to the Division of Budget. Over the course of subsequent discussions, however, the Division rejected IOLA's position. After further discussion among members of the IOLA Board, Chair Davis moved to approve a resolution fixing the IOLA Fund's executive salary and authorizing the New York State Comptroller to make appropriate payments, which was seconded by Trustee Cirando and approved without objection.

9. Search Committee Report

Chair Davis made a presentation of the process followed by the Search Committee, comprised of herself and Trustees Madigan and Lopez-Soto, which led to its enthusiastic endorsement of the internal candidate. She described that the Committee vetted three search firms and the full Board selected Koya Partners with a "targeted plus" approach. With Koya's assistance, the Committee completed a needs assessment, developed a position description, and engaged a broad range of stakeholders. Chair Davis noted that, in the course of the Committee's outreach, it received a dozen unsolicited endorsements of IOLA's internal candidate. Koya posted the position and vetted inquires, none of which warranted an interview. The Committee interviewed the internal candidate with nearly all other Board members attending, following which the Committee voted to extend an offer. Trustee Madigan then provided a summary of the Committee's detailed assessment of the internal candidate, followed by Trustee Lopez-Soto summarizing the comments made by the

¹ Mr. O'Malley explained that the recommended amended award for the Lawyers Fund exceeded 10% to account for a calculation error in the original grant award.

interviewers during their discussion of the internal candidate following the interview.

10. Executive Session

Chair Davis made a motion to enter into Executive Session to consider matters relating to the employment history and potential promotion of a particular person, which was seconded by Trustee Galowitz and approved without objection. While in Executive Session, the Board voted unanimously to approve the recommendation of the Search Committee to extend an offer to Christine Fecko to become the next Executive Director of the IOLA Fund.

11. IOLA Options for Restructuring

Ms. Fecko, with contributions from Laura Abel, Senior Policy Counsel with Lawyers Alliance, reviewed four potential options for legislative modifications to IOLA's structure and governance that would safeguard the integrity of IOLA's interest revenue and the dedication of these funds to civil legal services. Additionally, Trustee Madigan recommended consideration of advocacy with the New York State Comptroller to classify the IOLA Fund as a fiduciary fund, as provided for in IOLA's enabling statute. After significant discussion, the consensus of the Board was for the IOLA staff to explore discussions with the Comptroller regarding the Fund's reclassification and discussions with the Governor and Legislative leaders about an amendment to SFL §97-v that would expressly remove the IOLA Fund from the appropriation process. Chair Davis noted that, given the dynamics of this issue, there may be a need for a special meeting of the Board. The Board thanked Ms. Abel for her contributions to the discussion.

12. Next Meeting

The next meeting of the IOLA Board of Trustees will be June 5 at noon in the IOLA Fund offices.

There being no further business before the Board, the meeting was adjourned at approximately 2:09 p.m.

Respectfully submitted,
Christopher B. O'Malley
Executive Director