



New York Bankers Association

**STATEMENT OF MICHAEL P. SMITH
PRESIDENT & CEO
NEW YORK BANKERS ASSOCIATION
BEFORE
THE HONORABLE JONATHAN LIPPMAN
CHIEF JUDGE OF THE STATE OF NEW YORK**

September 28, 2010

Good morning, Judge Lippman, Judge Pfau, Judge Gonzalez, and Mr. Younger. My name is Michael P. Smith and I am President and CEO of the New York Bankers Association (NYBA). Our Association is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State, employing over 200,000 New Yorkers.

I welcome the opportunity to testify today to voice NYBA's support for expansion of access to civil legal services. We believe that legal representation for those who cannot otherwise afford to have counsel in civil litigation not only enhances a fair outcome, but also greatly decreases the amount of time needed to resolve disputes. Such efficiencies help courts more speedily address their overburdened dockets, provide resolution to all litigants in a more timely manner, and ultimately, we believe, save time and resources for all.

NYBA and its members have long worked to support financially challenged New Yorkers. For example, we supported the creation of the basic banking account, an innovative response to reach out to the unbanked. We support and participate in numerous financial education initiatives, have programs in place to protect elderly citizens against financial abuse, and over the last few years have offered New Yorkers an array of program initiatives designed to help them with mortgage-related issues and concerns.

In this regard, the basic banking account, available to all New Yorkers, is a low-cost bank account with very low maintenance and opening fees. The account also features a one-cent minimum balance requirement – a great help for low-income New Yorkers who sometimes find that high minimum balance requirements are a barrier to mainstream financial services. NYBA consistently voices its support for this program in testimony and when working with the State Legislature and the State Banking Department.

Another area in which the bank members of the New York Bankers Association work cooperatively with social services providers and law enforcement is that of “financial abuse of the elderly.” Banks and thrifts around the State of New York have trained their frontline staff to identify instances where our elderly and vulnerable neighbors might be taken advantage of by criminals, con artists, and sometimes even by their own family members or other caregivers. As our U.S. population ages, financial services professionals are strengthening their response to better serve their senior customers.

Ultimately, financial literacy is the best safeguard to mitigate the need for legal aid in the consumer area. To that end, the New York Bankers Association and its global financial literacy and empowerment partner, Operation HOPE, recruit and deploy more than 12,000 volunteer

bankers to teach students and adults the basics of credit and money management. More than 10,000 New Yorkers each year complete some form of the program. Operation HOPE also offers foreclosure and debt counseling, as well as assistance with federal small business lending programs.

Throughout this period of increased foreclosures, the New York Bankers Association has supported various programs and initiatives aimed at helping homeowners avoid foreclosure. As early as 2002 NYBA, along with U.S. Senator Schumer, began a dialogue with local community leaders and banks on the causes for many citizens choosing to enter into high-cost mortgages with non-banks, and created the HELP program. HELP was designed to bridge the communications gap between traditional banks and low- to moderate- income households and to break the grip of predatory lenders in certain neighborhoods. Additionally, NYBA has consistently worked with State and federal legislators and regulators for many years to develop meaningful high-cost and subprime lending legislation, designed to protect consumers while not limiting credit availability in the State. As a result of these efforts, mortgage legislation was enacted as far back as 2003, which we believe helped to significantly reduce the number of foreclosures in New York and enables us today to rank 40th among all 50 states in foreclosures.

In June 2008, NYBA supported a foreclosure mitigation initiative of the Office of Court Administration, spearheaded by your predecessor Chief Judge Judith Kaye, which sought to make settlement conferences more productive for all parties – the homeowners, the lenders, and the court system. Unfortunately, as you know, despite these efforts, as the number of foreclosure actions increased, lenders and the courts found themselves more and more back-logged with cases. Many settlement conferences continued to be adjourned after the first meeting, citing inadequate preparation. Volunteer lawyers in Brooklyn say that in that borough alone, half of all foreclosure cases require a *pro bono* attorney. A 2009 report of the Center for New York City Neighborhoods found that, after the first conference was adjourned, many homeowners wisely used the opportunity to seek counsel from legal aid services. The number of free legal aid providers expanded in response to this need in the community with many new volunteer initiatives springing up, resulting in more productive conferences. These services are now more often being used prior to the first settlement conference – with homeowners now less fearful of intimidating court environments and unfamiliar legal terminology. When distressed homeowners are able to find resolution in a timely manner, there is less chance of properties falling into disrepair and neighborhoods declining. The toll on a family of a long, drawn-out proceeding can also be avoided.

Legal aid services, however, have become overwhelmed by the caseload of foreclosure proceedings. In response, the Federal Reserve Bank of New York and the New York City Bar Association have launched a volunteer-effort called the Lawyers' Foreclosure Prevention Network, to supplement, on a *pro bono* basis, the number of lawyers available to homeowners in foreclosure. To facilitate this worthwhile program, financial institutions have waived, to the extent possible, conflicts of interest that arise in the representation of distressed homeowners, allowing their own counsel to work on behalf of those facing foreclosure.

As we have stated above, NYBA fully supports access to legal services for low-income New Yorkers. In fact, our member banks and our colleagues, including Citi, JPMorgan Chase and nationally renowned bank attorney Rodgin Cohen of Sullivan & Cromwell, were recently honored for their continuing commitment to legal aid services.

We are also aware that historically a significant portion of the funding for such services stem from revenues accumulated in the Interest on Lawyer Account (IOLA) Fund, which, in light of the current interest rate environment, is under great financial pressure. In fact according to testimony provided by IOLA's President Benito Romano at a hearing earlier this year, IOLA's revenues are down 75% over the last two years. While we understand that this is a significant challenge, we wish to express our strong belief that changes to the rules which set forth the standards for IOLA accounts (see Part 7000 of 21 NYCRR) not be considered as a means of addressing the IOLA

Fund's revenue shortfall. Any such rule change, we believe, could have the unintended consequence of limiting the number of banks who offer IOLA accounts to attorneys.

Section 497(6)(b) of New York's Judicial Law requires attorneys to deposit certain client funds into IOLA accounts for which participating banking institutions pay an interest rate not less than the rate paid on "similar accounts" and which do not impose charges or fees greater than those imposed on such similar accounts. As you know, IOLA earns the interest income net of any fees on these accounts and awards that money to civil legal aid organizations throughout New York State. Although banks are not mandated to offer IOLA accounts and despite the significant constraints placed on such accounts – including mandated interest rates and fee limitations – approximately 200 New York banking institutions (more than 90% of the banks in New York) do offer them. We believe this is strong evidence of the banking industry's commitment to supporting access to legal services for all.

However, in the hopes of increasing IOLA revenues, the IOLA Board has twice in the last few years amended its rules. In this regard, in 2007, the Board effectively increased the interest rates paid on IOLA accounts by broadly interpreting the statutory requirement that the interest rate payable on IOLA accounts be not less than the rate paid by the bank on "similar accounts." This interpretation resulted in banks being required to deem accounts they do not believe to be similar (such as money market accounts with or tied to check writing capability and many open-end money market funds) to inappropriately be deemed "similar" for interest-setting purposes.

Additionally, among other things, the 2007 amendments to the Board's rules added a "best customer" standard for the interest paid on such accounts, thereby requiring that the interest rate paid on an IOLA account must be at least as great as the rate the bank offers its best customers on similar accounts at that bank – a requirement for which there is no basis in the governing statute. The rule further established a requirement for attorneys that they establish IOLA accounts only in "eligible banks" although there is no such mandate in the underlying law. In fact the governing law specifically states that an attorney may establish an IOLA account "in a banking institution, of the choice of the attorney." Thus, the rule, without ostensible legal authority, limited the choices that an attorney has when selecting a financial institution for IOLA account purposes.

In 2010, the Board further revised its interest rate options to establish a 1% interest rate floor as one of the options banks may utilize when setting IOLA account interest rates – specifically, the option that ties IOLA rates to the Federal Funds Target Rate. Any further restrictions placed on IOLA accounts could, no doubt, result in limiting the number of banks offering this service, creating inconvenience and a lack of choice for attorneys required to set up IOLA accounts and ultimately undermining the success of a program in which the vast majority of banking institutions today voluntarily participate.

In summary, I wish to emphasize that the banking industry fully supports the increased availability of legal aid services to New Yorkers in need, and has a long history of meaningful support. In addition, the banking industry will continue to play a leading role in financial literacy initiatives in New York, as a way of mitigating future need for legal aid in many consumer service areas. Nevertheless, the financial challenges associated with the IOLA funding mechanism at this time should not result in additional burdens for the more than 90% of financial institutions in our State that offer IOLA accounts. We believe that to do so could discourage and even jeopardize the participation of banks in this critical and worthwhile cause. The Association pledges to expand efforts to expand our membership's activity in support of legal aid services through direct grants or volunteer and in-kind services. We believe this is the best and most effective approach in these difficult economic times.

Thank you.