



NYS Salary Commission <nyscompensation@gmail.com>

IOLA Fund of New York Salary Issue: For Chair Eugene Fahey (Please Forward)

Mary Rothwell Davis <davismcr@me.com>

Wed, Oct 30, 2024 at 9:00 AM

To: [REDACTED]
Cc: nyscompensation@gmail.com

[Interest on Lawyer Account Fund](#)
[of the State of New York](#)
[Funding Civil Legal Assistance for Low-Income New Yorkers Since 1984](#)

Via Email Only [REDACTED]
Hon. Eugene Fahey, Chair
NYS Commission on Legislative, Judicial & Executive Compensation
[64 Beaver Street](#)
Box 454
New York, NY 10004

Dear Chair Fahey:

I am chair of the IOLA Fund of New York, reappointed this past year by Chief Judge Wilson. In this capacity, I seek your and the Commission's help in sorting out the status of our Executive Director's salary. The Fund is a fiduciary fund with unique legislative authorization and regulations; our revenue comes solely from private attorney escrow accounts. This status places the Fund on somewhat different footing from most other state agencies; at times this leads to complexities; this is one such instance.

Our enabling statute very clearly confers sole power on the IOLA Board to set the Fund's employee salaries (State Finance Law Section 97-v (3)(f)). Over time, however, the Division of Budget has treated our ED position as falling under the tier system of Executive Law § 169. Notably, the agencies subject to that provision are enumerated; the IOLA Fund is not among them. More critically, the current designation of our executive director position as "Tier D" has suppressed the salary for the position. Thus when our long-time general counsel, Christine Fecko, was promoted to Executive Director, her salary increase was negligible, despite unanimous board approval of a meaningful increase.

We have attempted to sort this out with both the Comptroller's Office and the Division of Budget, as set forth in the attached correspondence with Director Blake Washington, but thus far have not succeeded. We are very keen to achieve a resolution of this matter and would like to establish our sole authority to set salaries for the Fund employees, as authorized by our governing statute. Your guidance and assistance would be deeply appreciated and I would be very pleased to discuss the matter with you or a Commission representative.

With thanks,

Mary Rothwell Davis
IOLA Fund of New York Board Chair
212-810-0345

Cc: nyscompensation@gmail.com; cfecko@iola.org

Begin forwarded message:

From: Mary Rothwell Davis <davismcr@me.com>
Subject: Letter from Board Chair: IOLA Fund Salary Issue
Date: May 31, 2024 at 9:16:31 AM EDT
To: [REDACTED] budget.ny.gov
Cc: [REDACTED]

Interest on Lawyer Account Fund
of the State of New York
Funding Civil Legal Assistance for Low-Income New Yorkers Since 1984

May 30, 2024

Via Email Only ([REDACTED]@budget.ny.gov)

Blake G. Washington, Director
NYS Division of the Budget
State Capitol Building
Albany, NY 12210

Dear Director Washington:

I am the Chair of the Board of Trustees of the Interest on Lawyer Account Fund of the State of New York ("IOLA"). IOLA is a unique entity that is funded not through state revenue, but through the New York State bar's participation in a common fund created from the interest on attorney escrow accounts. These funds are directed to IOLA on the understanding and condition that they will be dedicated to the furtherance of civil legal services in this state.

The sole legislative statement on fixing of the salary of IOLA personnel is that of State Finance Law Section 97-v(3)(f), which provides that the IOLA Board "may employ...such personnel as it may deem necessary for the performance of its functions and fix their compensation" [emphasis added]. The statute further provides that "all payments from the IOLA fund shall be made by the State Comptroller upon certification and authorization of the Board of Trustees of the Fund" [emphasis added]. Commensurate with this authority, the Board of Trustees of the IOLA Fund has voted unanimously to increase the salary of its Executive Director. See attached Resolutions dated December 6, 2023 and March 13, 2024.

The Board of the IOLA Fund strongly objects to the Division of Budget's (DOB) substitution of its authority and judgment for that of the IOLA Board in setting the salary of our Executive Director. The action of the DOB is contrary to law.

In response to the request of the IOLA Executive Director for payment in accordance with the IOLA Board of Directors' certification and authorization of this salary, DOB initially informed IOLA that it had classified IOLA as a Tier D entity under Executive Law 169. Because the proposed increase would exceed the salary amount allotted for designated Tier D leaders, the DOB declined to implement the requested increase.

The effort to fold officers of the IOLA Fund into the Executive Law 169 tier system was overreach. Executive Law 169, in its preamble, expressly limits its application to "[s]alaries of certain state officers holding the positions indicated hereinbelow"; IOLA is not included among the state officers covered by the provision. By limiting the state officers covered by Executive Law 169 to those enumerated, the statute implicitly excludes other state officers. The Legislature could have included the IOLA Fund among the entities identified in that salary scheme, but it did not. Thus, State Finance Law Section 97-v (3)(f) remains the sole legislative authority for setting the salary of IOLA Fund officers, and that determination rests with the Fund's Board of Directors. The Division of Budget's effort to substitute its own judgment is contrary to law.

In response to our subsequent outreach directly to the Office of the State Comptroller (OSC) to implement the salary increase, OSC conferred with DOB which asserted a new rationale for rejecting the IOLA Board's salary certification. It now proposed that under State Finance Law §44, the Division of Budget had authority to set the salary of the Executive Director of the IOLA Fund. See email dated May 17, 2024 from Jessica Sorrendino, Assistant Counsel, OSC to Christopher O'Malley, Executive Director, IOLA.

This action would also be contrary to law. State Finance Law §44 provides that the director of the budget "may" set the "salary or compensation of any officer or employee, when not prescribed by law." By express statute, however, setting of the salary of an employee of the IOLA Fund is prescribed by law—indeed, by a different chapter of the very same State Finance Law, State Finance Law §97-v(3)(f). That provision had long been in effect at the time State Finance Law §44 was enacted. Had the Legislature intended to supersede the provisions governing the IOLA Fund and the scope of power of its board of directors in setting salaries, it could easily have done so. But it did not. The compelling inference is that setting of salaries within the IOLA Fund is prescribed by State Finance Law §97-v(3)(f).

Moreover, the DOB has not previously invoked State Finance Law §44 in its communications with our office about salaries. The statute, in subsection (3), requires a certification process. To the best of our knowledge, IOLA has never participated in this process or been asked to do so. Indeed, Attachment 1 to Budget Bulletin

D-0250, effective March 19, 2024, does not include IOLA in its list of state entities requiring Budget Director approval pursuant to State Finance Law §44. Thus, the assertion that IOLA salaries have been governed by this provision is not supported by history and practice.

A framework of vesting salary decisions with the IOLA board makes sense when one recalls that the funds to be allocated to pay these salaries are not allocated from state revenue but from private, specially designated funds dedicated by the State bar and its cooperating banks.

The Legislature has expressly mandated that the State Comptroller comply with all payments from the IOLA Fund upon certification and application from its Board. Payment of the Executive Director's salary is such a payment from the Fund. Therefore, the Comptroller must comply with the Board's application for an annual salary of \$205,000 for its Executive Director, which the Board has unanimously found to be an appropriate level of compensation.

I would be very happy to meet with you or discuss this matter further at your convenience.

Sincerely,

Mary Rothwell Davis
Chair, The IOLA Fund of New York Board of Directors
212-810-0345
davismcr@me.com

Enclosures

CC: James Dewan, DOB [REDACTED]
Wil Tomlin, Director, Bureau of State Payroll Services, OSC [REDACTED]
Jessica Sorrendino, Assistant Counsel, OSC [REDACTED]

Attachments:

3 attachments

 **pastedGraphic.png**
7K

 **IOLA Resolution (3.13.24).pdf**
194K

 **IOLA Resolution (12.6.23).pdf**
29K

**MEETING OF THE BOARD OF TRUSTEES
OF THE IOLA FUND OF NEW YORK
December 6, 2023**

RESOLUTION

WHEREAS, Section 169 of New York Executive Law sets the salaries for commissioners, agency heads, and other specified positions;

WHEREAS, the New York State Committee on Legislative and Executive Compensation, established by Chapter 59 of the Laws of 2018, simplified the Executive Law 169 structure to have four categories of commissioners and authorized the Executive, through the Division of Budget, to set forth a plan for classifying state entities into the four categories, referred to as Tiers A-D;

WHEREAS, the IOLA Fund recently was informed that it had been classified as Tier D;

THEREFORE, BE IT RESOLVED that the Board of Trustees of the IOLA Fund of New York supports the classification of the IOLA Fund as Tier B;

BE IT FURTHER RESOLVED that the Board authorizes IOLA staff to take any actions necessary and appropriate to ensure the reclassification of IOLA within the tier system for Executive Law 169.

Motion by:

Paula Galowitz

Seconded by:

Kate Madigan

Vote:

6-0-1

Vote Recorded by:

Christine Fecko

New York, New York
December 6, 2023

**MEETING OF THE BOARD OF TRUSTEES
OF THE IOLA FUND OF NEW YORK
March 13, 2024**

RESOLUTION

WHEREAS, Section 169 of New York Executive Law sets the salaries for certain commissioners, agency heads, and other specified positions, which Law does not include any reference to the IOLA Fund (a copy of §169 is attached hereto as Exhibit A);

WHEREAS, the New York State Committee on Legislative and Executive Compensation (the “Committee”), established by Chapter 59 of the Laws of 2018, simplified the Executive Law 169 structure to have four categories of commissioners and authorized the Executive, through the Division of Budget, to set forth a plan for classifying state entities into the four categories, referred to as Tiers A-D (the “Plan”), which Plan was set forth in the Committee’s Report dated December 10, 2018 and in Payroll Bulletin 1935 (issued August 19, 2021) which does not include any reference to the IOLA Fund (a copy of the Plan is attached hereto as Exhibit B);

WHEREAS, the Division of Budget informed the IOLA Fund that, notwithstanding that §169 did not refer to the IOLA Fund, it had classified the IOLA Fund as falling within Tier D of the Plan, which provides for a maximum salary of \$170,000;

WHEREAS, IOLA’s current Executive Director was hired in 2009 at a salary of \$145,000, which would be the equivalent of \$205,000 in today’s dollars and would align with the salary for Tier B of the Plan;

WHEREAS, IOLA’s Executive Director salary is currently \$178,000, which represents a significant decrease in compensation in real dollar terms, and IOLA’s overall salary structure is severely compressed. With the 3% salary increases in FY24 and FY25, the difference between the salaries of IOLA’s Executive Director and its second highest employee will be less than \$2,000;

WHEREAS, at its meeting of December 6, 2023, the Board of Trustees of the IOLA Fund of New York passed a resolution supporting IOLA’s classification as Tier B under the Plan and authorizing IOLA staff to pursue this reclassification;

WHEREAS, after submission of the IOLA Board’s December 6, 2023 resolution, the Division of Budget informed the IOLA Fund that it would continue to treat the IOLA Fund as if it were within Tier D under the Plan;

WHEREAS, the IOLA Fund enabling statute, State Finance Law §97-v (3)(f), (h), provides that the IOLA Board

may employ ... such personnel as it may deem necessary for the performance of its functions and fix their compensation within the amounts made available therefor

and further provides that

[a]ll payments from the IOLA fund *shall* be made by the state comptroller upon certification and authorization of the board of trustees of the fund” (emphasis added);

THEREFORE, BE IT RESOLVED that the Board of Trustees of the IOLA Fund of New York fixes the salary of the IOLA Fund Executive Director to be no less than \$205,000 with any future increases to result in a base salary no less than that of agency heads under Tier B of the Plan; and

BE IT FURTHER RESOLVED that the Board of Trustees of the IOLA Fund of New York certifies and authorizes the New York State Comptroller to make salary payments from the IOLA Fund in accordance with the terms of this resolution.

Motion by: Mary Davis
Seconded by: John Cirando.
Vote: 8-0-0
Vote Recorded by: Christine Flecko

New York, New York
March 13, 2024

EXHIBIT A

§ 169. Salaries of certain state officers

1. Salaries of certain state officers holding the positions indicated hereinbelow shall be as set forth in subdivision two of this section:

(a) commissioner of corrections and community supervision, commissioner of education, commissioner of health, commissioner of mental health, commissioner of developmental disabilities, commissioner of children and family services, commissioner of temporary and disability assistance, chancellor of the state university of New York, commissioner of transportation, commissioner of environmental conservation, superintendent of state police, commissioner of general services and commissioner of the division of homeland security and emergency services;

(b) commissioner of labor, chairman of public service commission, commissioner of taxation and finance, superintendent of financial services, commissioner of criminal justice services, and commissioner of parks, recreation and historic preservation;

(c) commissioner of agriculture and markets, commissioner of alcoholism and substance abuse services, adjutant general, commissioner and president of state civil service commission, commissioner of economic development, chair of the energy research and development authority, president of higher education services corporation, commissioner of motor vehicles, member-chair of board of parole, chair of public employment relations board, secretary of state, chair of the state racing and wagering board, commissioner of alcoholism and substance abuse services, executive director of the housing finance agency, commissioner of housing and community renewal, executive director of state insurance fund, commissioner-chair of state liquor authority, chair of the workers' compensation board;

(d) director of office for the aging, commissioner of human rights, commissioners of the department of public service, chairman of state commission on quality of care for the mentally disabled, chairman of commission on alcoholism and substance abuse prevention and education, executive director of the council on the arts and executive director of the board of social welfare;

(e) chairperson of state athletic commission, director of the office of victim services, chairperson of human rights appeal board, chairperson of the industrial board of appeals, chairperson of the state commission of correction, members of the board of parole, member-chairperson of unemployment insurance appeal board, director of veterans' services, and vice-chairperson of the workers' compensation board;

(f) executive director of adirondack park agency, members of state commission of correction, members of unemployment insurance appeal board, and members of the workers' compensation board.

2.

(a) Effective January first, nineteen hundred ninety-nine, the annual salaries of the officers holding the positions indicated in subdivision one of this section shall be as follows: for the positions listed in paragraph (a), \$136,000; in paragraph (b), \$127,000; in paragraph (c), \$120,800; in paragraph (d), \$109,800; in paragraph (e), \$101,600; and in paragraph (f), \$90,800.

(b) Notwithstanding any of the foregoing provisions of this section to the contrary, an incumbent in a position (i) listed in former section one hundred sixty-nine of the executive law in effect on the day prior to the effective date of this subdivision, or (ii) listed in this section, or (iii) covered by a provision of law other than such section, shall not receive compensation in an amount less than such person received on the effective date of this section.

3. Notwithstanding any other provision of this section or any other provision of law, the boards of trustees of the state university of New York and the city university of New York shall each establish and implement salary plans for the chancellors, presidents and senior staffs of such state and city universities, respectively. The board of regents shall establish and implement a separate salary plan for the president of the university of the state of New York, setting forth the compensation to be received by the president for performing the duties of that office assigned by the rules of the regents or statute, which shall be in addition to the compensation received by such person pursuant to the provisions of subdivisions one and two of this section. Such salary plans shall be developed after consultation with the governor's office of employee relations and the division of the budget. Any increase in compensation for the positions set forth in this subdivision, not otherwise funded from any appropriation, shall be funded from reallocations of funds within the appropriations specifically identified by the aforementioned boards. Each board of trustees and the board of regents shall file a proposed salary plan report with the chairs of the senate finance committee and the assembly ways and means committee and the director of the budget at least sixty days prior to the effective date of such salary plan. Each salary plan report shall set forth the salary schedule, the dollar value of additional public compensation and other employment benefits that such positions would receive, the specific sources of funding to be reallocated for salary increases, the amount of increase to be provided to each position, the comparison salary data on which the plan is based, and such other

NY EXC Law 169 Salaries of certain state officers (Laws of New
York (2024 Edition))

information as the boards of trustees and the board of regents deem appropriate.

History:

Amended by New York Laws 2019, ch. 56, Sec. AA-2-a, eff. 4/12/2019.

EXHIBIT B

Executive Law Section 169 Salaries -- Effective January 1, 2021				
Tier A -- \$220,000	Tier B -- \$205,000	Tier C -- \$200,000	Tier D	Tier D -- Salary
Commissioner of Corrections and Community Supervision	Commissioner of Labor	Executive Director of the State Gaming Commission	Director of Office for the Aging	\$170,000
Commissioner of Education*	Commissioner of Taxation and Finance	Commissioner of Agriculture and Markets	Commissioner of Human Rights	\$170,000
Commissioner of Health	Commissioner of Criminal Justice Services	Commissioner of Alcoholism and Substance Abuse Services	Chairman of Human Rights Appeal Board	\$170,000
Commissioner of Mental Health	Commissioner of Parks, Recreation and Historic Preservation	Adjutant General	Executive Director of the Council on the Arts	\$170,000
Commissioner of Developmental Disabilities	Chairman of Public Service Commission	Commissioner and President of State Civil Service Commission	Director of the Office of Victim Services	\$170,000
Commissioner of Children and Family Services		Commissioner of Economic Development	Director of Veterans' Affairs	\$170,000
Commissioner of Temporary and Disability Assistance		President of the Higher Education Services Corporation	Executive Director of Adirondack Park Agency	\$170,000
Chancellor of the State University of New York**		Commissioner of Motor Vehicles	Chairman of State Commission on Quality of Care for the Mentally Disabled/Justice Center	\$170,000
Commissioner of Transportation		Secretary of State	Chairman of State Athletic Commission	\$170,000
Commissioner of Environmental Conservation		Executive Director of the Housing Finance Agency / Commissioner of Housing and Community Renewal***	Chairman of the Industrial Board of Appeals	\$170,000
Superintendent of State Police		Executive Director of State Insurance Fund	Commissioners of the Department of Public Service	\$170,000
Commissioner of General Services		Chair of the Energy and Research Development Authority	Members of the Board of Parole	\$170,000
Commissioner of the Division of Homeland Security and Emergency Services		Member-Chair of Board of Parole	Vice-Chairman of the Workers' Compensation Board	\$170,000
Superintendent of the Department of Financial Services		Chair of Public Employment Relations Board	Members of the Workers' Compensation Board	\$159,200
		Commissioner-Chair of State Liquor Authority	Member-Chairman of Unemployment Insurance Appeal Board	\$170,000
*requires Board of Regent action for role as SUNY President			Members of Unemployment Insurance Appeal Board	\$159,200
**requires SUNY Board Action			Chairman of the State Commission of Correction	\$170,000
		***requires HFA Board action	Members of State Commission of Correction	\$159,200
			Defunct - Chairman of Commission on Alcoholism and Substance Abuse Prevention and Education Executive Director of the Board of Social Welfare	