

AUDIT REPORT



CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
BUREAU OF FINANCIAL AUDIT
WILLIAM C. THOMPSON, JR., COMPTROLLER

Audit Report on the Financial and Operating Practices of the Richmond County Public Administrator's Office July 1, 2006–June 30, 2008

FN09-097A

December 30, 2009



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, N.Y. 10007-2341

WILLIAM C. THOMPSON, JR.
COMPTROLLER

To the Citizens of the City of New York

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has reviewed the effectiveness of the financial and operating practices of the Richmond County Public Administrator's Office (RCPA).

The RCPA is responsible for administering the estates of decedents in the borough of Staten Island. As the estate administrator, the RCPA makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, searches for possible heirs, and files tax returns on behalf of the decedents. We audit public offices such as this as a means of insuring that their operating practices follow applicable laws and guidelines fairly and consistently.

The results of our audit, which are presented in this report, have been discussed with RCPA officials, and their comments have been considered in preparing this report. Their complete written response is included in this report.

I trust that this report contains information that is of interest to you. If you have any questions concerning this report, please e-mail my audit bureau at audit@Comptroller.nyc.gov or telephone my office at 212-669-3747.

Very truly yours,

A handwritten signature in black ink, appearing to read "Will C. Thompson, Jr.", with a long horizontal flourish extending to the right.

William C. Thompson, Jr.

WCT/fh

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Table of Contents

AUDIT REPORT IN BRIEF	1
Audit Findings and Conclusions	1
Audit Recommendations	2
INTRODUCTION	3
Background.....	3
Objective.....	4
Scope and Methodology	4
Discussion of Audit Results	5
FINDINGS	6
\$813,961 Improperly Deposited and Safeguarded.....	6
Monthly Bank Reconciliations Not performed	7
Lack of Segregation of Duties	8
\$21,510 in Excess Legal Fees Charged to Estates	8
Inadequate System for Tracking and Recording Estate Information	9
Annual Independent Audit Not Performed.....	9
RECOMMENDATIONS	10
APPENDIX Analysis of Funds in Excess of FDIC	
ADDENDUM Richmond County Public Administrator’s Office Response	

*The City of New York
Office of the Comptroller
Bureau of Financial Audit*

**Audit Report on the Financial and Operating Practices of the
Richmond County Public Administrator's Office
July 1, 2006–June 30, 2008**

FN09-097A

AUDIT REPORT IN BRIEF

This audit determined whether the Richmond County Public Administrator's Office (RCPA) complied with Article 11 of the New York State Surrogate's Court Procedures Act, the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators, and other applicable City and State laws and regulations.

The RCPA handles the estates of decedents in the borough of Staten Island who die without a will, a personal representative, known heirs, or heirs not qualified to administer the estates. As the estate administrator, the RCPA makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, searches for possible heirs, and files tax returns on behalf of the decedents.

During Fiscal Years 2007 and 2008, the RCPA reported a total of 520 open estates valued at approximately \$6.4 million. For Fiscal Year 2007, the RCPA reported total expenses in the amount of \$348,095, consisting of \$327,872 in Personal Services (PS) and \$20,223 in Other than Personal Services (OTPS). For Fiscal Year 2008, it reported total expenses of \$361,714, consisting of \$338,248 in PS and \$23,466 in OTPS. The RCPA's Office employed five full-time staff members, including the Public Administrator and Deputy Public Administrator.

Audit Findings and Conclusions

The RCPA adequately handled certain estate management responsibilities, including the filing of the required monthly suspense account report with Surrogate's Court, ensuring that expenses funded by the suspense account were appropriate and necessary for the administration of the estates, and submitting monthly reports to the City Comptroller's Office.

However, our audit found some issues of concern. Specifically, the RCPA improperly maintained checking accounts in the RCPA's name totaling \$813,961, did not allocate the funds in checking accounts to the corresponding estates, and maintained average monthly balances that exceeded the FDIC insurance limit. In addition, there were significant inadequacies in RCPA's

internal control procedures as they relate to the recording and reporting of the estate funds, payment of legal fees to estates, tracking the progress of each estate, reconciling the books and bank account balances, and segregating key responsibilities.

Audit Recommendations

To address these issues, we make six recommendations, that the RCPA:

- Immediately close all checking accounts under the RCPA's name and ensure the checking accounts are reopened under the names of the appropriate estates.
- Reconcile all bank accounts with the estates, and ensure the estate assets are accurately reported.
- Monitor all bank balances to ensure they are within the FDIC insurance limit.
- Ensure that affidavits of work are submitted and reviewed before payments are made to attorneys.
- Develop a system to monitor cases adequately, including the use of a "tickler" function that would inform the RCPA of any unusual delays in estate administration and allow for the prompt and appropriate action to be taken.
- Conduct an annual independent audit and properly address all recommendations in a timely fashion.

INTRODUCTION

Background

The offices of New York City's five Public Administrators (PAs) are municipal agencies headed by court administrators appointed by the New York State Surrogate's Court. PA offices are responsible for administering the estates of individuals who die without a will, a personal representative, known heirs, or heirs not qualified to administer the estates. There is one PA office for each county of the City. PA offices are funded by the City as well as by fees collected from the estates they administer.

The functions of the PA offices are governed by Article 11 of the New York State Surrogate's Court Procedures Act (SCPA), the Report and Guidelines of the Administrative Board (Administrative Board Guidelines) for the Office of the Public Administrators, and reporting requirements established by New York City Comptroller's Directives. These publications contain guidelines for accounting and reporting, record keeping, and other administrative functions such as the handling of cash, property and other assets, maintenance of suspense (imprest) accounts, payments of legal and other fees, and the initial inspection of decedents' premises. In addition, Article 11 of the SCPA requires PA offices to pay into the City treasury all commissions and costs received by them from any source, file monthly account information on estates that have been closed or settled, make all books and records available to the City Comptroller for examination, and have an annual audit of the office performed by an independent certified public accountant (CPA).

PA offices must file an "informatory accounting" with Surrogate's Court for estates with a gross value of between \$500 and \$20,000. For large estates, those with gross values over \$20,000, PA offices are required to petition to the court for Letters of Administration, file a final accounting documenting all income and expenses associated with the estates, and obtain a decree from the Surrogate's Court Judge detailing how the estates are to be distributed.

The SCPA guidelines authorize PA offices to charge each estate an administrative fee of up to one percent of the gross value of the estate and to maintain a suspense account. That amount is deposited in a separate bank account and is used to supplement the PA office's budget appropriated by the City.

The Richmond County Public Administrator's Office (RCPA) handles the estates of decedents in the borough of Staten Island. As the estate administrator, the RCPA makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, searches for possible heirs, and files tax returns on behalf of the decedents.

During Fiscal Years 2007 and 2008, the RCPA reported a total of 520 open estates valued at approximately \$6.4 million. For Fiscal Year 2007, the RCPA reported total expenses in the amount of \$348,095, consisting of \$327,872 in Personal Services (PS) and \$20,223 in Other than Personal Services (OTPS). For Fiscal Year 2008, it reported total expenses of \$361,714 consisting of \$338,248 in PS and \$23,466 in OTPS. The RCPA employed five full-time staff members, including the Public Administrator and Deputy Public Administrator.

Objective

The objective of this audit was to determine whether the RCPA complied with Article 11 of the New York State Surrogate's Court Procedures Act, the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators, and other applicable City and State laws and regulations.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. This audit was conducted in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

The scope of this audit was July 1, 2006, through June 30, 2008. To gain an understanding of the policies, procedures, and regulations governing the RCPA, we reviewed Article 11 of the New York State Surrogate's Court Procedures Act, Administrative Board Guidelines, applicable Comptroller's Directives, and other related City and State regulations. In addition, we conducted a walkthrough of the RCPA's operations and interviewed the RCPA staff to gain an understanding of the office's practices related to the handling of estate accounts and the suspense account.

To assess the RCPA's compliance with the Administrative Board Guidelines related to the accounting procedures for handling estates, we reviewed all 520 open estates maintained by the RCPA from fiscal years 2007 through 2008. We assessed whether each estate valued at more than \$500 was accounted for separately, as required by the guidelines. We then judgmentally selected all 25 estates with values in excess of \$20,000 that were opened for longer than two years, totaling \$3.8 million, or 59 percent, of the total value of the estates under the RCPA's administration. For each sampled estate, we reviewed the account ledger and supporting documentation to determine whether:

- Proper procedures were followed for the inspection of decedents' residences and collection of decedents' personal property.
- Proper procedures were followed for the sale of decedents' personal property.
- All required documents were in each estate file.
- There was supporting documentation for all estate receipts and disbursements.
- Estate and fiduciary tax returns were filed.
- Appropriate commissions and fees were charged to the estates.
- Estate accounts were insured by the Federal Insurance Deposits Corporation (FDIC).
- Estate bank accounts were reconciled.

To assess the RCPA's internal controls over decedents' properties, we reviewed the system for collecting, recording, and securing properties removed from the decedents' residences for the 25 estates selected in our sample. We examined the estate files to ascertain whether the RCPA prepared inventory lists of decedents' properties and whether the properties were securely stored. We determined whether the RCPA maintained records in support of the investigator's reports, appraisals

of decedents' assets, and the sale prices of decedents' properties. In addition, for properties sold, we checked the final accounting detail prepared by the attorneys and whether the sale proceeds were correctly recorded in the estate accounts.

To determine whether the RCPA maintained complete and accurate records on all the estates, we compared the amounts reported on the QuickBooks records to the amounts reported in the individual bank statements for Fiscal Years 2007 and 2008. We also identified and reviewed all the accounts and balances reported in bank confirmation letters supplied by the RCPA at our request, and traced them to the RCPA records for consistency. In addition, we reviewed the account balances to determine whether the estate accounts were properly maintained within the FDIC insurance limit.

To determine whether the RCPA correctly paid estates legal fees charged by attorneys, we recalculated all the disbursements using the percentages stipulated in the Administrative Board Guidelines and compared the results to the amounts paid by the RCPA for Fiscal Years 2007 and 2008. We also examined estate files to determine whether the required affidavit of legal services was submitted and properly filed prior to making payments to attorneys, as required by the SCPA. We also ascertained whether all payments were accurately reported to the IRS on Form 1099-MISC.

In addition, we determined whether an annual audit of the RCPA was conducted by an independent CPA, in accordance with the SCPA, and that a copy was submitted to the City Comptroller's Office. We also determined whether the RCPA filed the required monthly, semi-annual, and annual reports with the Surrogate's Court and the State Comptroller's Office, and whether the RCPA submitted monthly reports of closed estates and final disposition of estate assets to the City Comptroller's Office, as required by Comptroller's Directive #28.

The results of our tests, while not projected to the population, provided reasonable assurance that we have obtained sufficient and appropriate evidence to determine the RCPA's compliance with the New York State Surrogate's Court Procedures Act, the Administrative Board Guidelines, and other applicable City and State regulations.

Discussion of Audit Results

The matters covered in this report were discussed with RCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to RCPA officials and discussed at an exit conference held on November 17, 2009. On November 30, 2009, we submitted a draft report to RCPA officials with a request for comments. We received a written response from the Richmond County Public Administrator on December 10, 2009.

The Public Administrator generally agreed with the audit's recommendations. In his response, he noted that certain issues cited were the direct result of the office being understaffed and that to implement the audit's recommendations, funding must be made available for an accounting clerical employee.

The full text of the Richmond County Public Administrator's response is included as an addendum to this report.

FINDINGS

The RCPA adequately handled certain estate management responsibilities including the filing of the required monthly suspense account report with Surrogate's Court, ensuring that expenses funded by the suspense account were appropriate and necessary for the administration of the estates, and submitting monthly reports to the City Comptroller's Office.

However, we found some issues of concern. Specifically, the RCPA improperly maintained checking accounts in the RCPA's name totaling \$813,961, did not allocate the funds in checking accounts to the corresponding estates, and maintained average monthly balances that exceeded the FDIC insurance limit. In addition, there were significant inadequacies in RCPA's internal control procedures as they relate to the recording and reporting of the estate funds, payment of legal fees to estates, tracking the progress of each estate, reconciling the books and bank account balances, and segregating key responsibilities.

These matters are discussed in greater detail in the following sections of this report.

\$813,961 Improperly Deposited and Safeguarded

The RCPA improperly maintained \$813,961 in three checking accounts under the RCPA's name, did not allocate the funds in the accounts to the corresponding estates, and maintained bank balances in excess of the FDIC insurance limit for at least 24 months, as shown in the Appendix.

Our review of the bank confirmation letters identified three checking accounts in the RCPA's name totaling \$813,961. This amount, however, could not be traced to the RCPA's books and records. According to the RCPA, at the end of an estate's administration, it transfers funds from the estate accounts into its non-interest-bearing checking accounts. The funds are then used to pay the expenses and other asset distribution of the estates. However, we noted that all three checking accounts have maintained significant average monthly balances and that very few disbursement activities have been reported in the accounts. In addition, the RCPA was unable to provide us with a breakdown of the estates that comprised the amounts in the checking accounts. Also, according to the RCPA, the three checking accounts were non-interest-bearing. Our review, however, found that one of the accounts was indeed interest bearing and that for calendar years 2007 and 2008 this account generated \$11,548 in interest that was not allocated to the corresponding estates.

Additionally, all three checking accounts maintained average monthly balances exceeding the FDIC insurance limit for the two-year period reviewed. Since the bank accounts included deposits from various estates, and the RCPA did not allocate the funds to the corresponding estates' accounts, the RCPA was not able to identify the estate accounts involved. As a result, we were not able to determine which estate accounts maintained balances that were at risk.

Inadequate Internal Controls

Monthly Bank Reconciliations Not Performed

The RCPA did not perform bank reconciliations on a regular basis. Our analysis of the RCPA's books and the balances confirmed by the banks found that a total of \$320,241 did not match the RCPA's QuickBooks records, as shown in Table I below. In fact, some of the accounts were not reconciled as far back as March 2005. Based on our review and interviews of RCPA staff, we found that in many instances the RCPA transferred funds within an estate's bank accounts and did not post the corresponding transactions in the books. As a result, expenses were not recorded, the balances on some estates accounts were overstated, and some estates accounts may have disbursed funds they did not have. Lack of timely reconciliation is a critical problem, especially when dealing with a large number of estate accounts. We also noted that although lack of account reconciliation was an issue addressed in the RCPA's independent audit report for Fiscal Year 2006, the RCPA has not implemented the report's recommendation for corrective action.

Table I
Book Balance vs. Bank Balance

	Unadjusted Book Balance	Confirmed Bank Balance	Difference
Bank 1	\$1,290,932	\$1,151,551	\$139,381
Bank 2	1,161,828	1,075,435	86,393
Bank 3	1,034,731	976,766	57,965
Bank 4	1,214,012	1,166,811	47,201
Bank 5	633,834	644,150	(10,316)
Bank 6	585,472	588,295	(2,823)
Bank 7	515,746	513,306	2,440
Total (a)	\$6,436,555	\$6,116,314	\$320,241

- (a) As stated in a previous finding, we were not able to trace the funds in the three checking accounts. Since the RCPA did not reconcile its records with the bank statements, we could not determine whether the differences that appear in Table I involve the amounts previously identified in the RCPA's three checking accounts.

Lack of Segregation of Duties

The RCPA did not ensure that key functions and responsibilities were segregated among different staff members to reduce errors. For example, we noted that the bank reconciliations performed were completed by the Finance Manager who also oversees the main accounting functions, such as transferring funds within the various estates accounts and recording transactions in the QuickBooks records. As a result, the RCPA did not provide the proper level of independent review and oversight over key areas of responsibility as required by Comptroller’s Directive #11, which states that “reconciliations must be done monthly by persons other than those who authorize disbursements, sign checks, process cash receipts, and have accounting functions.”

\$21,510 in Excess Legal Fees Charged to Estates

Legal fees exceeded the six percent rate allowed in the settlement of three estates. According to the Administrative Board Guidelines, legal fees are paid based on the gross value of the estate, with the maximum legal fees being six percent of the value of the estate on the day of closing. Additionally, legal fees should be supported by an affidavit of legal services detailing the services rendered, time spent, and basis for the request for payment. Of the 64 estates that were open during Fiscal Years 2007 and 2008 for which legal fees were paid, we determined that in three cases the attorney charged excess legal fees totaling \$21,510, as detailed in Table II following:

Table II
Schedule of Excess Legal Fees Charged to Estates

	(a) Gross Estate Value	(b) Legal Fee Paid	(b)/(a) % Legal Paid	(c) = (a) x 6% 6% Estate Legal Fees	(b) - (c) Overpaid
2007					
Estate M	\$ 652,038	\$ 42,402	6.5%	\$ 39,122	
Sub-Total	\$ 652,038	\$ 42,402		\$ 39,122	\$ 3,280
2008					
Estate B	\$ 225,567	\$ 28,469	13%	\$ 13,534	
Estate R	\$ 61,966	\$ 7,013	11%	\$ 3,718	
Sub-Total	\$ 287,533	\$ 35,482		\$ 17,252	\$ 18,230
Total Legal Fees Overpaid					\$ 21,510

Additionally, the Administrative Board Guidelines requires that the PA’s counsel prepare an affidavit of legal services to support each request for compensation. These affidavits set forth in detail the services rendered, the time spent, and the method or basis determining compensation. We also noted that the RCPA does not have procedures to ensure that attorneys’ affidavits are reviewed by RCPA staff before processing payments, nor did we see any evidence that such a

review was performed. In fact, we found that 40 payments to attorneys for legal work performed during 2007 and 2008 were made prior to the attorney's submission and filing of the required affidavits. The RCPA should take steps to independently verify that the amounts the attorneys submit are accurate, appropriate, justified, and within the SCPA's guidelines.

Inadequate System for Tracking and Recording Estate Information

The RCPA did not ensure that estate information is accurately reported and properly monitored. The RCPA lacked a proper system to track the status of each estate, as required by the Administrative Board Guidelines. Of the 520 estates maintained by the RCPA during Fiscal Years 2007 and 2008, 150 estates remained open for a period ranging from 3 to 14 years. According to the Administrative Board Guidelines, "the PA shall maintain a case management system to track the progress of each estate's administration. The system shall consist of a centralized tracking and recording system which reflects the status of each pending estate. The system shall include a 'tickler' function, so that the PA may monitor any unusual delays in the administration of any estate." In addition, to expedite the completion of the estates administration, the SCPA requires that the PA report to the Surrogate Court those estates that received Letters of Administration and remained opened for more than two years. However, due to the inadequacy of the RCPA's system for tracking estate records, the RCPA did not close estates as expeditiously as required by the SCPA.

Annual Independent Audits Not Performed

The RCPA did not have an annual independent audit performed as required by the SCPA. Our review noted that the last independent audit conducted of the RCPA was for the period ending June 30, 2006. That independent audit report identified certain issues of concerns, some of which were similar in nature to the findings identified during our review. Therefore, we strongly urge the RCPA to ensure that an independent audit is conducted annually and to properly address any recommendations in a timely fashion.

RECOMMENDATIONS

We recommend that the Richmond County Public Administrator's Office:

1. Immediately close all checking accounts under the RCPA's name and ensure the checking accounts are reopened under the names of the appropriate estates.

RCPA Response: "To resolve this issue we are developing a procedure to move the estate money into individual accounts until such time as they are closed. However, all checking accounts cannot be closed since they are utilized in the transfer of funds from the individual estate accounts to the checking accounts for the purposes of paying bills and other liabilities. Per your recommendation, we will move funds out of the accounts discussed above and into individual estate accounts to be used to house the funds until distribution. However, this suggestion causes the estates to continue to accrue interest resulting in having to have amended final tax returns prepared at an additional accounting fee. Note that this may not be cost effective since the accounting fee may very well exceed the gain to the estate, from bank interest to the estate escrow account."

Auditor Comment: We are glad that the RCPA's office agreed to develop procedures to move estate money into individual estate accounts until the estates are closed. However, we would like to clarify that, contrary to the RCPA's statement, our recommendations calls for checking accounts to be closed and immediately reopened under the names of the appropriate estates.

2. Reconcile all bank accounts with the estates, and ensure the estate assets are accurately reported.

RCPA Response: "The issue of monthly bank reconciliations remains a concern for the Public Administrator's Office. The best solution to this problem is to hire an accounting skilled employee to assist in such fiduciary matters. It is clear we need to employ a new person with responsibility for monthly bank reconciliations, (for over 100 estates) plus other bookkeeping functions. Absent the addition of an appropriate accounting staff person, we will continue to diligently do the best we can to maintain accuracy and accountability."

Auditor Comment: Although we understand the RCPA's concerns regarding the limited resources of the office, we still believe that the RCPA should make a better effort to ensure reconciliations are performed on a period basis.

3. Monitor all bank balances to ensure they are within the FDIC insurance limit.

RCPA Response: "In the matter cited by the auditors for this audit period, there were very large estates in these checking accounts waiting for distribution, but problems arose that slowed the process. However, we will adjust our current system to keep funds in the estate account, expedite the final tax returns and then transfer the funds into the checking account to reduce the time the funds may be over the FDIC limit. Regarding the issue of estate funds being held over FDIC limits, there are periods of time when that is impossible to prevent.

When an account has exceeded the FDIC limit during that month, it is unknown to us prior to reviewing the statement. I authorize action to transfer funds to bring estate accounts into compliance with FDIC regulations upon review of monthly statements. We will certainly be even more diligent in this regard.”

4. Ensure that affidavits of work are submitted and reviewed before payments are made to attorneys.

RCPA Response: “Human error at times can cause a copy of the fee affidavit not be placed into the estate file, although it is in the backup file. . . . In all three estates cited by the auditors, counsel was paid a 6% legal fee in accordance with Guidelines and a supplemental fee approved by the Surrogate due to unusual circumstances. The Surrogate has the authority to maintain, reduce, or increase legal fees with respect to the Guidelines. . . . The public administrator will certainly continue to be diligent to ensure that all estate filings are accompanied by an Attorney’s Affidavit of Legal Services, and will of course remain within guidelines unless extenuating circumstances dictate otherwise.”

5. Develop a system to monitor cases adequately, including the use of a “tickler” function that would inform the RCPA of any unusual delays in estate administration and allow for the prompt and appropriate action to be taken.

RCPA Response: “The Public Administrator does have a tracking system in place where each estate file has a status sheet indicating major events and upcoming follow-up. The Public Administrator however, agrees that there is room to create a tickler system that would be superior and more efficient. We are investigating options in that regard. . . . We are aware of the status of every estate under administration and we proceed cautiously by tracking the progress of open estates regularly. We are however on rare occasion victims of human error but do make corrections as errors are revealed. We certainly will attempt to create a better tracking system per the Comptroller’s request.”

6. Conduct an annual independent audit and properly address all recommendations in a timely fashion.

RCPA Response: “We have already contracted with an Independent Auditor which was scheduled to begin in the spring of 2009 but had to be put off because of the present New York City Comptroller’s Audit. We did meet and contract with this Independent Auditor in June 2009 and said audit is scheduled to commence in January 2010.”

Analysis of Funds in Excess of FDIC

Date	BANK 1	BANK 2	BANK 3	*FDIC Limit	Funds at Risk in BANK 1	Funds at Risk in BANK 2	Funds at Risk in BANK 3
	(A)	(B)	(C)	(D)	E = (A - D)	F = (B - D)	G = (C - D)
1/31/2007	\$ 248,079	\$ 164,116	\$ 138,838	\$ 100,000	\$ 148,079	\$ 64,116	\$ 38,838
2/28/2007	48,580	125,566	49,522	100,000		25,566	
3/31/2007	48,305	125,165	64,146	100,000		25,165	
4/30/2007	151,777	59,711	118,341	100,000	51,777		18,341
5/31/2007	149,277	57,211	117,939	100,000	49,277		17,939
6/30/2007	135,063	57,211	116,549	100,000	35,063		16,549
7/31/2007	135,063	55,534	37,726	100,000	35,063		
8/31/2007	135,063	215,732	249,544	100,000	35,063	115,732	149,544
9/30/2007	135,063	215,732	248,516	100,000	35,063	115,732	148,516
10/31/2007	104,446	211,982	361,514	100,000	4,446	111,982	261,514
11/30/2007	104,446	211,982	363,838	100,000	4,446	111,982	263,838
12/31/2007	104,446	188,234	260,876	100,000	4,446	88,234	160,876
1/31/2008	200,568	164,834	421,505	100,000	100,568	64,834	321,505
2/29/2008	104,456	164,834	86,633	100,000	4,456	64,834	
3/31/2008	187,580	226,770	384,143	100,000	87,580	126,770	284,143
4/30/2008	252,603	49,386	374,277	100,000	152,603		274,277
5/31/2008	252,603	49,386	359,312	100,000	152,603		259,312
6/30/2008	252,603	60,322	394,239	100,000	152,603		294,239
7/31/2008	214,080	258,557	351,522	100,000	114,080	158,557	251,522
8/31/2008	170,277	258,557	405,133	100,000	70,277	158,557	305,133
9/30/2008	164,571	258,557	390,833	100,000	64,571	158,557	290,833
10/31/2008	164,571	156,487	390,778	250,000			140,778
11/30/2008	120,115	134,274	379,806	250,000			129,806
12/31/2008	118,865	134,407	407,189	250,000			157,189

	BANK 1	BANK 2	BANK 3
	E	F	G
Months Funds in excess of FDIC	19	14	20
Highest Amount in excess of FDIC	\$ 152,603	\$ 158,557	\$ 321,505
Lowest Amount in excess of FDIC	\$ 4,446	\$ 25,165	\$ 16,549

Monthly Average Funds in excess of FDIC	\$ 68,530	\$ 99,330	\$ 189,235
TOTAL MONTHLY AVERAGE FUNDS IN EXCESS OF FDI	\$ 357,094		

* As of October 3, 2008, the Federal Deposit Insurance Coverage (FDIC) has been increased from \$100,000 to \$250,000 per depositor.



RICHMOND COUNTY

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December 9, 2009

Mr. John Graham
Deputy Comptroller
Audits, Accountancy & Contracts
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REFERENCE: AUDIT REPORT ON THE FINANCIAL AND OPERATING PRACTICES
OF THE RICHMOND COUNTY PUBLIC ADMINISTRATOR'S OFFICE
JULY 1, 2006 - JUNE 30, 2008
FN09-097A

Dear Deputy Comptroller Graham:

In reference to the Audit Draft Report regarding the audit conducted by the Office of the New York City Comptroller's Office, I am indicating below our responses to the issues raised and the recommendations offered. It is my understanding that the Public Administrator's response will be included in the final report.

As the smallest agency in the City of New York with a total New York City payroll staff of five, which includes myself and the Deputy Public Administrator, the administration of this office is indeed very challenging as we are obviously understaffed. Your auditors performed their work in an understanding manner and have indicated to us that although it is not their job to recommend hiring of employees, they were aware of the problem we face everyday. This matter will be discussed later in the response

Additionally, I was informed by the auditors that your purpose was to look only for items that may need attention and not for the overwhelming sound practices of the Office of the Public Administrator. Although you did indicate a few areas you thought we should consider for some changes in procedures, you also acknowledged that our office does adequately manage estate responsibilities.

Following are the responses of the Richmond County Public Administrator to the Audit Report suggestions and recommendations:

Recommendation 1.

Immediately close all checking accounts under the Richmond County Public Administrator's name and ensure the checking accounts are reopened under the names of the appropriate estates.

Richmond County Public Administrator Response:

Regarding the funds maintained at banks exceeding FDIC limits, note that when funds are ready for distribution, they are moved to a non-interest bearing account pending final tax returns and distributions to heirs. There are some situations when the final tax returns take months to prepare based on delays out of the Public Administrator's control, such as when we are awaiting a refund from various taxing authorities.

In the matter cited by the auditors for this audit period, there were very large estates in these checking accounts waiting for distribution, but problems arose that slowed down the process. However, we will adjust our current system to keep funds in the estate account, expedite the final tax returns and then transfer the funds into the checking account to greatly reduce the time the funds may be over the FDIC limit. In these instances, we cannot avoid possibly being over the FDIC limit for some period of time as accounts are moved.

The comment by the auditors that the Public Administrator Office cannot provide the breakdown of the estates that comprise the amount in the checking accounts was addressed by us. We did in fact have the names of the estates on file, but were in the transition from one computer program to another during the audit period which caused the confusion. To resolve this issue we are developing a procedure to move the estate money into individual estate accounts until such time as they are closed. However, all checking accounts cannot be closed since they are utilized in the transfer of funds from the individual estate accounts to the checking accounts for the purpose of paying bills and other liabilities. Per your recommendation, we will move funds out of the accounts discussed above and into individual estate accounts to be used to house the funds until distribution. However, this suggestion causes the estates to continue to accrue interest resulting in having to have amended final tax returns prepared at an additional accounting fee. Note that this may not be cost effective since the accounting fee may very well exceed the gain to the estate, from bank interest to the estate escrow account

The final comment that the auditors were not able to determine which estate accounts maintained balances that were at risk, and could not allocate funds to the corresponding estate accounts, is misleading. Our bookkeeper did indicate that we had documentation for all estate checking accounts which did in fact identify the name of the estate and the amount on deposit. However, we agree that a more efficient system should be implemented and we are working toward that end.

Recommendation 2.

Reconcile all bank accounts with the estates, and ensure the estate assets are accurately reported.

Richmond County Public Administrator Response:

The issue of monthly bank reconciliations remains a concern to the Public Administrator's Office. The best solution to this problem is to hire an accounting skilled employee to assist in such fiduciary matters. We have appealed to the Comptroller's Office in the past to assist us in obtaining a budget line for this person, but to no avail. The only person in our office performing these duties is a Secretary with bookkeeping experience, who is referenced as our Finance Manager. Based on the volume of secretarial duties, estate fund management, paying of bills, standard record keeping for hundreds of estates and doing distribution checks for heirs, monthly, semi annual, and annual reports to the Comptroller and Surrogate, etc. renders it virtually impossible for one person to accomplish the level of accounting procedures necessary and recommended.

It is clear that we need to employ a new person with responsibility for monthly bank reconciliations, (for over 100 estates) plus other bookkeeping functions. I discussed this with a CPA who indicated it would be more cost effective to hire another Public Administrator employee rather than to retain an outside accountant for these purposes.

Simply stated, we are understaffed in a discipline of critical concern. We again ask the Comptroller to assist us. The Public Administrator will appeal to the Mayor through the Office of Management & Budget to this end.

Although the audit cites deficiencies, these problems are in fact corrected as the bank reconciliations are done. We agree that bank reconciliations should be done on a monthly basis for all estate accounts, but understaffing has prohibited us from doing so. We have the daily administration of estates that cannot be neglected. We are left in an unfortunate situation of making choices with limited personnel resources.

Absent the addition of an appropriate accounting staff person, we will continue to diligently do the best we can to maintain accuracy and accountability.

Recommendation 3.

Monitor all bank balances to ensure they are within the FDIC insurance limit.

Richmond County Public Administrator Response:

Regarding the issue of estate funds being held over FDIC limits, there are periods of time when that is impossible to prevent. New funds received from large estates must be deposited into a bank and then transferred piecemeal and invested into several other banks. During that time, some funds may be over the FDIC limits for a period of time. Funds that are to be distributed are likewise transferred into an escrow type account and would also be at risk for short durations. That is unavoidable.

If estate funds are not moved to non-interest bearing accounts, then the estate would continue earning interest without fully being closed out and would require continuous Supplemental Accountings.

With respect to an audit comment that some funds were held in the Richmond County Public Administrator's name is erroneous. No money is held in the private name of the Public Administrator, but held by the Public Administrator regardless of who holds that position at any time. Additionally, the Public Administrator visually reviews bank statements every month. When an account has exceeded the FDIC limit during that month, it is unknown to us prior to reviewing the statement. I authorize action to transfer funds to bring estate accounts into compliance with FDIC regulations upon review of monthly statements. We will certainly be even more diligent in this regard.

Recommendation 4.

Ensure that affidavits of work are submitted and reviewed before payments are made to attorneys.

Richmond County Public Administrator Response:

Affidavit of Legal Services have been submitted for each and every estate. However, the auditors on occasion did not locate the affidavit since we keep a second file of all Legal Services Fees separately as a reference and backup. Human error at times can cause a copy of the fee affidavit not to be placed into the estate file, although it is in the backup file. However, in all cases there is an Affidavit of Legal Services and I suspect the auditors did not look in that master file in the cases cited. The affidavit does indicate the basic work for small estates performed and is not necessarily time sensitive since Public Administrator attorneys are not paid on time spent, but rather on a flat rate basis per the official Guidelines for Public Administrators.

This issue of the use of time to compensate counsel for the Public Administrator is addressed in a memorandum from the Administrative Board for the Offices of the Public Administrators, dated October 2, 2002. The Board clearly stated that, "it is well settled that it is not appropriate to base a legal fee in this area of law solely on a "time-clock" approach."

This audit questions legal fees in three instances paid to the Public Administrator's Counsel, out of the 520 open estates and hundreds of estates previously administered by the Office of the Richmond County Public Administrator during the audit review time frame. In all three estates cited by the auditors, counsel was paid a 6% legal fee in accordance with Guidelines and a supplemental fee approved by the Surrogate due to unusual circumstances. The Surrogate has the authority to maintain, reduce, or increase legal fees with respect to the Guidelines

I would also like to point out that Counsel to the Public Administrator has consistently performed his usual legal work for estates where there were no funds or very limited funds. In these cases, he very frequently provided legal services for the Public Administrator Pro-Bono (for free), or for fees as low as \$2.00 representing the balance in the estate available for payment. Additionally, counsel has made frequent Court appearances without compensation.

The Guidelines for legal fees articulated in the memorandum from the Administrative Board for the Offices of the Public Administrators dated October 2, 2002 referenced above clearly states:

"In the absence of Extraordinary Circumstances, the Public Administrators shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a fee computed under the following schedule: Schedule of sliding scale maximum legal fee based upon the gross value of the estate ("total charges" reported in the account)

Gross Value	Percentage
First \$750,000	6%

The adopted schedule provides the "customary fee charged... for similar services" in the overwhelming majority of estates that are administered by the Public Administrators and establishes a cap on the legal fees requested by counsel in these estates.

The amount of legal fees presently requested in most matters by the respective counsel for each of the Public Administrators is only one of the factors that the Board considered in enacting the schedule. The Board also considered that it is well settled that it is not appropriate to base a legal fee in this area of the law solely on a "time-clock" approach and, in some instances, time might be the least important factor to be considered (Matter of Brehm, 37 AD2d 95; Matter of Snell, 17 AD2nd 490; Matter of Kentana, 170 Misc. 663). Additionally in arriving at a fair fee for the services performed, the Board balanced the fact that each estate pays for its legal services against the economic reality that most estates administered by the Public Administrators are relatively modest and the Public Administrators would be unable to retain competent counsel to provide legal services in many of these estates if counsel did not have the opportunity to receive more significant compensation in the more

substantial estates. The "Rule of Thumb" that the schedule adopts is a product of the input and the consensus of all members of the Board which includes representatives from the offices of the Attorney General and the Comptroller as well as several Surrogates and attorneys in private practice.

The Board in enacting the schedule recognized that it is left to the Sound Discretion of the Surrogate to fix the reasonable compensation of counsel to be paid from each estate based upon "the time and labor required, the difficulty of the questions involved, the skill required to handle the problems presented, the lawyer's experience, ability, and reputation, the amount involved and benefit resulting to the estate from the services, the customary fee charged by the bar for similar services, the contingency or certainty of compensations, the results obtained, and the responsibility involved" (SCPA 1108(2)(C)). The enacted schedule does not in any way impinge upon either the rights of interested parties with regard to counsel fees or the jurisdiction of the court to determine such issue. It is noted that SCPA 1108 (2)(c) requires that counsel for the Public Administrators submit an affidavit of legal services to support their requests for compensation and the enacted guidelines remind and direct the Public Administrators to have their counsel file the affidavit of legal services required by the statute."

It is indisputable that for the three estates that the auditors offered criticism for being over the Guidelines was incorrect, and that the Public Administrator Office was not in violation. Clearly by virtue of the powers of the Surrogate as indicated above, reasonable compensation of Public Administrator counsel may be fixed by the Court. Additionally, the Public Administrator Fee Schedule clearly states, "In the Absence of Extenuating Circumstances fees shall be set as below: i.e., Gross Value \$750,000 at 6%." However, with regard to the three estates criticized, the Court approved of the counsel fees based on the above and other factors.

Case in Point 1d, Estate of B, all fees were paid and approved by Signed Consents of the heirs and the attorney for the heirs due to extraordinary circumstances. There was no loss for the estate since the heirs themselves agreed to pay the necessary Public Administrator legal services above the Guidelines amount.

Case in Point 2d, Estate of M, an additional small legal fee was agreed to by distributees and attorney for distributees and an Order was signed by the Surrogate approving the fees.

Case in Point 3d, Estate of R, all fees including a small fee above 6% was approved by the Court; again this estate clearly had extraordinary circumstances

The memorandum of October 2, 2002 clearly labels the PA Legal Fee Guidelines as a "Rule of Thumb" adopted by members of the PA Administration Board, representatives from the Attorney General's Office The Comptroller, Several Surrogates, and Attorneys in private practices.

The Public Administrator will certainly continue to be diligent to ensure that all estate filings are accompanied by an Attorney's Affidavit of Legal Services, and will of course remain within guidelines unless extenuating circumstances dictate otherwise.

Recommendation 5.

Develop a system to monitor cases adequately, including the use of a "tickler" function that would inform the RCPA of any unusual delays in estate administration and allow for the prompt and appropriate action to be taken.

Richmond County Public Administrator Response:

The Public Administrator does have a tracking system in place where each file has a status sheet indicating major events and upcoming followup. The Public Administrator however, agrees that there is room to create a tickler system that would be superior and more efficient. We are investigating options in that regard.

The auditors cited the number of estates remaining open for three years. There are estates that remain open not due to the Public Administrator's inability to monitor the administration progress, but rather because there are frequently unusual delays in estate administration such as delays in receiving an heirship report, locating and collecting assets that subsequently are found, collection of debts not known prior, motions filed in Surrogate's Court, adjournments, and many other factors that can occur in the course of an administration which cannot simply have a time frame assigned to it.

The work that we do and the fiduciary responsibility is enormous and are taken very seriously by the Public Administrator's Office. If it takes a little longer to make sure that all money is properly marshaled and distributed, then we will take the time to do so, which would be the prudent course of action.

The comment that the Public Administrator's Office inadequately tracked estate records and caused estates not to close expeditiously as required by the SPCA, is misleading and out of touch with the reality of estate administration. We are aware of the status of every estate under administration and we proceed cautiously by tracking the progress of open estates regularly. We are however on rare occasion victims of human error but do make corrections as errors are revealed. We certainly will attempt to create a better tracking system per the Comptroller's suggestion.

Recommendation 6.

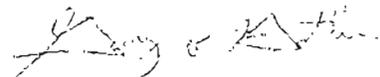
Conduct an annual independent audit and properly address all recommendations in a timely fashion.

Richmond County Public Administrator Response:

Previously, we engaged and completed approval of a CPA firm from the Comptroller's approval list to conduct an Independent Audit of our operations. We are reviewing that document to address the recommendations made. We have already contracted with an Independent Auditor which was scheduled to begin in the Spring of 2009 but had to be put off because of the present New York City Comptroller's Audit. We did meet and contract with this Independent Auditor in June 2009 and said audit is scheduled to commence in January 2010.

The above represents the responses and position of the Richmond County Public Administrator. We thank you for your recommendations and will give every effort to institute same. We do however reiterate that it is imperative that the Public Administrator Office be funded for an accounting clerical person, and we respectfully request that the Office of the Comptroller assist us in this regard by advocating on our behalf. Thank you.

Very truly yours,



Gary D. Gotlin
Richmond County
Public Administrator

GDG:clg

AUDIT - NYC FNC9-097A (2009).xpd

cc: Honorable Robert J. Gigante, Surrogate Richmond County
Arthur W. Decker, Esq., Co-Counsel Richmond County Public Administrator
Richard A. LaRosa, Esq., Co-Counsel Richmond County Public Administrator