



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the Operating Practices
of the Kings County Public
Administrator's Administration of
Estates

FP20-082A

May 17, 2021

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
SCOTT M. STRINGER

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To the Residents of the City of New York:

My office audited the Kings County Public Administrator (KCPA) to determine whether it has maintained sufficient controls over its administration of estates and complied with the Surrogate's Court Procedures Act (SCPA), the Guidelines for the Operations of the Public Administrators of New York State (PA Guidelines), and other applicable regulations. We audit City agencies such as the KCPA to increase accountability and to help ensure that funds are properly safeguarded and appropriately used.

The audit found weaknesses in the KCPA's internal control structure. Specifically, two conflicting Administrative Orders have been issued by two different Kings County Surrogate's Court judges that convey conflicting directions to the PA and the Deputy PA. The conflict between these orders weakened management's ability to establish and maintain an effective system of internal control and accountability. Further, the KCPA did not establish adequate written policies and procedures to provide guidance to its staff. Among other things, we found that some KCPA investigators assigned to search for inventory and collect estates' personal property from the decedents' residences did not properly log those items on the designated forms and that the KCPA office staff did not properly document the office's receipt of the estates' personal property that investigators brought to the office for vault storage. Additionally, the KCPA could not account for a significant quantity of estates' personal property, and its inventory records of estates' non-liquid personal property were incomplete, inconsistent, and overwritten. Finally, the KCPA has not conducted properly documented, periodic inventory counts of estates' personal property.

To address these issues, the audit makes two recommendations to the Surrogate's Court and nine to the KCPA. These include a recommendation that the Surrogate's Court review its Administrative Orders with the assistance of the Office of Court Administration to resolve conflicts that exist between them. In addition, we recommend that the KCPA establish written policies and procedures that include guidance to staff, consistent with the SCPA and the PA Guidelines, for the proper performance of their assigned duties. The KCPA should also ensure that it properly logs and maintains essential information concerning all personal property received.

The results of the audit have been discussed with the KCPA and all comments received have been considered in preparing this report. The written responses received are attached to this report. If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott M. Stringer".

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Operating Practices of the Kings County Public Administrator's Administration of Estates

FP20-082A

EXECUTIVE SUMMARY

There are five Public Administrators (PAs) within New York City (the City), each appointed by the judge or judges of the Surrogate's Court of their respective counties. The Office of the Kings County Public Administrator (KCPA) administers estates of Kings County residents who die intestate (without a will) and without a family member or other person authorized to administer their estates. In Kings County, two elected Surrogate's Court judges (Surrogates) preside over the Surrogate's Court. They divide judicial responsibility for the estates that the KCPA administers and share the power to appoint and remove the PA.¹

Article 11 of the New York State Surrogate's Procedure Act (SCPA) and the *Guidelines for the Operations of the Public Administrators of New York State issued pursuant to SCPA §1128* (PA Guidelines) govern the KCPA's estate-administration process. A core component of the KCPA's responsibility under these rules is to identify, collect, inventory, and manage the sale of real and personal property that belongs to the decedents' estates it administers.

The City partially funds the operations of the KCPA. In addition, in accordance with the SCPA, the KCPA charges each estate an administrative fee of up to one percent of the estate's gross value, which it deposits in a suspense account that is used to fund office expenses and certain estate expenses.

In Fiscal Year 2020, the KCPA's City-funded expenditures totaled \$848,753. That year, the KCPA employed 14 individuals, consisting of a PA, a Deputy PA, and a staff of 12 investigative and office personnel. As of September 18, 2019, the KCPA maintained a caseload of 2,740 open estates, according to its records.

¹ The estates handled by the Surrogate's Court in Kings County are assigned to an individual Surrogate based on the decedent's date of death. One Surrogate presides over cases involving the estates of decedents who died during odd-numbered months; the other Surrogate presides over cases involving the estates of decedents who died during even-numbered months. With respect to the appointment and removal of the PA, the Surrogate's Court Procedure Act §1102(1) provides, in part, "The public administrators of Kings, Richmond, New York, Bronx and Queens counties shall be appointed by and may be removed by the judge or judges of the court of their respective counties and shall continue in office until removed."

We conducted this audit to determine whether the KCPA maintained sufficient controls over certain operations integral to its administration of estates and whether the KCPA complied with related requirements of the SCPA, the PA Guidelines, and other applicable regulations.

Audit Findings and Conclusions

The audit found significant weaknesses affecting the KCPA's management structure and operating practices related to the administration of estates. Specifically, two conflicting court orders issued by the two Kings County Surrogates have created confusion and dissension within the KCPA's office relating to the proper chain of command and the authority of its two senior managers to make and approve necessary decisions. We also found that the KCPA lacked sufficient detailed policies and procedures to govern some of its estate-administration processes.

The combination of insufficient operating procedures and diminished management authority has compromised the existing weak control environment and allowed noncompliant practices to persist. In that regard, we identified significant weaknesses and inconsistencies in the KCPA's searches for, and its collection, inventory, and retention of, personal property belonging to decedents' estates.

Audit Recommendations

To address the issues raised by this audit, we make two recommendations to the Surrogate's Court and nine recommendations to the KCPA. They include the following.

The Kings County Surrogate's Court should:

- Review its Administrative Orders of May 18, 2020 and May 20, 2020 with the assistance of the Office of Court Administration to address and as far as possible resolve any contradictions that may exist between them.

The KCPA should:

- Establish written policies and procedures that include detailed guidance to staff, consistent with the SCPA and the PA Guidelines, for the proper performance of their assigned duties.
- Ensure that it properly logs and maintains essential information concerning all personal property of every estate during or immediately following investigations at decedents' residences.
- Ensure that it consistently documents all aspects of the in-office inventory intake process on the required forms.
- Perform and obtain appraisals of non-liquid inventory items belonging to closed estates, sell the items at auction, and ensure the proceeds of the sales are credited to the estates and remitted to the appropriate individuals in accordance with the applicable decree wherever feasible.
- Regularly download, preserve, and periodically compare copies of video surveillance records with access log records to ensure a complete record of access to the vault.

Agency Response

In its response, the KCPA did not address or specifically state whether it agreed or disagreed with each of the audit's recommendations. The KCPA stated, in part, "The Comptroller's audit report focuses on the specific areas of KCPA which continue to need improvement, rather than on improvements which have been implemented since the 2015 [audit]. The Comptroller makes several valid recommendations with respect to improving operations of the agency. These recommendations will be implemented where possible. However, until the agency's reporting structure is re-established in accordance with the NYS Surrogate's Court Procedure Act, additional efforts to improve KCPA operations will not be possible."

Kings County Surrogate's Response

One of the two Kings County Surrogates provided a written response to the audit report. The Surrogate's response did not specifically address or state whether the Surrogate agreed or disagreed with the audit's recommendations.² The Surrogate stated in part that "the problems and issues raised and identified in the preliminary audit report are symptomatic of the fundamental structural problems of the manner in which the office of PA is supervised, not just in Kings County, but in New York City as a whole. Until this underlying structure issue is rectified, the problems that have confronted the various public administrator's offices in New York City for a century will only continue."

² The written audit response submitted by one of Kings County's two Surrogates was initially provided in response to the preliminary draft report. Thereafter, Surrogate Margarita Lopez Torres who submitted the initial response, requested that it be considered as her response to the draft report.

AUDIT REPORT

Background

The KCPA is responsible for administering the estates of the Kings County residents who die intestate and/or without known heirs or anyone else able and authorized to administer their estates. This responsibility requires the KCPA to protect each decedent's estate it administers from waste, loss, and theft, make burial arrangements, identify and liquidate assets, pay taxes, and distribute the assets in accordance with a decree issued by the Surrogate's Court.

There are five PAs within the City, each appointed by the judge or judges of the Surrogate's Court of their respective counties. In Kings County, two elected Surrogates preside over the Surrogate's Court. They divide judicial responsibility for the estates that the KCPA administers and share the power to appoint and remove the PA. Under the SCPA, the Surrogates issue letters of administration, oversee court proceedings such as kinship hearings, and issue judicial decrees that direct, among other things, the distribution of estate assets to the proper parties.

Article 11 of SCPA and the PA Guidelines govern the operations of the PAs within the City. Under SCPA §1109, each such PA is required to submit certain reports to their county Surrogates and other City and State officials, including, variously, the Mayor, the City Comptroller, the State Comptroller, and the State Attorney General. The required reports include an annual audit by a certified public accountant, monthly reports of closed estates, and semiannual reports to the Surrogate(s) of open estates that have not been fully distributed within two years of the issuance of permanent letters of administration.³ The PA also maintains internal policies for several areas of its operations.⁴

One critical component of the KCPA's responsibility is to identify, collect, inventory, and manage the sale of real and personal property that belongs to the decedents' estates it administers.⁵ The KCPA maintains a vault within its office where it stores smaller tangible items of estates' personal property pending their liquidation through sale at auction or private sale, and a warehouse across the street from the office for larger items, such as furniture and bikes. Cash is stored in a smaller vault in the Deputy PA's office prior to deposit in the bank. Debit cards and similar cards of value are brought back to the KCPA and destroyed in the presence of two KCPA employees. The KCPA uses CompuTrust, a trust accounting and case management software system, to process and maintain an accounting record of each estate's financial transactions and assets and to support and manage other aspects of estate administration. However, the KCPA also separately maintains its record of its inventory of estates' tangible, or non-liquid, personal property, in a single Excel file.

As of September 2019, the KCPA's Excel inventory file—its record of estates' non-liquid items of tangible personal property—contained 1,218 line entries, each consisting of a row within the Excel file. Each row corresponded to either an individual item, or a bag containing multiple items, of

³ Open estates are those which may require further administrative or judicial action, such as investigations and actions to identify and collect assets, pay expenses, settle liabilities, including taxes, and distribute statutory fees and net estate assets to the parties entitled to them in accordance with a judicial decree issued by the Surrogate's Court. Closed estates are those where all abovementioned procedures and distributions have been completed.

⁴ The KCPA's internal policies include the *Guidelines and Procedures for the Operations of the Office of the Public Administrators of Kings County New York* (provides general administration procedures), the "Auction List Procedure," and several other policies.

⁵ "Real property" is land plus any buildings, structures, and equipment permanently attached to it. "Personal property" is any physical item that can be owned that is not fixed to real property, such as cash, credit cards, motor vehicles, bikes, and jewelry, among other things. This audit focused primarily on the KCPA's inventory practices for personal property.

estates' personal property that, according to the inventory record, should have been located in the KCPA's vault, and 58 inventory line entries corresponding to items that reportedly were located in the warehouse.⁶

The City partially funds the operations of the KCPA. In addition, in accordance with the SCPA, the KCPA charges each estate an administrative fee of up to one percent of the gross value of that estate, which it deposits in a suspense account used to fund office and certain estate expenses.⁷

The City Comptroller's Comprehensive Annual Financial Report for Fiscal Year 2020 reported that the KCPA generated approximately \$1,062,000 in City revenue through charges for services, and that its City-funded expenditures totaled \$848,753, consisting of \$797,711 for Personal Services and \$51,042 for Other Than Personal Services. That year, the KCPA employed 14 individuals, 13 of whom were paid from its City allocation for Personal Services and 1 employee paid through the KCPA's suspense account. The KCPA's 14 employees consisted of a PA, a Deputy PA, and a staff of 12 investigative and office personnel who perform the day-to-day tasks necessary for the administration of estates. As of June 30, 2020, the KCPA had \$422,582 in its suspense account.

In addition, during Fiscal Year 2020, there were three counsels to the KCPA assigned to handle legal matters related to the estates, who were appointed by the Kings County Surrogates under SCPA §1108(2). The KCPA pays fees to the counsels for their services from estate funds in amounts approved by the Surrogate's Court. Under SCPA §1108(2)(b) and (c), any legal fees allowed to those counsels by the Surrogate's Court must be supported by detailed affidavits of legal services.

As of September 18, 2019, the KCPA maintained a caseload of 2,740 open estates according to its records.

Objectives

The objectives of this audit were to determine whether the KCPA:

- Maintained sufficient controls over certain operating practices of its administration of estates; and
- Complied with estate management requirements established by the SCPA, the PA Guidelines, and other applicable regulations.

Scope and Methodology Statement

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,

⁶ Each inventory line entry represents a single item or multiple items collected from a decedent's residence and stored in an inventory bag. Smaller inventory items retrieved from the same residence are generally grouped in an inventory bag and stored within larger bins in the vault.

⁷ A suspense account is a general ledger account in which funds are temporarily recorded. The KCPA's suspense account is a separate bank account maintained by the KCPA and reported in the general ledger containing: (a) fees allowed by the court; (b) interest; (c) reimbursements of disbursements for estates made from the suspense account prior to the collection of assets from the estates; and (d) fees received by the PA for performance of administrative services. The suspense account is separate from the commissions issued to the City and reported by the City as revenue in the City Comptroller's Comprehensive Annual Financial Report.

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 the 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 January 1, 2017 through June 30, 2020. Please refer to the Detailed Scope and Methodology section at the end of this report for the specific audit procedures and detailed tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with KCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to the KCPA and to both Kings County Surrogates on February 18, 2021. It was discussed with KCPA at an exit conference on March 4, 2021.⁸ On April 6, 2021, we submitted a draft report to the KCPA and the Kings County Surrogates with a request for written comments. We received a written response from the KCPA on April 20, 2021 which is included as an addendum to this report.

The KCPA's response did not address the audit's recommendations and specifically state whether it agreed or disagreed with each of them. However, based on the KCPA's full response, it appears that the KCPA agreed with four recommendations (#5, #6, #8 and #9), believed that one recommendation was already in place (#1), and did not respond to four recommendations (#2, #3, #4 and #7). In its response, the KCPA stated, "The Comptroller makes several valid recommendations with respect to improving operations of the agency. These recommendations will be implemented where possible. However, until the agency's reporting structure is re-established in accordance with the NYS Surrogate's Court Procedure Act, additional efforts to improve KCPA operations will not be possible."

The KCPA further stated that the "KCPA will continue to experience issues in the management of estates, operations, and staff as long as the current appointment structure for the Public Administrator, Deputy Public Administrator and counsel to the Public Administrator continues. Issues resulting from the appointment structure are not unique to KCPA. Similar issues have been known to surface in other Public Administrator offices. The resulting issues are magnified in Kings County because there are two Surrogate court judges, the only other county in New York State besides Manhattan which has two Surrogates. Notwithstanding the inherent ethical issues of the statutes, the appointment process creates no operational issue when two Surrogates see eye-to-eye. However, it can be and is a major impediment to the proper functioning of the PA when two Surrogates in a county, as is currently the case in Brooklyn, disagree over the propriety of a judge's personal involvement in the daily operations of a city agency."

One of the two Kings County Surrogates provided a written response to the audit report. The Surrogate did not specifically address the audit's recommendations and did not state whether the Surrogate agreed or disagreed. The Surrogate stated, "That this Comptroller perceives that there is conflict, dysfunction, and confusion in the chain of command in the KCPA is utterly unfortunate but should come as no surprise. To the contrary, the problems and issues raised and identified in the preliminary audit report are symptomatic of the fundamental structural problems of the manner

⁸ Both of the Kings County Surrogates were invited to attend an exit conference to have been scheduled for the first week of March 2021. Although, ultimately, no exit conference was held with the Surrogates, Surrogate Margarita Lopez Torres responded to the invitation and provided written comments in response to the preliminary draft audit report. As noted, Surrogate Lopez Torres asked that those written comments serve as her response to this report.

in which the office of PA is supervised, not just in Kings County, but in New York City as a whole. Until this underlying structure issue is rectified, the problems that have confronted the various public administrator's offices in New York City for a century will only continue.”

After carefully reviewing the KCPA's and the Surrogate's responses, we find no basis to alter any of the report's findings or conclusions. The full texts of the KCPA's and the Surrogate's written responses are included as addenda to this report.

FINDINGS AND RECOMMENDATIONS

The audit found significant weaknesses affecting the KCPA's management structure and operating practices related to the administration of estates. The most pressing issue facing the KCPA, which overshadows all of the office's operations, is the existence of two Administrative Orders of the Kings County Surrogate's Court that convey specific and directly conflicting directions to the PA and the Deputy PA individually concerning their respective responsibilities and powers relating to: (1) estate administration; and (2) access to and control of the KCPA's suspense account. The contradictory and competing directions came from the two Kings County Surrogates, who share statutory power to appoint and remove the PA and Deputy PA. The conflicting court orders have created confusion and dissension within the KCPA's office relating to the proper chain of command and the authority of its two most senior managers to make and approve necessary decisions. The confusion has undermined management's authority and diminished its ability to establish and maintain an effective system of internal control and accountability as required by Comptroller's Directive #1, *Principles of Internal Control*.

Moreover, the audit identified significant weaknesses in the KCPA's operating practices that preceded the issuance of the two Administrative Orders and that have continued unabated thereafter. These require management's prompt attention and concerted remedial action. In particular, we found that the KCPA lacks sufficient detailed policies and procedures to govern certain aspects of its estate-administration processes. The combination of insufficiently detailed standard operating procedures and diminished management authority has resulted in a compromised control environment that has allowed noncompliant practices to persist. In that regard, we identified significant weaknesses and inconsistencies in the KCPA's searches for, and its collection, inventory, and retention of, personal property belonging to decedents' estates.

Specifically, we found that some KCPA investigators assigned to search for, inventory, and collect estates' personal property from the decedents' residences did not immediately log those items on the designated forms. In addition, KCPA office staff did not properly document the office's receipt of the estates' personal property that investigators brought to the office for vault storage. Furthermore, the KCPA could not account for a significant quantity of estates' personal property, and its inventory records of estates' non-liquid personal property were incomplete, inconsistent, and overwritten. Finally, the KCPA has not conducted properly documented, periodic inventory counts of estates' personal property. All of these operational weaknesses increase the likelihood of the loss or misappropriation of estate property, and that such activity would go undetected. These findings are further discussed below.

Conflicting Orders from the Surrogate's Court Impair Management's Ability to Administer Estates Properly

Conflicting administrative orders issued by the two Kings County Surrogates impair the KCPA's ability to administer estates properly. The conflicting orders create confusion concerning the authority of the KCPA's two senior executives—the PA and Deputy PA—to administer and direct the staff's work on individual estates. The conflict and confusion undermine management's authority and weakens its ability to implement necessary controls and properly administer estates.

Comptroller's Directive #1 emphasizes the need for both support and a clear organizational structure for an agency to develop and maintain an effective control environment:

It is important that agency management and staff be provided with the required support necessary for them to accomplish their assigned duties, as well as understand the importance of developing and implementing sound internal control. [. . .]

A good internal control environment requires that the agency's organizational structure clearly defines key areas of authority and responsibility and establishes appropriate lines of reporting. The appointment of competent and respected staff management is vital as well as is a properly assigned management span of control with clearly defined lines of authority and responsibility.⁹

In contrast to the principles of Comptroller's Directive #1, management's authority and responsibility within the KCPA's office has become increasingly fragmented and unclear, as described below. The two Kings County Surrogates, who share statutory power to appoint and remove the PA, disagree over whether they have the authority to lawfully restrain the PA individually from taking official action to administer all the estates in one Surrogate's inventory and to direct the PA's deputy, without the PA's consent, to assume that power and responsibility.¹⁰ As a result, they have issued separate and conflicting administrative orders that provide contradictory instructions on how the PA, Deputy PA, and KCPA employees must carry out their official activities, as described below.

On May 18, 2020, one Surrogate issued a written Administrative Order, as a "continuation" of a September 16, 2019 "order on the record" suspending the PA individually "from taking any further action in the processing of any pending and/or new cases in the estate inventory assigned to [that Surrogate]." According to the Administrative Order, the issuing Surrogate directed the Deputy PA individually to "conduct all matters necessary and proper to administer [those] decedents' estates."¹¹ The May 18, 2020 Administrative Order further directs that the Deputy PA shall "be granted access to, be a signatory on and may utilize the funds in the Suspense Account maintained by the Office of the Public Administrator."¹²

In addition, earlier the same Surrogate issued a related letter, dated February 20, 2020, addressed to the KCPA's office staff that stated that as of September 16, 2019, the PA "was suspended from controlling and from handling" any estate cases assigned to that Surrogate. The letter further directed the staff to report any instances of noncompliance to the Surrogate, who then would take the "appropriate action with the proper authorities including but not limited to criminal and/or civil contempt of the court."

However, on May 20, 2020, the other Kings County Surrogate issued an Administrative Order that countermanded her colleague's May 18 order, citing "the statutory limitations imposed by the SCPA on such directives." The May 20 order directs that the Deputy PA "shall not take any actions except those specifically prescribed for and vested in her by, and at the direction of, the [PA]

⁹ Comptroller's Directive #1 §4.1.

¹⁰ SCPA §1102(1) provides, in pertinent part, "The public administrators of Kings, Richmond, New York, Bronx and Queens counties shall be appointed by and may be removed by the judge or judges of the court of their respective counties and shall continue in office until removed."

¹¹ The Administrative Order dated May 18, 2020 refers to a previous suspension issued by Surrogate Harriet Thompson during a court hearing on September 16, 2019 and states that the suspension ordered on May 28, 2020 is a continuation of the suspension ordered on the hearing date.

¹² The PA Guidelines permit a PA to maintain a suspense account, separate from the accounts of the estates it administers, to pay the PA's office expenses and certain expenses the estates incur, either before the PA has collected their assets or for which their assets are insufficient. The account contains statutory fees the PA's Office earns, reimbursements of advanced expenses from the estates, and interest earned on the account balance.

pursuant to SCPA 1103(2).¹³ The May 20 order further directs that the Deputy PA “shall not access or utilize any funds in the Suspense Account maintained by the New York City Office of the Public Administrator for Kings County, except upon the express authorization of the [PA].”¹⁴

The above-referenced excerpts from the Court’s two orders demonstrate the conflict and its dysfunctional impact on the KCPA’s office. The first order would restrain the PA from carrying out his official responsibilities for, in theory, half the estates in the office he heads and assigns that power and responsibility directly and exclusively to the PA’s deputy. The second order which was issued in response to the first, instructs the Deputy PA that she must act only in accordance with the PA’s instructions, citing the applicable section of the SCPA. The two competing orders are thus irreconcilable; the management and staff of the KCPA’s office cannot follow one without breaching the other.

As a result of the Court’s conflicting instructions, the KCPA’s office has experienced confusion over the proper chain of command. For instance, officials in that office have expressed disagreement and uncertainty concerning which executive has the authority to approve disbursements from the suspense account to pay particular estate expenses. The confusion has led to inaction and inefficiencies that impede the orderly administration of estates.

Furthermore, the Court’s conflicting administrative orders have exacerbated a reportedly pre-existing divisive culture at the KCPA. During our audit, we were informed of and observed multiple instances of tension, conflict, and internal disagreement among the KCPA’s senior management and staff concerning day-to-day operations. In one instance, the PA and Deputy PA disagreed on the validity of an official KCPA legal document that the Deputy PA reportedly had signed without the PA’s approval. The PA then issued a written direction to the KCPA’s counsel, referring to that document, stating that he had not authorized it, and instructing counsel to “cease and desist” from “subjecting [the KCPA’s] office and [the City] from exposure to litigation for unauthorized activity.” In another example, a KCPA investigator refused to follow the PA’s instruction to allow the audit team to conduct a routine observation of a KCPA investigation.

The culture of an organization drives how it conducts business and executes its operations. As discussed in Comptroller’s Directive #1, “a positive control environment is the foundation for all other standards of internal control.” The Directive discusses the importance of teamwork to the goal of creating an effective control environment:

Maintaining and demonstrating an atmosphere of teamwork, integrity and ethical values, among management and staff, is an important environmental factor towards the success of business financial control.

In contrast to the teamwork and adherence to clearly defined rules required for an effective control environment, the KCPA is burdened with dysfunction and dissension associated in part with the conflicting administrative orders of the Kings County Surrogate’s Court. The conflict reduces the likelihood that the KCPA’s management and staff will work cooperatively to develop, implement, and establish accountability for the control activities and mechanisms needed to correct the weaknesses this audit identified both prior to and following the issuance of the conflicting

¹³ SCPA §1103(2) states, in relevant part, “The deputy public administrators of any county where the office exists or may be established shall perform the services and shall possess the powers as may be prescribed for and vested in him by the respective public administrators.”

¹⁴ In response to the preliminary draft of this audit report, Surrogate Margarita Lopez Torres who issued the Administrative Order of May 20, 2020 stated, in part, that the May 20 order was an effort to maintain the KCPA’s pre-suspension-order status, “since it is the Public Administrator who has the authority to manage the operations of that office.” Surrogate Lopez Torres further stated that the May 20, 2020 order “did nothing more than state that which is already directed by Article 11 of the [SCPA].”

Administrative Orders. If the conflict and weaknesses go uncorrected, the risks of waste, loss, and misappropriation of estate property identified by this audit will persist.

KCPA Response: In reference to the Administrative Order issued by one Surrogate on May 18, 2020, the PA states, “The Comptroller’s report describes a ‘divisive culture at KCPA’ which . . . is attributable solely to the actions of Surrogate Thompson, rather than the result of ‘conflicting orders.’ Surrogate Thompson’s actions have resulted in dysfunction and confusion amongst KCPA staff as to the supervisory structure of the agency.”

Surrogate Response: “The subsequent order that I issued on May 20, 2020, was an effort to maintain the status quo ante, since it is the Public Administrator who has the authority to manage the operations of that office. The order I issued on May 20, 2020, did nothing more than state that which is already directed by Article 11 of the Surrogate’s Court Procedure Act (“SCPA”).

Auditor Comment: We urge the two Kings County Surrogates to confer, along with the Office of Court Administration, to resolve the conflicting and contradictory administrative orders.

Lack of Detailed Written Policies and Procedures in Several Areas of Operation

The KCPA has not established adequate written policies and procedures to govern its operations, including its day-to-day responsibilities for the administration of estates. According to §1A of the PA Guidelines, “Each PA shall promulgate a written plan ensuring a segregation of duties for collection and custody of estate assets, authorizations for handling estate transactions, record-keeping, and the reconciliation of estate accounts.” However, we found that the KCPA did not establish clear and detailed written guidelines or procedures for the transfer of personal property into the KCPA vault, and the sale and release of personal property in KCPA custody, and reconciliation of inventory records against periodic physical inventory counts of such property, among other operations.

We found that the lack of adequate written procedures has resulted in weaknesses in estate-administration. Specifically, the KCPA’s inventory records of estates’ non-liquid items of personal property are incomplete and inaccurate, the KCPA has not conducted properly documented periodic inventory counts and reconciliations, and the KCPA has not optimally utilized its office video surveillance system to monitor access to the vault where estates’ personal property is stored. The following sections of this report discuss these control deficiencies.

The insufficiently clear and detailed policies and procedures for the KCPA’s day-to-day operations related to the safeguarding of estates’ personal property, combined with the conflicting orders of the Surrogate’s Court judges discussed previously, increase the risk of undetected loss, misappropriation, and mismanagement of estate assets, diminished operational efficiency, and impaired reliability of financial data in KCPA operations.

KCPA Response: “The current audit report states, ‘KCPA did not establish adequate written policies and procedures for the collection of personal property from the residences, the transfer of personal property into the KCPA vault, and the sale and release of personal property in KCPA custody, among other operations.’ The Guidelines and Procedures for the Operations of the Office of the Public Administrator

of Kings County set forth such procedures. . . . Notwithstanding articulation and implementation of these procedures, they are meaningless unless adhered to by staff members and enforced by supervision.”

Auditor Comment: Although compliance with existing policies and procedures remains an issue at the KCPA, we found that in specific areas of operation outlined in our report, the KCPA’s policies and procedures lacked the detailed guidance needed to ensure that KCPA employees have clear written direction concerning their responsibilities. The implementation and enforcement of such policies and procedures remain the responsibility of KCPA management.

Inappropriate Practices for the Recording, Collection, Storage, and Disposition of Estate Personal Property

The KCPA failed to ensure accountability and accuracy with respect to its Excel spreadsheet log of estates’ non-liquid assets, particularly physical items of personal property that the KCPA collects, primarily from decedents’ residences (Inventory Record). This failure results in part from the lack of written policies and procedures governing the preparation, updating, and reconciliation of the Inventory Record. Weaknesses also exist in the KCPA’s recording, collection, and transfer of decedents’ personal property. Further, the KCPA failed to conduct periodic inventory counts and reconciliations of the non-liquid estate property stored in its vault and warehouse. As a result, the KCPA is unable to account properly for estate property, which is also susceptible to potential loss, misappropriation, and theft.

KCPA Investigators Did Not Immediately Log Items on Designated Forms

The search for and retrieval of personal property from a decedent’s home is an essential component of the KCPA’s estate-administration process. This activity, which KCPA investigators perform, involves inherent risks of misappropriation and misconduct. Generally, the investigators work in pairs, without on-scene supervision by their office, in varied locations where they have direct access to decedents’ personal property. Furthermore, in most cases the PA investigators conducting the search of a decedent’s residence will be the first persons responsible for preparing an inventory of the contents. Thus, they may obtain access to valuable items in the residence before any other record exists to establish the presence of those items.

The PA Guidelines prescribe certain procedures to mitigate the risks of these searches. Specifically, investigators must: “endeavor” to secure the presence of an independent witness; document each residence’s condition and contents with photographs and a video recording; and, “to the extent feasible,” make a complete and detailed report of the search and an inventory of its contents “contemporaneous with the search or immediately thereafter.” KCPA investigators are expected to use a “Decedent’s Real Property and Apartment Inventory Record” form during or immediately following the search to document the specific items they identify as valuable and retrieve from the property, such as jewelry, cash, and credit cards. However, based on our observations, KCPA investigators did not always log the personal property they found in a decedent’s residence during or immediately after their search.

We conducted two separate observations of KCPA investigators' searches of decedent's residences.¹⁵ In one of the two searches, the investigators immediately logged and photographed the items they identified as valuable. In contrast, the investigators who conducted the other search photographed the items they collected but did not immediately log them in a written record and inventory. When asked whether they were going to log the items on the appropriate form, the investigators stated that they would complete the form upon returning to the office. At that point, the investigators were scheduled to conduct a second search at a different residence. However, the practice of logging the items removed from a decedent's residence only after traveling from the residence to a second location, including the office, does not satisfy the PA Guidelines' requirement of a complete and detailed report of the search and an inventory of the contents made contemporaneously with the search or *immediately* thereafter, where feasible. We observed nothing during the search that would have made the completion of a contemporaneous record and inventory infeasible.

A contemporaneous record and inventory of the search of a decedent's residence made in real time as items are identified serves as a control to mitigate the inherent risks of misappropriation and misconduct during and after such searches. Conversely, the risks increase in proportion to the delay in completing the required written record.

KCPA Response: "With respect to property recovered from decedents' residences, the Guidelines and Procedures for the Operations of the Office of the Public Administrator of Kings County require that '[a]ll property retrieved from investigations will be secured and added immediately to the current records being held by the Public Administrator. This will assure that all property brought in is combined with existing property for safekeeping.' Again, the current issues relating to retrieval and securing of personal property are due to the undermining of the Commissioner's authority to enforce existing procedures, rather than a lack of procedures."

Auditor Comment: Our finding describes a failure of certain KCPA investigators to comply with applicable policies that require the immediate logging of items of personal property that KCPA investigators remove from a decedent's residence. The implementation and enforcement of such policies remain the responsibility of KCPA management.

The KCPA's Documentation of Its Inventory Intake Process Was Incomplete and Inconsistent

The KCPA did not consistently document the intake and internal transfer of estates' personal property from the time its investigators brought the property into the office through its placement in the office's vault.

According to KCPA officials, the PA Guidelines, and the KCPA's internal written policy, KCPA investigators are supposed to search each decedent's residence for personal property. KCPA officials informed us that KCPA investigators look for any documents that will assist in the estate-administration process, such as a will, bank records, and other documents. Further, KCPA officials explained that the KCPA investigators should complete the required record-keeping documents for the search, including the previously-mentioned "Decedent's Real Property and Apartment Inventory Record" form, listing all items of personal property they remove, and bring the

¹⁵ Due to the limitations caused by the COVID-19 pandemic, the audit team was only able to perform two observations of KCPA investigations.

inventoried personal property back to the KCPA office for their supervisor's review. The KCPA's bookkeeper then fills out a Property Intake Sheet to document the transfer of certain types of that personal property, essentially noncash or cash-equivalent items, into the vault. The Property Intake Sheet is supposed to include chain of custody information, identifying the KCPA employee who received the inventoried property from the KCPA investigator, and each employee who had custody of it until it was placed in the vault. The bookkeeper is supposed to attach the completed Property Intake Sheet to the inventory bag containing the property. However, we found a significant number of the inventory bags in the vault without the appropriate Property Intake Sheets attached.

As part of our inventory count, described below, we tested whether Property Intake Sheets were properly completed and attached to the inventory bags in the vault. We found that 69 of 176 inventory bags we reviewed did not have a Property Intake Sheet attached.¹⁶ Of the remaining 107 inventory bags, the Property Intake Sheets attached to 53 were incomplete; specifically, the "received by" and "date" fields were left blank. The KCPA's failure to document the intake, internal transfer, and storage of personal property with properly completed Property Intake Sheets significantly impairs its ability to track and account for its inventory of estates' personal property throughout the administration process and may increase the risks of theft or loss of such property.

KCPA Response: "The guidelines also clearly describe the procedures to be followed by the bookkeeper to record and store these items. As detailed above, the issues identified by the Comptroller are not due to a lack of articulated procedures, but rather are the result of non-compliance with procedures in place."

Auditor Comment: To address the problems associated with the non-compliance the KCPA's response cites, KCPA management should (1) review the applicable written policies and procedures, (2) ensure they provide sufficiently detailed direction and revise them if and as necessary, and (3) take further steps, starting with ongoing monitoring of intake and inventory records, to improve this area of its operation. Such steps should include regular management review of key records, continual monitoring of staff performance, and prompt communication with staff concerning instances of noncompliance. Concerted management action is needed to ensure that KCPA staff consistently and accurately document on the required forms all information required for the proper in-office receipt, transfer, inventory storage, and disposition of estates' personal property.

The KCPA Was Unable to Properly Account for Its Inventory Items

The KCPA failed to maintain an accurate and complete Inventory Record of the estate property stored in its vault. According to the PA Guidelines,

All estate activity shall be recorded promptly in the case management system. The case management system shall provide . . . an individual inventory of each item of real and personal property of saleable value relating to each estate, and the

¹⁶ During an inventory count of the vault conducted by our office on February 11, 2020, our auditors reviewed 176 inventory bags to check for properly completed Property Intake Sheets. The total number of bags we reviewed was less than the total number of bags contained in the vault. We halted our review of the Property Intake Sheets when the KCPA office was closed due to the COVID-19 emergency, which has also prevented our return to the vault to conduct further testing of the Property Intake Sheets.

location of such assets, except that like items of individual value of less than twenty-five dollars (\$25) may be described in lots.

However, our review of KCPA's Inventory Record found that it did not account properly for many of the items that were or should have been the KCPA's custody. Specifically, we found that the Inventory Record: (1) lacked identification and location information; (2) listed many items as missing with no explanation or external record of an investigation; and (3) incorrectly listed other missing items as on hand.

The KCPA keeps its record of items stored in its vault and warehouse—its Inventory Record—in a single Excel spreadsheet which the office's bookkeeper maintains. The bookkeeper updates the Inventory Record to add the items of personal property the KCPA investigators document in the Decedent's Real Property and Apartment Inventory Record and bring into the office.

Our review of the KCPA's Inventory Record found significant deficiencies within the detailed entries for individual items. Specifically, we found that 684 of the 1,218 line entries on the Inventory Record lacked location information for the listed items. These inventory line entries did not include some or all of the following: a bag number, a bin number, and/or another specific location for the property in the vault. Moreover, we found that the KCPA has not established a standardized system of coding, quantifying, and describing the items listed in its Inventory Record. For some items, the bookkeeper entered notations such as "n/a" and "?" rather than a specific coded location in the field designated for the item's location. We also found that 138 of the 1,218 inventory line entries on the Inventory Record lacked a sufficient description of the listed items. Specifically, the Inventory Record did not always provide the quantity or meaningful descriptions of the items, with many items listed simply as "unverified" without any description or explanation.

Due in part to the lack of necessary details, the KCPA was unable to ensure that its inventory records accurately reflect the contents of its inventory. Further, the KCPA's failure to record essential information, such as quantities of jewelry items and the types of coins collected from the decedents' residences and reportedly stored in the office's vault and warehouse, increases the risk of misappropriation and theft of estates' property.

We found, in addition to, and possibly because of, the abovementioned deficiencies, that the KCPA could not account for significant quantities of estates' personal property. On January 21 through January 22, and March 2, 2020, we conducted an inventory count of the vault and warehouse, respectively, and found numerous significant problems described below.

Among other things, during our observation of the vault we found that the KCPA's Inventory Record listed a significant number of the items as missing without explanation and that it listed other items as being on hand that we did not observe in the vault. Specifically, of the 1,218 individual items or bags of estates' personal property reflected in the KCPA's Inventory Record, all of which should have been located in the vault, the KCPA could not properly account for 60 inventory bags (4.9 percent). Of those 60 bags, 52 were missing, and the remaining 8 bags were found open and empty, the contents having been removed with no corresponding entry in the record. Of the 52 missing bags, the Inventory Record noted that 38 bags were missing, with no indication of their whereabouts or any further information as to their disposition. Likewise, the Inventory Record contained no record of the whereabouts or disposition of the remaining 14 missing bags, the items that were in them, or the items that had been in the 8 additional bags found open with contents removed.

The Inventory Record also contained 58 line entries for items that should have been located in the KCPA warehouse. However, during our inventory count, we were unable to locate 15 (25.9 percent) of those 58 items.

Furthermore, we observed hundreds of items in the warehouse, including baseball cards, guitars, and vintage typewriters, among others, that were not listed in the Inventory Record. KCPA officials stated that many of those unlisted items predated their time at KCPA and that the KCPA had no record to establish the estates to which those items belonged, or whether or when those estates were closed. Consequently, distributees of the unidentified estates may not receive estate funds that could have been distributed had these items been sold at auction or privately and the proceeds credited to the correct estates. Moreover, because these items are not listed in the KCPA's Inventory Record or any other record to our knowledge, they are at increased risk of being misappropriated.

KCPA officials informed us that KCPA employees had conducted an informal inventory count in 2019, discussed in the next section. However, that effort was not documented and did not result in an investigation of the missing items listed in the KCPA's Inventory Record or of the hundreds of unrecorded items in the warehouse, which was not included in the KCPA's 2019 inventory count.

KCPA Response: In reference to the inventory conducted internally by the KCPA, the KCPA stated "I was assured that all items in the vault had been identified, logged as belonging to the proper estates and that all items contained on the agency's Inventory Record were accounted for. In September 2019, as result of a Comptroller's audit, it became clear that the project was not properly completed."

The KCPA Failed to Conduct Periodic Inventory Counts of Estate Personal Property

The KCPA failed to periodically conduct inventory counts of the personal property it maintained in its vault and warehouse for the estates it is responsible for administering. According to Comptroller's Directive #1, *Principles of Internal Control*, §5.5, "An agency must establish physical control to secure and safeguard vulnerable assets. . . . Periodic counting and comparison to control records for such assets is an important element of control of these assets." However, the KCPA was unable to furnish documentation to establish that it had either implemented or conducted periodic counts and comparisons of the assets on hand with its Inventory Record.

While KCPA officials informed us that two KCPA staff members (the bookkeeper and the office manager) conducted an informal inventory count of the items maintained in the vault (but not its warehouse) on September 17, 2019, they had no documentation to establish that it was properly conducted. Notably, the two KCPA employees who conducted that count were not independent of the day-to-day inventory process. Rather, they were the bookkeeper, who is responsible for daily maintenance of the Inventory Record, and the office manager, who is one of three KCPA employees entrusted with the combination for the vault. Moreover, the KCPA was unable to furnish documentation of either the process employed in performing the inventory count or of its specific results. Instead, the only records the KCPA officials provided were a pre-count Inventory Record and a post-count Inventory Record. However, the post-count Inventory Record did not provide reasonable assurance that an adequate inventory count had been performed since it was memorialized by overwriting the previous record, and because it lacked the essential information that should be included in an inventory count, such as who performed the count, the dates and times, the official results, and any follow-up procedures. This critical information is needed to

ensure the transparency and independence of the inventory count process and to allow the users to track the changes and discrepancies before and after the count is performed.

Due to the conflicting responsibilities of the KCPA employees involved in the count and the lack of supporting documentation, the inventory count the KCPA performed in September 2019 was not a valid “count and comparison to control records” as Directive #1 requires. When we asked when the KCPA had last conducted an inventory count before September 2019, the KCPA did not provide a specific date or a record of any previous count.

Further, as noted, the 2019 count was only of the items in the vault and the KCPA did not at that time conduct an inventory count of the items maintained in its warehouse. KCPA officials could not tell us when the last inventory count was performed there.

The absence of proper periodic inventory counts contributes to the inaccuracy of the KCPA's Inventory Record and to the office's inability to account for missing items and hundreds of items on hand that belonged to now-unidentified estates. Further, the KCPA's failure to conduct appropriate periodic inventory counts impairs its ability to detect, investigate, and take timely action to address both recordkeeping errors and instances of loss and potential theft involving estate property. Finally, the accumulation of hundreds of unaccounted-for inventory items in the warehouse increases the risk of theft and the risk that the KCPA has failed or may fail to include assets of now unidentified estates in its inventories and sales, potentially depriving the estates' distributees of money they should have received.

KCPA Response: “Outside vendors will be utilized to conduct vault and warehouse inventories going forward. Items currently stored in the warehouse predate my appointment. These items are for the most part decades old and of no value. . . . Upon becoming the Public Administrator in 2015, one of my top priorities was to document and liquidate the hundreds of personal property items housed in the agency vault. . . . The secondary project of identifying, removing and liquidating items in the warehouse which have no clear or significant value will be tackled once the vault is reconciled, and the number of such items held will be reduced to a manageable number.”

Auditor Comment: We are pleased that the KCPA will engage outside vendors, presumably with no conflicting responsibilities, to conduct inventory counts for the vault and warehouse and that the KCPA intends to address the issues our audit identified relating to inaccurate inventory records, missing items, and the accumulation of unaccounted-for items, particularly in the warehouse.

The KCPA Did Not Effectively Monitor Access to Its Vault

The KCPA did not effectively utilize its office video surveillance system to monitor access to the vault where some of the estates' personal property is stored. According to Comptroller's Directive #1, §4.5, “A sound internal control system must be supported by ongoing activity monitoring occurring at various organizational levels and in the course of normal operations.” Section 5.5 further states,

An agency must establish physical control to secure and safeguard vulnerable assets. Examples include security for and limited access to assets such as cash, securities, inventories, computers and other equipment, which might be vulnerable to risk of loss or unauthorized use. Periodic counting and comparison to control records for such assets is an important element of control of these assets.

In addition to the requirements established by the Comptroller's Directives, the Department of Records and Information Services recommends that video recordings be retained for a period of six months.

In 2019, the KCPA installed a video surveillance system focused on the vault entrance. This monitoring system could provide a record of the dates and times KCPA employees, or any other persons, enter and exit the vault during an established timeframe, and thereby serve as a component of an effective control environment to protect valuable inventory items. However, the KCPA does not utilize the system in a manner that would enable it to fill that role.

Specifically, the KCPA does not back up its video record to a secure, external source and does not periodically compare it with the manual vault entry log to determine whether the staff members who enter the vault properly complete the log. Instead, the monitoring system activates and records automatically when it detects movement outside the vault entrance, and it periodically overwrites the video files it creates, usually within a month. Thus, the system does not create a record that the KCPA can reliably use to monitor or reconstruct access to the vault during an established timeframe. Therefore, the KCPA was not utilizing this particular tool to its optimal capacity to safeguard valuable estate property.

KCPA Response: "In 2019 I had a video surveillance system installed to monitor vault access, among other office functions. . . I am currently working with a vendor to update the storage capacity of the system in order to retain a minimum of six months of recordings as per the Comptroller's recommendation."

Auditor Comment: We are pleased that the KCPA will retain the video record for an established timeframe in accordance with our recommendation. The KCPA should also establish policies and procedures to periodically compare the video surveillance records with the corresponding access log records to ensure a complete record of access to the vault.

RECOMMENDATIONS

The Kings County Surrogate's Court should:

1. Review its Administrative Orders of May 18, 2020 and May 20, 2020 with the assistance of the Office of Court Administration to address and as far as possible resolve any contradictions that may exist between them.
2. Confer internally, with the assistance of the Office of Court Administration, to develop a framework in which the two Kings County Surrogates may jointly provide an appropriate level of Court oversight to ensure the KCPA's accountability to the Court for the administration of estates in accordance with the SCPA, the Administrative Guidelines, other applicable authority, and best practices.

Auditor Comment: As stated previously, one of the two Kings County Surrogates responded to the audit report but did not specifically agree or disagree with these recommendations. The second Kings County Surrogate did not submit a response to the audit report.

The KCPA should:

1. Establish written policies and procedures that include detailed guidance to staff, consistent with the SCPA and the PA Guidelines, for the proper performance of their assigned duties. The policies and procedures should cover in detail, at a minimum:
 - a. searches for and collection of estate assets in decedents' residences;
 - b. securely maintaining permanent chain of custody and complete inventory records for non-liquid items of estate property;
 - c. securely synchronizing the inventory records for each estate with the corresponding case management and accounting records to ensure that non-liquid items of personal property are promptly sold and the proceeds credited to the correct estates;
 - d. safeguarding all estate property;
 - e. maintaining complete access records for the vault; and
 - f. properly disposing of estates' unsaleable personal property.

KCPA Response: "The Guidelines and Procedures for the Operations of the Office of the Public Administrator of Kings County set forth such procedures. These procedures have been in place since 2014 and were sufficient at the time of the Comptroller's previous audit of June 2015. "

Auditor Comment: We found that in certain specific areas of operation outlined in our report, the KCPA's policies and procedures lacked the detailed guidance needed to ensure the staff's effective performance of key responsibilities related to safeguarding and accounting for estates' personal property. We urge the KCPA to review and enhance existing policies and procedures to ensure they provide the guidance necessary to establish

accountability throughout the office for proper performance of the office's responsibilities.

2. Ensure that it properly logs and maintains essential information concerning all personal property of every estate during or immediately following investigations at decedents' residences.
3. Consider using video recording devices during investigations at decedents' residences, in combination with the appropriate written record, to ensure that it reliably documents each residence's condition and contents and that all personal property is identified in the written record of the investigation.
4. Ensure that it consistently documents all aspects of the in-office inventory intake process on the required forms.

KCPA Response for Recommendations #2, #3 and #4: The KCPA did not specifically address recommendations #2, #3, and #4. However, the KCPA stated, "The Comptroller makes several valid recommendations with respect to improving operations of the agency. These recommendations will be implemented where possible."

Auditor Comment: While we are pleased that the KCPA acknowledges the overall validity of our recommendations for improving the KCPA's operations, we reiterate the importance of the specific recommendations needed to enable the KCPA to remedy the specific internal control issues the report identifies.

5. Designate employees who are independent of the inventory process to conduct periodic inventory counts of the personal property maintained in the vault and warehouse, and follow up with management review and investigation to:
 - a. Ensure the proper recording of all essential details of the inventory, including the quantity, description, and location of each item or group of items in accordance with the PA Guidelines.
 - b. Identify and investigate missing items and initiate appropriate law enforcement referrals, disciplinary action, and/or other appropriate corrective action promptly.
 - c. Investigate the unaccounted-for items of non-liquid personal property in the vault and warehouse to identify and credit the appropriate estates wherever possible.
 - d. Determine, with legal advice as needed, the appropriate disposition of unclaimed property in the vault and warehouse for which the KCPA cannot identify the owner or the persons entitled to sale proceeds.

KCPA Response: "Although KCPA conducted inventory counts for items contained in its vault during 2015 and 2018-19, as explained above and referenced in the audit report, the 2018-19 reconciliation was not properly performed. Outside vendors will be utilized to conduct vault and warehouse inventories going forward."

Auditor Comment: We are pleased that the KCPA will engage outside vendors, presumably with no conflicting responsibilities, to conduct inventory counts for the vault and warehouse. We urge the KCPA to ensure that its

inventory counts include and are supplemented with the recommended procedures for management review, investigation, and follow-up action as outlined above.

6. Perform and obtain appraisals of non-liquid inventory items belonging to closed estates, sell the items at auction, and ensure the proceeds of the sales are credited to the estates and remitted to the appropriate individuals in accordance with the applicable decree wherever feasible.

KCPA Response: “Upon becoming the Public Administrator in 2015, one of my top priorities was to document and liquidate the hundreds of personal property items housed in the agency vault. Between December 2015 and March 2020, the number of estates with jewelry or other personal property as the only asset, was reduced from 1516 to 1208. The secondary project of identifying, removing and liquidating items in the warehouse which have no clear or significant value will be tackled once the vault is reconciled, and the number of such items held will be reduced to a manageable number.” The KCPA further stated that these projects are on hold due to the inadequate reconciliation of items contained in the vault, “complicated by impediments imposed by” the May 18, 2020 Administrative Order, specifically, its “suspension of [the PA’s] ability to supervise all matters in [the issuing Surrogate’s] inventory, which includes approximately fifty percent of the items housed in the agency’s vault and warehouse.”

Auditor Comment: We are pleased that the KCPA will take steps to document and liquidate the personal property maintained in the vault and warehouse. We urge KCPA management to complete those projects in a timely manner.

7. Consider transitioning inventory records of non-liquid items of tangible personal property of the estates to CompuTrust and utilizing CompuTrust going forward to record all details of such items and as a means of restricting access to those inventory records to the persons whose specific job duties require it. Alternatively, identify and obtain a suitable, secure system to maintain a continuous, complete inventory record of estates’ non-liquid personal property, preserving the dates and essential details of updates, and synchronize those records with the estate accounting and case management system to ensure that all estate property is tracked from collection to disposition and that the proceeds are properly credited and traceable to the appropriate estates.

KCPA Response: The KCPA did not specifically address recommendation #7. However, it stated, “The Comptroller makes several valid recommendations with respect to improving operations of the agency. These recommendations will be implemented where possible.”

Auditor Comment: We reiterate the importance of the KCPA’s implementing the specific recommendations needed to remedy the internal control issues the report identifies and, as relevant here, to work toward full integration of the inventory records it maintains for the estates it administers.

8. Regularly download, preserve, and periodically compare copies of video surveillance records with access log records to ensure a complete record of access to the vault.

9. Periodically back up video surveillance records and maintain the backed-up records in a secure location.

KCPA Response to Recommendations #8 and #9: “I am currently working with a vendor to update the storage capacity of the system in order to retain a minimum of six months of recordings as per the Comptroller’s recommendation.”

Auditor Comment: We are pleased that the KCPA intends to retain video records for an established timeframe in accordance with our recommendation. The KCPA should also establish a policy and procedures to periodically compare the video surveillance records with access log records to ensure a complete record of access to the vault.

DETAILED 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 January 1, 2017 through June 30, 2020.

To gain an understanding of the policies, rules, and regulations applicable to the KCPA, we reviewed the documents that detail the office's general responsibilities and powers; these included the New York State Public Administrator Guidelines, the New York State Surrogate's Court Procedure Act, Comptroller's Directive #1, *Principles of Internal Control*, and the Department of Records and Information Services' NYC Supplemental Records Retention and Disposition Schedule. We also obtained any available policies and procedures from the KCPA's office to gain a general understanding of the overall functions of the KCPA.

To gain an understanding of KCPA's administration processes, we conducted a variety of walkthrough meetings, including but not limited to the following: a general walkthrough of administration processes with the PA and Deputy PA; meetings/walkthroughs with the three counsels to the KCPA appointed by the Kings County Surrogates concerning the steps they take to draft and carry out Surrogate's Court decrees concerning the estates; a general walkthrough with office staff including the office manager, investigators, case managers, accountants, and bookkeeper concerning their daily duties and responsibilities as they relate to estates; and interviews with both the PA and Deputy PA on their day-to-day duties and responsibilities in managing estates. To gain a general understanding of the KCPA's functions and better identify any internal control weaknesses, we created flowcharts of the major areas of its operations.

To assess the KCPA's inventory and kinship investigation procedures, we reviewed all available policies the office had concerning investigation procedures. Further, we accompanied investigators from the office on two separate occasions (10-30-19 and 11-04-19) and observed the residence investigations in the field. We observed the information and property collected from the decedents' residences and the process of returning it to the KCPA's office.

To gain an understanding of the oversight structure in which the KCPA operates, we interviewed both Kings County Surrogate's Court Judges to determine the nature of their oversight over the day-to-day activities of the office.

To gain a better understanding of specific office practices in relation to the intake of decedents' property, we met with the PA. Additionally, we conducted a separate meeting with the PA, the Deputy PA, and the Property Manager to understand how the office procures the services of various vendors for the estates for which the KCPA is responsible.

To gain a better understanding of the data entry procedures and CompuTrust system, we observed staff's logging financial transactions into the CompuTrust system and reviewed the CompuTrust Manual. We also observed items being placed into the vault and the associated updating of the Excel sheet Inventory Record. To determine the accuracy and completeness of the Inventory Records, we conducted an inventory count of the vault on February 11, 2020 and

the warehouse on March 3, 2020. This count allowed us to determine which items were present in those areas, which items in those areas were listed in the Inventory Record, and which items listed in the Inventory Record were missing. We also conducted meetings with the PA to gain information concerning the office's video surveillance system and how it is used. Additionally, in order to garner an understanding of the entire process, we conducted an interview with the auctioneers responsible for liquidating items for the KCPA's office.

To better understand the ongoing conflicts at the KCPA's office, we reviewed a variety of communications circulated by and throughout the office. These include emails sent between KCPA officials, as well as office-wide public emails.

To assess the reliability of the computer-processed data from CompuTrust and Excel, we took samples of trial balances from opened and closed estates. We did this by separating the estate file into both opened and closed estates. Then using the audit program ACL, we took a random sample of each limited to 50 transactions related to the decedents' estates. Each line item sampled included information such as the decedent's name, PA number, date of transaction, amount in the transaction, check number, and vendor paid. We then tied the financial information to hard copy documents provided by the KCPA's office, to ensure that any differences were immaterial. Further, we examined the sale of all real properties in the scope period to determine whether the properties were being sold for fair market value.

The results of the above investigations provide a reasonable basis to assess and to support our findings and conclusions about the KCPA's operating practices.

**Comments of the Public Administrator Richard Buckheit, on the
New York City Comptroller's Audit Report of KCPA (FP20-82A) April 6, 2021**

The following comments are in response to the Comptroller's Audit Report for KCPA (FP20-82A) dated April 6, 2021. The audit encompassed the period from January 1, 2017, through June 30, 2020, and took place between September 2019 and September 2020. The auditors were physically present at KCPA from September 2019 through February 2020, at which time the auditors were unable to return to KCPA due to the COVID-19 Pandemic. During the COVID-19 shutdown KCPA provided requested documents via email. The draft report was received by KCPA on April 6, 2021.

Response to the Findings Recommendations

I. Background

As of September 18, 2019, KCPA had 2,740 open estates under its administration. The number of open estates as of January 2015, the date of my appointment, was 4,512. Thus, between January 2015 through September 2019, while continuing to receive and administer hundreds of new estates each year, KCPA reduced the number of open estates in its inventory by 1,772 or 39.2 percent. The reduction was achieved through several initiatives which I implemented, and which were made possible as a result of my request to the Office of Management and Budget for increased staffing,¹ as well as by hiring temporary agency staff funded by the agency suspense account. The reduction in the number of open estates administered by KCPA has been a priority for the agency since 2015. The Comptroller took no notice of this reduction in his current report².

II. Conflicting Orders from the Surrogate's Court Impair Management's Ability to Administer Estates Properly

The Comptroller's report describes a "divisive culture at KCPA" which, for reasons explained below, is attributable solely to the actions of Surrogate Thompson, rather than the result of "conflicting orders." Surrogate Thompson's actions have resulted in dysfunction and confusion amongst KCPA staff as to the supervisory structure of the agency. Judge Thompson's involvement in the operations of KCPA began well before she issued her May 18, 2020 Administrative Order. The issues began to surface shortly after she took the bench in January 2019. The ability of Surrogate Thompson, New York State elected official, to disrupt the operations of KCPA, a New York City agency is only comprehensible upon exploration of the laws authorizing Surrogates to

¹ In 2017 the New York City Office of Management and Budget authorized two additional KCPA staff lines.

² As of July 1, 2014, the KCPA was responsible for managing 42,407 estates valued at \$95.7 million. NYC Comptroller's Audit Report, June 2015 (MD14-122F) at page 4.

appoint counsel to the PA,³ the Public Administrator⁴ and the Deputy Public Administrator.⁵ Surrogate Thompson has involved herself in the day-to-day management and operation of a city agency, including issues surrounding staff supervision and the management of estates and real estate⁶ These actions include: sending a false and discriminatory statements in a letter to Chief Administrative Judge Lawrence Marks (May 22, 2019); sending a letter to KCPA staff threatening criminal and/or civil contempt should they provide information to me and/or fail to comply with her directives; issuing a May 18, 2020 order “suspending me from taking any further action in the processing of any pending and/or new cases in (the) [her] inventory” and additional actions which have furthered division and dissension amongst staff and continue to inspire or enable some KCPA staff members to ignore or disregard agency policies, procedures, and directives.⁷

To be clear, Surrogate Lopez Torres’ order of May 20, 2020, did not contribute to this dysfunction. Her order was simply an attempt to return the office to the *status quo*, which existed prior to Surrogate Thompson’s unilateral involvement in the day-to-day operations of the agency. The May 18, 2020, Administrative Order issued by Surrogate Thompson is the basis of a pending lawsuit, brought by the New York City Law Department (517574/2020) in Kings County Supreme Court seeking reversal of the order and resumption of normal agency operations.

III. Lack of Detailed Written Policies and Procedures in Several Areas of Operation

The current audit report states, “KCPA did not establish adequate written policies and procedures for the collection of personal property from the residences, the transfer of personal property into the KCPA vault, and the sale and release of personal property in KCPA custody, among other operations.” The Guidelines and Procedures for the Operations of the Office of the Public Administrator of Kings County⁸ set forth such procedures. These procedures have been in place since 2014 and were sufficient at the time of the Comptroller’s previous audit of June 2015. The 2015 report does not specifically mention the need for the agency to revise procedures with

³ In the counties of the City of New York, the court may appoint one or more counsels to the public administrator. SCPA Section 1108.

⁴ The Public Administrator of Kings, Richmond, New York, Bronx and Queens counties shall be appointed by and may be removed by the judge or judges of the court of their respective countries and shall recontinue in office until removed. SCPA Section 1102 (1).

⁵ The deputy public administrator of the counties of New York city shall be appointed by the surrogate court judge of the county in which they shall serve. SCPA Section 1103.

⁶ The Public Administrator “shall have authority to take possession of, manage and collect the rents of real property of an intestate” SCPA Section 1112.

⁷ One troubling issue confronting KCPA is the number of investigations skewed in favor of estates on Surrogate Thompson’s docket. Between February 13, 2020 and April 15, 2021 66.2 % of all KCPA investigations were conducted on Surrogate Thompson’s estates while just 33.8 % of investigations were conducted on Surrogate Lopez Torres’ estates.

⁸ Created by Deputy A. Glover FY 2014 and revised in 2018.

respect to the collection of personal property from residences, the transfer of personal property into the KCPA vault nor the sale and release of personal property in KCPA custody⁹.

KCPA maintains written policies and procedures for multiple areas of operations, including: asset collection; credit/debit card destruction; case management; investigations; vendor bidding procedures; Weekly Case Management Reports; Vendor W-9 and Misc-1099 procedures; Financial Management and Management of Personal and Real Property (revised 2018); Large and Small Estate Checklists; Supervisory Case Reviews; Funds Disbursement Procedures; Procedures for Closing Estates containing less than \$500 in assets; loans to estates; bank account reconciliations; suspense account management, and others. Dozens of policies and procedures implemented since January 2015 are unrecognized in the current audit report. Notwithstanding articulation and implementation of these procedures, they are meaningless unless adhered to by staff members and enforced by supervision. As a result of Surrogate Thompson's involvement in KCPA operations, some staff members, with the consent of the Deputy Public Administrator, are now permitted to ignore KCPA policies and procedures without fear of repercussion.

IV. Inappropriate Practices for the Recording, Collection, Storage, and Disposition of Estate Personal Property

A) KCPA Investigators Did Not Immediately Log Items on Designated Forms

With respect to property recovered from decedents' residences, the Guidelines and Procedures for the Operations of the Office of the Public Administrator of Kings County require that "[a]ll property retrieved from investigations will be **secured and added immediately to the current records** being held by the Public Administrator. This will assure that all property brought in is combined with existing property for safekeeping." Again, the current issues relating to retrieval and securing of personal property are due to the undermining of the Commissioner's authority to enforce existing procedures, rather than a lack of procedures.

For example, one investigator currently refuses to allow the Commissioner to confirm items recovered from investigations, leaving this responsibility solely to the Deputy when she is available to verify them. Thus, property is left unverified and unsecured for days. Deputy Glover is fully aware of this violation of agency guidelines yet has taken no corrective action. For example, recent Investigation Reports by this non-compliant investigator read, "The recovered items were photographed, inventoried on the Decedent's

⁹ "Since the prior audit, KCPA has developed written procedures to describe key employees' responsibilities and functions critical to the administration of estates. However, our review of these functions such as review of bank reconciliations, administration of auctions of decedent property, management of loans made to estates, and management of the disbursement account were not described in the KCPA's procedures." NYC Comptroller's June 2015 Follow-up Audit Report on the Financial and Operating Practices of the Kings County Public Administrator's Office.

Real Property and Apartment Inventory Record form and brought back to KCPA via agency vehicle *to be verified by Deputy Commissioner Glover at a future date.*¹⁰

B) The KCPA's Documentation of Its Inventory Intake Process Was Incomplete and Inconsistent.

Guidelines in place at KCPA since 2014 describe the types of personal property and documents investigators should search for, collect, transport and transfer into the vault from decedent residences. The guidelines also clearly describe the procedures to be followed by the bookkeeper to record and store these items. As detailed above, the issues identified by the Comptroller are not due to a lack of articulated procedures, but rather are the result of non-compliance with procedures in place.

C) The KCPA Was Unable to Properly Account for Its Inventory Items

In May 2018, I asked Deputy Public Administrator Glover to assign two staff members to reconcile personal property held in the agency vault. In October 2018, I was informed that the project was finished, only to find a bin containing miscellaneous items which had not been attributed to particular estates. The assigned staff members were advised that the completion of the project involved confirming that all items held in the vault had been attributed to the proper estates and that items listed in the agency's Inventory Record, if they could not be located in the vault, were to be described as follows: identified as sold at public auction and proceeds credited to the proper estate; missing; misplaced or misidentified and attributed to an incorrect estate. In the Fall of 2018, the project stalled for no apparent reason. The office manager, although taking part in the project initially, refused without explanation to participate any further. Rather than instruct the office manager to complete the project, Deputy Glover permitted the office manager to cease working on it. During the Fall of 2019, I was again informed that the project, which should have taken approximately one month to complete, was completed one year after it began. I was assured that all items in the vault had been identified, logged as belonging to the proper estates and that all items contained on the agency's Inventory Record were accounted for. In September 2019, as result of a Comptroller's audit, it became clear that the project was not properly completed.¹¹

¹⁰ Estate of James Childs (151656) Investigation Report 10/27/20; Estate of Ileana Birnbaum (151336) Investigation Report 11/10/20; Estate of Calvin Lent (151336) Investigation Reports 1/19/21 and 4/2/21 (the investigation took place on 4/1/21); Estate of Meryl Landy (151834) Investigation Report 3/16/21.

¹¹ The Comptroller found that as of Sept 2019, "the KCPA's Inventory Record listed a significant number of items as missing without explanation and that it listed other items as being on hand that we did not observe in the vault. Specifically, of the 1,218 individual items or bags of estates' personal property reflected in the KCPA Inventory Record, all of which would have been located in the vault, the KCPA could not properly account for 60 inventory bags (4.9%). Of those 60 bags, 52 were missing, and remaining 8 bags were found

Prior to the current KCPA audit, the previous Comptroller's audit took place from July 2013 through December 2014. The only recommendation mentioning personal property contained in that report was, KCPA should "maintain a master inventory record in each estate file or in Computust that details every item of estate property held by the PA in its safe, warehouse, banks and other locations." The Comptroller's June 2015 report made no mention of the need to revise or implement new policies or procedures regarding personal property. This highlights the fact that any current issues concerning personal property are the result of a culture of disregard and resistance to supervision and oversight created by the actions of Surrogate Thompson, rather than the result of a lack of procedures. The ability of one judge to undermine the authority of a city commissioner and interfere in the daily operation of a city agency is possible as a result of the flawed statutory appointment structure which authorizes the Surrogates to appoint the Deputy Public Administrator¹² as well as the attorneys who appear before the Surrogates and who represent estates on behalf of the Public Administrator in Surrogate's Court. In no other court does a judge deciding the merits of a case also select both the individual who appears as a party and the attorney appointed to represent that party in matters pending before the court. This appointment structure creates an inherent conflict of interest which must be addressed by the legislature.

D) The KCPA Failed to Conduct Periodic Inventory Counts of Estate Personal Property

In his 2015 audit report, the Comptroller recommended that KCPA maintain an Inventory Record of items held on behalf of the estates it administers. This recommendation was implemented, as referenced at page eleven of the current audit report: "The KCPA keeps its record of items stored in its vault and warehouse - its Inventory Record - in a single Excel spreadsheet which the office's bookkeeper maintains. The bookkeeper updates the Inventory Record to add the items of personal property the KCPA investigators document in the Decedent's Real Property and Apartment Inventory Record and bring into the office." Although KCPA conducted inventory counts for items contained in its vault during 2015 and 2018-19, as explained above and referenced in the audit report, the 2018-19 reconciliation was not properly performed. Outside vendors will be utilized to conduct vault and warehouse inventories going forward.

open and empty, the contents having been removed with no corresponding entry in the record. Of the 52 missing bags, the Inventory Record noted that 38 bags were missing, with no indication of their whereabouts or any further information as to their disposition. Likewise, the Inventory Record contained no record of the whereabouts or disposition of the remaining 14 missing bags, the items that were in them, or the items that had been in the 8 additional bags found open with contents removed."

¹² In stark contrast to the Comptroller's findings, the Deputy Public Administrator is quoted as saying, the Public Administrator's "suspension does not affect KCPA operations" (NY Daily News 2/15/21). Additionally, the Deputy filed an affidavit in support of Surrogate Thompson's May 18, 2020 order declaring, "Since Mr. Buckheit's suspension, despite his claims to the contrary, the office continues to function as it did in the past." (Glover Affidavit 3/3/21 Index No. 517574/2020). These statements are evidence not of the Deputy's commitment to the proper functioning of the agency, but rather to Surrogate Thompson, the person who holds the power to appoint the next Public Administrator.

Items currently stored in the warehouse predate my appointment. These items are for the most part decades old and of no value.¹³ The baseball cards mentioned in the current audit report belong to an estate where the decedent passed away in 2006. The guitar and typewriter of no value, belong to an estate where the decedent passed away in 2007. The guitar has a severe crack and the (Corona) typewriter is not worth the cost of transporting it to the auction house. Personal property, with few exceptions, is not stored in the warehouse. Instead, personal property which cannot be secured in the agency's vault due to space limitations is sold via property sale bids conducted from decedent's homes.

Upon becoming the Public Administrator in 2015, one of my top priorities was to document and liquidate the hundreds of personal property items housed in the agency vault. Between December 2015 and March 2020, the number of estates with jewelry or other personal property as the only asset, was reduced from 1516 to 1208. The secondary project of identifying, removing and liquidating items in the warehouse which have no clear or significant value will be tackled once the vault is reconciled, and the number of such items held will be reduced to a manageable number. These projects are on hold due the inadequate reconciliation of items contained in the vault as of September 2019, complicated by impediments imposed by Surrogate Thompson's suspension of my ability to supervise all matters in her inventory, which includes approximately fifty percent of the items housed in the agency's vault and warehouse.

E) The KCPA Did Not Effectively Monitor Access to Its Vault

The Comptroller's 2015 audit made no recommendation with respect to monitoring vault access. At the time of the 2015 report, vault access monitoring consisted of a handwritten, self-reporting vault entry log required to be completed by anyone entering the vault. In 2019 I had a video surveillance system installed to monitor vault access, among other office functions. Surrogate Thompson strongly objected to the system being installed.¹⁴ I am currently working with a vendor to update the storage capacity of the system in order to retain a minimum of six months of recordings as per the Comptroller's recommendation. As the Comptroller recommends, there are and always have been a very limited number of staff members having access to the vault.

¹³ Most of the items in the warehouse (furniture, glassware and knick-knacks) were offered for sale at public auction(s) prior to 2015 but did not sell. Since the items did not sell during public auction(s) it stands to reason that they have no value.

¹⁴ In a letter to Chief Administrative Judge Lawrence Marks dated May 22, 2019 Surrogate Thompson wrote, "equally offensive, I have been informed that the PA had cameras installed in the office... Why are the cameras still installed? I believe that cameras may be appropriate in banks and other such institutions but not in the PA's office."

V. Conclusion

Substantial improvements in the operations of KCPA, unrecognized in the current audit report, have been achieved since my appointment as Public Administrator in 2015. These improvements have been acknowledged during conversations with the Comptroller's audit team. The status of KCPA operations prior to 2015 is documented in two Comptroller reports dated June 13, 2013 and June 30, 2015. These reports can be viewed at the NYC Comptroller's website:

https://comptroller.nyc.gov/reports/?fwp_agency=public-administrator-kings-county

KCPA will continue to experience issues in the management of estates, operations, and staff as long as the current appointment structure for the Public Administrator, Deputy Public Administrator and counsel to the Public Administrator continues. Issues resulting from the appointment structure are not unique to KCPA. Similar issues have been known to surface in other Public Administrator offices. The resulting issues are magnified in Kings County because there are two Surrogate court judges, the only other county in New York State besides Manhattan which has two Surrogates. Notwithstanding the inherent ethical issues of the statutes, the appointment process creates no operational issue when two Surrogates see eye-to-eye. However, it can be and is a major impediment to the proper functioning of the PA when two Surrogates in a county, as is currently the case in Brooklyn, disagree over the propriety of a judge's personal involvement in the daily operations of a city agency. Under these circumstances, supervisory hierarchies are undermined, and there is no incentive for a Deputy Public Administrator to work cohesively with the Commissioner in order to improve the operations of the agency. In fact, the exact opposite is incentivized, as the interference of the court may create in the Deputy an anticipation of assuming the Public Administrator position.

As a result of the current situation, in which Surrogate Thompson has acted unilaterally to improperly and unlawfully delegate the Commissioner's authority to the Deputy,¹⁵ the KCPA has become dysfunctional. Policies, procedures and directives put in place in response to the NYC Comptroller's 2013 and 2015 audits are ignored; annual audits¹⁶ and reports required by SCPA are not performed as they cannot be certified as accurate; investigations move at a snail's pace and initiatives put in place to reduce the agency caseload of estates are on hold. The result is a lack of accountability or clear reporting structure due to Surrogate Thompson's May 18, 2020 administrative and other improper orders.

The Comptroller's audit report focuses on the specific areas of KCPA which continue to need improvement, rather than on improvements which have been implemented since the 2015. The Comptroller makes several valid recommendations with respect to improving operations of the agency. These recommendations will be implemented where possible. However, until the agency's

¹⁵ The Deputy Public Administrator possesses the power as may be prescribed and vested in her by the respective Public Administrator. SCPA Section 1103(2).

¹⁶ As of January 2015, the last annual audit completed as required pursuant to SCPA Section 1110, was for fiscal year 2007. Between 2015 and 2019 KCPA completed eleven annual audits (2008-2018). Due to Surrogate Thompson's May 2020 administrative order annual audits cannot be performed.

reporting structure is re-established in accordance with the NYS Surrogate's Court Procedure Act, additional efforts to improve KCPA operations will not be possible.

**COMMENTS OF
SURROGATE MARGARITA LOPEZ TORRES
ON THE
PRELIMINARY DRAFT
OF THE
NEW YORK CITY COMPTROLLER’S
AUDIT REPORT ON THE OPERATING PRACTICES OF THE KCPA, FP20-082A
March 15, 2021**

The Comptroller’s preliminary draft of its audit on the Kings County Office of the Public Administrator opines that conflicting orders from the two Kings County Surrogates have resulted in “confusion concerning the authority” of the Public Administrator (“PA”) to administer and direct the operations of that office.

The issuance of an “Administrative Order,” on May 18, 2020, by Surrogate Harriet Thompson, which followed a verbal order “on the record,” purported to unilaterally suspend a City Commissioner from all matters in Surrogate Thompson’s inventory (docket of cases). This was followed by a letter, dated February 20, 2020, in which Surrogate Thompson asserted that the Commissioner had not been in compliance with her order. Surrogate Thompson directed that each staff member had the obligation to comply with her order and to “immediately” report any noncompliance to her. Indeed, she threatened the members of the staff of a City Commissioner that she would “take the appropriate action with the proper authorities including but not limited to criminal and/or civil contempt of court.”

This created an untenable situation, with ramifications well beyond the contours of the cases pending in the court within Surrogate’s Thompson’s docket of court cases. It has severely affected the entirety of operations within this office, to its detriment — all without there being a statutory authority or any basis in law for these directives and orders. The subsequent order that I issued on May 20, 2020, was an effort to maintain the *status quo ante*, since it is the Public Administrator who has the authority to manage the operations of that office. The order I issued on May 20, 2020, did nothing more than state that which is already directed by Article 11 of the Surrogate’s Court Procedure Act (“SCPA”). It would, indeed, have been *ultra vires* were someone other than the Public Administrator to take any action contrary to that authorized by the Public Administrator, who is ultimately the person responsible for the management and operations of this office.

It should be noted that Surrogate Thompson has never set forth the statutory basis for taking the actions she has with respect to a City agency (other than to say that it is her belief that, as surrogate, she has the authority to so act). Indeed, during a meeting I attended on January 7, 2020, with the Chief Administrative Judge, his counsel, the Commissioner, and Surrogate Thompson, she acknowledged that there was no statutory authority for her unilateral action in suspending the Commissioner from handling specific matters within his

purview.¹

That this Comptroller perceives that there is conflict, dysfunction, and confusion in the chain of command in the KCPA is utterly unfortunate but should come as no surprise. To the contrary, the problems and issues raised and identified in the preliminary audit report are symptomatic of the fundamental structural problems of the manner in which the office of PA is supervised, not just in Kings County, but in New York City as a whole. Until this underlying structure issue is rectified, the problems that have confronted the various public administrator's offices in New York City for a century will only continue.

The PAs are not employees of the State courts – were that otherwise, the New York City Comptroller clearly would have no jurisdiction whatsoever to audit that agency. Instead, in all five boroughs they are commissioners of the City of New York. Pursuant to SCPA § 1105 (3), their salaries are paid by the City, and such expenses must be included in the City's annual budget. Most of the PAs' staff are also City employees paid by the City. All commissions received by each commissioner must be deposited in the City's treasury each month and the Comptroller may demand that each commissioner produce all bank statements, vouchers, and any other documents of the public administrators' offices at any time. SCPA § 1107. Additionally, until 1993, each commissioner was required to file monthly reports only with the Mayor and Comptroller. In 1993, SCPA § 1109 was amended to also require the filing of such reports with the surrogate of the county in which a public administrator was located. 1993 NY Laws 655. Pursuant to SCPA § 1110, the City is answerable for each commissioner's faithful execution of her or his office, the City has complete authority to make any lawful deductions from the public administrator's commissions, and it is the City that is ultimately financially liable for the any misconduct or negligence by its commissioners.

Despite the foregoing, in New York City the PA in each county is appointed by the surrogate or surrogates of that county pursuant to SCPA § 1102, and only the surrogate or surrogates may remove the City's public administrator. The City, therefore, although liable for all of her or his acts, may not appoint or remove any public administrator. Additionally, while other City agencies are represented in court proceedings by the City's own Corporation Counsel, in Surrogate's Court, with respect to estate proceedings, the City's public administrators are represented by private counsel appointed by the court pursuant to SCPA § 1108 (2)(a). And while attorneys for Corporation Counsel are salaried employees of the City, each Commissioner's counsel in Surrogate's proceedings is paid by the estates of decedents in such amounts as are determined appropriate by the surrogates.

1. Surrogate Thompson's actions are presently the subject of a pending Article 78 proceeding brought by the Commissioner, represented by Corporation Counsel. *Buckheit v. Thompson*, Index #517574/20 (S. Ct. Kings Co).

Thus, there exists the anomaly of a surrogate, a member of the State's judiciary branch, appointing a public administrator, a member of the City's executive branch, rather than the Mayor, who appoints all other City commissioners. This statutory scheme has resulted in an untenable system of diffused accountability that has, time and again, ill-served the public interest. While the public administrator is an agency of the City, the City has never committed to any ongoing routine oversight over its own agency and commissioners.²

The result is a municipal or county agency whose relationship to the City or county government is akin to that of a neglected step-child. The surrogates themselves, as judicial officers, should not and cannot become closely involved in the oversight of a litigant who frequently appears before them; it is an inherent conflict of interest. And for a judge to review the records and day-to-day affairs of the public administrator would necessarily require gaining extrajudicial personal knowledge of the facts of a case. To do so becomes ethically problematic where the judge is called upon to rule in cases of which she or he has prior personal knowledge of the estate's affairs and may have even directed the conduct of the fiduciary. *See* 22 NYCRR § 100.3(E)(1)(a)(ii) (requiring a judge to disqualify herself if she has personal knowledge of disputed facts concerning the proceeding). When one considers that the public administrators' counsel are also appointed by the surrogate or surrogates, the matter becomes even more problematic.³ If the very judge who decides what legal fees shall be paid to the public administrator's counsel is also involved, directly or indirectly, in the ongoing oversight and administration of the office of that litigant, then the impartial judicial role is further compromised, and certainly the public perception is diminished.⁴

2. Indeed, not many years ago, in a Title VII action alleging sexual harassment by a deputy public administrator, the City moved to dismiss the complaint, asserting that its own deputy commissioner should not be considered a City employee, as the deputy public administrator is appointed by the surrogate. *Gryga v. Ganzman*, 991 F. Supp 105 (E.D.NY 1998). That court, finding that the City was indeed the employer of the public administrator's staff as a matter of law, denied the motion. *Id.* at 111; *see, also, Ganzman v Hess*, 273 A.D.2d 352, 353 (2d Dep't 2000) (same); *Culler v. New York State Unified Court System*, 2019 NY Slip Op. 32134 (U) (S. Ct. Kings Co. 2019).

While the Comptroller does perform audits of the public administrator of each county every four years, there remains a systemic failure to supervise on the City's part.

3. This is entirely unlike the process utilized for the appointment of counsel for indigent or incompetent persons, where judges in each such case choose randomly from a panel of attorneys prequalified by the Appellate Division.

4. The argument has been made that the surrogate is in the best position of selecting the PA,
(continued...)

Even if these formidable ethical quandaries were not present, the surrogates lack the resources and tools to carry out appropriate oversight. Surrogates *do not* have accountants, investigators, spot checkers, auditors, investment advisors, and so forth, available to them to assure compliance with rules, regulations, and guidelines affecting the daily operations of the PA's office – indeed, even more so with the recent cutbacks in court staff.⁵

Yet the perception and expectation is that the surrogates – because they are the ones who, by statute, appoint the public administrator and deputy public administrator – are the ones responsible for doing just that. Even a respected surrogate can find himself the subject of disciplinary proceedings for allegedly failing to exercise sufficient oversight of the timeliness of Public Administrator filings, the prudence of investment decisions made by the PA, or the propriety of the billings of a PA contractor.⁶

That the present statutory scheme creates a structurally unworkable system is certainly not mere conjecture. For nearly a century the flaws of a system by which the surrogate appoints the public administrator and the public administrator's counsel has resulted -- in all five counties of the City -- in repeated incidents that have attained notoriety in the news media and surely have not enhanced the public's perceptions of either office and their independence from one another.⁷ Events of this nature have "eroded public confidence in

4. (...continued)

Deputy PA, and counsel; this appears to be derived from a sense that mayors are not competent to properly select their own commissioners. There is no empirical evidence that the Mayor of the City of New York is any less capable of selecting qualified commissioners for this position than for any other sensitive post, such as commissioners of police, fire, health, finance, law, or education. That some surrogates may be satisfied with their appointees does not ameliorate the underlying structural weaknesses and anomalies of the current statutory framework.

5. While an auditor – selected by the PA – prepares an annual report which it provided to the Surrogate, such annual report is no substitute for the needed ongoing oversight of the operations of the PA's office by municipal entities.

6. In 2012, the Bronx Surrogate was disciplined by the Commission on Judicial Conduct for failing to supervise the PA counsel, *Conduct Commission Censures Holzman*, NYLJ Dec. 19, 2012, who two years later pled guilty to grand larceny for intentionally overcharging estates for his services. *Ex-Counsel to Bronx Public Administrator Pleads to Larceny*, NYLJ, Oct. 1, 2014.

7. For example, in 1930, the PA for Richmond County resigned after it was discovered that substantial sums from estates were missing. *Close Curb is Put on Estates Bureau*, N.Y. Times, August 2, 1930. In 1966, counsel to the PA in both New York and Queens Counties were either former law partners or law associates of the respective Surrogates. *Manhattan Surrogate's Court is*
(continued...)

the integrity of the Judiciary," *In re Feinberg*, 57 A.D.3d 1087, 1088 (3d Dep't 2008), as well as the functioning of the PA's office.

This analysis of the structural problems of the current arrangement is hardly novel. In 1987, the Attorney General and the State Comptroller issued a report which summarized the problem with the current system:

[W]e believe that a Surrogate's direct involvement in the management of a [public administrator] office is *extremely problematic*. Any objections by interested parties challenging the methods and conduct of the [public administrator] in administering a particular estate are made before the local Surrogate, and it is the Surrogate who must ultimately pass upon these objections in the course of reviewing the [public administrator's] final accounting. Where the Surrogate has closely supervised the [public administrator] and has played a direct role in the formulation of office policy, his impartiality in assessing objections to the [public administrator's] procedures or conduct is inevitably open to question ... The hint of a conflict of interest or the suggestion of a possible bias undermines public confidence in the fundamental fairness of the judicial process. At the very least, the present [public administrator] appointment scheme places the Surrogate in the dubious position of "hiring" a public official who is a frequent party before him and whose conduct – as the Surrogate's appointee and subordinate – may be the subject of legal proceedings that the Surrogate must determine.

New York City Public Administrators: An Operational Review, at 54 (November 1987) (on file with the New York State Library) (emphasis added). That report urged the following remedial recommendations:

7. (...continued)

Focus of Political Disputes, N.Y. Times, July 5, 1966. In 1986, the Queens County Surrogate removed the PA's counsel after it was revealed that there was a federal investigation underway of alleged kickbacks from the counsel to the former executive secretary of the Queens Democratic party, *Surrogate Aide to Be Removed over an Inquiry*, N.Y. Times April 2, 1986; two years later, the Surrogate was censured for leasing office space owned by him to successive attorneys for the PA. *State Panel Censures a Judge in Queens for Ethical Abuses*, N.Y. Times, April 7, 1988. In 2005, the Surrogate of Kings County was removed from office for permitting excessive fees for the then-counsel to the Public Administrator for Kings County. *In re Feinberg*, 5 NY3d 206 (2005), resulting in the Attorney General moving to vacate decrees in hundreds of cases with respect to the PA's counsel's fees. See *Matter of Alayon*, 28 Misc.3d 311 (Sur. Ct. Kings Co. 2010), *aff'd*, 86 A.D.3d 644 (2d Dep't 2011), and *Matter of Adelson*, 25 Misc.3d 1215A (Sur. Ct. Kings Co. 2009).

[T]he power to appoint the PAs should be transferred from the local Surrogates to New York City government. Because the PA frequently appears before the Surrogate of his county as a party to legal proceedings and because the Surrogate ultimately must pass upon challenges to the [public administrator's] conduct and policies in any estate matter, it seems to us inappropriate for the Surrogate to appoint and supervise the [public administrator]. In addition to eliminating any appearance of a conflict in the Surrogate's roles under the present appointment scheme, the proposed transfer of appointing authority would squarely place the ultimate responsibility for a properly run New York City system in the executive branch of the local government that controls the [public administrator] office budgets, ending the present bifurcation of appointing authority and funding responsibility. Furthermore, we believe that centralizing appointing authority and oversight in municipal government will enhance the likelihood that the [public administrators] adopt efficient and uniform procedures for the discharge of their responsibilities. Finally, we note that this transfer of appointing authority to the City will allow the City's Department of Investigations to investigate any allegations of misconduct.

Id. at ES-9 (emphasis added).⁸

Unfortunately, despite the issuance of this report a third of a century ago, there has been no meaningful action at the municipal or state level to pursue the report's recommendation of vesting responsibility in the City for the actual oversight of its own offices. Yet there appears to be no compelling reason why commissioners in this single instance need be appointed by someone other than the municipal government or why, in this single instance, private counsel are appointed to represent a City commissioner in court proceedings.⁹ Indeed, the Attorney General and Comptroller also recommended that the public administrators "be required to employ salaried staff counsel and staff accountants to

8. These problems were not confined to the City, however. In a report in 1988, the Attorney General and the State Comptroller, found that the problems in the administration of the Nassau, Onondaga and Monroe County PA offices eroded public trust and urged that the county governments, rather than the surrogates, appoint the PAs. *New York Report Faults Handling of Estates*, N.Y. Times April 10, 1988.

9. In fact, in a memorandum of law (NYSCEF #41) recently filed in the pending *Buckheit v. Thompson*, Article 78 proceeding mentioned above, the City's attorneys noted that under 394(a) of the City Charter "[t]he corporation counsel shall be attorney and counsel for the city and every agency thereof" (emphasis added) and declared that "Indeed, 'any City official who seeks to sue *must* be represented by Corporation Counsel.' *Hevesi v. Pataki*, 169 Misc. 2d 467 (Sup. Ct. N.Y. Co. 1996) " (emphasis in original).

provide these professional services more economically." *Id.* at ES-9.

In 1992, then Chief Judge Sol Wachler similarly urged the creation of a City-wide PA office appointed by the Mayor. He noted that under the present system public administrators and their staffs “*are not subject to direct regulation* by court administrators because they are not court employees” and remarking that “[t]he unfortunate part of this is that the courts are tainted by any wrongdoing or inappropriate activity on the part of the public administrator *when the courts have nothing to do with regulating it.*” (emphasis added). *Reform of Public Administrators' System Urged*. NYLJ Sept. 16, 1992. Then Chief Administrative Judge Matthew Crossen agreed, stating that “it would professionalize the public administrator process and make it easier to deal with [] concerns about abuse if the office were made citywide, with an appointment by the Mayor,” adding that the office could be overseen by the Department of Investigation and the Comptroller’s office. *Id.*

In 2005 a blue ribbon commission appointed by then Chief Justice Judith S. Kaye and headed by Sheila Birnbaum of Skadden, Arps, Slate, Meagher & Flom (the “Birnbaum Commission”) summarized the ongoing structural dilemma thus:

Although the Surrogates appoint them, PAs are City/County officials. The Surrogates and OCA do not fund the PAs and *are not the entities statutorily designated to oversee them*. The local governments who do fund and employ the PAs are statutorily charged with this oversight *are in no position to exercise this responsibility in an effective manner because they have virtually no interaction with the PAs*.

Report of the Commission on Fiduciary Appointments, Feb. 2005, at 36 (emphasis added).¹⁰ The Birnbaum Commission noted that “[t]he lack of accountability that pervades this arcane field, which is little known and understood by the public and peopled by a very small group of specialty practitioners who can and do earn very large legal fees, constitutes a serious threat to public confidence.” *Id.* at 36.

The Birnbaum Commission urged vesting the power of public administrators appointment in the City, since

those charged with funding and overseeing the PAs should also control their appointment. So doing would address the inherent conflict of having Surrogates appoint individuals who are funded and supervised by another branch of government, a situation that effectively leaves those individuals unaccountable.

Id. at 44. The Commission also urged removing the surrogates’s power to appoint private legal counsel and instead give the City power to hire legal staff to serve as PA counsel.

10. Available at ww2.nycourts.gov/sites/default/files/document/files/2018-06/fiduciary-2005.pdf

This reform undoubtedly would increase accountability, since local governments would have direct and continuous oversight over the lawyers serving intestate estates and would be able to better monitor the quality of legal services being provided. This system also would substantially reduce costs to estates, solve the problem of excessive legal fee awards, and eliminate the perception that a small cadre of politically connected private lawyers are being enriched at the expense of intestate estates.

Id. at 45-46.

The City should no longer abdicate its responsibility for the oversight and operation of its own agency, in the same fashion as its other agencies. Indeed, by declining to oversee the operations of the Public Administrators, the City continually leaves itself open to liability for any mismanagement by the Public Administrator – as has been repeatedly documented in countless news articles over the decades – since pursuant to SCPA §1110, a person aggrieved by any mismanagement by the PA is entitled to proceed against the City.

Whereas a judge cannot, nor should, manage the affairs of a litigant and the office of the Public Administrator is an agency of the City, for which the City is liable, it is the City that should both appoint and oversee the office. It is long overdue that the SCPA, in the City of New York, be amended to require, that the:

- 1) Mayor appoint the Public Administrator and Deputy Public Administrator;
- 2) Mayor provide oversight to the ongoing operations of the PA's office; and that the
- 3) Corporation Counsel represent the Office of the Public Administrator.

In conclusion, such structural change would not only provide the City's Office of the Public Administrator with appropriate oversight, but as well enhance the independence and impartiality of the Surrogate's Courts in cases involving this vital office. I urge that the Comptroller, in his crucial role as guardian of the City's fiscal management, to vigorously advocate for the needed structural change to bring this to fruition.