

# AUDIT REPORT

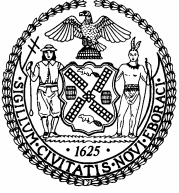


CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF MANAGEMENT AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Financial and Operating Practices of the New York County Public Administrator's Office**

*MD07-062A*

**June 27, 2007**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

**To the Citizens of the City of New York**

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, § 93, of the New York City Charter, my office has conducted an audit on the compliance of the Office of the New York County Public Administrator (NYCPA) with applicable federal, State, and City laws, rules, and regulations.

The NYCPA administers the estates of individuals who die in New York County without wills or when no other appropriate individual is willing or qualified to administer the estate. We audit public offices such as this to ensure they follow applicable laws and guidelines fairly, consistently, and in the best interest of those they serve.

The results of our audit, which are presented in this report, have been discussed with NYCPA officials, and their comments have been considered in the preparation of this report. Their complete written response is attached to this report.

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

Very truly yours,

A handwritten signature in cursive script that reads "William C. Thompson, Jr.".

William C. Thompson, Jr.  
WCT/ec

**Report:** MD07-062A  
**Filed:** June 27, 2007

*Table of Contents*

**AUDIT REPORT IN BRIEF ..... 1**

    Audit Findings and Conclusions..... 1

    Audit Recommendations..... 2

    NYCPA Response..... 2

**INTRODUCTION..... 3**

    Background..... 3

    Objective..... 4

    Scope and Methodology ..... 4

    Discussion of Audit Results..... 7

**FINDINGS AND RECOMMENDATIONS ..... 8**

    Noncompliance with Guidelines during Residence Searches..... 9

        Recommendations..... 10

    Final Accounting Not Always Submitted to the Surrogate’s Court ..... 11

        Recommendations..... 15

    Form 1099-MISC Payments Not Reported to the IRS ..... 15

        Recommendations..... 17

    Independent Audit Not Performed..... 18

        Recommendations..... 19

**ADDENDUM: New York County Public Administrator's Office Response**

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

**Audit Report on the  
Financial and Operating Practices of the  
New York County Public Administrator's Office**

**MD07-062A**

---

**AUDIT REPORT IN BRIEF**

The objective of the audit was to determine whether the Office of the New York County Public Administrator (NYCPA) complied with Article 11 of the New York State Surrogate's Court Procedures Act (SCPA), the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines), and other applicable federal, State, and City laws, rules, and regulations. There are five Public Administrators in New York City, each of whom serves one of the City's five counties and reports to the county Surrogate's Court. Each Public Administrator is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate.

As of June 30, 2006, the New York County Public Administrator (NYCPA) was administering 1,011 open estates with assets valued at more than \$106 million. According to the City's Fiscal Year 2006 annual financial report the NYCPA collected \$1,470,250 in revenues and had expenditures totaling \$1,085,912.

**Audit Findings and Conclusions**

The NYCPA generally adheres to procedures of the SCPA, Administrative Board Guidelines, and its own guidelines and procedures. However, we identified a few instances of noncompliance relating to certain practices. The NYCPA did not always comply with the Administrative Board Guidelines during decedents' residence searches. Investigators do not prepare an inventory listing of jewelry items retrieved during residence searches; and there was no evidence that two investigators were present as required at 2 of 12 residence searches. In addition, the NYCPA did not always submit final accountings to the Surrogate's Court, underreported \$3,764,520 in 1099-reportable payments to the Internal Revenue Service (IRS), and did not have an independent Certified Public Accountant (CPA) conduct an annual audit.

### **Audit Recommendations**

Based on our findings, we make nine recommendations, five of which are listed below. The NYCPA should:

- Ensure that a complete and detailed inventory list is prepared of all items retrieved from decedents' residences, including jewelry items, and that the inventory list is signed by both investigators.
- Ensure that two investigators are present during searches of decedents' residences and that the investigators document their presence by signing the Investigator's Reports.
- Ensure that final accountings and amended final accountings are prepared and filed with the Surrogate's Court.
- Ensure that IRS 1099-MISC forms are issued to all individuals with 1099-reportable income (payments made to individuals who provide a service relating to the NYCPA operations, including services provided on behalf of the estates).
- Have an independent CPA conduct annual audits that comply with SCPA requirements.

### **NYCPA Response**

In their response, NYCPA officials generally disagreed with the audit's findings, but stated that they would take some steps to implement four of the audit's nine recommendations. They disagreed with three of the recommendations and did not respond to two.

## INTRODUCTION

### Background

There are five Public Administrators in New York City, each of whom serves one of the City's five counties and reports to the county Surrogate's Court. According to Article 11 of the New York State Surrogate's Court Procedures Act (SCPA), which governs Public Administrators and their offices, a Public Administrator is "appointed by and may be removed by the judge or judges of the court . . . and shall continue in office until removed." Each Public Administrator is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate.

The SCPA requires that the Public Administrator deposit all commissions and costs received in the City treasury; make all books, records, and documents available to the City Comptroller for examination; file monthly account information on estates that have been closed or finally settled; and have an annual audit of the office performed by an independent certified public accountant (CPA), the cost of which is to be funded by the City. As an estate's administrator, the Public Administrator makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, and searches for possible heirs. It is also responsible for filing tax returns on behalf of the decedents.

In addition to following SCPA provisions, the Public Administrators must comply with requirements of the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators* (Administrative Board Guidelines) in their office operations. This publication contains guidelines for record-keeping; accounting; cash, property, and other asset management and sale; maintenance of "suspense" (imprest) accounts; payment of fees; and the initial inspection of a decedent's premises.

A Public Administrator is required to submit a final accounting of all estate transactions to the Surrogate's Court of the county when an estate with assets having gross values of more than \$500 has closed or is in the process of being closed. A final accounting documents all income and expenses associated with an estate and provides a record of the estate's financial transactions to aid the Surrogate's Court in its oversight of the Public Administrators' offices.

If additional assets have been received after an estate is closed and final accountings have been submitted to the Surrogate's Court, the Public Administrator reopens an estate in order to process the additional assets. A final accounting covering the period of the administration of those additional assets is prepared and filed with the Surrogate's Court indicating the transactions associated with the additional assets.

The City provides some funds for the operation of the Public Administrator's office. To fund expenses that are not covered by the City's budget appropriations, the Administrative Board Guidelines authorize the Public Administrator to charge each estate an administrative fee of up to one percent of the gross value of each estate and to maintain a suspense account. These fees are deposited in a separate bank account and are used to supplement the Public Administrator's

budget. The Administrative Board Guidelines state that suspense-account funds are to be used to pay expenses “necessary for the proper functioning of the office’s operations and for the administration of estates.” The funds can also be used as a loan to estates to pay expenses prior to the conversion of estate assets to cash.

As of June 30, 2006, the New York County Public Administrator (NYCPA) was administering 1,011 open estates with assets valued at more than \$106 million. According to the City’s Fiscal Year 2006 annual financial report the NYCPA collected \$1,470,250 in revenues and had expenditures totaling \$1,085,912, consisting of \$514,814 for Personal Service expenditures and \$571,098 for Other Than Personal Service expenditures. During Fiscal Year 2006, the NYCPA employed 11 City employees, including the Public Administrator and Deputy Public Administrator. The NYCPA also employed eight non-City employees (three full-time and five part-time employees) and seven non-City interns who were paid from its suspense account.

### **Objective**

The objective of our audit was to determine whether the Office of the New York County Public Administrator complied with Article 11 of the New York State Surrogate’s Court Procedures Act, the *Report and Guidelines of the Administrative Board for the Offices of the Public Administrators*, and other applicable federal, State, and City laws, rules, and regulations.

### **Scope and Methodology**

The scope of our audit was July 1, 2005, through June 30, 2006 (Fiscal Year 2006).

To obtain an understanding of the procedures and regulations with which the NYCPA must comply, we reviewed Article 11 of the SCPA; the Administrative Board Guidelines; Comptroller’s Directive #1, “Principles of Internal Control”; Comptroller’s Directive #28, “Reporting Requirements for Public Administrators”; and other applicable federal, State, and City laws, rules, and regulations. In addition, we interviewed NYCPA staff to gain an understanding of the office’s practices relating to the handling of the estate and suspense-account funds.

To assess NYCPA internal controls applicable to our audit objectives, we evaluated the information obtained in the above-mentioned interviews and reviewed office operating procedures. We reviewed the NYCPA Comptroller’s Directive #1 Financial Integrity Statement filings for calendar year 2005 and 2006. We also examined and conducted tests of NYCPA record-keeping practices to determine the reliability of the controls in these areas.

To assess NYCPA compliance with Administrative Board Guidelines procedures for handling estate accounts, we selected a sample of 24 closed estates with gross estate values of at least \$1,000, for a total sample value of \$682,758. Of these 24 estates, we randomly selected 5 estates with a total value of \$10,967 from the 220 estates with gross estate values of between

\$1,000 and \$10,000; and judgmentally selected all 19 estates with gross estate values of at least \$10,000, for a total value of \$671,791. This sample was selected from a population of 239 estates,<sup>1</sup> valued at \$1,294,060, that were opened as of July 1, 2004, and closed during Fiscal Year 2006 (July 1, 2005, through June 30, 2006).

We determined whether each estate was accounted for separately, as required by the guidelines, and whether all required documents were in the estate files for each sampled estate. We checked whether the appropriate Letters of Administration were obtained from the Surrogate's Court and whether there was evidence indicating that the NYCPA performed a search for beneficiaries of the decedent.

To determine whether the NYCPA maintained adequate controls over estate administration, we reviewed the supporting documentation for each sampled estate. To ensure that all estate transactions were properly recorded, we traced the supporting documentation for each sampled estate to the Trial Balance Report, which details all income and expense transactions made for individual estates. In addition, we determined whether inquiry letters regarding the decedent's assets were sent to the decedent's financial institutions and other institutions (such as nursing homes). We also determined whether the NYCPA correctly charged the estates for legal fees, Finance Administrator's costs and commissions, and NYCPA commissions.

We determined whether the NYCPA correctly filed final accountings for each sampled estate with the Surrogate's Court and correctly filed the monthly account information with the Comptroller's Office. We also ensured that the income and expenses reported on the final accountings reconciled with those reported on the Trial Balance Reports.

To determine whether the NYCPA properly administered the additional assets received after estates were closed, we randomly selected five additional-asset estates,<sup>2</sup> valued at \$45,972, from a population of 56 additional-asset estates with gross estate values of at least \$1,000 and with a total value of \$260,163 that were reopened and closed during Fiscal Year 2006. We determined whether the NYCPA filed final accountings with the Surrogate's Court for the additional assets received, and whether the appropriate fees, costs, and commissions were charged to the estates. We also ascertained whether the estate income and expenses as reported on the final accounting reconciled with those reported on the Trial Balance Report. In addition, we determined whether the additional assets were handled in accordance with the initial administration of the estate, such as distributions to heirs and payments to creditors.

To determine whether the investigators followed the Administrative Board Guidelines when conducting investigations of decedents' residences, we obtained copies of the Investigator's Report prepared for the 12 sampled estates requiring residence searches. We reviewed the Investigator's Reports to determine whether two NYCPA investigators searched the

---

<sup>1</sup> The 239 estates consist of 220 estates with gross estate values of between \$1,000 and \$10,000, having a total gross estate value of \$622,269, and 19 estates with gross estate values of at least \$10,000, having a total gross estate value of \$671,791.

<sup>2</sup> An additional-asset estate is an estate that was previously closed by the NYCPA but reopened to administer the additional funds received.



decedents' residences, whether an independent witness was present at the time of the search, and whether the investigators sealed all entrances after their search. We also determined whether logs were maintained reflecting visits to the decedents' residences and whether detailed inventory lists were prepared identifying all items removed from the decedents' residences. In addition, for decedents' residences that contained furniture items, we determined whether an independent expert certification was obtained by the NYCPA indicating that all property of value was removed from the decedents' residences before being released.

To assess NYCPA controls over decedents' jewelry items stored at the NYCPA office, we reviewed the system for collecting, recording, and securing these items removed from decedents' residences. We ascertained whether the NYCPA prepared inventory lists of decedents' jewelry items and whether the properties were securely stored. We determined whether the NYCPA maintained appraisals of decedents' assets and sale prices of decedents' properties sold at auction, including the allocation of those proceeds.

To determine whether jewelry items secured at the NYCPA office were adequately accounted for and to verify their existence, we traced the items listed on the appraisal sheets for 20 estates (consisting of 10 of our sampled 29 estates with evidence of jewelry items and an additional 10 estates randomly selected from the estates that had jewelry in the safe) to the items stored in the safes and storage room. For jewelry items sold at auction and no longer present at the NYCPA, we traced these items to the auctioneer's list of properties and associated jewelry sale worksheets to verify the sale. In addition, we traced the proceeds of the sale to the Trial Balance Reports to check whether the decedent's estate was properly credited. For items that were distributed to decedents' heirs, we obtained copies of the signed receipts to verify this distribution.

We determined whether the NYCPA had procedures to identify and track reportable Internal Revenue Service (IRS) Form 1099-MISC payments and determined whether the NYCPA correctly reported all calendar year 2005 Form 1099-MISC payments to the IRS.

We determined whether an annual audit of the NYCPA was conducted by an independent CPA, in accordance with the SCPA, and that a copy was submitted to the City Comptroller's Office. We also determined whether the NYCPA filed the required monthly, semi-annual, and annual reports with the Surrogate's Court, State Comptroller's Office, and City Comptroller's Office.

We reviewed a previous audit of the NYCPA entitled, *Audit Report on the Financial and Operating Practices of the New York County Public Administrator's Office* (FP00-190A, issued June 25, 2003), to determine whether there were any recurring issues.

The results of our tests of the adequacy of NYCPA estate management practices relating to our sampled 29 estates, while not statistically projected to the population of estates, provided us a reasonable basis to assess the adequacy of NYCPA estate management practices.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of the records and other auditing procedures considered

necessary. This audit was performed in accordance with the audit responsibilities of the City Comptroller as set forth in Chapter 5, §93, of the New York City Charter.

### **Discussion of Audit Results**

The matters covered in this report were discussed with NYCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCPA officials and discussed at an exit conference held on May 16, 2007. On May 21, 2007, we submitted a draft report to NYCPA officials with a request for comments. We received a written response from NYCPA officials on June 5, 2006. In their response, NYCPA officials generally disagreed with the audit's findings, but stated that they would take some steps to implement four of the audit's nine recommendations. They disagreed with three of the recommendations relating to use of the correct gross estate values when calculating the commissions due the City, and issuance of 1099 forms to all individuals with 1099-reportable income. They did not respond to two recommendations relating to selection of a CPA firm in accordance with Comptroller's Directive #5 and obtaining a budgeting decision from the City as to whether it will fund an audit.

The full text of the NYCPA response is included as an addendum to this report.

## **FINDINGS AND RECOMMENDATIONS**

The NYCPA generally adheres to procedures of the SCPA, Administrative Board Guidelines, and its own guidelines and procedures. The NYCPA generally:

- Maintains a central record of estates. In addition, each estate valued at more than \$500 is accounted for separately.
- Maintains accurate records of receipts and disbursements. The estate files contain all supporting documentation for receipts and disbursements, including documentation of the NYCPA's search for estate assets, evidence of bills from creditors, and proof of claims before they are paid.
- Correctly accounts for legal fees, Finance Administrator's commissions and costs, NYCPA commissions, and expenses related to the administration of the estates.
- Correctly transfers Medicaid funds for applicable nursing home estates to the Department of Social Services.
- Maintains all required documentation in the estate files, such as Letters of Administration from the Surrogate's Court for those estates valued above \$20,000, and inquiry letters to the decedents' financial institutions and other institutions (such as nursing homes) to collect the decedents' assets. The NYCPA also maintains records regarding residence investigation reports, including logs of every visit to the decedents' residences; inventory lists of furniture items retrieved from decedents' residences; appraisals of decedents' assets, and the sales prices of decedents' properties.
- Files the required monthly, semi-annual, and annual reports with the Surrogate's Court, State Comptroller's Office, and City Comptroller's Office.
- Correctly administered the additional-asset estates in accordance with initial administration.

However, we identified a few instances of noncompliance relating to certain practices. The NYCPA:

- Did not always comply with the Administrative Board Guidelines during decedents' residence searches. Investigators do not prepare an inventory listing of jewelry items retrieved during residence searches, and there was no evidence that two investigators were present as required at 2 out of 12 residence searches.
- Did not always submit final accountings to the Surrogate's Court.
- Underreported \$3,764,520 in 1099-reportable payments to the IRS.

- Did not have an independent CPA conduct an annual audit.

These issues are discussed in the following sections of this report.

### **Noncompliance with Guidelines during Residence Searches**

The NYCPA did not always comply with the Administrative Board Guidelines procedures for searches of decedents' residences. Although investigators prepare inventory listings for cash and furniture, investigators do not prepare an inventory listing of jewelry items retrieved during residence searches. In addition, there was no evidence that two investigators were present as required at 2 of 12 residence searches.

According to the Administrative Board Guidelines, "During all searches for personal property at the residence of a decedent, at least two investigators employed by the PA [Public Administrator] must be present at all times. . . .The investigators will thoroughly search each residence and . . . make a complete and detailed inventory of its contents, which inventory shall be signed by both investigators."

We found that the investigators generally do not prepare an inventory listing of jewelry items retrieved during residence searches. Upon retrieval, the investigators place the jewelry items from the residences into small envelopes labeled with the decedent's name and assigned estate number. These envelopes are placed into a lock-box by the investigators until the Deputy Public Administrator removes and secures them in one of the safes at the NYCPA office until appraised. The appraiser, who comes periodically to the NYCPA office, is the one that prepares a detailed inventory list of all the items contained in the envelopes, a copy of which is placed into the envelopes of the items.

Although the NYCPA uses the appraisal sheets as its record of inventory, this is not in compliance with the Administrative Board Guidelines. Although we identified no discrepancies during our jewelry inventory observation and comparison with the appraisal sheets, we have no assurance that all items retrieved were properly accounted for and included on the appraisal sheets. All items should be inventoried at the time that they are received by the NYCPA and the inventory signed by both investigators. Accurate inventory records are necessary to maintain sufficient controls over decedents' assets and to protect them against the possibility of loss or theft.

In addition, in 12 of our 29 sampled estates requiring residence searches, there was no evidence that the minimum two investigators were present during the investigation of two residences, as there was only one investigator's signature on the Investigator's Reports.

To ensure full compliance with the Administrative Board Guidelines procedures regarding searching decedents' residences and thereby ensuring decedents' properties are accounted for and secured, the NYCPA should require investigators to fully document their efforts, including preparing inventory lists of jewelry items and having two investigators sign the Investigator's Report as required.

At the exit conference, the Public Administrator stated that in one instance, although there was only one investigator present during the residence search, an independent witness was also present. However, this practice is also contrary to the Administrative Board Guidelines, which require at least two investigators employed by the NYCPA to be present during residence searches.

In the second instance, the Public Administrator stated that while two investigators were present, one investigator failed to sign the front of the Investigator's Report indicating his presence during the residence search. She further stated that she would ensure that all Investigator's Reports are signed by both investigators.

### **Recommendations**

The NYCPA should:

1. Ensure that a complete and detailed inventory list is prepared of all items retrieved from decedents' residences, including jewelry items, and that the inventory list is signed by both investigators.

**NYCPA Response:** "In an effort to address the concerns raised by the Office of the Comptroller as to adequate controls over jewelry and protection from its loss or theft, the Office of the Public Administrator will modify its procedure concerning jewelry found in decedent's residence. Prospectively, the Public Administrator's investigators will photograph or videotape the items of jewelry that they take into custody at the time the items are placed in the jewelry envelope(s). Those photographs will be maintained in the Public Administrator's main file for each estate, along with the other documentation related to the investigator's actions, but separately from the envelope(s) actually containing the jewelry, which are held in the safe or lock box at the Office of the Public Administrator. The Office of the Public Administrator believes that the photographs will serve as a practical, cost-effective, itemized photographic inventory of the jewelry located and secured during each apartment search."

2. Ensure that two investigators are present during searches of decedents' residences and that the investigators document their presence by signing the Investigator's Reports.

**NYCPA Response:** "The Office of the Public Administrator believes that there is documentation establishing the presence of two investigators at both of the residence searches discussed by the Office of the Comptroller. However, in the future, the Office of the Public Administrator will ensure that its investigators fully execute all Investigator's Reports to clearly document the presence of both of the Public Administrator's investigators at every decedent's residence."

**Auditor Comment:** This response is contradictory to statements made by NYCPA officials at the exit conference when, as noted previously, officials stated that only one investigator was present in one of the instances. The Public Administrator, in her response, claimed the use of the word "we" on the Investigator's Reports indicated that

two investigators were present in both instances. Nevertheless, we are pleased that the NYCPA will fully execute the Investigator's Reports and ensure that its investigators sign them.

### **Final Accounting Not Always Submitted to the Surrogate's Court**

The NYCPA did not always submit a final accounting reflecting the current gross estate values and distribution amounts to the Surrogate's Court. According to SCPA, §1123.2, an informatory account (final accounting) must be filed with the court for estates with assets having gross values of between \$500 and \$20,000, and copies are to be provided to the appropriate interested parties. For those estates having assets with gross values in excess of \$20,000, the Public Administrator must obtain the Surrogate Court's approval of the final accounting and a court decree to distribute the estate assets.

Final accountings were not prepared or submitted to the Surrogate's Court for three of the five additional-asset estates with gross estate values of \$24,994, \$12,441, and \$1,066. Although the funds were appropriately distributed and the commissions and costs were correctly accounted for, the NYCPA should have ensured that final accountings for these additional assets were filed with the Surrogate's Court.

**NYCPA Response:** "SCPA 1123(e) only 'authorizes' but does not require the Office of the Public Administrator to file an informatory accounting when the Office of the Public Administrator has administered assets accounted for are in excess of \$500, but less than \$20,000.

"There is no provision contained in the Surrogate's Court Procedure Act or the Guidelines of the Administrative Board for the Offices of the Public Administrators to file an accounting in the Surrogate's Court for each and every estate the office administers. . . . However, it is the practice of the Office of the Public Administrator to file either an informatory accounting or a judicial accounting proceeding for each estate in which it administers in excess of \$500 and the estate is not insolvent due to a funeral claim."

**Auditor Comment:** During the course of the audit, the NYCPA staff informed us that final accountings (whether an informatory account or judicial account) must be filed with the Surrogate's Court for each estate having assets with gross values of at least \$500, as interpreted from §1123 of the SCPA. In addition, they stated that it is the practice of the NYCPA to reopen an estate if additional assets are received after an estate is closed and that a final accounting covering the period of the administration of those additional assets must be filed with the Surrogate's Court. Neither the Public Administrator nor her attorneys said anything to suggest that the NYCPA has discretion as to whether or not to file an informatory accounting for such estates, nor did they provide documentation at or subsequent to the exit conference to support this assertion in the response.

Regardless of her interpretation of the SCPA, the Public Administrator confirms in her response that it is the practice of the NYCPA to file final accountings (either informatory

account or judicial account) for each estate with assets of \$500 or more. The results of our audit test that identified instances in which NYCPA actions were not consistent with its own practices remain unchallenged.

**NYCPA Response:** “In the estate with additional assets having a gross value of \$24,944, the additional assets were completely unknown to the Office of the Public Administrator when it filed the final judicial accounting proceeding and the Surrogate’s Court entered the Decree on Accounting. Upon learning of the additional assets, the Office of the Public Administrator re-opened the estate.

“However, the Decree on Accounting for this estate had provided for the distribution of the net estate to known persons. Therefore, the Office of the Public Administrator provided said individuals and/or their counsel with documentation of the additional assets and the Public Administrator’s proposed disbursement of those assets. The interested parties had no opposition to the proposed disbursements. Therefore, the Office of the Public Administrator re-closed the decedent’s estate to the interested parties.”

**Auditor Comment:** The response is contrary to what we were told throughout the course of the audit about the handling of this estate. When we requested the final accounting from the NYCPA in-house accountant for the additional asset amount of \$24,944 that was received from the State Comptroller’s Office of Unclaimed Funds, the accountant did not inform us that a final accounting did not have to be prepared. Rather, the accountant stated that the attorney did not file a final accounting with the Surrogate’s Court for this amount and that only a worksheet was prepared.

Moreover, our review of the estate file for this decedent found that subsequent to the receipt of the \$24,944, the NYCPA also collected additional assets of \$6,998 and \$18,301.80 from the State Comptroller’s Office of Unclaimed Funds. Although a final accounting *was not* filed for the additional asset of \$24,944, final accountings (an affidavit amending the account) for the additional assets of \$6,998 and \$18,301.80 *were* prepared and filed with the Surrogate’s Court, bringing into question the NYCPA’s stated reason for its failure to prepare a final accounting for the \$24,944.

**NYCPA Response:** “In the estate with additional assets having a gross value of \$1,066, the additional assets were actually interest earned on the estate bank accounts while the final judicial accounting proceeding was pending before the Surrogate’s Court and Decree on Accounting was awaiting execution by the Surrogate. Therefore, this estate is properly grouped with the second distinct groups of cases by the Office of the Comptroller.”

**Auditor Comment:** This estate was recorded on the monthly report of closed estates submitted to the Comptroller’s Office by the NYCPA as an additional-asset estate, and we treated it as such during our audit testing. The NYCPA staff made no distinction to us between this and other estates or otherwise indicated that this estate was to be treated differently. Accordingly, our finding remains.

In addition, amended final accountings were not prepared for four of the 24 estates requiring them. These estates had additional receipts, totaling \$4,484, subsequent to the preparation of the final accountings. Rather than preparing an amended final accounting, the attorney prepared a worksheet indicating the revised gross estate value and distribution amounts. Although the funds were appropriately distributed, the NYCPA commissions were incorrectly calculated for all four estates, with shortages ranging from \$5 to \$25, and for the Finance Administrator's commission, a shortage of \$9 for one estate. The original gross estate value was used instead of the final value in calculating the commissions resulting in the NYCPA and Finance Administrator receiving less in commission than required. These amounts are not material. However, given the value of the estates administered by the NYCPA, should the practice remain uncorrected or become prevalent, its impact could be potentially significant, and the resulting remittance to the City (NYCPA and Finance Administrator) could be far less than it should be. The NYCPA should have ensured that amended final accountings were prepared and submitted to the Surrogate's Court for these four estates.

**NYCPA Response:** "In the four estates cited . . . the Office of the Public Administrator filed a judicial accounting proceeding accurately reflecting the assets of the estate at the preparation of the accounting and subsequently filed a Decree of Accounting to settle the accounting. The additional receipts referred to by the Office of the Comptroller were additional interest received on the estate bank accounts for the matters in question, while the final accounting and decree were pending before the Surrogate's Court.

"The Surrogate's Court is fully aware that estates administered by the Office of the Public Administrator continue to accumulate these 'float' assets and that they will be accounted for and distributed when the Counsel to the Public Administrator prepares the close-out worksheet for each estate."

**Auditor Comment:** Even if the case were as described in the response, neither the Public Administrator nor her attorneys were able to provide us documentation to substantiate her description of the events in this case. When we requested documentation of the Surrogate's Court requirements for information about estates and when it requires the final accountings be filed, we were told that no such documentation existed. The Public Administrator stated that the attorneys "just know" what information is required and when to file the applicable documents (including the final accountings) with the Surrogate's Court. Given the absence of any documents to substantiate the Public Administrator's description of events or how the attorneys "just know," we cannot determine the veracity of her statements.

**NYCPA Response:** "[T]he Counsel to the Public Administrator does not recalculate the SCPA 1106(3) miscellaneous administration expense commissions earned by the Office of the Public Administrator and payable to the New York City Finance Administrator, based upon the revised value of the gross estate . . . because, by the terms of SCPA 1103(3), the miscellaneous administration expense commission must be allowed by the Surrogate.



“Therefore, the Office of the Public Administrator believes that the SCPA 1106(3) miscellaneous administration expense commission shortages . . . in the four cited estates, ranging from \$5 to \$25, were not actually shortages at all. Since there was no judicial mechanism for accounting on these additional ‘float’ assets while the judicial accountings and decrees remained pending, there was no means by which the Surrogate could approve the SCPA 1106(3) miscellaneous administration expense commission on these additional receipts.”

**Auditor Comment:** As stated in the SCPA, §1106.3, the court may allow the Public Administrator reasonable and necessary expenses and disbursements and a reasonable amount for the expenses of his office to be fixed by the court. This “fixed” amount is the already approved one percent of an estate’s gross value that the Surrogate’s Court allows the Public Administrator to charge each estate the NYCPA administers.

If the Surrogate’s Court is aware of the additional “float” assets, as the Public Administrator states, then the Surrogate’s Court should be aware that additional commissions would be taken on any additional assets coming in that are part of the estate’s gross value.

Moreover, the one percent NYCPA commission was charged against the additional-asset estate having additional receipts of \$1,066. If this estate was not to be considered as an additional-asset estate, as suggested by the Public Administrator, and if the NYCPA does not adjust the NYCPA commission to reflect the additional “float” assets, then the NYCPA should not have collected the one percent commission on the \$1,066. The NYCPA is not consistent in its practices, and the NYCPA response contradicts statements made to us during the audit.

**NYCPA Response:** “The Office of the Public Administrator believes that the commissions shortage finding was the result of the misreading of the Decree on Accounting for one of the matters in question, which was actually an *intervivos trust* and not a decedent’s estate. Unlike estate accountings, trust accountings separately account for the principal and interest received by the trustee. . . . The asset value difference perceived by the Office of the Comptroller was again a result of the misreading of the Decree on Accounting by focusing only on the principal portion of the trust to the exclusion of the income portion.”

**Auditor Comment:** We agree that the estate in question was a trust, and we treated it as such during our testing. During our meetings with the NYCPA staff and discussions regarding the trust, we were not told that the gross estate value we were using was incorrect. In fact, one of the NYCPA staff directed us to the gross estate value indicated on the worksheet that differed from the amount listed on the final accounting submitted to the Surrogate’s Court.

Furthermore, on April 19, 2007, we provided the Public Administrator with a listing of the estates and discrepancies cited in the report to afford her the opportunity to investigate these discrepancies. The Public Administrator did not point out this particular

supposed error, nor did she provide us during or subsequent to the exit conference any documentation to support the assertion now being made in her response. Accordingly, our finding remains.

By not preparing and submitting final accountings and amended final accountings to the Surrogate's Court, the NYCPA hinders the oversight of its estate administration by the Surrogate's Court; and by not providing the most up-to-date financial activities of the estates based on correct gross estate values, there is a risk of shortchanging the legal fees and commissions of the NYCPA and Finance Administrator.

At the exit conference, the NYCPA Attorney stated that although final and amended final accountings were not prepared for these estates, worksheets indicating the revised gross estate values and distribution amounts were prepared and submitted to all interested parties.

### **Recommendations**

The NYCPA should:

3. Ensure that final accountings and amended final accountings are prepared and filed with the Surrogate's Court.

**NYCPA Response:** "Although the Office of the Public Administrator does not believe that it is prudent or required to file an accounting on additional assets with the Surrogate's Court in all matters, the Office of the Public Administrator will prospectively attempt to file an accounting on additional assets in affidavit form with the Surrogate's Court if it does not commence a judicial accounting on additional assets."

4. Ensure that the correct gross estate values are used in calculating the commissions due the City.

**NYCPA Response:** "The Office of the Public Administrator believes it used the correct gross estate values for calculating the commissions due to the City of New York on all of its estates, including those cited by the Office of the Comptroller, and that the City of New York received all of the commissions to which it was entitled as a result of the services performed by the Office of the Public Administrator."

**Auditor Comment:** As stated previously, the NYCPA is not consistent in using the correct gross estate values in calculating commissions, as evidenced by the additional commission it charged against the estate with additional receipts of \$1,066. NYCPA did not use the final gross estate value in calculating the commissions for the four cited estates. Accordingly, we request that the NYCPA reconsider its response to this recommendation.

### **Form 1099-MISC Payments Not Reported to the IRS**

Despite correctly reporting to the IRS and issuing the required IRS Form 1099-MISC to 17 individuals that provided services to the NYCPA during calendar year 2005, the NYCPA

failed to issue 1099-MISC forms to an additional 102 individuals for payments totaling \$3,764,520. This amount included payments of approximately \$2.79 million to the NYCPA's attorneys who provide legal services for the administration of the estates. A previous audit of the NYCPA financial and operating practices also reported that the NYCPA did not issue the required IRS forms to an estimated 100 individuals. Table I below shows a breakdown of the unreported 1099-reportable payments for calendar year 2005.

**Table I**  
Unreported IRS 1099-Reportable Income

<b>Provided Service</b>	<b># of Individuals</b>	<b>Total Payments</b>
Legal Services:		
NYCPA Attorneys	2	\$2,787,944
Guardians Ad Litem	72	558,622
Other Legal	21	399,665
Accounting Services	1	2,963
Other Services	6	15,326
<b>Total</b>	<b>102</b>	<b>\$3,764,520</b>

According to Comptroller's Directive #28, "if a Public Administrator is the payor, for purposes of information reporting, for payments to a service provider on behalf of an estate that it administers, the Public Administrator is required, by section 6041 of the Internal Service Revenue Code, to issue Form 1099-MISC to that service provider in its own name and taxpayer identification number (TIN), and must aggregate amounts paid to the service provider during the year on behalf of the estate." Furthermore, section 6041 states that "a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information" with respect to that payment if the person performs management or oversight functions in connection with the payment.

Although the NYCPA contends that her office is "not engaged in a trade or business, does not appoint (hire), supervise or manage the payees and therefore is not subject to the requirement to issue a 1099 to the[se] payees," we believe otherwise. The NYCPA's responsibilities, as outlined in the SCPA, clearly include management and oversight functions for the administration of an estate and payment for services provided to the estate. The NYCPA does not merely make payments to vendors; the NYCPA is supposed to ensure that the required services are properly performed and documented before payments are made. Therefore, we maintain that the NYCPA should report these vendor payments to the IRS and issue the required forms to the vendors.

By failing to issue 1099-MISC forms for all required individuals the NYCPA may be allowing individuals to understate their income to the government and avoid paying taxes on the excluded amounts.

## Recommendations

The NYCPA should:

5. Issue the IRS 1099-MISC forms cited in the report.
6. Ensure that IRS 1099-MISC forms are issued to all individuals with 1099-reportable income (payments made to individuals who provide a service relating to the NYCPA operations, including services provided on behalf of the estates).

**NYCPA Response:** “As the Office of the Public Administrator has explained in its responses to similar recommendations in prior reports, when it administers a decedent’s estate the Office of the Public Administrator is not engaged in a trade or business as the same is identified under IRC 6041. Therefore, the Office of the Public Administrator is not a payor for the purposes of information reporting under either Directive #28 of the Office of the Comptroller or Treasury Regulation 1.6041-1.

“It should be noted that there is no provision contained in the Surrogate’s Court Procedure Act or the Guidelines of the Administrative Board for the Offices of the Public Administrators requiring the Office of the Public Administrator to issue a form 1099-Misc to service provider when payment is made from estate funds.

“Finally, the Internal Revenue Service and the New York State Department of Taxation and Finance have never directed or indicated to the Public Administrator that a Form 1099-Misc should be issued to any attorney rendering services to estates administered by the Public Administrator. Therefore, the Public Administrator strongly refutes any notion that its actions may be allowing individuals to understate their income or avoid the payment of taxes.”

**Auditor Comment:** As stated previously, a prior audit of the NYCPA financial and operating practices also reported that the NYCPA did not issue the required 1099-MISC forms. During the previous audit, our office made an inquiry to the IRS concerning this issue. Our position is supported by that IRS response, as follows:

“Section 1.604-1(e) of the regulations provides that a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make the information return with respect to that payment if the person performs management or oversight functions in connection with the payment. . . .

“A person that arranges services for another, including hiring service providers and overseeing the services provided, generally exercises management or oversight over the payments to such service providers. See, e.g., § 1.6041-1(e)(2), Examples 5 and 7. As described in your letter, the Office’s [i.e., the NYCPA’s] functions with respect to payments made to service providers on behalf of estates suggests that the Office exercises

management or oversight over these payments. If the Office exercises management or oversight over these payments, it would be the payor for information reporting purposes pursuant to §1.6041-1(e) of the regulations.

“If the Office is the payor for purposes of information reporting with respects to payments to a service provider on behalf of estates that it administers, the Office would issue form 1099-MISC to such service provider in its own name and TIN [Taxpayer Identification Number], and would aggregate amounts paid to the service provider during the year on behalf of such estates.”

The NYCPA meets the IRS §1.604-1(e) definition of the entity that is responsible for management and oversight of the estates it administers; therefore, NYCPA should issue IRS 1099-MISC forms to the vendors it pays with estate funds. Accordingly, we reaffirm our recommendation.

### **Independent Audit Not Performed**

The NYCPA did not have an independent CPA conduct an audit of its records, as required by the SCPA. According to Article 11, §1109, of the SCPA, “Each public administrator shall conduct annually an audit of his office by an independent certified accountant. . . . The audit shall be conducted in compliance with generally accepted government audit standards, and shall include a review of the performance of the office with respect to guidelines and uniform fee schedules established by the administrative board. The cost of such audit and report shall be included annually in the budget of the city of New York.”

In addition, Administrative Board Guidelines require that the annual audit include the bookkeeping system, which records and summarizes the receipts and disbursements of each estate- as well as the non-estate-related receipts and disbursements received and paid by the NYCPA.

The NYCPA budget for Fiscal Years 2005 and 2006 included \$10,499 and \$20,003, respectively, for an audit. In each case, the appropriation was not spent. NYCPA officials told us that they have been unable to contract with a CPA for an annual audit due to a lack of sufficient funding from the City. However, the NYCPA had no evidence that it attempted to procure the services of a CPA to conduct the audit. This condition was also cited in a previous audit of the NYCPA financial and operating practices and the same reason was given for not conducting an audit.

At the exit conference, NYCPA officials stated that they are looking into the feasibility of having a CPA conduct an audit.

## **Recommendations**

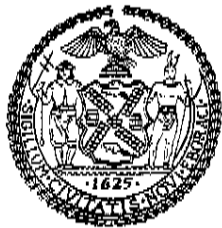
The NYCPA should:

7. Have an independent CPA conduct annual audits that comply with SCPA requirements.

***NYCPA Response:*** “The Office of the Public Administrator will again attempt to retain an independent certified public accounting firm to conduct an audit, within the budgetary constraints placed upon the Office of the Public Administrator by the City of New York, that complies with SCPA 1109 and the recommendations of Guidelines of the Administrative Board for the Offices of the Public Administrators.”

8. Select the independent CPA firm in accordance with Comptroller’s Directive #5, “Audits of Agency Programs and Operations,” which provides guidance on this topic.
9. Obtain a budgeting decision from the City as to whether it will fund the audit pursuant to SCPA Article 11, §1109.

***NYCPA Response:*** The NYCPA did not respond to recommendations #8 and #9.



# Public Administrator

## County of New York

ETHEL J. GRIFFIN, *Commissioner*  
*Public Administratrix*

THOMAS R. PURCELL, *Deputy Commissioner*  
*Deputy Public Administrator*

June 5, 2007

Hon. William C. Thompson, Jr.  
Comptroller of the City of New York  
Executive Offices  
1 Centre Street  
New York, New York 10007-2341

Re: Response to Recommendations of "Audit Report on the Financial and Operating Practices of the New York County Public Administrator's Office MD07-062A"

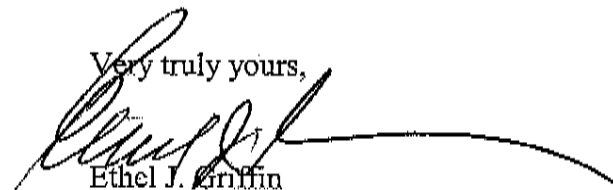
Dear Comptroller Thompson:

Attached is a copy of the Response to Recommendations and Agency Implementation Plan which is to be included as an attachment to the Final Report.

The Public Administrator of the New York County appreciates the opportunity to respond to the audit report of the New York City Office of the Comptroller. The professional manner in which the audit was conducted allowed for an ongoing dialog between the Public Administrator, her staff, and the auditors.

If you have any questions regarding this response, please contact me.

Very truly yours,



Ethel J. Griffin

cc: John Graham, Deputy Comptroller

**RESPONSE OF THE OFFICE OF THE PUBLIC ADMINISTRATOR OF THE COUNTY OF NEW YORK TO THE OFFICE OF THE COMPTROLLER'S AUDIT REPORT ON THE FINANCIAL AND OPERATING PRACTICES OF THE NEW YORK COUNTY PUBLIC ADMINISTRATOR'S OFFICE**

The Office of the Comptroller has cited four (4) specific instances of where it asserts that the Office of the Public Administrator has not complied with either the Surrogate's Court Procedure Act, the Guidelines of the Administrative Board for the Offices of the Public Administrators, or the Public Administrators own guidelines and procedures. It should be noted that the Guidelines of the Administrative Board for the Offices of the Public Administrators are merely guidelines and not regulations, court rules or statutes. However, the Office of the Public Administrator does endeavor to conform the operation of its office to said Guidelines. The Office of the Public Administrator wishes to separately respond to each of the issues raised by the Office of the Comptroller.

**Noncompliance with Guidelines during Resident Searches**

The Office of the Comptroller asserts that the Office of the Public Administrator did not always conform with the Guidelines of the Administrative Board for the Offices of the Public Administrators with respect to residence searches. The findings of the Office of the Comptroller relate to two specific issues.

First, the Guidelines of the Administrative Board for the Offices of the Public Administrators provide that during all searches for personal property at the residence of a decedent, at least two investigators employed by the Public Administrator should be present at all times. The Office of the Comptroller reviewed twelve (12) estates where the Office of the Public Administrator conducted apartment searches and found that for two (2) of the estates "there was no evidence that two investigators were present as required."

The Office of the Public Administrator must respectfully disagree with this finding of the Office of the Comptroller.

In the first of the two estates referred to by the Office of the Comptroller, the Investigator's Report recites that "On 9/8/[0]4, *we* stopped at the above address . . . ." (emphasis added). Additionally, while only one the Public Administrator's investigators signed the front of the Investigator's Report, both of the Public Administrator's investigators did sign the back of the Investigator's Report. Therefore, there is evidence that two investigators employed by the Public Administrator were present during the residence search for the estate in question.

In the second of the two estates referred to by the Office of the Comptroller, the Investigator's Report recites that "*We* stopped to conduct a search . . ." (emphasis added). However, upon arrival at the decedent's address, the Public Administrator's investigators learned that the decedent's apartment had already been cleared. Therefore, there was no apartment



search or inventory for this particular estate and the Office of the Public Administrator was in compliance with the Guidelines of the Administrative Board for the Offices of the Public Administrators in this particular estate.

The Office of the Public Administrator believes that there is documentation establishing the presence of two investigators at both of the residence searches discussed by the Office of the Comptroller. However, in the future, the Office of the Public Administrator will ensure that its investigators fully execute all Investigator's Reports to clearly document the presence of both of the Public Administrator's investigators at every decedent's residence.

The second specific issued raised by the Office of the Comptroller relates to the Office of the Public Administrator's procedure for securing and inventorying jewelry found during residence searches. The Guidelines of the Administrative Board for the Offices of the Public Administrators provide that "The investigators will thoroughly search each residence and, contemporaneous with the search or immediately thereafter, make a complete and detailed inventory of its contents, which inventory shall be signed by both investigators and, if an independent witness has been present at the search, by the independent witness."

As acknowledged by the Office of the Comptroller, the Public Administrator's investigators do prepare an inventory for each residence search and if jewelry is located during the search, it is noted on the investigator's report and inventory. However, the Public Administrator's investigators do not generally prepare a detailed itemized inventory separately listing each item of jewelry retrieved during each residence search. The Office of the Public Administrator believes the existing procedure for the removal, securing and subsequent inventorying of jewelry found in a decedent's residence provides sufficient controls and adequately protects the items from the possibility of loss and theft. Moreover, the Public Administrator's Office does not believe that the Guidelines of the Administrative Board for the Offices of the Public Administrators suggest that the investigators should prepare an itemized inventory listing each item of jewelry.

As acknowledged by the Office of the Comptroller, Public Administrator's investigators do immediately remove all jewelry, place the items into sealed envelopes, and transport the sealed envelopes to the Office of the Public Administrator where they are placed in a safe or lockbox. The jewelry remains secure until it is removed from a safe by the Deputy Public Administrator for review by a certified appraiser and the preparation of a detailed inventory/appraisal. Therefore, the Office of the Public Administrator has not found that there is any real risk of loss or theft between the point when the jewelry is secured by the investigators and its subsequent inventory and appraisal at the Office of the Public Administrator.

Most of the estates administered by the Public Administrator include items of jewelry, often in significant quantities, that have no real value because they are costume in nature. The Office of the Public Administrator does not believe it is practical or cost effective for investigators to prepare an itemized inventory listing each item of jewelry. More importantly, the Office of the

Public Administrator believes that the preparation of an itemized inventory listing each item of jewelry actually increases the risk of loss by exposing the jewelry to theft by third parties. Most significantly, the jewelry would be at increased risk of theft by the independent witness (typically a building employee or neighbor) that the Guidelines of the Administrative Board for the Offices of the Public Administrators recommend be present with the investigators during a residence search.

In an effort to address the concerns raised by the Office of the Comptroller as to adequate controls over jewelry and protection from its loss or theft, the Office of the Public Administrator will modify its procedure concerning jewelry found in a decedent's residence. Prospectively, the Public Administrator's investigators will photograph or videotape the items of jewelry that they take into custody at the time the items are placed in the jewelry envelope(s). Those photographs will be maintained in the Public Administrator's main file for each estate, along with the other documentation related to the investigator's actions, but separately from the envelope(s) actually containing the jewelry, which are held in the safe or lockbox at the Office of the Public Administrator. The Office of the Public Administrator believes that the photographs will serve as a practical, cost-effective, itemized photographic inventory of the jewelry located and secured during each apartment search. The contemporaneous photographic inventory will also avoid increasing the risks of loss or theft associated with the preparation of a handwritten itemized inventory.

#### Final Accounting Not Always Submitted to the Surrogate's Court

The Office of the Comptroller has asserted that the Office of the Public Administrator did not always submit a final accounting to the Surrogate's Court. SCPA 1123(e) only "authorizes" but does not require the Office of the Public Administrator to file an informatory accounting when the Office of the Public Administrator has administered assets accounted for are in excess of \$500, but less than \$20,000.

There is no provision contained in the Surrogate's Court Procedure Act or the Guidelines of the Administrative Board for the Offices of the Public Administrators requiring the Office of the Public Administrator to file an accounting in the Surrogate's Court for each and every estate the office administers. In fact, the overwhelming number of estate administered by private fiduciaries, as opposed to those administered by the Office of the Public Administrator, are administered and closed without the filing of any accounting with the Surrogate's Court. However, it is the practice of the Office of the Public Administrator to file either an informatory accounting or a judicial accounting proceeding for each estate in which it administers assets in excess of \$500 and the estate is not insolvent due to a funeral claim.

The Office of the Comptroller has asserted that the Office of the Public Administrator did not file final accounting in two distinct groups of cases. First, the Office of the Comptroller asserts that "[f]inal accountings were not prepared or submitted to the Surrogate's Court for three of five additional asset estates with gross values of \$24,944, \$12,411 and \$1,066." The Office of the Comptroller has acknowledged that the commissions and fees associated with these estate

were properly accounted for and that the estates were properly distributed by the Office of the Public Administrator. The Office of the Public Administrator believes that the Office of the Comptroller has inaccurately described the conduct of the Office of the Public Administrator with respect to these three estates.

In each of the three estates described by the Office of the Comptroller, the Office of the Public Administrator commenced a final judicial accounting proceeding for the estate before the Surrogate's Court accounting for all known assets of the estate. In each case, the judicial accounting proceeding was concluded when the Surrogate entered a Decree on Accounting. The Office of the Public Administrator subsequently closed the estate and distributed the balance on hand in accordance with the Decree on Accounting.

In the estate with additional assets having a gross value of \$24,944, the additional assets were completely unknown to the Office of the Public Administrator when it filed the final judicial accounting proceeding and the Surrogate's Court entered the Decree on Accounting. Upon learning of the additional assets, the Office of the Public Administrator re-opened the estate.

However, the Decree on Accounting for this estate had provided for the distribution of the net estate to known persons. Therefore, the Office of the Public Administrator provided said individuals and/or their counsel with documentation of the additional assets and the Public Administrator's proposed disbursement of those assets. The interested beneficiaries had no opposition to the proposed disbursements. Therefore, the Office of the Public Administrator re-closed the decedent's estate to the interested parties.

In the estate with additional assets having a gross value of \$12,411, the additional assets were the proceeds of a jewelry sale. While all commissions and fees were properly calculated and the net funds properly disbursed, the Office of the Public Administrator acknowledges that it should have, at a minimum, filed an affidavit amending the final accounting with the Surrogate's Court to account for the receipt and disbursement of the additional assets in this estate.

In the estate with additional assets having a gross value of \$1,066, the additional assets were actually interest earned on the estate bank accounts while the final judicial accounting proceeding was pending before the Surrogate's Court and the Decree on Accounting was awaiting execution by the Surrogate. Therefore, this estate is properly grouped with the second distinct groups of cases cited by the Office of the Comptroller and is therefore addressed below.

The Office of the Public Administrator believes that the preparation and filing of an additional asset accounting in the first two estates cited by the Office of the Comptroller would only have served to reduce the funds available to the estate beneficiaries. It should also be noted that the Office of the Public Administrator files judicial accountings on additional assets when the additional assets exceed \$20,000 and the interested parties include the decedent's unknown distributees, persons whose whereabouts are unknown, or persons who may be under a disability. Although the Office of the Public Administrator does not believe that it is prudent or required to

file an accounting on additional assets with the Surrogate's Court in all matters, the Office of the Public Administrator will prospectively attempt to file an accounting on additional assets in affidavit form with the Surrogate's Court if it does not commence a judicial accounting on additional assets.

The Office of the Comptroller has also asserted that the Office of the Public Administrator did not file a final accountings in a second distinct groups of cases. Specifically, the Office of the Comptroller asserts that "amended final accountings were not prepared for four of the 24 estates requiring them. These estates had additional receipts, totaling \$4,484, subsequent to the preparation of the final accountings. Rather than preparing an amended final accounting, the attorney prepared a worksheet indicating the revised gross estate value and distribution amounts." The Office of the Public Administrator again believes that the Office of the Comptroller has inaccurately described the conduct of the Office of the Public Administrator with respect to these four estates.

In the four estates cited by the Office of the Comptroller, the Office of the Public Administrator filed a judicial accounting proceeding accurately reflecting the assets of the estate at the preparation of the accounting and subsequently filed a Decree on Accounting to settle the accounting. The additional receipts referred to by the Office of the Comptroller were additional interest received on the estate bank accounts for the matters in question, while the final accounting and decree were pending before the Surrogate's Court. Since an estate is not a static entity that remains fixed while the final accounting is pending before the Court, nearly every estate administered by the Office of the Public Administrator earns such additional interest while the account and decree are pending before the Court.

Once the Decree on Accounting is submitted and thereafter entered by the Court, there is simply no judicial procedure available to account for these "float" assets earned prior to the entry of the Decree on Accounting. It is simply impossible to judicially address this interest because every time an amended accounting is filed listing the newly earned interest, more interest would be earned prior to the entry of the Decree on Accounting. The Surrogate's Court is fully aware that the estates administered by the Office of the Public Administrator continue to accumulate these "float" assets and that they will be accounted for and distributed when the Counsel to the Public Administrator prepares the close-out sheet for each estate.

The "worksheet" referred to by the Office of the Comptroller is the close-out sheet for each estate. The close-out sheet is prepared by the Counsel to the Public Administrator and delivered to the Office of the Public Administrator for use in issuing the closing checks for the estate. Counsel includes any of the additional "float" assets described by the Office of the Comptroller in a revised value for the gross estate.

The Counsel to the Public Administrator recalculates the SCPA 2307 commissions earned by the Office of the Public Administrator and payable to the New York City Finance Administrator, based upon the revised value for the gross estate. The Office of the Comptroller

asserts that it found a commissions shortage in one of the four estates cited by the Office of the Comptroller. However, the Office of the Public Administrator has reviewed the commissions calculations for all four of the estates and found no commissions shortage. The Office of the Public Administrator believes that the commissions shortage finding was the result of a misreading of the Decree on Accounting for one of the matters in question, which was actually an *intervivos trust* and not a decedent's estate. Unlike estate accountings, trusts accountings separately account for the principal and interest received by the trustee. In fact, there was no difference in the asset values stated in the final accounting and the close-out sheet for this trust matter. The asset value difference perceived by the Office of the Comptroller was again the result of the misreading of the Decree on Accounting by focusing on only the principal portion of the trust to the exclusion of the income portion.

In contrast, the Counsel to the Public Administrator does not recalculate the SCPA 1106(3) miscellaneous administration expense commissions earned by the Office of the Public Administrator and payable to the New York City Finance Administrator, based upon the revised value for the gross estate. Counsel does not recalculate the SCPA 1106(3) miscellaneous administration expense commissions because, by the terms of SCPA 1103(3), the miscellaneous administration expense commission must be allowed by the Surrogate. In contrast, SCPA 1103(1) permits the Office of the Public Administrator to retain the SCPA 2307 commission without allowance by the Surrogate.

Therefore, the Office of the Public Administrator believes that the SCPA 1106(3) miscellaneous administration expense commission shortages cited by the Office of Comptroller in the four cited estates, ranging from \$5 to \$25, were not actually shortages at all. Since there was no judicial mechanism for accounting on these additional "float" assets while the judicial accountings and decrees remained pending, there was no means by which the Surrogate could approve the SCPA 1106(3) miscellaneous administration expense commission on these additional receipts. Therefore, the Office of the Public Administrator was not entitled to any additional SCPA 1106(3) miscellaneous administration expense commissions on the four cited estates.

Finally, the Office of the Comptroller believes that by not filing an accounting on additional assets in each and every estate regardless of the facts and circumstances of a particular matter, the Office of the Public Administrator has hindered the oversight by the Surrogate's Court of its administration of estates. However, the Office of the Public Administrator currently provides a bi-annual report to the Surrogates detailing open estates where letters have issued, an annual report to the New York State Comptroller detailing estates where letters have issued and an accounting has not been filed, a monthly report to the Comptroller of the City or New York detailing the value of all estates closed during the month, and the attorneys fees and commissions paid, and an annual report to the Surrogates on every statutory and financial aspect of the operation of the Office of the Public Administrator throughout the year. Since the filing of an accounting on additional assets under the circumstances requested by the Office of the Comptroller would be only informational, it would not be reviewed by the Surrogate's Court staff for accuracy. Therefore, the Office of the Public Administrator believes that the filing of an

accounting on additional assets under the circumstances requested by the Office of the Comptroller will not aid in the supervision of the Office of the Public Administrator by the Surrogate's Court or any other office. However, as stated above, the Office of the Public Administrator will prospectively attempt to file an accounting on additional assets in affidavit form with the Surrogate's Court if it does not commence a judicial accounting on additional assets.

The Office of the Public Administrator believes it used the correct gross estate values for calculating the commissions due to the City of New York on all of its estates, including those cited by the Office of the Comptroller, and that the City of New York received all of the commissions to which it was entitled as a result of the services performed by the Office of the Public Administrator.

#### Form 1099-MISC Payments Not Reported to the IRS

The Report cites Section 6041 of the Internal Revenue Code as authority requiring the Office of the Public Administrator to issue a Form 1099-Misc to any service provider, including attorneys and guardians *ad litem*, who render services in an estate matter. As the Office of the Public Administrator has explained in its responses to similar recommendations in prior audit reports, when it administers a decedent's estate the Office of the Public Administrator is not engaged in a trade or business as the same is defined under IRC 6041. Therefore, the Office of the Public Administrator is not a payor for purposes of information reporting under either Directive #28 of the Office of the Comptroller or Treasury Regulation 1.6041-1.

Further, upon information and belief, the standard practice followed by corporate fiduciaries in trusts and estates practice is to not issue a Form 1099-Misc to attorneys retained by the trust or estate. It should be noted that there is no provision contained in the Surrogate's Court Procedure Act or the Guidelines of the Administrative Board for the Offices of the Public Administrators requiring the Office of the Public Administrator to issue a Form 1099-Misc to service provider when payment is made from estate funds.

Finally, the Internal Revenue Service and the New York State Department of Taxation and Finance have never directed or indicated to the Public Administrator that a Form 1099-Misc should be issued to any attorney rendering services to estates administered by the Public Administrator. Therefore, the Office of the Public Administrator strongly refutes any notion that its actions may be allowing individuals to understate their income or avoid the payment of taxes.

The Office of the Public Administrator notes that the Office of the Comptroller has recognized in a prior Audit Report that an estate does not engaged in a trade or business as the same is defined under IRC 6041. Therefore, when the Office of the Public Administrator, as the fiduciary instrument through which the estate acts, pays a service provider from estate funds, that action is not somehow transformed into constituting the engagement in a trade or business as the same is defined under IRC 6041. This is of course distinguished from a payment to a service

provider or vendor by the Office of the Public Administrator from its own operating budget or suspense funds for services rendered to the Office of the Public Administrator itself and not one of the estates under administration, for which a Form 1099-Misc is routinely issued pursuant to IRC 6041.

#### Independent Audit Not Performed

The Office of the Public Administrator acknowledges the audit requirement of Section 1109 of the Surrogate's Court Procedure Act and that the Guidelines of the Administrative Board for the Offices of the Public Administrators recommend that the SCPA 1109 audit include an review of the bookkeeping system utilized by the Office of the Public Administrator.

In the past, the Office of the Public Administrator has consulted with independent certified public accounting firms and ascertained that the budgeted funds would be largely inadequate to conduct the broad type of audit that is described in SCPA 1109 and the Guidelines of the Administrative Board.

In a prior Audit Report, the Office of the Comptroller had suggested that the Office of the Public Administrator should utilize its suspense funds to pay the cost of the SCPA 1109 audit. However, the Office of the Public Administrator believes that this would be a clear violation of SCPA 1109, which requires that the cost of the audit be provided by the City of New York.

The Office of the Public Administrator will again attempt to retain an independent certified public accounting firm to conduct an audit, within the budgetary constraints placed upon the Office of the Public Administrator by the City of New York, that complies with SCPA 1109 and the recommendations of Guidelines of the Administrative Board for the Offices of the Public Administrators.