

# AUDIT REPORT

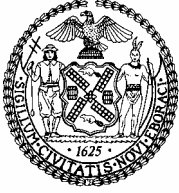


CITY OF NEW YORK  
OFFICE OF THE COMPTROLLER  
BUREAU OF MANAGEMENT AUDIT  
**WILLIAM C. THOMPSON, JR., COMPTROLLER**

## **Audit Report on the Estate Management Practices of the Kings County Public Administrator**

*ME05-055A*

**June 29, 2005**



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

WILLIAM C. THOMPSON, JR.  
COMPTROLLER

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

Ladies and Gentlemen:

In accordance with the Comptroller's responsibilities contained in Chapter 5, §93, of the New York City Charter, my office has reviewed the effectiveness of certain estate management practices of the Kings County Public Administrator (KCPA).

The results of our audit, which are presented in this report, have been discussed with KCPA officials, and their comments have been considered in the preparation of this report.

Audits such as this provide a means of ensuring that City resources are used effectively, efficiently, and in the best interest of the public.

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/fh

**Report:** ME05-055A  
**Filed:** June 29, 2005

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

**Audit Report on the Estate Management Practices  
Of the Kings County Public Administrator**

**ME05-055A**

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**AUDIT REPORT IN BRIEF**

This audit determined the effectiveness of certain estate management practices of the Kings County Public Administrator (KCPA). The KCPA is responsible for administering the estates of decedents in Brooklyn who leave no will, personal representative, or known heirs, or who leave heirs who are not qualified or willing to administer the estate. The Public Administrator reviews the personal effects of the decedent, collects and manages assets, releases assets to authorized parties, secures real property, pays estate creditors, collects estate debts, sells real estate and other personal property at public auction, and distributes estate assets to heirs. The Public Administrator also arranges funerals, notifies next of kin, and arranges for an accountant to prepare decedents' income taxes and for counsel to prepare estate taxes.

**Audit Findings and Conclusions**

The KCPA adequately handled certain estate management responsibilities for estates closed in Fiscal Year 2004. The KCPA generally handled the estates' assets, fees, and distributions in an appropriate manner. It also properly secured and restricted access to those decedents' personal effects that were stored in the KCPA office's vaults and locked rooms. In addition, the KCPA generally required its Counsel to limit requests for compensation for legal services to comply with the October 3, 2002 Interim Report and Guidelines of the Administrative Board.

However, our audit identified some areas of concern. Neither of the KCPA's two repositories of estate information—an automated system that tracks financial data and the estate files—contains all the key information on an estate. Furthermore, the estate files are often disorganized collections of documentation. As a result, a complete and accurate picture of the status of an estate is often not readily available. In addition, the KCPA office was unable to demonstrate that the fees it charged estates for administrative expense, or the fees it allowed its Counsel to charge for estates valued at under \$25,000, were appropriate. Finally, the KCPA did not ensure that its Counsel always prepared an affidavit of legal services.

### **Audit Recommendations**

To address these issues, the audit recommended that the KCPA:

- Maintain better organized case files.
- Ensure that case files contain all key information.
- Add a checklist to each case file that clearly shows all of the actions taken on an estate.
- Attempt to obtain documentation clearly showing approval of the current fees for administrative expense.
- Attempt to obtain documentation showing approval of its set-fee schedule for the legal services provided to estates valued at under \$25,000.
- Ensure that the required affidavits of legal services are filed for each estate.

### **KCPA Response**

On June 1, 2005, we submitted a draft to the KCPA office with a request for comments. We received a written response on June 21, 2005. In its response, the KCPA office disagreed with some of the audit's findings and many of its recommendations. We address each of their concerns in the body of the report.

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

## **INTRODUCTION**

### **Background**

The Offices of the Public Administrators for the counties within New York City are governed by Article 11 of the New York State Surrogate's Court Procedures Act (SCPA). The head of each office—the Public Administrator—is appointed by the Surrogate of the county. The Public Administrator is responsible for administering the estates of decedents who leave no will, personal representative, or known heirs, or who leave heirs who are not qualified or willing to administer the estate. The Kings County Public Administrator handles the estates of such decedents in Brooklyn.

The Public Administrator reviews the personal effects of the decedent, collects and manages assets, releases assets to authorized parties, secures real property, pays estate creditors, collects estate debts, sells real estate and other personal property at public auction, and distributes estate assets to heirs. The Public Administrator also arranges funerals, notifies next of kin, and arranges for an accountant to prepare decedents' income taxes and counsel to prepare estate taxes.

The value of an estate's assets dictates the administration of the estate. Estates with assets below \$500 require no special accounting. For estates with assets between \$500 and \$20,000, the Public Administrator must file an "informatory accounting" with the Surrogate's Court that summarizes the estate's transactions and assets. For estates with assets in excess of \$20,000, the Public Administrator must petition the Surrogate's Court for a "letter of administration" that empowers the Public Administrator to act on the estate's behalf, and must file a "final accounting" with the Surrogate's Court that details the estate's assets, expenses, claims, and reserves, and proposes a final distribution of assets.

During the course of our audit, the New York State Commission on Judicial Conduct voted to remove the Surrogate of Kings County from office for awarding excessive legal fees to the KCPA Counsel. Pending a review of this decision by the Court of Appeals, an Interim Surrogate was appointed. The Interim Surrogate informed the KCPA Counsel that he would not be assigned any more Surrogate's Court cases.

### **Objective**

The audit's objective was to determine the effectiveness of certain estate management practices of the Kings County Public Administrator.

### **Scope and Methodology**

This audit covered the period from July 1, 2003 to June 30, 2004 (Fiscal Year 2004).

To gain an understanding of the Public Administrator's operations, we reviewed Article 11 of the Surrogate's Court Procedure Act, the November 13, 1995 Report and Guidelines of the

Administrative Board for the Offices of the Public Administrators Pursuant to Surrogate's Court Procedure Act Section 1128, the October 3, 2002 Interim Report and Guidelines of the Administrative Board, and the KCPA Policy and Procedure Manual; interviewed KCPA officials; and conducted a walk-through of their operations. We also interviewed the KCPA Counsel and Accountant.

To determine the adequacy of KCPA's estate management practices, we randomly selected for review a sample of 25 of the 311 estates valued at more than \$500 that were closed during Fiscal Year 2004. We reviewed the documentation in estate files to determine whether the KCPA complied with applicable procedures and guidelines in its management of the estates. We compared the itemized personal effects listed in the case files with the general ledger to determine whether these assets were properly disposed of and whether the proceeds from the dispositions were properly credited to the estate. We reviewed each estate's fee payments and distributions, and the estate's informatory or final accounting statement.

In light of the New York State Commission on Judicial Conduct's findings concerning the Kings County Surrogate's awarding of legal fees to the KCPA Counsel, we randomly selected and added 28 cases to our sample of 25 for the sole purpose of reviewing the legal services provided to a total of 53 of the 311 estates that were closed during Fiscal Year 2004. For each of the 53 estates, we determined whether the KCPA Counsel prepared the required affidavit of legal services and whether the legal fees sought and awarded to KCPA Counsel were appropriate.

To determine whether the KCPA properly secured those decedents' personal effects (e.g., jewelry) that are stored in the KCPA office until their final disposition, we observed access to the KCPA's vaults and locked rooms.

The results of our tests of the adequacy of KCPA's estate management practices relating to our sample of 25 estates, while not statistically projected to the population of 311 estates closed in Fiscal Year 2004, provide a reasonable basis for us to assess the adequacy of KCPA's estate management practices during this time period. Results from our test of the appropriateness of the legal fees sought and awarded for the 53 cases in our sample were projected to the population of 311 estates closed in Fiscal Year 2004.

This audit was conducted in accordance with generally accepted government auditing standards (GAGAS) and included tests of records and other auditing procedures considered necessary. This audit was performed in accordance with the audit responsibilities of the 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 officials of the Kings County Public Administrator's office during and at the conclusion of this audit. A preliminary draft report was sent to officials of the Kings County Public Administrator's office on May 5, 2005, and was discussed at an exit conference held on May 26, 2005. On June 1, 2005, we submitted a draft report to officials of the Kings County Public Administrator's office with a request for

comments. We received a written response from the Kings County Public Administrator's office on June 21, 2005.

In its response, the KCPA office disagreed with some of the audit's findings and many of its recommendations. While KCPA officials agreed that the case files could be better organized, they claimed that staffing limitations prevent them from maintaining better organized files. The audit contends that better organized case files would improve office efficiency and make better use of limited staff resources. KCPA officials agreed to seek approval for its fee schedule for administrative expense but questioned the need to obtain approval for its fee schedule for the legal services provided to estates valued at under \$25,000. The audit maintains that it is in the best interest of the KCPA to obtain approval for both fee schedules. KCPA officials stated that affidavits of legal services have been prepared since the Administrative Board issued its Interim Report and Guidelines in 2002. The audit noted that prior to 2002, State law already required the submission of affidavits of legal services.

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



## **FINDINGS AND RECOMMENDATIONS**

The KCPA adequately handled certain estate management responsibilities for estates closed in Fiscal Year 2004. The KCPA generally handled the estates' assets, fees, and distributions in an appropriate manner. It also properly secured and restricted access to those decedents' personal effects that were stored in the KCPA office's vaults and locked rooms. In addition, the KCPA generally required its Counsel to limit requests for compensation for legal services to comply with the October 3, 2002 Interim Report and Guidelines of the Administrative Board.

However, our audit identified some areas of concern. Neither of the KCPA's two repositories of estate information—an automated system that tracks financial data and the estate files—contains all the key information on an estate. Furthermore, the estate files are often disorganized collections of documentation. As a result, a complete and accurate picture of the status of an estate is often not readily available. In addition, the KCPA office was unable to demonstrate that the fees it charged estates for administrative expense, or the fees it allowed its Counsel to charge for estates valued at under \$25,000, were appropriate. Finally, the KCPA did not ensure that its Counsel always prepared an affidavit of legal services.

### **KCPA's System for Tracking and Recording Estate Information Is Inadequate**

The Report and Guidelines of the Administrative Board states that “the PA shall maintain a case management system to track the progress of each estate's administration. The system shall consist of a centralized tracking and recording system which reflects the status of each pending estate.”

The KCPA maintains a case file for each estate. This file is the repository for estate documentation. The KCPA also uses its Trust Management System (TMS) to manage estates' financial accounts. TMS maintains a general ledger for each estate that shows all of the financial transactions that have occurred on the estate. However, neither the case file nor the TMS provides a complete picture of an estate's status at any given time. For example, printouts of the final general ledger were not in the case files for any of the closed estates we reviewed. Further, a case file is often a disorganized collection of documentation with which it is difficult to ascertain the current status of an estate. Since several people, including KCPA employees, as well as the KCPA Counsel and Accountant, are involved in managing the estate, a better organized case file could help ensure that these people work together in a consistent and efficient manner to ensure a timely and proper distribution of assets.

We reviewed a sample of 25 of the 311 estates valued at more than \$500 that were closed in Fiscal Year 2004. In four cases, estates were closed even though there was no indication in the case files that jewelry and other household effects cited in investigators' property reports and inventories were properly sold, distributed, or disposed of. In each of these cases, the KCPA office was able to provide us with additional information to account for its handling of the jewelry and household effects.

In one of these four cases, the estate was closed and its assets distributed even though there was no evidence in TMS or the case file that the estate's 48 U.S. Savings Bonds, which investigators had previously inventoried, had been distributed, sold, or redeemed. While the KCPA office properly secured and restricted access to those decedents' personal effects that were stored in the KCPA office's vaults and locked rooms, KCPA officials acknowledge that in this case most of these bonds were kept in an employee's desk. The KCPA office became aware of the location of these bonds after the estate was closed in November 2000. However, the inventory list identifying the bonds was in the case file.

After the estate was reopened, the KCPA office wrote to the Federal Reserve Bank of New York in August 2004 to redeem 25 of the 48 bonds. The general ledger indicates that the bonds were redeemed in September 2004. However, when we reviewed the case file, there was no documentation showing the current status of the remaining 23 bonds. The KCPA office informed us that 13 of the 23 bonds had been given to the family. However, there was no indication of this in the case file. At the exit conference, KCPA officials provided us with confirmations they received in 2005 showing that these 13 bonds had been redeemed by the family in 1998 and 2001. The KCPA also provided us at the exit conference with a copy of its April 20, 2005 letter to the Federal Reserve Bank of New York seeking to redeem the remaining 10 bonds.

While the KCPA did not need Surrogate's Court approval to reopen the estate and redeem these bonds, such efforts are inefficient. Of greater concern is the fact that the KCPA office kept these bonds in an inappropriate location and that it closed the estate without ensuring the distribution to heirs of all of the inventoried assets.

A better organized case file that includes all key data and clearly shows all the actions taken on an estate would facilitate both a more effective handling of the estate and a closer supervisory review of estate transactions and accountings.

**KCPA Response:** "All Stocks and Bonds are kept in the KCPA's locked vault. The only time they are removed is when they are actively being worked on."

**Auditors' Comment:** As noted above, KCPA officials acknowledged that for the case described, most of the U.S. Savings Bonds were kept in an employee's desk.

### **Recommendations**

The KCPA office should:

1. Maintain better organized case files.

**KCPA Response:** "This objection is raised without a clear definition of 'organized case files.' KCPA strives to the best of its abilities to keep case files organized. Due to the nature of our work and multitude of individuals (support staff, attorneys, accountants, guardian-ad-litem, etc.) adding and reviewing case information, it is virtually impossible to maintain any set organization. Unfortunately, KCPA is understaffed and all employees

perform multi-functions. KCPA cannot afford to dedicate workers exclusively to the task of keeping case files organized.”

2. Ensure that case files include all key information.

**KCPA Response:** “All the key information on an estate is kept in the automated Estate Management System. Cash income and disbursements are kept in the Automated Financial System, and non-cash items are kept in the Automated Inventory System until their liquidation, at which time they are transferred to the Financial System. Ledger and inventory reports are not kept in the case files because case information constantly changes. Keeping this information current would be extremely difficult and counter productive.”

3. Add a checklist to each case file that clearly shows all of the actions taken on an estate.

**KCPA Response:** “The caseload, and case volatility coupled with understaffing prohibits such a checklist. Maintaining and updating such a list will be a real hardship for the KCPA office.

**Auditors’ Comment:** KCPA’s response to these three recommendations reinforces the need for their implementation. It is precisely because of case volatility and limited staffing that we recommend that the KCPA office enhance its efforts to maintain well-organized and complete case files. Well-organized and complete case files can improve office efficiency. Use of a checklist that identifies all the assets received and their disposition, as well as the significant actions taken on a case to date, would help the multiple users of a case file know immediately the status of a case, and could limit the need for case re-openings to resolve matters that should have been addressed upon the closing of the estate.

### **Schedule of Fees for Administrative Expense Not Substantiated**

SCPA §1106(3) allows the Public Administrator “a reasonable amount for the expenses of his office.” For estates with a gross value of more than \$20,000, the KCPA routinely charges an estate a fee of up to two percent of the estate’s gross value (one percent on the initial accounting and one percent on the final decree). For estates valued at less than \$20,000, informatory accounting fees start at \$65 for estates with a gross value up to \$1,000 and increase to \$150 for estates with a gross value between \$10,000 and \$20,000; for supplemental accountings, fees start at \$40 and increase to \$75. According to KCPA officials, all of these fees are in accordance with existing guidelines. However, KCPA officials could not supply us with documentation to substantiate these fees. SCPA §1106(3) requires that any increase in these fees beyond what the KCPA was charging as of December 31, 1992 must be approved in writing by the Administrative Board. KCPA officials were unable to show us the administrative expense fees they were charging in 1992 or subsequent Administrative Board approval of higher fees. While we found that the KCPA’s charges were within the indicated fees, we could not be assured

that these fees were charged in 1992 or that higher fees had been approved by the Administrative Board. Without documentation clearly showing the 1992 fees or the written approval of the fees by the Administrative Board, there is no evidence that the KCPA is charging the correct fees for administrative expense.

### **Recommendation**

4. The KCPA should attempt to obtain documentation clearly showing the 1992 fees or written Administrative Board approval of the current fees for administrative expense.

**KCPA Response:** “KCPA office will attempt to obtain documentation showing the 1992 administrative fees.”

### **Legal Fees and Affidavits of Legal Services**

On February 10, 2005, the New York State Commission on Judicial Conduct (the Commission) voted to remove the Surrogate for Kings County for awarding excessive legal fees to the KCPA Counsel. Pending a review of this decision by the Court of Appeals, an Interim Surrogate was appointed. The Interim Surrogate informed the KCPA Counsel that he would not be assigned any more Surrogate’s Court cases.

The Commission found that between January 1997 and May 2002, the Surrogate did not require the KCPA Counsel to file affidavits of legal services explaining the services provided to the estate and routinely awarded the KCPA Counsel fees equal to eight percent of the gross value of the estate. The Commission reported that during this period, the legal fees awarded counsels for the Public Administrators of the other four counties in New York City did not exceed six percent and were based on the required filing of affidavits of legal services. The eight percent fees awarded the KCPA Counsel also exceeded the guidelines outlined in 1988 and 1994 agreements between the prior KCPA Counsel and the Attorney General’s office. These guidelines limited KCPA Counsel’s fees to six percent of the estate’s gross value, but permitted the KCPA Counsel to request an additional fee for special or supplemental services.

According to the Commission, the additional two percent fee was regularly requested and generally granted by the Surrogate. The Commission reported that the six percent fee was requested in the initial accounting signed by the KCPA, and that upon the submission of the final decree, an additional two percent fee request was calculated by the Chief Clerk of the Surrogate’s Court or the KCPA Counsel’s office and reported to the Surrogate.

On October 3, 2002, the Administrative Board, in its Interim Report and Guidelines, established a sliding-scale fee schedule for legal services, based on the gross value of the estate. The fee schedule sets the maximum compensation for legal services “in the absence of extraordinary circumstances.” The Interim Report and Guidelines states that “the Public Administrators shall require their counsel to limit their request for compensation in any estate to an amount not to exceed” six percent on the first \$750,000, plus smaller percentages on additional amounts, decreasing to one and one-half percent on amounts over \$5,000,000. However, for estates with a gross value up to \$25,000, KCPA officials stated that the Surrogate’s

Court has established a set-fee schedule. The fees start at \$60 for estates with a gross value up to \$1,000 and increase to \$1,500 for estates with a gross value between \$20,000 and \$25,000. The KCPA office was not able to provide us with any documentation showing approval of its set-fee schedule for the legal services provided to estates valued at under \$25,000.

Our review of 53 estates closed in Fiscal Year 2004 showed that after October 2002, the KCPA Counsel sought and received legal fees out of these estates that were consistent with these schedules.<sup>1</sup> Nineteen estates were valued at more than \$25,000 and were subject to the sliding-scale fee schedule. Thirty-four estates were valued under \$25,000 and were subject to the set-fee schedule. Our result is consistent with the Commission's finding in its February 2005 report that the fees awarded to the KCPA Counsel since October 2002 have not exceeded six percent.

The Administrative Board's Interim Report and Guidelines also requires that the Public Administrator's counsel prepare an affidavit of legal services to support each request for compensation. In six of the 53 cases, the required affidavits of legal services were not in the estate file. On May 31, 2005, after the exit conference, the KCPA Counsel provided us with six affidavits of legal services. However, only one of these affidavits was prepared at the time of the final decree. Four of these affidavits were prepared one to two years after the final decrees were issued for the estates. The sixth affidavit did not correspond to the estate file we reviewed. SCPA §1108(2)(c), which was in effect when the KCPA Counsel assumed his position in 1997, required that "any legal fee allowed by the [surrogate's] court ... shall be supported by an affidavit of legal services." Because affidavits of legal services were not filed with the final decrees in some of these cases, neither the Public Administrator nor the court could be assured that the fees were appropriate for the services performed.

**KCPA Response:** "[The second and third paragraphs of this section] are repeats of statements by the Commission on Judicial Review Report. The statements have nothing to do with the audit's objective of the effectiveness of estate management directive of the KCPA. This recommendation was added after the exit conference."

**Auditors' Comment:** We stated in the preliminary draft and draft reports that the information provided in these paragraphs was based on the New York State Commission on Judicial Conduct's report. We present this information to provide context for our review of the legal fees awarded to the KCPA Counsel for estates closed in Fiscal Year 2004. We did not add any recommendations to the audit report after the exit conference.

### **Recommendations**

The KCPA office should:

5. Attempt to obtain documentation showing approval of its set-fee schedule for the legal services provided to estates valued at under \$25,000.

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<sup>1</sup> Based on our sample size of 53 estates from a population of 311 estates, we are 95 percent confident that if any errors exist in the population, the error rate is less than 5.16 percent.

**KCPA Response:** “See attached. ... The courts promulgated a fee structure for estates under \$20,000. These estates do not warrant a formal accounting and the fee schedule allows for no more than a fee of six percent.”

**Auditors’ Comment:** The KCPA office was unable to provide us with documentation showing that the courts promulgated a fee structure for estates under \$20,000. The attachment is merely a copy of a portion of a newspaper article. It is in the best interest of the KCPA to obtain approval in writing from the Administrative Board or the Surrogate Judge for the set-fee schedule for estates under \$25,000 (which in some instances allows legal fees to exceed six percent).

6. Ensure that the required affidavits of legal services are filed for each estate.

**KCPA Response:** “With respect to affidavits of Legal Services, counsel’s office has provided an affidavit simultaneously with every accounting and or decree filed since May 2002. In four of the matters reviewed, affidavits were filed ‘nunc pro tunc’ because the matters were closed prior to 2002 and re-opened later to account for assets received after the final decree. These matters were re-closed in 2004.

“With respect to an affidavit that did not correspond to the estate file reviewed, it should be noted that in error, the sixth affidavit provided was for the estate of J [name and file number withheld]. The Comptroller’s office requested the affidavit of the estate of W [name and file number withheld]. W was the pre-deceased brother of J. J is W’s sole distributee. As all funds from the estate of W belonged to the estate of J, no affidavit of legal services was filed with the court. This was done in order to save W’s estate from court filing fees, publication fees, guardian ad-litem fees and citation fees.”

**Auditors’ Comment:** The affidavits of legal services for the six cases were not in the case files but were provided by the KCPA Counsel’s office after the exit conference. While the decrees for the four “nunc pro tunc” cases were issued in 2000 and 2001, prior to the Administrative Board’s 2002 Interim Report and Guidelines, SCPA §1108(2)(c) already required the submission of an affidavit of legal services for these four cases at the time of the decree. In addition, for the sixth case cited in the KCPA response, both the J and W estates paid KCPA Counsel fees for legal services. Therefore, an affidavit of legal services should have been prepared for each estate.

**KCPA Response:** “It should be noted that the Comptroller performed two audits of the Public Administrator’s office from 1996 to just prior to this last audit. At no time did the Comptroller raise the issue of fee amounts and failure to file affidavits.”

**Auditors’ Comment:** Our previous audit of the KCPA office was issued on February 8, 2001. Each audit is independent. The focus and findings of an audit often differ from those of our previous audit of the same agency.

# Public Administrator

ADDENDUM

Page 1 of 4

Steven R. Finkelstein

Counsel

1-212-363-2500

Marietta Small  
Commissioner  
Public Administratrix



County of Kings

File No.  
Estate of  
Attention

City of New York  
Office of the Comptroller  
1 Centre Street  
New York, NY 10007-2341

June 21, 2005

RE: Response to Audit ME05-055A  
of the Kings County Public Administrator  
on Estate Management Practices

Dear Mr. Brooks:

Attached is the Kings County Public Administrator's response to the above mentioned audit report.

If you have any questions regarding this response, please contact me at 718-643-3106

Yours Truly,

Marietta Small

**KCPA'S SYSTEM FOR TRACKING AND RECORDING ESTATE INFORMATION IS INADEQUATE**

**Agency Response to Pg. 7 paragraph 4-5:** All Stocks and Bonds are kept in the KCPA's locked vault. The only time they are removed is when they are actively being worked on for redemption

1. **Comptroller Recommendation:** Maintain better-organized case files. (Pg. 7)

**Agency Response:** This objection is raised without a clear definition of "organized case files". KCPA strives to the best of its abilities to keep case files organized. Due to the nature of our work and multitude of individuals (support staff, attorneys, accountants, guardian-ad-litem, etc.) adding and reviewing case information, it is virtually impossible to maintain any set organization. Unfortunately, KCPA is understaffed and all employees perform multi-functions. KCPA cannot afford to dedicate workers exclusively to the task of keeping case files organized.

2. **Comptroller Recommendation:** Ensure that case files include all key information. (Pg. 7)

**Agency Response:** All the key information on an estate is kept in the automated Estate Management System. Cash income and disbursements are kept in the Automated Financial System, and non-cash items are kept in the Automated Inventory System until their liquidation, at which time they are transferred to the Financial System. Ledger and inventory reports are not kept in the case files because case information constantly changes. Keeping this information current would be extremely difficult and counter productive.

3. **Comptroller Recommendation:** Add a checklist to each case file that clearly shows all of the action taken on an estate. (Pg. 7)

**Agency Response:** The caseload, and case volatility coupled with understaffing prohibits such a checklist. Maintaining and updating such a list will be a real hardship for the KCPA office.

**SCHEDULE OF FEES FOR ADMINISTRATIVE EXPENSE NOT SUBSTANTIATED**

4. **Comptroller Recommendation:** The KCPA should attempt to obtain documentation clearly showing the 1992 fees or written Administrative Board approval of the current fees for administrative expense. (Pg. 8)

**Agency Response:** KCPA office will attempt to obtain documentation showing the 1992 administrative fees.

**Agency Response:** The last two paragraphs (pg. 8) are repeats of statements made by the Commission on Judicial Review Report. The statements have nothing to do with the audit's objective of the effectiveness of estate management directive of the KCPA. This recommendation was added after the exit conference.



**LEGAL FEES AND AFFIDAVIT OF LEGAL SERVICES**

5. Comptroller Recommendation: The KCPA should attempt to obtain documentation showing approval of its set-fee schedule for the legal services provided to estates valued at under \$25,000.00. (Pg. 9)

Agency Response: see attached.

6. Comptroller Recommendation: The KCPA should ensure that the required affidavits of legal services are filed for each estate. (Pg. 9)

Agency Response: With respect to affidavits of Legal Services, counsel's office has provided an affidavit simultaneously with every accounting and or decree filed since May 2002. In four of the matters reviewed, affidavits were filed "nunc pro tunc" because the matters were closed prior to 2002 and re-opened later to account for assets received after the final decree. These matters were re-closed in 2004.

With respect to an affidavit that did not correspond to the estate file reviewed, it should be noted that in error, the sixth affidavit provided was for the estate of J [REDACTED]. The comptroller's office requested that the affidavit for the estate of W [REDACTED]. W [REDACTED] was the pre-deceased brother of J [REDACTED]. J [REDACTED] is W [REDACTED]'s sole distributtee. As all funds from the estate of W [REDACTED] belonged to the estate of J [REDACTED], no affidavit of legal services was filed with the court. This was done in order to save W [REDACTED]'s estate from court filing fees, publication fees, guardian ad-litem fees and citation fees.

It should be noted that the Comptroller's Office performed two audits of the Public Administrator's Office from 1996 to just prior to this last audit. At no time did the Comptroller raise the issue of fee amounts and failure to file affidavits.

The courts promulgated a fee structure for estates under \$20,00.00. These estates do not warrant a formal accounting and the fee schedule allows for no more that a fee on six percent.

## Fees of Counsel for Public Administrators

Continued from page 1

widely employed. The new guidelines specify that absent "extraordinary circumstances," New York City public administrators must require their counsel to limit their fee request within the schedule.

### Enforcement of Rule

Enforcement of the rule is left to the surrogates who must approve fee awards. A report approved by the panel yesterday explicitly recognized that the surrogates have final authority to set fees paid to counsel for the public administrators.

Public administrators are appointed by surrogates in each county to wind down the affairs of persons who die without a will and have no close relative or friend who can take over that duty.

Both Surrogate Holzman in the Bronx and Surrogate Nahman in Queens have been using a schedule lower than the one adopted by panel yesterday, according to the Attorney General's Office.

The Queens schedule starts at 6 percent for estates of \$300,000 or less, and rises to 3 percent for amounts over \$1 million. The Bronx schedule is 6 percent for

amounts under \$500,000, and 4 percent over that amount, with a smaller percentage in "very large" estates.

Mr. Josephson said it was his understanding that Surrogates Holzman and Nahman would continue to use their existing schedules.

The panel also decided at yesterday's meeting to examine whether counsel for public administrators, in addition to fees approved by surrogates for their work on estates, are also compensated by referral fees or as co-counsel in estates that have a

negligence action as a principal asset.

The panel met at the offices of Milberg Weiss Bershad Hynes & Lerach.

The other attorney members of the panel, which is mandated by statute, Surrogate Procedure Act §1128, are Roger Bennett Adler, John J. Reilly of Reilly & Reilly, Patricia M. Hynes of Milberg Weiss, David G. Samuels of Perlman & Perlman, Kathryn Grant Madigan of Levene Gouldin & Thompson, and Kathleen Grimm, who is now a top aid to Joel Klein, New York City school chancellor.

### Fee Ceilings Set for fees of Counsel to Public Administrators

Amount	Rate	Handwritten
First \$750,000	6	4.5, 000
Next \$500,000	5.5	27,500
Next \$250,000	5	12,500
Next \$500,000	4.5	22,500
Next \$3,000,000	3	
Next \$5,000,000	1.5	

SOURCE: The Administrative Board for the Offices of Public Administrators