



City of New York

OFFICE OF THE COMPTROLLER

Scott M. Stringer
COMPTROLLER



FINANCIAL AUDIT

Marjorie Landa

Deputy Comptroller for Audit

Audit Report on the
Financial and Operating Practices of
the Office of the Bronx County Public
Administrator

FK13-127A

June 30, 2015

<http://comptroller.nyc.gov>



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER
1 CENTRE STREET
NEW YORK, NY 10007

SCOTT M. STRINGER
COMPTROLLER

June 30, 2015

To the Residents of the City of New York:

My office has audited the Office of the Bronx County Public Administrator (BCPA) to determine whether the BCPA properly executed its fiduciary responsibilities, including whether it properly safeguarded estate assets, accurately reported revenue and expenses, and managed estate activities in accordance with Article 11 of the SCPA and other applicable State and City law and rules. We audit entities such as this to increase accountability and ensure that their operations follow applicable laws and guidelines in a consistent manner.

This audit found that the BCPA failed to properly carry out its fiduciary responsibilities in accordance with governing law and rules. The audit found multiple circumstances where the BCPA did not act in the best interests of estates, where it failed to carry out its duties prudently, and where it did not comply with applicable law and rules. Our audit also found that the BCPA did not maintain a reliable case management system, it did not appropriately and effectively use suspense account funds, it failed to properly administer bank accounts as required by the Guidelines, and it did not submit to oversight authorities financial and operational reports as required by the law.

This audit makes a total of 41 recommendations, including that the BCPA should: institute comprehensive formal written policies and procedures that adequately and specifically address the duties and procedures to be followed by employees for critical functions; ensure that BCPA staff properly complete Disbursement Vouchers detailing the amount, reason, and review and approval for expenses, and attach supporting documentation to them; select vendors who are competitive with other vendors providing the same services; and ensure that estate funds are secured with FDIC insurance or collateralization agreements. The report also recommends that the BCPA should: immediately submit outstanding audits when they are issued and thereafter, conduct and submit audits within prescribed timeframes; ensure that it submits accurate and complete reports of open and settled estates; and appropriately report all vendor payments and employee wages to the IRS and state tax authorities and issue 1099-MISC forms to vendors.

The results of this audit have been discussed with BCPA officials, and their comments have been considered in preparing this report. Their complete written response is attached to this report.

If you have any questions concerning this report, please e-mail my Audit Bureau at audit@comptroller.nyc.gov.

Sincerely,

Scott M. Stringer

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THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER FINANCIAL AUDIT

Audit Report on the Financial and Operating Practices of the Office of the Bronx County Public Administrator

FK13-127A

EXECUTIVE SUMMARY

The Office of the Bronx County Public Administrator (BCPA) is responsible for administering the estates of individuals in the Bronx who die intestate (i.e., without a will) or when no other appropriate individual is willing or qualified to administer the estate. As the estate administrator, the BCPA has a fiduciary duty to conduct thorough investigations to discover and safeguard all estate assets; pay decedents' bills and taxes; account for and maintain documentation to support estate activities; and distribute estate proceeds to decedents' heirs.

The BCPA is managed by a Public Administrator (PA) and a Deputy Public Administrator who are appointed and may be removed by the Bronx County Surrogate's Court Judge. The current Public Administrator and Deputy Public Administrator were appointed in March 2013, and June 2013, respectively. Additionally, the Bronx County Surrogate's Court Judge appoints counsel to the BCPA to render legal services to estates. The current BCPA counsel was appointed in February 2013 and is responsible for estates opened after this time.

Audit Findings and Conclusions

The BCPA failed to properly carry out its fiduciary responsibilities in accordance with governing laws and rules. We found multiple circumstances where it did not act in the best interests of estates, where it failed to carry out its duties prudently, and where it did not comply with applicable laws and rules. We also found that the BCPA did not maintain a reliable case management system, it did not appropriately and effectively use suspense account funds, it failed to properly administer bank accounts as required by the Guidelines for the Operations of the Offices of the Public Administrators of New York State (Guidelines), and it did not submit financial and operational reports to oversight authorities as required by the law that would allow them effectively assess, monitor, and hold the BCPA accountable for its performance.

Audit Recommendations

This report makes a total of 41 recommendations to the BCPA, including:

- The BCPA should institute comprehensive formal written policies and procedures that adequately and specifically address the duties and procedures to be followed by employees for critical functions, including but not limited to: asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting, including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking.
- The BCPA should establish asset identification policies and procedures and checklists detailing basic databases to search, and provide for access to databases including but not limited to: the New York City Department of Finance's (DOF) ACRIS public database of real property records; the Office of the State Comptroller's (OSC) public database of unclaimed funds; and the New York State Department of Motor Vehicles' (NYS-DMV) database of automobiles, boats, and other motorized vehicles records.
- The BCPA should track inquiry, confirmation, and collection letters to ensure that letters are sent, responses are received, necessary follow up action is taken, and ultimately, that funds are collected in a timely manner.
- The BCPA should ensure that BCPA staff properly complete Disbursement Vouchers detailing the amount, reason, and review and approval for expenses, and attach supporting documentation to them.
- The BCPA should select vendors who are competitive with other vendors providing the same services.
- The BCPA should ensure that suspense account expenses are reasonable, appropriate, adequately supported, and authorized.
- The BCPA should ensure that estate funds are secured with FDIC insurance or collateralization agreements between the BCPA and financial institutions which are backed by approved government securities.
- The BCPA should immediately submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices and the Mayor outstanding audits when they are issued, and thereafter, conduct and submit audits within prescribed timeframes.
- The BCPA should ensure that it submits to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor accurate and complete reports of open and settled estates.
- The BCPA should appropriately report all vendor payments and employee wages to the IRS and state tax authorities and issue 1099-MISC forms to vendors paid more than \$600 in a calendar year.

Agency Response

The BCPA strongly disagreed with “significant portions of the Report, and in particular with any notion that the BCPAO [the Bronx County Public Administrator’s Office] has failed to carry out its fiduciary responsibilities in administering the estates under its charge. The BCPA stated that it “feels the subject Report is replete with misstatements, mischaracterizations and outright inaccuracies as to what if any mistakes might have been made” and attributed this to Comptroller’s Office staff not understanding and applying appropriate governing laws, rules, and regulations and not seeking input from the BCPA during the course of the audit.

However, contrary to the BCPA’s assertions, the Comptroller’s Office appropriately applied applicable laws, rules, and regulations — primarily Article 11 of the Surrogate Court Procedures Act (SCPA), the Guidelines, and the BCPA’s informal policies and procedures. Moreover, from the outset of the audit, the Comptroller’s Office repeatedly sought and obtained input from and communicated issues to BCPA staff and counsel through meetings, phone calls, and emails. Further, the Comptroller’s Office formally discussed the audit’s findings and conclusions with the BCPA on numerous occasions up to and including the exit conference held in May 2015, but for the first time starting in July 2014.

Additionally, the PA did not address or criticize report findings that he stated related to issues that occurred or stemmed from events prior to his appointment. However, upon his appointment in March 2013, the PA assumed full responsibility for BCPA operations and all open estates regardless of when issues originated or when estates were opened.

Finally, the PA stated that budgetary constraints precluded him from addressing several issues, including those related to the BCPA’s case management system.

The full text of the BCPA’s response is included as an addendum to this report.

AUDIT REPORT

Background

The BCPA is responsible for administering the estates of individuals in the Bronx who die intestate (i.e., without a will) or when no other appropriate individual is willing or qualified to administer the estate. The BCPA is notified of potential estates from reports of death from the public, the Office of Chief Medical Examiner, and the Police Department.

As the estate administrator, the BCPA has a fiduciary duty to conduct thorough investigations to discover all assets and safeguard them; pay decedents' bills and taxes; account for and maintain documentation to support estate activities; and distribute estate proceeds to decedents' heirs. SCPA Article 11, Section 1123(2)(d) allows small estates, defined by SCPA Article 13, Section 1301 as an estate with a gross value of less than \$30,000, to be settled without court administration.¹ The BCPA utilizes the CompuTrust database system to account for and safeguard estate assets, and manage, monitor, and track estates' progress to settlement as required. Based on other BCPA records, we estimate that as of January 2014, the BCPA was responsible for administering 1,157 estates² with a cumulative value of at least \$32.4 million.³

The BCPA's operations are funded by the City of New York and by estate commissions. SCPA Section 1106(1) authorizes Public Administrators to receive commissions allowed by law to fiduciaries under Section 2307, which dictates a sliding scale commission of up to five percent of the gross value of each estate. In turn, SCPA Section 1107 requires Public Administrators to remit these sliding scale commissions monthly to DOF for deposit into the City treasury, and to be accompanied by a sworn statement setting forth the amount of the commissions. In addition, SCPA 1106(3) authorizes Public Administrators in New York State to retain "a reasonable amount for the expenses of his office, to be fixed by the court," which is currently set at a one percent commission of the gross value of each estate. The Guidelines Section I(D)(1) prohibits Public Administrators from commingling these one percent commissions with estate funds and, therefore, allows Public Administrators to maintain them in a separate bank account (the BCPA suspense account).

According to CompuTrust, for Fiscal Year 2013, the BCPA submitted commissions to DOF in the amount of \$2,019,582 and retained commissions in the amount of \$385,806. For the same period, the City allocated \$538,487 to the BCPA for its operations (\$493,110 for Personal Services and \$45,377 for Other Than Personal Services). Retained commissions and City-allocated funds

¹ For small estates, Public Administrators are not required to follow SCPA Section 2203 and "present to the court a petition showing the names and post-office addresses of all persons interested, that all taxes have been paid or that no taxes were due and that the petitioner has fully accounted and made full disclosure in writing of his administration of the estate to all persons who would be required to be served with process...and praying for a decree releasing and discharging the petitioner." Instead, SCPA Article 11, Section 1123(2)(e) allows Public Administrators to "[f]ile in the court an informatory account in a form prescribed by rule where the gross value of the assets of the estate accounted for is more than \$500 and less than that as defined as a small estate in subdivision 1 of section 1301 of this act and shall serve a copy of such informatory accounting by certified mail on all interested parties at least 30 days prior to filing with the court."

SCPA Article 13, Section 1301 defines a small estate as "the estate of a domiciliary or a non-domiciliary who dies leaving personal property having a gross value of \$30,000 or less exclusive of property required to be set off under EPTL 5-3.1 (a) (1), (2), (3), (4) and (5). 2"

² We compiled a population of open estates from: an auditors' inventory of hard copy estate files maintained in BCPA file cabinets; a BCPA inventory of hard copy estate files, which included files maintained in its cabinets and files being worked on by its staff; and BCPA counsel inventories of hard copy estate files maintained in counsels' private offices.

³ We estimated the minimum gross value of estates administered by the BCPA based on BCPA estate bank account balances reported in January 2014 bank statements.

totaling \$924,293 were available for the operations of the BCPA.

In addition to the SCPA and the Guidelines, BCPA activities are governed by Part 207 of the Uniform Rules for NYS Trial Courts; Title 2, Section 72.1 of the New York Codes, Rules, and Regulations (NYCRR); and the New York City Comptroller's Office Directive #28, "Reporting Requirements for Public Administrators." The BCPA is required to submit to the Surrogate's Court, the New York State and New York City Comptrollers, the New York State Attorney General, and the New York City Mayor audits and/or reports on its open and closed estates to allow these public bodies to assess, monitor, and hold the BCPA accountable for its fiscal and operational performance.

The BCPA is managed by a Public Administrator and a Deputy Public Administrator who are appointed and may be removed by the Bronx County Surrogate's Court Judge. The current Public Administrator and Deputy Public Administrator were appointed in March 2013, and June 2013, respectively. Additionally, the Bronx County Surrogate's Court Judge appoints counsel to the BCPA to render legal services to estates. The current BCPA counsel was appointed in February 2013 and is responsible for estates opened after this time.

Objective

The objective of this audit was to determine whether the BCPA properly executed its fiduciary responsibilities, including whether it properly safeguarded estate assets, accurately reported revenue and expenses, and managed estate activities in accordance with Article 11 of the SCPA and other applicable State and City law and rules.

Scope and Methodology Statement

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

The initial scope of this audit was Fiscal Years 2012 and 2013 and was updated to reflect events occurring through the close of audit fieldwork in March 2015. The scope of this audit focused on the 1,157 estates we estimate that the BCPA was responsible for administering as of January 2014. Please refer to the Detailed Scope and Methodology at the end of this report for the specific procedures and tests that were conducted.

Discussion of Audit Results

The matters covered in this report were discussed with BCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to BCPA officials and discussed at an exit conference held on May 28, 2015. On June 11, 2015 we submitted a draft report to the BCPA with a request for comments. We received a written response from the BCPA on June 25, 2015.

In the written response, the BCPA strongly disagreed with "significant portions of the Report, and in particular with any notion that the BCPAO has failed to carry out its fiduciary responsibilities in administering the estates under its charge." The BCPA stated that it "feels the subject Report is replete with misstatements, mischaracterizations and outright inaccuracies as to what if any mistakes might have been made" and attributed this to Comptroller's Office staff not understanding and applying appropriate governing laws, rules, and regulations and not seeking input from the BCPA. Specifically, the BCPA stated that,

after finally, and only just recently - on May 28, 2015 - speaking substantively and comprehensively (see below) with the OC [City of New York Office of the Comptroller] staff that produced the Report as to their 'preliminary draft' of same, it is the BCPAO's contention that the reason for these misstatements, mischaracterizations and inaccuracies is the OC staff's utter and complete failure to understand and appreciate, or if they did understand and appreciate it to then accept, the law that governs the practices and procedures of the Public Administrator's Offices, and to instead choose to inappropriately apply totally inapplicable general accounting principles to the very unique processes and procedures of the BCPAO.

However, contrary to the BCPA's assertions, the Comptroller's Office appropriately applied applicable laws, rules, and regulations — primarily the SCPA, the Guidelines, and the BCPA's informal policies and procedures. Moreover, from the outset of the audit, the Comptroller's Office repeatedly sought and obtained input from and communicated issues to BCPA staff and counsel through meetings, phone calls, and emails. Further, the Comptroller's Office formally discussed the audit's findings and conclusions with the BCPA on numerous occasions up through and including the exit conference held in May 2015, but for the first time starting in July 2014.

The PA additionally did not address or criticized report findings that he stated related to issues that stemmed from or occurred prior to his appointment. However, upon his appointment in March 2013, the PA assumed full responsibility for BCPA operations and all open estates regardless of when issues originated or when estates were opened.

Finally, the PA stated that budgetary constraints precluded him from addressing several issues, including those related to its case management system.

The full text of the BCPA's response is included as an addendum to this report.

FINDINGS AND RECOMMENDATIONS

The BCPA failed to properly carry out its fiduciary responsibilities in accordance with governing laws and rules. We found multiple circumstances where it did not act in the best interests of estates, where it failed to carry out its duties prudently, and where it did not comply with applicable laws and rules. We also found that the BCPA did not maintain a reliable case management system; that it did not appropriately and effectively use suspense account funds; that it failed to properly administer bank accounts as required by the Guidelines; and that it did not submit to oversight authorities financial and operational reports as required by the law that would allow these authorities to effectively assess, monitor, and hold the BCPA accountable for its performance.

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

The BCPA Did Not Maintain a Reliable Case Management System

The BCPA did not implement or maintain a reliable case management system that includes accounting, inventory, and estate management information as required by Section I(B) of the Guidelines.⁴ Significantly, contributing to the case management system's unreliability, we found that the BCPA did not update or accurately reflect estate statuses. The prior PA was cited for failing to consistently close cases in CompuTrust in a 2009 audit conducted by the New York City Comptroller's Office. In response, the BCPA represented that,

[the] service provider has discontinued support of the present system. In any event this office will attempt even under the present system to use the closed codes which this office has already attempted to implement on its own since September 2007. When the new system is implemented this office will work with the service provider to establish a procedure that will allow us to use open, closed, reopened and codes to indicate that reopened cases are now closed.

However, we found that as of December 2013, CompuTrust reported that there were 19,887 open estates. Thus, it is not clear what, if anything, was done prior to that time to address the BCPA's failure to close cases in CompuTrust or otherwise accurately reflect estate status in the system.

Since it was not possible for the BCPA to provide a complete and accurate list of open and closed cases from its case management system, in order to conduct this audit, we relied on multiple sources of information, including hard copy estate files maintained in various locations and case management system records to ascertain the status of cases and the activities taken therein. Based on our review, we estimated that there were only 1,157 open estates as of January 2014. After discussing our findings with the BCPA, the PA informed us that BCPA staff is presently going

⁴ The Guidelines Section I(B)(2)(c) requires that "a case management system be maintained which includes "an accounting system to record and summarize all receipts and disbursements for each estate. The entries in this accounting system shall reflect the estate to which they pertain, the date of receipt and the source of funds received, the date and nature of each disbursement and reference to invoices or other documentation supporting the disbursement, and any other relevant information." The Guidelines Section I(B)(2)(b) requires that a case management system be maintained which includes "an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets, except that like items of individual value of less than twenty-five dollars (\$25) may be described in lots." The Guidelines Section I(B)(1) requires that "[e]ach PA shall implement and maintain an electronic case management system containing a record of each estate under administration." Further, the Guidelines Section I(B)(2)(a) requires that the system "shall include a calendar or report-generating function that reflects the status of each estate, so that the PA may monitor unusual delays in the administration of any estate."

through all estates in CompuTrust that do not have a closed code, and is investigating whether they should be marked as closed. Also, the staff is reviewing all physical files in the active cases filing area and determining whether any of those estates should be closed in CompuTrust as well.

We also found additional case management system weaknesses exist that stem from the fact that the BCPA failed to properly credit decedents' estates for all assets in either its CompuTrust accounting or inventory modules, did not assign dollar values to recorded inventory, and did not maintain documentation to support reported income and expense transactions. These issues are discussed in detail below. The BCPA also generally did not properly record or maintain documentation to support the dates that Letters of Administration or Testamentary were first issued.

As a result of these defects in the information contained in the case management system, the BCPA cannot effectively monitor its operations and ensure that it identifies and distributes all estate assets properly and in a timely manner. Moreover, it is unable to accurately report to oversight agencies how many estates are under its administration, the gross value of those estates, how long estates remain open, and how long it takes to settle estates.

Recommendations

The BCPA should:

1. Accurately reflect and promptly update estate information and status in CompuTrust.

BCPA Response: “The BCPAO has long acknowledged that there are roughly 19,000 old, closed estates that are coded as ‘open’ in the CompuTrust system. This is the result of estates not having properly been coded as ‘closed’ by certain prior BCPA's, from the date when the universally-utilized CompuTrust system was first implemented, in 1987. It is the understanding of the current BCPA that in approximately 2008 the BCPA at that time instituted a proper system of closing files but that this prior BCPA, and subsequent prior BCPAs, for unknown reasons but likely due to it being impossible or at least a monumental waste of limited resources to do so, did not undertake to re-classify as closed the over 19,000 improperly-coded cases in the CompuTrust system. Similarly, the BCPAO does not currently have staff sufficient to undertake the enormous and irrelevant task of coding as closed the nearly 19,000 estates in question. As such, this condition will persist until the BCPA is budgeted sufficient resources by the City to address the project.”

Auditor Comment: The BCPA's assertion that accurately identifying closed and open estates in CompuTrust would be a “monumental waste of time” suggests a fundamental lack of understanding of the function of the mandated computer system and a complete disregard for accuracy, accountability and oversight. Moreover, the BCPA's position directly contradicts its governing Guidelines Sections I(B)(1) and (2)(a) which require each PA to “maintain an electronic case management system that shall contain a record of each estate under its administration” and “include a calendar or report-generating function that reflects the status of each estate, so that the PA may monitor unusual delays in the administration of any estate.” Further, the Guidelines Section I(B)(2) requires that PAs promptly record estate activity in the electronic case management system. Therefore, we reiterate that the BCPA should comply with these fundamental Guidelines requirements and accurately reflect and promptly update estate information and status in CompuTrust.

Further, the BCPA's position as set forth in its response directly contradicts statements made by the current PA during the course of the audit. In April 2015, the PA stated "we have printed reports as to all cases from the very beginning of the use of the CompuTrust system that do not have in CompuTrust one of the 'closed' codes assigned to them. We are having staff go through every such case from 2008 on to investigate what if any of these should properly be coded in CompuTrust with one of the 'closed' codes and we are then doing so, and we are also physically reviewing every actual file in our active-cases filing-area/cabinets to determine whether any of them should have their code changed in CompuTrust to one of the 'closed' codes therein and then doing so." Implicit in this statement is the correct understanding that only with a careful manual review of the estates identified as open in CompuTrust can the BCPA be certain that it is aware of every truly open matter and properly dispose of the actual closed matters. Accordingly, it is incumbent upon the BCPA to determine a reasonable way to ensure that the information in CompuTrust is complete and accurate and that the BCPA is aware of every open estate it is responsible for.

2. Ensure that BCPA staff promptly and accurately record in CompuTrust the dates that the first Letters of Administration or Testamentary are issued and changes in estate status.

BCPA Response: "[T]he BCPAO agrees with the OC that some files did not in the Computrust system set forth have the date that Letters of Administration were issued to the BCPAO, and the BCPAO is presently attempting to do so going forward. The BCPAO notes, however, that this has in absolutely no way impacted the ability of the BCPAO to administer estates nor involved a breach of fiduciary duty."

Auditor Comment: The BCPA's ability to effectively administer estates was necessarily impacted. As previously noted, the BCPA could not accurately monitor or report to oversight agencies how long estates remain open and how long it takes to settle estates because it did not properly record or maintain documentation to support the dates that Letters of Administration or Testamentary were first issued.

SCPA Section 1109 and Title 2 NYCRR Section 72.1 require PAs appointed in each county to file semi-annual reports of open estates with the Surrogate's Court in their respective counties and annual reports of open estates with the New York State Comptroller detailing: the dates that Letters of Administration or Testamentary were issued to PAs authorizing them to administer estates; each estate's gross value; and the reasons why final distribution of estate proceeds has not yet been made. Further, Section 1109 of the SCPA and Comptroller's Directive #28 require PAs to file monthly reports of settled estates with the Surrogate's Court, the New York City Mayor, and the New York City Comptroller detailing the dates estates were assigned to PAs and closed.

All of the aforementioned reporting requirements are critical to ensuring the accuracy, accountability and transparency of the Public Administrators' work in each county. Therefore, we reiterate that the BCPA should ensure that BCPA staff promptly and accurately record in CompuTrust the dates that the first

Letters of Administration or Testamentary are issued and changes in estate status.

3. Periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration or Testamentary to data recorded in CompuTrust to ensure accuracy and reliability.

BCPA Response: “[T]he BCPAO does not agree that a periodic review of the actual Letters of Administration to compare the date of the Letters to the date of the letters as entered in CompuTrust is a productive use of limited staff resources. Moreover, the above-noted going forward procedure to ensure that the date is recorded upon receipt of the letters will alleviate the need for a periodic review.”

Auditor Comment: Without periodically comparing source documents to information recorded in CompuTrust, the BCPA cannot ensure that the data in its case management system is reliable. Further, although the BCPA refers to an “above-noted going forward procedure” that will ensure that dates are “recorded upon receipt of the letters” and “alleviate the need for a periodic review,” the BCPA did not detail any such alternative procedure in its response. Therefore, we reiterate the need for the BCPA to periodically compare source documents, including but not limited to income and expense documentation and Letters of Administration or Testamentary to data recorded in CompuTrust to ensure the accuracy and reliability of the data.

The BCPA Failed to Properly Account for Estates’ Assets

The BCPA did not establish accountability for estate assets and created an environment where assets may not have been identified or collected or where assets may have been misappropriated. Notably, the BCPA did not ensure that assets worth in total at least \$4.9 million were identified, collected, and credited to various decedents’ estates. Additionally, when the BCPA did credit decedents’ estates for assets, it did not always maintain documentation to properly account for estate income and it did not assign a dollar value to estate assets recorded in its CompuTrust inventory module.

The BCPA Failed to Properly Conduct and Document Searches for and Collections of Assets Worth at Least \$4.9 Million

The BCPA failed to ensure that its staff and appointed counsel conducted and documented thorough and complete searches for assets. As a result of the BCPA’s failure to establish and enforce proper asset identification and recovery procedures, we found that the BCPA failed to identify, collect, and/or credit decedents’ estates for assets worth at least \$4.9 million related to 26 estates.

Section IV(A)(1) of the Guidelines requires the PA to “take all steps necessary to assure that all personal property belonging to a decedent’s estate is collected and credited to the decedent’s estate. It is the duty of the PA to supervise and oversee the conduct of those who search and collect personal property.” BCPA staff and appointed counsel are responsible for searching for and collecting decedents’ assets. However, the BCPA failed to ensure that such searches and collections were properly conducted and documented by BCPA staff and appointed counsel.

Contributing to this failure was a lack of any formal, written policies and procedures or checklists

to follow to ensure effective asset identification.⁵ Such procedures and related checklists should, at minimum, identify and provide for access to databases to be searched, including: DOF's Automated City Register Information System (ACRIS) public database of real property records; OSC's public database of unclaimed funds; and the NYS-DMV's database of automobiles, boats, and other motorized vehicles records. Additionally, the BCPA did not ensure that BCPA staff and appointed counsel complied with the guidance that was available, such as the Guidelines and the BCPA's informal policies and procedures.

We found the following failures with the BCPA's asset identification and collection practices:

- Although specifically required by the Guidelines Section IV(A)(3), the BCPA did not ensure that its two investigators adequately detailed residence searches in written reports and completed reports during or immediately after searches were conducted. Further, although recommended by the Guidelines Section IV(A)(3), the BCPA did not ensure that its two investigators tried to secure independent witnesses, such as landlords or building superintendents, prior to conducting residence searches and have them sign written reports of residence searches; consistently photograph searches; or inventory residence contents (both contents that were brought back to the BCPA office and contents that were left in the residence).⁶

Some of these exact same problems were identified in a 2009 New York City Comptroller's Office audit report that cited the BCPA for not preparing "a detailed inventory list of personal property retrieved during residence searches, such as, jewelry. . . . The Decedent's Property Clerk Report has a section entitled 'Items Removed to the Office', but only broad descriptions such as 'coins (various)' or 'jewelry' are noted." Accordingly, the report recommended that the BCPA should "[e]nsure that investigators prepare a complete and detailed inventory list of all items retrieved." The BCPA responded that "[t]he property clerk has been instructed to work with the investigators to insure that the investigators compare and complete a detailed inventory list of all items retrieved from a decedent's residence." However, we found that BCPA investigators are still not preparing detailed inventory lists.

- The BCPA did not ensure that BCPA staff and appointed counsel redirected decedents' mail only to the BCPA office as required by its informal policies and procedures. A BCPA memorandum issued in November 2008 required that "[w]henever a new file is opened (with the exception of nursing home cases), the following . . . should be completed and sent out. 1. Mail Forwarding Card for Post Office." However, in some instances, the BCPA allowed the prior BCPA counsel to redirect decedents' mail to the counsel's private law office. As a result, correspondence and disbursements related to items such as decedents' annuities, bank accounts, and life insurance policies were not properly recorded and accounted for by the BCPA. Further, the BCPA failed to ensure that its staff

⁵ The BCPA has issued informal policies and procedures over the years through various memos and forms designed to address specific issues that emerged. However, these are inadequate because they are neither comprehensive nor complete. Moreover, the staff is not properly trained on them and they are not consistently enforced as is reflected in the findings from this audit.

⁶ The Guidelines Section IV(A)(3) requires that "[p]rior to the search, the employee(s) shall endeavor to secure at the search the presence of an independent witness, such as a landlord or building superintendent, at the search. The employee(s) shall, to the extent feasible, thoroughly search each residence and document the contents and condition of the residence by photograph or video recording, which documentation shall be reviewed by the PA and maintained by the PA in the estate file. The employee(s) shall contemporaneous with the search of the residence or immediately thereafter, make a complete and detailed report of the search and, to the extent feasible, an inventory of its contents. The report and inventory shall be signed by the employee(s) and any other witness to the search. If no independent witness is available, or if the witness(es) refuse(s) to sign the report and inventory, the PA's employee(s) shall document such in the report."

properly recorded in the CompuTrust Mail Log financial and asset-related correspondence and any associated dollar value, when applicable, in accordance with its unwritten practice.⁷ The BCPA thereby increased the risk that not all of the decedents' assets and heirs would be identified.

- The BCPA failed to ensure that BCPA staff and appointed counsel contacted all relevant financial and other institutions and took all steps necessary to collect assets. A BCPA memorandum issued in October 2011 requires that “PA Investigators present any and all asset information they have found in the decedent’s home during the course of their investigation(s).” The Deputy PA is then required to “flag the pertinent asset(s) that should be collected.” Once flagged, the file(s) are to be referred to a Principal Administrative Associate “so that he can...determine the current status of the specific account(s) in question.” Once the status was determined, a File Clerk is required to maintain a log “to keep track of assets that need collecting.” However, the BCPA has failed to follow this procedure.
- The BCPA failed to ensure that BCPA staff maintained estate files that contained “all documents relating thereto, including but not limited to pleadings, tax returns, correspondence, financial statements, investigator’s reports, police vouchers, appraisals, insurance documents, receipts, invoices, and proof of payment of estate disbursements” as required by the Guidelines Section I(C). Further, the BCPA did not ensure accountability for estate files by maintaining master lists of file contents. Further, the BCPA did not ensure that there was an accurate record of where the files were located by requiring BCPA staff and appointed counsel to consistently sign files out. Moreover, the BCPA allowed BCPA prior and current appointed counsel to maintain their own separate files and allowed BCPA counsel to remove estate files from the BCPA office and maintain them in counsels’ private offices.

In a 2009 audit, the New York City Comptroller’s Office cited the BCPA for not maintaining documents necessary to estate administration and accounting such as asset inquiry letters, documentation relating to receipts of assets and disbursement of funds, and court accountings of the distribution of the estate funds. Accordingly, the report recommended that the BCPA should develop a comprehensive policies and procedures manual that lists all documentation required to be filed and maintained. In response, the BCPA maintained that it lacked the resources to develop a comprehensive manual but would nevertheless develop “a list of the documentation to be filed and maintained in the estate folders” and ensure that such documentation was maintained. In April 2015, the BCPA provided us with a working draft of its new Policies and Procedures manual which included a list of documents that should be maintained in estate files.

Through our review of BCPA records and independent database searches for 50 sampled open estates, we identified the assets summarized in the table below that were not identified, collected, and credited by the BCPA.

⁷ According to the CompuTrust user manual, the “*Mail Logging Procedures* module allows your office to record and track incoming and outgoing mail that is related to clients, vendors, specific transactions, or case workers. When correspondence that is received or distributed requires a task to be performed by a specific date, it can be entered into the Mail Log, thereby creating a database that may be queried at any time to verify the disposition of any items. The reports provide evidence that the office has complied with court orders, has sent bills, anticipated responses, and has concluded other required tasks.”

Assets Not Identified, Collected, and Credited to Decedents' Estates or Distributed to Designated Beneficiaries as of FY14

Asset	Instances	Instances for Which Actual or Estimated Dollar Value Available	Dollar Value
Real Property	11	9	\$4,244,595
Cash – held by legal or financial institutions	56	25	633,968
Cash – Unclaimed Funds	12	0	Indeterminate
Personal Property	16	2	10,805
Motor Vehicles	2	0	Indeterminate
Total	97	36	\$4,889,368

When we asked the BCPA about these estate assets, the BCPA subsequently accounted for assets totaling at least \$3,010,972. The BCPA did not, however, account for the remaining estate assets totaling at least \$1,878,396. Notably, of this amount, the BCPA indicated it may not or would not pursue collection of four real properties with a combined value of \$1,386,595 that are subject to foreclosure proceedings. The BCPA stated that it may not or would not pursue these assets because their likely sale value was not sufficient to cover the liens. However, while Section IV(B)(3) of the Guidelines states that “[p]ersonal property that has no value may be disposed of at the PA’s discretion,” there is no such discretion based on value applicable to the disposal of real property. Thus, the BCPA’s practice appears to be contrary to its governing Guidelines.

BCPA Response: “The statements underlying this Finding are the most glaring, egregious, disingenuous, unfair and reckless misstatements, mischaracterizations and inaccuracies contained in the Report. . . .

OC staff has identified less than \$5,000 in estate assets that the BCPAO admittedly failed to identify, collect and credit to an estate. To illustrate how misleading the \$4.9 million figure put forth OC staff truly is, as OC staff is well aware fully \$2.4 million of that figure pertains to a parcel of real estate that the BCPA has been administering for several years and the proceeds of the sale of which were deposited into the relevant estate's bank account upon the sale of the property in March of 2015. As such, and OC staff is well aware, any contention that the BCPAO failed to identify, collect and credit this asset to the estate is not [*sic*] absurd.

OC staff is also incorrect that the BCPA made the same failings as to real estate in 10 other estates. The part of real estate that is an estate-asset is only the equity in the property (i.e. its sale price less any mortgages, liens and expenses of sale). Therefore, a parcel of real property has a asset value of \$0 as an estate asset if it is worth \$1 million but has a \$1.1 million mortgage against the property. As an estate fiduciary, the BCPA has the obligation to make a determination as to whether the potential equity of a property warrants the resources and expenses of conducting a formal sale, or if the property appears to have little or no equity (because the obligations attached to the

property will exceed or come close to exceeding the value), to allow the property to be foreclosed upon by the lien holders. . . .

Further, as to the approximately \$645,000 in cash and personal property averred by OC staff as not being collected, this consists almost entirely of assets that do not belong to decedent's estate because they had joint owners or beneficiaries, or were assets that were already collected by prior fiduciaries in estates where the BCPA is the second estate administrator. The BCPA disputes that such assets are properly recordable in the CompuTrust system.”

Auditor Comment: The audit report appropriately identified the above-referenced \$2.4 million real property as not being properly credited to the decedent's estate account. It was not. Although the BCPA states that it had been administering this property for “several years,” the BCPA never recorded it in the CompuTrust inventory module, a failure that is in direct violation of the Guidelines Section I(B)(2)(b) requirement that the BCPA maintain an electronic case management system that includes “an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets, except that like items of individual value of less than twenty-five dollars (\$25) may be described in lots.” The Guidelines Section I(B)(2) further requires the BCPA to promptly record all activity in the system.

With regard to certain other questioned real properties, we repeatedly requested that the BCPA provide us documentation of property appraisals, outstanding mortgages, and liens to demonstrate that those questioned real properties had no value. However, the BCPA provided us only written explanations and never provided the requested documentation. Similarly, we repeatedly requested and the BCPA did not provide us documentation to demonstrate that assets were jointly-owned or had named beneficiaries and therefore, should not pass through the estate. Thus, we have no basis upon which to change our findings.

The BCPA Failed to Ensure that Amounts Credited to Decedents' Estates Were Appropriate

The BCPA did not maintain documentation that adequately supported the accuracy and completeness of the estate income (i.e., cash and non-cash liquidated assets) it recorded in CompuTrust as required by its informal policies and procedures. The BCPA's informal policies and procedures require that certain critical documents be maintained including inquiry letters, asset statements, and copies of checks received. However, the BCPA did not ensure that this was done.

For the 50 open estates we sampled, we reviewed 141 income transactions totaling \$4.2 million and found that 25 transactions totaling \$1.2 million lacked supporting documentation such as contracts or bills of sale; letters from financial institutions, insurance companies, and other entities confirming funds available for disbursement; and copies of checks received. For example, in connection with one estate, the BCPA recorded income of \$986,849 related to inheritance distributions. However, the BCPA did not maintain adequate documentation in the estate file to support that this figure was correct or that it represented all income related to this transaction.

Further, the BCPA did not assign dollar values to estate assets recorded in its CompuTrust

inventory module as required by both Section 207.20 of the Uniform Rules for the Surrogate's Court and the Code of Federal Regulations (CFR) Title 26, Section 20.2031-1(b). The CFR specifically mandates that:

The value of every item of property includible in a decedent's gross estate under section 2031 through 2044 is its fair market value at the time of the decedent's death except that if the executor elects the alternate valuation method under section 2032, it is the fair market value thereof at the date, and with the adjustments, prescribed in that section. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

We found that the BCPA has continued its longstanding practice of failing to properly account for funds by failing to value assets as required by both the CFR Title 26, Part 20 and Uniform Rules for the Surrogate's Court. The BCPA was previously cited for inventory valuation issues by both the New York City Comptroller's Office in its 2009 audit and by its independent auditor in 2009, 2010, and 2011. The BCPA's independent auditor specifically recommended that the BCPA "devise a system where it can capture and record the value of all the assets of each estate."

However, both the prior and current PA disagreed with the independent auditor's recommendation and claimed that it is neither feasible nor appropriate to assign fair market value for estate assets. Specifically, the current PA contends that ascribing value to non-cash assets is not appropriate because such values "are subject to a market" and "might not eventually be marshaled into an estate." The current PA also asserted that "as a matter of fiduciary accounting and Surrogate's Court practice, an asset is generally not considered received by an estate fiduciary until it is reduced to cash and/or deposited into an account having title in the name of the estate."

The prior and current PA's assertions are contrary to the plain language of Section 207.20 of the Uniform Rules for the Surrogate's Court and CFR Title 26, Part 20. Since the BCPA recognized estate assets in CompuTrust, it should also measure and record the value of those assets. By not doing so, neither the BCPA nor any of the multiple oversight authorities that are supposed to be able to review the BCPA's activities can see the true value of estates under the BCPA's administration. Among other things, this hinders the BCPA's ability to determine whether estates are small estates, which may be settled without court administration, or large estates.

Recommendations

The BCPA should:

4. Institute comprehensive formal written policies and procedures that adequately and specifically address the duties and procedures to be followed by employees for critical functions, including, but not limited to: asset identification, collection, safeguarding, and distribution; bank account administration; estate accounting including the recording, documenting, and reporting of income and expense transactions; and estate management, monitoring, and tracking.

BCPA Response: "[A]t the time of the commencement of the tenure of the current BCPA there was already in force and effect in the BCPAO a bound series of detailed directives and memos, promulgated to and initialed by all relevant BCPAO staff as having been read and agreed to by them, governing the many duties, practices and procedures to be followed by BCPAO

employees, as to, but not limited to, those specifically mentioned by OC staff of: asset identification, collection, safeguarding and distribution; estate accounting including the recording, documenting and reporting of income and expense transactions; and estate management, monitoring and tracking.”

Auditor Comment: In the audit report, we acknowledged the BCPA’s informal policies and procedures issued over the years through various memos and forms. However, as previously noted, these are inadequate because they are neither comprehensive nor complete. Moreover, the staff is not properly trained on them and they are not consistently enforced as is reflected in the findings from this audit. Therefore, we reiterate that the BCPA should institute comprehensive formal written policies and procedures.

We note that during the course of the audit, the PA also acknowledged that these informal policies and procedures were inadequate and charged the Deputy PA with developing a comprehensive policies and procedures manual. On April 20, 2015, the PA provided us a “working draft” of this manual.

5. Establish asset identification policies and procedures and checklists detailing basic databases to search and provide for access to databases, including but not limited to: DOF’s ACRIS public database of real property records; the OSC public database of unclaimed funds; and the NYS-DMV database of automobiles, boats, and other motorized vehicles records.

BCPA Response: “[B]oth BCPAO employees and current and former Counsels to the BCPAO had, at all times, full and unfettered access to, and made use of as was required and in the best interests of the estate under administration, specifically all of the databases listed by OC staff; and that whereas the City refused to budget for the BCPAO funds to avail itself of the expensive yet useful pay-database of *Lexis-Nexus* both current and former Counsel to the BCPAO nevertheless had access to and extensively utilized this database; and that the current BCPA, when he began his tenure, and with the City still not providing budget funds to do so, nonetheless utilized BCPAO Suspense Account funds to implement the use of the *CLEAR* database/search service from Thompson-Reuters.”

Auditor Comment: Contrary to the BCPA’s assertion, our audit revealed that staff members did not always make use of public databases as detailed in the report. These omissions were able to occur because the BCPA lacks a mechanism, such as a checklist, to ensure that searches are consistently conducted and documented. As previously noted, Section IV(A)(1) of the Guidelines requires the PA to “take all steps necessary to assure that all personal property belonging to a decedent’s estate is collected and credited to the decedent’s estate. It is the duty of the PA to supervise and oversee the conduct of those who search and collect personal property.” Therefore, we reiterate our recommendation that the BCPA establish asset identification policies and procedures and checklists detailing basic databases to search and provide for access to public and pay databases.

6. Ensure that its investigators try to secure independent witnesses, such as landlords or building superintendents, prior to conducting residence searches and have them sign written reports of residence searches; consistently

photograph searches; inventory residence contents (both contents that were brought back to the BCPA office and contents that were left in the residence); and adequately detail residence searches in written reports and complete reports during or immediately after searches are conducted.

BCPA Response: “[T]he BCPA also intends to have its investigators make greater efforts to, despite it being extremely difficult to do so in the Bronx environment where they work, nonetheless solicit independent witnesses to their visits of residences, while maintaining the security of the contents.”

Auditor Comment: The BCPA did not fully address the recommendation related to documenting residence searches. Therefore, we reiterate our recommendation that the BCPA ensure that its investigators have independent witnesses sign written reports of residence searches; consistently photograph searches; inventory residence contents (both contents that were brought back to the BCPA office and contents that were left in the residence); and adequately detail residence searches in written reports and complete reports during or immediately after searches are conducted.

7. Consider having the PA or Deputy PA periodically accompany investigators on searches of properties to ensure that policies are properly followed.

BCPA Response: The BCPA did not address this recommendation.

8. Ensure that decedents’ mail is redirected only to the BCPA office and that BCPA staff record the nature and, when applicable, the associated dollar value of decedents’ mail in the CompuTrust Mail Log.

BCPA Response: “[T]he BCPA notes that no mail forwarding request has ever been made to have the United States Postal Service to forward mail to Counsel or any other address other than the address of the BCPAO. If Counsel, in dealing with the administration of an estate informed another attorney or person or entity involved in an administration to send something directly to Counsel then this was likely a matter of efficiency and in no way negatively impacted any estate.”

Auditor Comment: The prior PA and prior BCPA-appointed counsel did in fact instruct financial institutions to redirect mail to the prior BCPA counsel’s office. As noted in the audit report, this resulted in correspondence and disbursements related to items such as decedents’ annuities, bank accounts, and life insurance policies not being properly recorded and accounted for by the BCPA and thereby increased the risk that estate assets may be misappropriated where their existence is not known to the BCPA and not noted in the CompuTrust Mail Log. Therefore, we reiterate our recommendation that the BCPA ensure that decedents’ mail is redirected *only* to the BCPA office and that BCPA staff always record the nature and, when applicable, the associated dollar value of decedents’ mail in the CompuTrust Mail Log.

We note that during the course of the audit, we informed the BCPA that decedents’ mail was redirected to the prior appointed counsel’s private office and the BCPA subsequently issued a memorandum to BCPA appointed counsel dated October 10, 2014 directing that “[a]ny and all correspondence relating to estates or matters that the Public Administrator is handling or might be handling in any way, including, but not limited, to any and all

correspondence related to the marshaling of assets and all collected estate assets themselves, should be specifically directed by Counsel to be sent to or made returnable to 'The Bronx Public Administrator, Estate of _____ (if appropriate), 851 Grand Concourse, Room 336, Bronx, NY, 10541.'"

9. Track inquiry, confirmation, and collection letters to ensure that letters are sent, responses are received, necessary follow up action is taken, and ultimately, that funds are collected in a timely manner.

BCPA Response: "The OC has errantly read the *Guidelines* as requiring the BCPAO to obtain written confirmation from every financial institution that a possible estate asset is no longer in existence or payable to a beneficiary. The *Guidelines* impose no such requirement. Rather, they merely require the BCPAO to maintain whatever written responses it does actually receive in the estate files and to make note of oral conversations. . . . The BCPA obviously cannot force banks, brokerage firms and other financial institutions to provide written responses to BCPAO inquiries setting forth such things as an account is payable to a beneficiary or no longer exists. But despite this OC staff failed to accept this actual and practical reality of administering an estate."

Auditor Comment: We acknowledge that certain institutions may at times refuse to provide written confirmation of accounts and our recommendation does not assume that confirmations will always be provided. Indeed, this is all the more reason why the BCPA should systematically track the requests it makes and the responses it gets and document in memoranda verbal responses that it receives, including but not limited to: the name of the financial or other institution; account number(s); account balance(s), if any, and status; the name, title, and contact information of the employee that provided account information; and the date that information was provided. Memoranda should be maintained in estate files.

10. Maintain master lists of hard copy estate file contents and periodically review files to ensure that BCPA staff and counsel maintain in hard copy estate files documentation of all estate activity, including, but not limited to: potential estate assets; income and expense transactions; inventory; Letters of Administration and/or Testamentary; kinship searches; and legal matters.

BCPA Response: The BCPA did not respond to this recommendation.

11. Ensure that BCPA staff and counsel consistently sign for hard copy estate files and do not allow BCPA staff and counsel to remove hard copy estate files from the BCPA office or maintain separate estate files.

BCPA Response: "OC staff also takes issue with Counsel removing files from the offices of the BCPA, to work on those files. However, not allowing Counsel to as needed remove files would create an unworkable situation that interferes with the legal work required in these matters and harms the estates under administration. And OC staff has thus not surprisingly made any suggestion as to how Counsel would or could actually perform the legal work on each estate without a permanent presence in the Office of the BCPAO, which, by Surrogate Court rule, is not allowed."

Auditor Comment: The BCPA's position violates its governing *Guidelines*, Section I(C) which requires PAs to "maintain a file ['the estate file'] for each

estate containing all documents relating thereto, including but not limited to pleadings, tax returns, correspondence, financial statements, investigator's reports, police vouchers, appraisals, insurance documents, receipts, invoices, and proof of payment of estate disbursements." Therefore, we reiterate that the BCPA should ensure that BCPA staff and counsel consistently sign for hard copy estate files and do not allow BCPA staff and counsel to remove hard copy estate files from the BCPA office or maintain separate estate files.

Contrary to the BCPA's assertion, we discussed this issue with the BCPA at our exit conference held on May 28, 2015 and did offer the BCPA a workable solution. Since the Guidelines Section I(C) expressly states that "[e]lectronic storage of all or some of the documents in the estate file is permissible," we suggested that the BCPA explore the feasibility of maintaining and sharing with BCPA-appointed counsel electronic copies of estate documentation via a shared network drive or email. In response, BCPA-appointed counsel expressed his preference for working with electronic files and the PA stated that he would explore the feasibility of maintaining and sharing electronic documentation via a shared network drive.

12. Periodically review asset identification checklists and hard copy estate files with BCPA staff and counsel to ensure that assets are identified, collected, and credited to decedents' estates in either the CompuTrust income or inventory modules.

BCPA Response: The BCPA did not address this recommendation.

13. Document in memoranda the basis for and decisions to not pursue collection of estate assets and maintain such memoranda and supporting documentation in estate files.

BCPA Response: The BCPA did not address this recommendation.

14. Assign dollar values to estate assets that are collected and recorded in its CompuTrust inventory module.

BCPA Response: The BCPA did not address this recommendation.

The BCPA Failed to Ensure Estate Expenses Were Authorized and Appropriate

The BCPA has a fiduciary duty as an estate administrator to pay the decedent's bills and taxes and to ensure that such expenses are reasonable, appropriate, adequately supported, and authorized. However, the BCPA did not maintain documentation to support expenses, did not competitively solicit vendors who provided estate services, and did not ensure that estates were charged proper fees.

The BCPA Did Not Maintain Adequate Documentation to Support Estate Expenses

The BCPA did not properly document expenses paid from decedents' estates as required by Section III(B) of the Guidelines.⁸ For each payment made from an estate, the BCPA requires its

⁸ The Guidelines Section III(B) requires that "[a]ll disbursements of estate funds shall be approved in writing by the PA, and shall be supported by invoices reflecting the date, nature, and amount of each disbursement, and the estate against which each disbursement is charged. The PA shall maintain a record of such approval in the estate file."

staff to document the amount and purpose, and that a review was made and approval given on a form known as a Disbursement Voucher and to attach all supporting documentation such as vendor invoices. The Disbursement Vouchers are then supposed to be maintained in the appropriate estate files.

However, the BCPA did not monitor its staff to ensure they consistently and properly completed the Disbursement Vouchers. For 50 sampled open estates, we reviewed 256 expense transactions totaling \$3,438,390 and found that 146 transactions totaling \$762,053 lacked adequate supporting documentation and evidence of proper supervisory review and approval. For example, the BCPA recorded an expense of \$25,505 related to the correction of a bank error. However, the only documentation the BCPA maintained to support this payment was an internal memo requesting the transfer of funds from one estate to another. There was no other documentation maintained in the file showing an error was made, and that the proper amount was transferred to fix the error. The BCPA was also previously cited for failing to consistently and properly complete Disbursement Vouchers by its independent auditor in 2011.

BCPA Response: “[W]hile there were what OC staff has said were lapses in performing each and every one of the above-described described steps for a given disbursement and/or not fully including the back-up documentation for a particular disbursement, with the BCPAO performing literally thousands of disbursements per year OC staff did not find any that it indicated were unlawful.”

Recommendation

15. The BCPA should ensure that BCPA staff properly complete Disbursement Vouchers detailing the amount, reason, and review and approval for expenses, and attach supporting documentation to them.

BCPA Response: “The Report also notes that the BCPAO’s [SCPA Section] 1109 auditors have previously cited the BCPA for not requiring disbursement vouchers for all expense checks. However, this misrepresents the position of the outside auditors. Rather, the BCPAO’s 1109 auditors have made clear to the BCPA that a disbursement voucher is only required when a check request is not supported by an approved bill, which serves the same function as a disbursement voucher. And moreover, after the 1109 auditors made their finding, the prior BCPA did in fact implement a voucher and pre-approval procedure as recommended.”

Auditor Comment: The Guidelines Section III(B) requirement is clear, “[a]ll disbursements of estate funds shall be approved in writing by the PA, and shall be supported by invoices reflecting the date, nature, and amount of each disbursement, and the estate against which each disbursement is charged. The PA shall maintain a record of such approval in the estate file.” Accordingly, the BCPA should employ and ensure that BCPA staff properly complete a consistent procedure and document—whether it is a Disbursement Voucher, check request, or other form—that details the amount, reason, and review and approval for expenses, and attach supporting documentation to them. Contrary to the BCPA’s assertion in its response, its independent auditor did, in fact, take this same position stating “the voucher system that is in place in BCPA should be consistently applied regardless of the modes of payment, size, complexity of a transaction and the personnel involved.”

The BCPA Failed to Document That It Properly Selected Vendors

The BCPA did not competitively select vendors as required by the Sections V(A)(4-6) of the Guidelines which states that

[The] PA shall advertise for outside vendors. . . . Based on responses to the advertisement and the PA's knowledge of competent outside vendors, the PA shall prepare a list of the providers in each category, specifying for each the provider's usual fee. . . . The list shall be updated at least annually and shall be available for public inspection at the PA's office. . . . In selecting an outside vendor to provide services, the PA shall select one who is competitive with other vendors in the classification. In all events, the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community.

The BCPA advertised for outside vendors, such as accountants, appraisers, cleaning services, and funeral directors, and maintained a list of vendors that responded. However, the BCPA did not indicate vendors' usual fees on this list or maintain vendor responses specifying this information. Consequently, there is no evidence that competitive bids were submitted and evaluated, and that one of these vendors was ultimately selected by the BCPA. Instead, the BCPA generally continued to use vendors selected by the prior PA, including the vendors it employed to file estate tax returns, appraisers, and auctioneers. Consequently, we are not reasonably assured that vendor fees charged to estates were competitive and reasonable.

Recommendations

The BCPA should:

16. Prepare and update annually a list of vendors by category specifying their usual fee. This list should be compiled based on advertisement responses and on the BCPA's knowledge of competent outside vendors.

BCPA Response: "The BCPAO maintains that it followed the required advertising and selection procedure for Vendors, but will endeavor in the future to maintain better records as to this."

17. Select vendors who are competitive with other vendors providing the same services.

BCPA Response: "The BCPA also notes that price is not the determining factor in the selection of Vendors, as the *Guidelines* clearly provide that 'the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community.'"

Auditor Comment: While price is a determining factor in the selection of vendors, the BCPA is correct in noting that it is not the only factor. The Guidelines require PAs to select vendors who are competitive but prohibit the use of unqualified and incompetent vendors. The Guidelines Section V(5) states that,

[b]ased on responses to the advertisement and the PA's knowledge of competent outside vendors, the PA shall prepare a list of the providers in each category, specifying for each the

provider's usual fee. The PA shall include on the list only those outside vendors that hold all necessary licenses for their field, have a good reputation in the community, and, if they have provided goods or services in the past, those who have performed the services competently or have provided goods of serviceable quality.

Further the Guidelines Section V(6) states that,

[i]n selecting an outside vendor to provide services, the PA shall select one who is competitive with other vendors in the classification. In all events, the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community.

Thus, the BCPA's obligation to select only outside vendors who are competitive with other vendors providing the same services is clear.

The BCPA Failed to Ensure That Estates Were Charged Proper Accounting Fees

The BCPA failed to ensure that estates were charged proper accounting fees. As noted above, the BCPA does not have records that establish that it competitively selected providers of accounting services for the estates. Instead, the BCPA selected the accounting firm to perform estate accounting work that had been engaged by the prior PA. That accounting firm did not have a contract or any formal document memorializing the terms of its engagements, payments, and requirements for work. Rather, the PA allowed it to operate under the prior PA's "oral agreement encompassing" an informal fee schedule.

Moreover, the selection of this accounting firm to provide accounting services for estates was improper because the accounting firm also provided accounting services to the BCPA free of charge at the same time that it provided estate services. This arrangement, at a minimum, created a conflict of interest for the PA who is responsible for determining the reasonableness of the bills charged to estates by the accounting firm. The free accounting work provided by the accounting firm raises a question as to the BCPA's objectivity when it selected this accounting vendor and when it reviewed the firm's bills for "reasonableness."

In addition, we found that the accounting firm's work for the BCPA's office was inadequate. Specifically, we found that the accounting firm failed to properly report all payments made to service providers and employees to the Internal Revenue Service (IRS) and the New York State Department of Taxation and Finance. Additionally, the firm did not properly file 1099 forms required by law, which resulted in the City being assessed penalties of \$1,200 and \$400 for Calendar Years 2011 and 2012, respectively. Finally, the firm did not properly perform bank reconciliations.

The BCPA is required under Section V(A)(4-6) of the Guidelines to use a competitive process to select only vendors who are competitive with other vendors in the classification and have the complete confidence of the PA. As noted above, we saw no documentation that a determination was ever made that the accounting vendor's fees were competitive. Moreover, the BCPA should not have selected and continued to use the accounting firm because of past poor performance. Further, the BCPA is required to review each charge to an estate to determine whether it is fair

and reasonable.

The Guidelines instruct the PA to “at all times strive to avoid taking action that may give rise to a conflict of interest or the appearance of impropriety.” We also note that the City Charter Section 2604(b)(2) which sets forth the City’s Conflict of Interests Rules provide that “[n]o public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties.” In addition, Section 2604(b)(3) of the City’s Conflict of Interests Rules mandates that “[n]o public servant shall use or attempt to use his or her position as a public servant to obtain any financial gain, contract, license, privilege or other private or personal advantage, direct or indirect, for the public servant or any person or firm associated with the public servant.”

BCPA Response: “The accounting firm utilized by the BCPA was selected by the prior BCPA in 2009. While the current BCPA was not able to locate any records related to that selection, it is noted that despite the annual publication of the required notice soliciting other accounting firms, the BCPA has not received a single response to the advertisement from another accounting firm. . . . OC staff has presented absolutely no documentation to support the position that an accounting firm with similar experience, that of having represented Public Administrators in the City for more than 35 years without a single adverse tax audit result, would charge lower fees than the extremely reasonable fees of the present accounting firm.

The Report also takes issue with the fact that the accounting firm provides services to the estates, but also performs separate services for the BCPA itself. The BCPA acknowledges that this system, implemented by the prior BCPA, is far from perfect. However, it does not create a conflict of interest as the OC alludes. The accounting services performed for the BCPA itself are very limited. . . .

The Report also asserts the BCPAO’s outside accounting firm performed inadequate work as related to certain IRS Form 1099s that are claimed to have been filed with incorrect information. . . . The BCPA does not agree that requesting a Form W-9 from the GALs would have made any difference on this issue.”

Auditor Comment: In the absence of comparative fees, it is not possible for the BCPA to determine whether the fees charged by its current accounting firm are reasonable. If the BCPA has not received any responses to its annual newspaper advertisements for accounting services in the last six years, it should consider choosing additional locations for advertisements. For example, it could advertise for outside vendors by posting a standing announcement on either its own website, a website maintained by the county where the PA maintains his or her office, or a website maintained by the City of New York, as applicable. At a minimum, the BCPA should advertise in a different newspaper of general circulation within the Bronx.

Additionally, the BCPA’s receiving free accounting services — no matter how limited — from the firm that it selected to perform estate accounting work does in fact constitute a conflict of interest and violates its governing Guidelines which state that “the PA should at all times strive to avoid taking action that

may give rise to a conflict of interest or the appearance of impropriety.” Where the BCPA receives free services from a vendor, it has an inherent conflict when evaluating and making judgments about that vendor’s work for and billed to estates. Further, the BCPA’s claim that it receives only “very limited” services is belied by the BCPA’s simultaneous statement that it cannot engage an accounting firm to perform its administrative accounting work unless and until “the City budgets the BCPA sufficient funds to employ that second accounting firm.”

Finally, with regard to 1099 issuance, the BCPA could reduce filing errors and avoid unnecessary penalties by requesting Form W-9s from vendors and validating vendor information in advance of filing Form 1099s. The IRS allows “authorized payers” the opportunity to match Form 1099 payee information against IRS records prior to filing information returns. This service is free of charge.

Recommendations

The BCPA should:

18. Immediately cease relying on the present accounting firm to provide accounting services to the BCPA in connection with the operation of its office and select a new firm that is paid for its work and that does not provide estate work at the same time, utilizing a competitive selection process in accordance with the Guidelines. Enter into a written agreement with this firm that details services to be provided and rate and method of compensation and ensure that the accountant is paid in accordance with the terms of the agreement.

BCPA Response: “The BCPA is fully prepared to retain a separate accounting firm to perform services for the BCPA itself, as soon as the City budgets the BCPA sufficient funds to employ that second accounting firm.”

Auditor Comment: The BCPA has not presented any information to cause us to alter our recommendation that it retain the services of a separate accounting firm to perform its accounting and bookkeeping work. Further, when the BCPA retains a new accounting firm to perform services for the BCPA itself, we reiterate our recommendation that the BCPA utilize a competitive selection process in accordance with the Guidelines, enter into a written agreement with the firm that details services to be provided and rate and method of compensation, and ensure that the firm is paid in accordance with the terms of the agreement.

19. Immediately cease relying on the present accounting firm to provide accounting services to estates and select a new firm that does not also provide accounting services to the BCPA utilizing competitive processes in accordance with the Guidelines. Enter into a written agreement with this firm that details services to be provided and rate and method of compensation and ensure that the accountant is paid in accordance with the terms of the agreement.

BCPA Response: The BCPA did not address this recommendation.

20. Review the work done by the accounting firms that have been employed by the BCPA to ensure its adequacy. Should an accounting firm be retained to

undertake this review, it should be a firm that is not and has not been engaged to perform work on estates or work for the BCPA itself.

BCPA Response: The BCPA did not address this recommendation.

The BCPA Did Not Take Necessary Steps to Identify Distributees and Ensure That They Received Estate Assets

We found one estate originally opened in December 2004 out of our 50 sampled estates where the BCPA did not accurately report kinship information to the Surrogate's Court, contact named beneficiaries of estate assets and transfer funds to them, and notify foreign consul that the BCPA applied to administer the estate. It should be noted that this estate was administered by a prior PA and a prior appointed counsel who were both relieved of their positions.⁹

In the case of this one estate where we found issues with the steps taken to identify distributees, the BCPA failed to correctly represent its efforts to identify next of kin and the results of its kinship searches to the Surrogate's Court. In her Affidavit of Due Diligence for this estate dated September 21, 2005, a prior PA swore that:

- “[N]o correspondence has been received to enable your deponent to locate any next of kin.”
- “Your deponent requested the insurance company to check to see if a beneficiary had been named on the decedent’s insurance policy. There was no one named.”

Further, in an Affirmation of Legal Services dated September 21, 2005, a prior BCPA appointed counsel affirmed under the penalties of perjury that the report of death indicated that the decedent had no next of kin. The BCPA appointed counsel further affirmed that he reexamined all of the decedent’s remaining effects, papers, documents, mail, and assets, and communicated with each of the decedent’s financial institutions and banks in order to obtain and examine original applications and signature cards all in a further effort to identify possible next of kin.

However, the BCPA’s records are inconsistent with the prior PA’s and prior counsel’s statements. Specifically, contrary to prior counsel’s sworn statement, the BCPA’s report of death dated December 8, 2004 did in fact state that “there is a cousin in Ireland that will be coming for funeral.” Further, beginning on January 6, 2005, the BCPA received numerous letters and calls from six individuals and their counsel in which they identified themselves to the BCPA as the surviving first cousins of the decedent and inquired about kinship requirements. In a letter dated March 28, 2005, the BCPA was advised that a life insurance policy named one of these individuals as a cousin and beneficiary of the decedent, and asked the BCPA to provide certain documentation so that payment could be made. Based on the prior PA’s Affidavit of Due Diligence and the prior BCPA counsel’s Affirmation of Legal Services, the Surrogate’s Court allowed this estate to be closed and estate proceeds totaling \$132,804 to be remitted to DOF for unknown distributees on June 9, 2006.¹⁰

⁹ In September 2014, the prior appointed counsel was convicted of grand larceny (unrelated to the estate discussed in this section) for intentionally charging estates advance fees for work not performed and excessive legal fees for work that was done and agreed to pay restitution to estates.

¹⁰ The six individuals persisted in their efforts to ascertain kinship requirements, provide kinship documentation, and claim estate funds and accumulated interest totaling \$150,337. Most recently, a letter dated June 4, 2012 sent from the six individuals’ counsel to the Bronx County Surrogate’s Court indicated that a detailed affidavit of heirship and numerous exhibits were submitted to the Surrogate’s Court. According to BCPA counsel, the Surrogate’s Court decided that the six individuals have yet to provide sufficient kinship documents. However, we do not know if the Surrogate’s Court had all of the pertinent information from the BCPA at the time this finding was made.

Additionally in connection with this estate, the BCPA did not inform two individuals that they were named as beneficiaries of certain estate assets worth \$204,858, including the life insurance policy discussed in the preceding section of this report, and distribute funds to them as required by the Guidelines. Section II(B)(1) of the Guidelines dated November 13, 1995, required that,

[w]henver the PA receives passbooks or other evidence of joint or trust bank accounts, insurance policies, pension accounts or other similar assets not passing through the estate, the PA shall immediately contact the beneficiaries of such accounts or assets and transfer all funds to the appropriate parties subject to the proviso that the estate is solvent and that charges against such assets be paid or provided for before any such transfer.

Based on available documentation, it appears that the BCPA received information regarding designated beneficiaries of estate assets in February 2005, March 2005, and March 2008. Although the BCPA had contact information for the two named beneficiaries, there was no documentation in the BCPA estate file to show that the PA contacted the named beneficiaries and transferred funds to them. Moreover, when an insurance company asked the BCPA to facilitate processing of a claim, the BCPA incorrectly advised the life insurance company on June 4, 2007 that “we don’t have any information on file for the beneficiary.”

The BCPA also failed to notify foreign consul that it was applying to administer this estate as required under the law. Section 207.21 of the Uniform Rules for the Surrogate's Court states “[w]here it appears that an intestate who died, or any party interested in the estate of the intestate, is the subject of a foreign power whose consul is entitled by treaty to administration or intervention, notice of the application for the appointment of an administrator shall be given such consul.” Since parties interested in the estate (e.g., the six individuals who identified themselves to the BCPA as the surviving first cousins of the decedent) were from Ireland and Western Australia, the BCPA should have notified foreign consul that it applied to administer this estate in December 2004.

BCPA Response: “The BCPA notes that this finding is based yet again on the same estate file that was opened in 2004 and closed in February of 2007, a date prior to the involvement of the current PA, current and prior Counsel, and even the prior Public Administrator. As such, the OC's issuance of this particular Finding can only be intended to unfairly malign the reputation of the BCPAO. The actions that the OC takes issue with occurred a decade ago and were performed by persons that the OC is well aware are no longer affiliated with the BCPAO. And any failure of the Counsel to the BCPA at the time, who has since pled guilty to crimes surrounding his tenure, has absolutely nothing to do with the period of the subject Audit.”

Auditor Comment: The inclusion of the estate in question in the audit was based on information provided by the BCPA; it was included among the population of the 1,157 estates that the PA stated “represents the best-possible list of as-yet-finished Bronx PA matters on or about January 31, 2014.”

Additionally, during the course of the audit, the BCPA informed us that while this estate was closed in February 2007, it was reopened in 2008, then closed again in May 2008, and then reopened again for kinship in 2012. Based on the BCPA’s records, it remains open. We asked for, but the BCPA did not provide, court documentation related to the reopening and closing of this estate.

Recommendations

The BCPA should:

21. Review the proceedings in Surrogate's Court related to the estate discussed above and take any appropriate action to ensure that the record considered by the Surrogate's Court is complete and accurate.

BCPA Response: “[P]rior Counsel to the BCPAO has reviewed the estate file in question and determined that no action is required as to the Court record.”

Auditor Comment: The report does not recommend that the BCPA have its prior appointed counsel review the estate file. Rather, the report recommends that the BCPA review the proceedings in Surrogate's Court related to the estate discussed above and take any appropriate action to ensure that the record considered by the Surrogate's Court is complete and accurate. To clarify, this should include, but not be limited to, ensuring that the Surrogate's Court has been provided with all of the kinship information contained in either the decedent's remaining effects, papers, documents, mail, and assets, or correspondence with the financial institutions, life insurance companies, and other entities or individuals.

22. Accurately report to the Surrogate's Court the BCPA's efforts to identify next of kin and the results of kinship searches.

BCPA Response: The BCPA did not address this recommendation.

23. Provide potential distributees with written copies of the evidentiary requirements to establish kinship and guidance on requisite services, applicable statutory provisions, and kinship proceedings.

BCPA Response: The BCPA did not address this recommendation.

24. Use available information to inform joint owners and designated beneficiaries of the existence of estate assets in accordance with the Guidelines.

BCPA Response: “[T]his Finding reflects a very basic misunderstanding by OC staff about how estate administration works, in that assets that have surviving beneficiaries or joint owners thereon are NOT estate assets and the BCPA has absolutely no authority or obligation to administer those assets.”

Auditor Comment: The report acknowledges that there are two separate and distinct types of assets — estate assets and assets not passing through the estate (e.g., assets with surviving beneficiaries or joint owners), and that the BCPA's obligations vary for each of these two types of assets. The report does not state that the BCPA should administer assets not passing through the estate. However, the report correctly asserts that both the prior Guidelines dated November 1995 and the current Guidelines dated February 2012 require the BCPA to obtain information about the beneficiaries of assets not passing through the estate and facilitate the transfer of assets to them. The current Guidelines Section III(C)(1) states,

Whenever the PA receives evidence of joint or trust bank accounts, insurance policies, retirement accounts or other similar assets not passing through the estate, the PA shall promptly notify the institution holding such assets of the death of the decedent, and

shall seek to obtain the date of death value of the assets and any available information concerning the joint owner or designated beneficiary, which shall be maintained in the estate file. . . . After considering the solvency of the decedent's estate, any estate tax issues, potential issues as to validity and liability, and all other relevant information, the PA shall utilize the available information to inform joint owners and designated beneficiaries as to the existence of such assets, if the PA believes that to do so is consistent with the best interests of decedent's estate and the PA's fiduciary obligations thereto.

25. Notify foreign consul that it is applying to administer estates for which decedents or interested parties are the subject of a foreign power whose consul is entitled by treaty to administration or intervention.

BCPA Response: “[S]ince the involvement of the subject prior Counsel to the BCPAO there has never been a single instance where a known necessary party was not served with required legal notice.”

Auditor Comment: Prior BCPA-appointed counsel was involved in the administration of the estate discussed above when it was re-opened. This prior counsel did not provide us with documentation that reflected that it notified foreign consul.

The BCPA Did Not Appropriately Restrict Access to CompuTrust

The BCPA did not appropriately restrict access to CompuTrust as required by Section I(B)(3) of the Guidelines. The Guidelines Section I(B)(3) requires that “[t]he electronic case management system . . . include appropriate security features including controlled access to the system and data backup.” Further, Comptroller’s Office Directive #18, “Guidelines for the Management, Protection and Control of Agency Information and Information Processing Systems” support controlled access with the caution that “[t]he protection and control of data and information processing resources is an important element of the agency’s overall internal control environment.”

However, the BCPA did not appropriately restrict BCPA employees’ access and grant user rights only as necessary for staff to do their jobs. Further, the BCPA allowed shared BCPA counsel and accountant user accounts which did not identify individual users to the system and establish accountability for transactions. Consequently, the BCPA did not appropriately restrict access to sensitive information, establish accountability for transactions, and protect against inappropriate and fraudulent transactions.

Recommendations

The BCPA should:

26. Grant BCPA staff only those CompuTrust user rights necessary to do their jobs.

BCPA Response: “No non-staff member had or has access to make entries or changes to the CompuTrust System. While the information contained in CompuTrust was never at risk of theft or loss, it could be made even more secure. The BCPA is working to further restrict access to certain areas of CompuTrust that most BCPA staff members do not require and to eliminate old, no longer utilized, user names.

27. Deactivate shared CompuTrust user accounts and create unique user accounts that identify individual users to the system and establish accountability for transactions.

BCPA Response: “The BCPA is working to . . . eliminate old, no longer utilized, user names. However, the BCPA has a limited number of user names that it may allow pursuant to its agreement with CompuTrust, such that group names for attorneys and accountants offices may still be necessary.”

Auditor Comment: Based on our review of CompuTrust user profiles as of March 2015, it appears that the BCPA has enough available users accounts to create unique user accounts for its attorneys and accountants. Most notably, the BCPA already has three unique user accounts for BCPA-appointed counsel, two for prior counsel and one for current counsel. Consequently, its shared “palegal” user account is unnecessary and could be used to create a second user account for its accountants.

Suspense Account Expenses Totaling \$105,150 Were Not Reasonable, Appropriate, and Adequately Supported

We found that expenses made from the BCPA suspense account totaling \$105,150 were not reasonable, appropriate, adequately supported, and/or authorized. Section I(D) of the Guidelines allows the BCPA to separately maintain an account containing SCPA 1106 commissions and accumulated interest and to use such funds “to pay office expenses not funded by the PA’s budget, as set forth herein. Expenses funded from the suspense account must be necessary for the proper functioning of the office’s operations and for the administration of estates.” Accordingly, the SCPA further requires that the PA “keep and maintain accurate records of all receipts and disbursements to and from the suspense account, including back up documentation.”

However, in our review of sampled Fiscal Year 2013 expenses totaling \$294,817, we found that the BCPA suspense account expenses totaling \$105,150 (36 percent) were not reasonable, appropriate, and/or adequately supported. Specifically, we found that \$99,450 out of \$154,363 paid to 13 sampled payees for Other Than Personnel Service expenses (64 percent), were not reasonable, appropriate, adequately supported, and/or properly approved. These expenses were largely related to an office renovation project, including new office furniture and carpeting and design services, initiated by the prior PA. In total, the BCPA spent \$82,218 on this project which represented 23 percent of Calendar Year 2013 suspense account expenses. Notwithstanding the magnitude of these expenses, the prior PA did not competitively procure or contract for goods and services.

In addition, we found that \$5,700 paid for car allowances out of \$140,454 paid to five BCPA employees for Personnel Services, was not adequately supported. Comptroller’s Directive #6, Section 18.5, requires reimbursements for employees’ use of personal vehicles for agency business to be supported by forms detailing: the travel date and purpose; each stop and/or final destination; initial and ending odometer readings; and a calculation showing multiplication of total mileage by the mileage rate allowance. However, the BCPA paid employees who used their cars for the entire day a flat rate of \$30 per day which was not supported by business use mileage.

BCPA Response: “The office renovation project that is the basis of this finding was conducted by the prior BCPA, without the participation or involvement of the prior BCPA Counsel, and, obviously therefore, the current BCPA and Counsel had no involvement with that renovation. The current BCPA has been

unable to locate the prior BCPA's records as to any bidding out of the renovation and therefore has no basis upon which to respond to this aspect of this Finding."

Recommendations

The BCPA should:

28. Ensure that suspense account expenses are reasonable, appropriate, adequately supported, and authorized.

BCPA Response: The BCPA did not address this recommendation.

29. Require BCPA employees who use their cars for BCPA business to document: the dates and purpose of travel; travel itinerary; starting and ending odometer readings; and calculation of business use mileage in accordance with Comptroller's Directive #6.

BCPA Response: "The Report also takes issue with the BCPA paying one of its investigators a flat daily rate for using his car in connection with residence investigations for the individual estates rather than reimbursing the investigator based upon actual mileage. However, the nature of BCPA residence investigations is fluid and requires multiple destinations in a single day. The BCPAO has determined that the time and cost of calculating mileage to each destination would be difficult, time-consuming and a waste of resources."

Auditor Comment: The BCPA's position violates Comptroller's Directive #6 as well as its governing Guidelines Section I(D)(2) which states that,

[e]xpenses funded from the suspense account must be necessary for the proper functioning of the office's operations and for the administration of estates. . . . Where suspense account funds are used to pay salaries and benefits for office personnel, the PA shall maintain records which set forth the reasons for employing such personnel and justify the reasonableness of their salaries and benefits.

Additionally, the time and cost associated with recording and calculating mileage is only nominal as investigators visit only a few locations per day. Therefore, we reiterate our recommendation that the BCPA require BCPA employees who use their cars for BCPA business to document: the dates and purpose of travel; travel itinerary; starting and ending odometer readings; and calculation of business use mileage in accordance with Comptroller's Directive #6.

30. Reimburse employees who use their cars for BCPA business based on: reported business use mileage; a rate of no more than 28 cents per mile; and a guarantee of no more than 30 miles for each day of use in accordance with Comptroller's Directive #6.

BCPA Response: "The BCPA investigators generously offer to use their personal vehicles for investigations and are paid a flat rate to cover both mileage and extensive wear-and-tear on these vehicles. As such, the BCPAO strongly disagrees that the actual mileage standard properly applies to the unique situation of the BCPA investigator. And the BCPAO further states that, if the OC disagrees, it may impress upon the City to budget the BCPA a vehicle,

and funds to cover fuel and maintenance costs, to be utilized for investigations.”

Auditor Comment: If the BCPA refuses to utilize the standard mileage rate prescribed by Comptroller’s Directive #6, it should at least utilize the standard mileage rate prescribed by the Internal Revenue Service which is based on an annual study of the fixed and variable costs of operating an automobile, including depreciation, insurance, repairs, tires, maintenance, gas and oil.

The BCPA Did Not Properly Administer Bank Accounts

The BCPA failed to properly administer its bank accounts. Specifically, the BCPA failed to properly secure estate funds through insurance and collateralization agreements; properly perform bank reconciliations for estate accounts and the BCPA suspense account; and void long-outstanding checks or determine why such checks were not cashed.

Collateralization

The BCPA did not secure estate funds totaling \$14.1 million with Federal Deposit Insurance Corporation (FDIC) insurance and collateralization agreements backed by approved government securities as required by Section III(A)(5) of the Guidelines.¹¹ In its 2012 Annual Report, the BCPA maintained that “the first \$500,000 in deposits were insured by the FDIC, with the first \$250,000 in deposits being FDIC-insured automatically as FDIC-participating-bank deposits and an additional \$250,000 in deposits being FDIC-insured because they were designated as ‘public funds’ under the banking law.” However, since the deposits at issue were composed of estate funds, they were fiduciary funds, not public funds, and so to the extent any additional insurance might be extended to public funds, it would not be applicable to these estate funds. Moreover, we were unable to find any authority that authorizes the provision of additional insurance for public funds.

The BCPA further maintained that deposits over and above \$500,000 were secured by collateralization agreements. Specifically, the BCPA stated that its HSBC accounts were collateralized pursuant to a written security agreement between the BCPA and HSBC. Additionally, we were advised by the City’s Treasurer that since the BCPA’s Chase accounts “were registered with us . . . balances are now fully collateralized through the City’s centralized collateral agreements.”

Section III(A)(5) of the Guidelines required that “[i]f funds held for an estate in a particular financial institution exceed the FDIC insured amount, the PA shall immediately: (a) open a separate account or accounts in a different financial institution or financial institutions so that no funds held for an estate in a particular financial institution exceed the FDIC insured amount; or (b) collateralize such sums with approved government securities, pursuant to a written security agreement between the PA and the financial institution.” However, the City’s centralized collateral agreements with HSBC did not satisfy the Guidelines’ requirements because they were not backed by approved government securities. Further, with regard to the Chase accounts, the BCPA should have entered an agreement directly with the bank. Moreover, notwithstanding the view expressed by the City Treasurer referred to above, since the funds maintained at Chase were estate funds held by the BCPA as a fiduciary for those estates, and not held in the name of

¹¹ The Guidelines Section III(A)(5) require that “[e]state funds held in FDIC-insured accounts shall not exceed the amount insured by the FDIC (“FDIC insured amount”). If funds held for an estate in a particular financial institution exceed the FDIC insured amount, the PA shall immediately: (a) open a separate account or accounts in a different financial institution or financial institutions so that no funds held for an estate in a particular financial institution exceed the FDIC insured amount; or (b) collateralize such sums with approved government securities, pursuant to a written security agreement between the PA and the financial institution. Funds held in non-FDIC insured accounts must be secured by collateral, as above.”

the City of New York, they were not public funds. Accordingly, they were not covered by the City's centralized collateral agreements.

We totaled the amounts of the deposits that exceed the \$250,000 FDIC insurance limit and found that estate funds totaling \$14.1 million as of June 28, 2013 were not properly secured and the City may be held liable for any lost estate funds.

After discussing our findings with the BCPA, the BCPA again consulted with DOF. Subsequently, DOF's Collateral Committee concluded that,

the current arrangement may not adequately meet the State guidelines for such accounts. Further, the Collateral Committee now recommends that the Bronx PA's Office should no longer use the City's tax ID for its bank accounts and should enter into separate collateral agreements with each bank holding Bronx PA funds. Such accounts should be set up to provide the maximum FDIC insurance coverage at the individual beneficiary level, as instructed in the State PA guidelines.

The PA has yet to enter new agreements as recommended.

Recommendation

31. The BCPA should ensure that estate funds are secured with FDIC insurance or collateralization agreements between the BCPA and financial institutions which are backed by approved government securities.

BCPA Response: "Only in April of 2015, did the BCPA receive instruction from DOF to maintain the estate funds under the BCPAO's own TIN and also utilizing the individual estates' tax identification numbers. As such, the BCPA is in the process of implementing that system, which should better comport with the current desire of the OC."

Auditor Comment: Contrary to the BCPA's assertion, DOF's Collateral Committee notified the BCPA in October 2014, not April 2015, that the BCPA's estate funds were not properly collateralized. Therefore, we reiterate our recommendation that the BPCA immediately ensure that estate funds are secured with FDIC insurance or collateralization agreements between the BCPA and financial institutions which are backed by approved government securities.

Bank Reconciliations

The BCPA did not ensure that bank reconciliations for estate and suspense accounts were properly performed. Although CompuTrust is capable of reconciling accounts, the BCPA does not utilize this feature. Instead, the BCPA had an external accountant perform manual reconciliations. However, based on our review of June 2013 and October to December 2014 bank reconciliations, we found that the BCPA did not ensure that its external accountant identified adjusting entries in a timely manner, and that explanations were provided for why adjusting entries were made. Further, the BCPA did not ensure that BCPA staff made required adjustments in a timely manner. Most notably, the external accountant failed to identify that January 2013 estate receipts totaling \$131,069 were erroneously deposited in the BCPA suspense account until June 2013 and the BCPA did not withdraw these funds from the BCPA suspense account and deposit them in the estate account until August 2013.

In addition, we found that BCPA supervisory personnel did not always review and sign bank reconciliations to ensure they were performed properly. Consequently, the BCPA may not have detected errors and misappropriation of estate assets. The BCPA was also cited for failing to have bank reconciliations signed by the preparer and the reviewer by its independent auditor in 2011.

Recommendations

The BCPA should:

32. Ensure that bank reconciliations are performed monthly and that adjusting entries are identified, explained, and made in a timely manner.

BCPA Response: “[I]n contrast to the OC, the BCPA’s independent annual auditor has never taken issue with the manner in which the monthly reconciliations were performed. Again, the OC has provided the BCPA with absolutely nothing to establish that the reconciliations were performed incorrectly other than they were not performed in a manner that the OC has unilaterally deemed to be proper.”

Auditor Comment: The audit report did, in fact, detail bank reconciliation deficiencies in connection with adjusting entries and supervisory review and sign-off. Therefore, we reiterate our recommendation that the BCPA ensure that bank reconciliations are performed monthly and that adjusting entries are identified, explained, and made in a timely manner.

33. Have BCPA supervisory personnel review and sign off on all reconciliations to ensure that they are done properly.

BCPA Response: “[T]he accounting firm no longer prepares the reconciliations on the accounts holding estate funds, and they are instead prepared by a BCPA staff member and then reviewed by the outside accounting firm.”

Auditor Comment: The report recommended that the BCPA immediately cease relying on the present accounting firm to provide both accounting services to the BCPA in connection with the operation of its office and to estates. (See Recommendations #18 and #19.) Therefore, we object to this accounting firm performing any BCPA accounting work—and in particular supervisory work—and we reiterate our recommendation that BCPA supervisory personnel review and sign off on all reconciliations to ensure that they are done properly.

Long-Outstanding Checks

The BCPA did not void long-outstanding checks or determine why checks were not cashed in a timely manner. As noted above, the BCPA is responsible for paying decedents’ bills and taxes, ensuring that the legal distributees receive their inheritance, and submitting commissions to the City to cover administrative costs. Therefore, the BCPA should follow up on checks outstanding for more than 60 days, determine why they were not cashed, and reissue checks accordingly.

However, based on our review of BCPA’s Disbursement Journals for its estate and suspense bank accounts, the BCPA did not do so. Specifically, we identified 444 checks totaling \$127,615 that were outstanding for between 66 and 237 days.

Recommendation

34. The BCPA should periodically review its Disbursement Journal and bank records, void checks outstanding more than 60 days, determine why they were not cashed, and reissue checks accordingly.

BCPA Response: “[T]he BCPAO acknowledges that it often carries significant numbers of un-cashed checks in its system. This is a product of the large number of checks issued by the office and the large number of estates under administration. Most importantly, no funds have been lost in connection with these checks. The BCPA is working to shorten the time-frame for the voiding and replacement of un-cashed checks, but is, of course, limited by the staff resources at its disposal.”

The BCPA Failed to Properly File Required Financial and Operating Reports with Various Oversight Authorities

The BCPA repeatedly failed to submit required annual independent audits to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Offices, and the Mayor as required by law. Additionally, the BCPA did not accurately report key performance indicators including the number of open and closed estates and the length of time estates remain open. Consequently, these State and City oversight authorities have been inhibited in their ability to effectively assess, monitor, and hold the BCPA accountable for its administration of estates and ensure that the BCPA properly settled estates and distributed estate proceeds in a timely manner.

Annual Independent Audit

The BCPA is required to conduct annual independent audits but has failed to do so for multiple years. In addition, for those years where independent audits have been done, the BCPA has failed to initiate them in a timely manner and submit them, as required by law, to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Offices, and the Mayor as required by Section 1109 of the SCPA.

The prior PA was responsible for conducting audits for the four and a half year period July 1, 2008 to December 31, 2012. However, during this time period, only one audit was conducted, for the period July 1, 2008 to June 30, 2009. Furthermore, this audit was not initiated and completed in a timely manner and was never submitted to State and City regulatory authorities. None of the other mandatory annual audits, for the three and a half year period from July 1, 2009 to December 31, 2012, were completed under the prior PA.

For the period July 1, 2009 to December 31, 2010, the prior PA commissioned an audit and nearly all of the work was done. However, a report was not issued because the prior PA would not sign a management representation letter acknowledging responsibility for financial statements. For the period January 1, 2011 to December 31, 2011, the prior PA “informally commissioned” an audit and “some work as to it was done.” For the period January 1, 2012 to December 31, 2012, the prior PA did not commission an audit and “thus no work was done as to it.” Consequently, State and City regulatory authorities could not effectively assess, monitor, and hold the BCPA accountable for its performance.

Subsequent to his appointment in March 2013, the current PA had the audits for the periods July 1, 2009 to December 31, 2010, and January 1, 2011 to December 31, 2011 completed, and stated that audits for Calendar Years 2012 and 2013 will be completed by June 30, 2015.

Reports on Open Estates

The BCPA did not submit accurate semi-annual and annual reports of open estates to the Surrogate's Court and New York State Comptroller as required by law. As previously noted, the BCPA did not close cases in CompuTrust and accurately report in CompuTrust or maintain documentation to support the date that the first Letters of Administration or Testamentary were issued. Consequently, the BCPA cannot readily and accurately generate from CompuTrust reports detailing the number of open estates and the length of time they remain open. Therefore, the BCPA manually compiles reports of open estates which it acknowledged may not be accurate and complete.

Reports on Settled Estates

The BCPA did not submit accurate reports of settled estates as required by Section 1109 of the SCPA and Comptroller's Directive # 28 to the New York City Comptroller's Office. These reports enable oversight authorities to see how long it takes the BCPA to settle estates and the amount, reason, and to whom legal fees, administrative expenses, commissions, and distributions were paid.

Based on our review of BCPA's June 2013 settled estates report, we noted that the BCPA did not report activity for 15 estates. More importantly, the BCPA generally did not report activity in its entirety upon final closing or settlement. Instead, the BCPA reported activity piecemeal as payments were made. Consequently, oversight agencies could not readily determine whether legal fees and commissions paid were properly calculated and limited to prescribed percentages and administrative expenses were reasonable and appropriate.

Recommendations

The BCPA should:

35. Immediately submit to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor outstanding audits when they are issued and thereafter, conduct and submit audits within prescribed timeframes.

BCPA Response: "The BCPA acknowledges that the office is behind on the mandated independent annual audits. However, this is a condition that the current BCPA inherited from the prior BCPA. The 2011 annual audit was completed in early 2015.... with the conclusion of the OC audit at hand, the 2012 audit is already commenced and the 2013 audit is already commissioned and will begin immediately upon completion of the 2012 audit. The BCPA expects to be complete with the 2012 and 2013 audits by then end of the current year, and if the 2014 audit is not concluded by the end of the current year, it will be concluded shortly thereafter."

36. Ensure that it submits to the Surrogate's Court, State Attorney General, State and City Comptroller's Offices, and the Mayor accurate and complete reports of open and settled estates.

BCPA Response: "[T]he BCPAO strenuously repudiates any notion that its reports on open estates were not filed or were inaccurate. The OC Report claims that the reports on open estates filed by the BCPA must be erroneous because, as noted above, there are roughly 19,000 old, closed estates that are coded as 'open' in the CompuTrust system. The OC takes the position that these estates should have been included in the reports. However, an estate is not open simply because it is coded as 'open' in CompuTrust. An estate is

open if it is in the process of being administered.”

Auditor Comment: The audit report does not take the position that the approximately 19,000 erroneously coded estates should be included in open estate reports that the BCPA is required by law to submit to oversight agencies. To be clear, the audit report simply states the obvious, that the BCPA cannot generate accurate reports of open estates from CompuTrust and instead, the BCPA has had to manually compile reports of open estates, which it has acknowledged may not be accurate and complete.

BCPA Response: “Further, the BCPAO also strenuously refutes any notion that its reports on settled estates were not filed or were inaccurate. The OC claim that these reports were inaccurate because there were estates ‘not reported in whole or in part’ on the reports on settled estates.... [T]he OC did not find any estates that were not reported ‘in whole’ (i.e. left off of the reports when they should have been included). Instead, the OC apparently based its entire finding upon only two estates that having been closed previously, reopened for the collection of additional assets, and then re-closed.

The OC's complaint is that in the month when both estates were re-closed, the BCPA only reported the legal fees and commissions that were paid in connection with the additional assets, rather than those paid in connection with the entire estate. . . . [T]his method of reporting was implemented years ago. . . at the specific direction of the New York City Department of Finance (DOF). . . DOF wanted the monthly report on settled estates to reflect only the expenses on the additional assets so that the checks they were receiving at that time would match the report. Therefore, if the OC is unhappy with the manner of the reporting, blame does not lie with the BCPA.”

Auditor Comment: Based on our review of the BCPA's June 2013 settled estates report, the BCPA did, in fact, fail to report activity for 15 estates.

Additionally, in its response, the BCPA acknowledged that it does report activity piecemeal as payments were made and explained that DOF instructed the BCPA to report in this manner. However, by law, the Comptroller, not DOF, prescribes the manner of settled estates reporting. Section 1109 of the SCPA states that “[e]ach public administrator shall file monthly with the surrogate of the county where appointed, mayor and the comptroller of the city of New York a statement of such of his accounts as have been closed or finally settled in such form as the comptroller may prescribe.”

Reports to Taxing Authorities of Vendor and Employee Payments of at least \$3.5 Million Were Not Made

The BCPA failed to inform the IRS and the New York State Department of Taxation and Finance of all reportable vendor payments. The 26 CFR 1.6041-1 requires 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 under this section with respect to that payment if . . . that person -- (i) Performs management or oversight functions in connection with the payment.

The IRS instructions for Form 1099-MISC specify that “[p]ayments by federal, state, or local government agencies are also reportable.” Further, to ascertain which vendors should be issued a Form 1099, the IRS requires that payors, including government agencies, collect a Form W-9 from vendors their detailing their federal tax classification.

Pursuant to 26 CFR 1.6041-1, the BCPA exercises management and oversight in connection with payments made to vendors on behalf of estates in that the PA is responsible for—including, but not limited to—employing outside vendors necessary to administer estates, selecting vendors, setting vendor compensation, documenting vendor compensation in either written agreements between the PA and the vendor or detailed vendor invoices, and reviewing vendor payments. Moreover, the BCPA is tasked with approving in writing, and maintaining documentation to support all estate disbursements. Therefore, the BCPA is deemed to be the payor for vendor payments made on behalf of estates where the BCPA exercises management and oversight and is required to collect W-9 forms from vendors and issue vendors Form 1099s for services rendered to estates.¹²

The New York City Comptroller’s Office has since 1999 repeatedly cited the BCPA for its failure to properly issue Form 1099-MISC in accordance with the law. In response, the BCPA has since 1999 repeatedly represented that it would issue Form 1099-MISC to vendors as required by the law. The BCPA was also cited for failing to properly issue Form 1099-MISC by its independent auditor in 2011. Nevertheless, Forms 1099-MISC have never properly been issued. Moreover, the current PA, on the advice of the BCPA accounting firm and prior appointed counsel, maintained that the BCPA is not required to issue Form 1099-MISC to vendors on behalf of estates. As a result, the BCPA has increased the risk that its vendors could have underreported their income.

Since the BCPA did not collect W-9s from vendors, identify in CompuTrust the vendors who should receive Form 1099s, and distinguish between vendors and estate distributees in CompuTrust, we could not identify the total number of vendors who were not issued 1099s and the dollar amounts paid to them. However based on New York State Department of State data, at minimum, the BCPA did not issue Forms 1099-MISC to seven legal service providers for work done on behalf of estates, payments to whom totaled \$3,503,415.¹³ Most notably, the BCPA did not issue its prior BCPA appointed counsel a Form 1099-MISC for payments totaling \$2,893,057. As a result, these providers may have underreported their income and reduced their tax liability.

After discussing our findings with the BCPA, the BCPA stated that, “after having now discussed it further with Counsel and prior Counsel, and after learning what is done by the Queens and Manhattan PAs, I have come to the conclusion that issuing 1099s in a manner close to the information you provided is how I would like to proceed going forward.”

Additionally, we found that the BCPA did not collect W-9 forms from vendors and issue vendors Form 1099-MISC for any services provided directly to the BCPA. Again, since the BCPA did not collect W-9 forms detailing federal tax classification, we could not determine whether and how many vendors were not issued Forms 1099-MISC and the dollar amounts paid to them.

We also found that the BCPA did not report to the IRS and New York State Department of Taxation wages paid to two BCPA employees totaling \$24,709 and \$10,045 for Calendar Years 2012 and 2013, respectively. The BCPA did not report wages and car allowances made under a

¹²As previously noted, the BCPA counsel is appointed by the Bronx County Surrogate’s Court Judge. However, the BCPA exercises management and oversight over appointed counsel. The BCPA is responsible for overseeing appointed counsel’s work and reviewing and approving counsel payment requests and disbursing counsel payments in accordance with the Guidelines Section II(D).

¹³ The BCPA, in consultation with its counsel and a competent, unconflicted accountant, should review service vendor information, including federal tax classification and payments, and make a final determination as to appropriate tax treatment.

“nonaccountable plan.”¹⁴ As a result, these two BCPA employees may have underreported their income and reduced their tax liability. Most notably, the BCPA reported wages of only \$20,238 for an employee who earned \$44,771 in 2012 — an understatement of 54.8 percent. Since this BCPA employee is a New York City Police Department service retiree, the understatement of wages may also have allowed the retired employee to circumvent the State’s “double-dipping” laws and improperly collect pension payments.¹⁵

BCPA Response: “There is no dispute that, under the Internal Revenue Code, if the BCPA is engaged in a ‘trade or business’ it must file a Form 1099 for payments made to its vendors. The BCPA is, however, not engaged in a ‘trade or business’ and as such there is no requirement to file a Form 1099. The BCPA does not dispute that when the Office of the BCPA makes payments to vendors from City funds that it is engaged in the trade or business of operating a governmental office and it is required to issue a Form 1099.

However, this is separate and distinct from payments made to vendors when acting as the administrator of a particular estate utilizing the funds belonging to that estate. The United States Supreme Court, in United States v. Pyne, Executors, clearly held that the administration of an estate is not engaging in a trade or business and therefore the BCPA has absolutely no legal obligation to file a Form 1099 for a payment made from an estate. . . .

In short, the BCPA is not a representative payee of the estates under its administration because the estates themselves make the payments utilizing their own funds. The BCPA is simply the estate fiduciary, the instrument by which the checks are drawn and signed. This does not serve to convert the BCPAO into a representative payee, which an actual review of the examples provided by the Internal Revenue Code regulations reflects.”

Auditor Comment: The BCPA is in fact engaged in a trade or business when it administers estates. As previously noted, the BCPA is a governmental entity that exists solely to administer estates, which it does in large volume, and receives considerable City-funding and compensation for doing so. IRS guidance on Form 1099 issuance expressly states that “[g]overnment entities **are** in the trade or business of being a government entity [emphasis in original]” and that “Government Agencies and non-profit organizations are also required to file Form 1099.”¹⁶

¹⁴ For a plan to be considered to be an “accountable plan” by the IRS, an “employer’s reimbursement or allowance arrangement must include all of the following rules: 1. Your expenses must have a business connection — that is, you must have paid or incurred deductible expenses while performing services as an employee of your employer. 2. You must adequately account to your employer for these expenses within a reasonable period of time. 3. You must return any excess reimbursement or allowance within a reasonable period of time.” The IRS considers any plan that does not these three requirements to be a non-accountable plan.

¹⁵ A New York City Police Department service retiree who is re-employed by the State or any of its political subdivisions may not continue to collect pension benefits, except in accordance with conditions established by the New York State Retirement and Social Security Law (RSSL), Section 210 through 216. RSSL Section 212 permits a service retiree to be re-employed in New York public service if the retiree earns no more than a prescribed amount (i.e., \$30,000 for Calendar Year 2012) and files a “Section 212 Statement of Election” with his or her retirement system. A service retiree who exceeds the Section RSSL 212 salary limitations may have his or her pension benefits denied unless his or her prospective employer obtained a waiver from the State or municipal Civil Service Commission or other authorized agency.

¹⁶ See Federal, State and Local Government Group 7251: Form 1099 MISC Filing Requirements, IRS 2014 PowerPoint. Also see www.irsvideos.gov/1099webinar.

As previously noted, the BCPA is a municipal office that is responsible for administering the estates of individuals in the Bronx who die intestate or when no other appropriate individual is willing or qualified to administer the estate. We estimate that as of January 2014, the BCPA was responsible for administering 1,157 estates with a cumulative value of at least \$32.4 million.

The BCPA's operations are funded by the City of New York and by estate commissions. SCPA 1106(1) authorizes the BCPA to collect sliding-scale commissions for performing fiduciary services. These commissions are remitted to DOF for deposit into the City treasury. Additionally, SCPA 1106(3) authorizes the BCPA to collect and retain a one percent commission of the gross value of each estate. For Fiscal Year 2013, the BCPA submitted commissions to DOF in the amount of \$2,019,582 and retained commissions in the amount of \$385,806.

Nevertheless, the BCPA has erroneously cited United States v. Pyne, Executors, 313 U.S.127 (1941) which relates to an executor administering a single estate and not a person appointed to the governmental position of Public Administrator. Based on its misplaced reliance on Pyne, the BCPA claims that it is acting as an executor and is "not a representative payee of the estates under its administration because the estates themselves make the payments utilizing their own funds. The BCPA is simply the estate fiduciary, the instrument by which the checks are drawn and signed."

However, as previously discussed in the audit report, pursuant to 26 CFR 1.6041-1, the BCPA exercises management and oversight in connection with payments made to vendors on behalf of estates in that the PA is responsible for, including, but not limited to, employing outside vendors necessary to administer estates, selecting vendors, setting vendor compensation, documenting vendor compensation in either written agreements between the PA and the vendor or detailed vendor invoices, and reviewing vendor payments. Moreover, the BCPA is tasked with approving in writing, and maintaining documentation to support all estate disbursements. Therefore, the BCPA is deemed to be the payor for vendor payments made on behalf of estates where the BCPA exercises management and oversight and is required to collect W-9 forms from vendors and issue vendors Form 1099s for services rendered to estates.

We note that the BCPA's current position contradicts statements made by the PA during the course of the audit. In April 2015, the PA stated "while our accountants never got back to me to weigh in (again; as you know they have opined on this several times) on my most recent request that they do so on this issue, after having now discussed it further with Counsel and prior Counsel, and after learning what is done by the Queens and Manhattan PAs, I have come to the conclusion that issuing 1099s in a manner close to the information you provided is how I would like to proceed going forward."

Recommendations

The BCPA should:

37. Collect W-9 Forms from all vendors and identify in CompuTrust all vendors who should receive Form 1099s.

BCPA Response: The BCPA did not address this recommendation.

38. Distinguish in CompuTrust between vendors and estate distributees.

BCPA Response: The BCPA did not address this recommendation.

39. Appropriately report all vendor payments and employee wages to the IRS and state tax authorities and issue 1099-MISC forms to vendors paid more than \$600 in a calendar year.

BCPA Response: “[D]espite [sic] all of the above, the BCPAO is willing to relent and file Form 1099s for the payments made from the individual estates, even though it has absolutely no legal obligation to do so. However, the BCPA will only file the Form 1099s in accordance with actual law, not the OC’s misunderstanding thereof, and issue the 1099s from the individual estates under administration, rather than under the BCPA’s own employer identification number, as the BCPA does NOT pay those expenses from City funds. And as to this, the BCPAO has been unable to determine how to pay for the cost of issuing the Form 1099s, because, as discussed above, the City has yet to budget the BCPA funds to hire a second outside accounting firm to perform such tasks. The BCPA also does not have unused staff hours to perform this function and the City recently declined the BCPA’s request for an additional staff salary line.”

Auditor Comment: Prior to issuing Form 1099s, the BCPA should seek the advice of expert tax counsel, including, but not limited to, lawyers with an expertise in tax law at the City’s Law Department, to ensure that it properly files Form 1099s and does not incur unnecessary penalties.

40. Reissue W-2s for those employees whose wages were understated.

BCPA Response: The BCPA did not address this recommendation.

Other Matters – Police Department Property Bags

Between 2002 and 2008, the New York City Police Department Bronx Property Clerk Division sent the BCPA bags of decedents’ property, including items such as bank cards, jewelry, and cellular phones. Rather than determine whether the BCPA should administer these decedents’ estates and deal with the property accordingly, prior PAs simply maintained these property bags in a storeroom. Upon discovering the property bags, the current PA attempted to administer the decedents’ estates. However, given the age of the property and lack of demographic information, the current PA was generally precluded from doing so and is unsure how to handle the disposition of the property bags. The PA informed us however that the BCPA office has stopped the practice of accepting these property bags from the Police Department.

Section 1126 of the SCPA states that “[w]henver the public administrator shall receive papers or property of a decedent upon whose estate no letters have been issued or whose property is not sufficient to require administration under 1116, the public administrator is authorized to abandon or destroy all such papers and property in his possession after 5 years have elapsed from the death of the decedent and upon proof satisfactory to him that they are without value.”

Recommendation

41. The BCPA should determine the length of time that property has been held since the decedent's date of death and the value of the property, and dispose of property in accordance with applicable law.

BCPA Response: "The OC is well-aware the situation that the surrounding the police property bags dates back to 2008 and was not a result of actions of the current BCPA or prior BCPA, who have both worked to alleviate the situation. The BCPA has no further comment beyond that the situation is addressed."

DETAILED SCOPE AND METHODOLOGY

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

The initial scope of this audit was Fiscal Years 2012 and 2013. It was updated to reflect events occurring through the close of audit field work in March 2015. The scope of this audit focused on the 1,157 estates we estimate that the BCPA was responsible for administering as of January 2014.

To obtain an understanding of the policies, procedures, and regulations governing the BCPA, we reviewed: Article 11 of the SCPA; the Guidelines; Section 207.63 of the Uniform Rules for NYS Trial Courts; Title 2, Section 72.1 of the New York Codes, Rules, and Regulations; Comptroller's Directive #6, "Travel, Meals, Lodging and Miscellaneous Agency Expenses;" and Comptroller's Directive #28, "Reporting Requirements for Public Administrators." We also reviewed the New York City Comptroller's Internal Control and Accountability Directives, Directives #1, "Principles of Internal Control," #11, "Cash Accountability and Control," and #18, "Guidelines for the Management, Protection & Control of Agency Information & Information Processing Systems." These directives were used as criteria in evaluating the BCPA's financial and operating practices.

We reviewed the prior New York City Comptroller's Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office (MH07-128A) issued on May 29, 2009, as well as the last independent audit report which covered Fiscal Year Ended June 30, 2009, and was issued on September 30, 2010.

To gain an understanding of the BCPA's critical financial and operating practices and assess the BCPA's internal controls, we interviewed BCPA officials regarding asset identification, collection, safeguarding, and distribution; estate accounting including the recording, documenting, and reporting of income and expenses transactions; bank account administration; and estate management, monitoring, and tracking. We also requested the BCPA's formal, written policies and procedures. The BCPA did not maintain formal, comprehensive policies and procedures. However, the office did provide us with a collection of informal procedures in the form of various memos and sample documents and forms. It should also be noted that on April 20, 2015, the BCPA provided us with a working draft of its new Policies and Procedures manual.

As previously detailed in this report, the BCPA cannot generate a reliable list of open estates from CompuTrust. Therefore, we compiled a population of open estates from: an auditors' inventory of hard copy estate files maintained in BCPA file cabinets, a BCPA inventory of hard copy estate files which included files maintained in its cabinets and files being worked on by its staff, and BCPA counsel inventories of hard copy estate files maintained in counsels' private office. We estimate that as of January 2014, the BCPA was responsible for administering 1,157 estates with a value of at least \$32.4 million. We randomly selected 50 estates from this population. According to CompuTrust, the 50 sampled open estates had a gross estate value of approximately \$4.2 million.

To determine whether BCPA identified, collected, or credited decedents' estates for assets, we looked for evidence of assets for our 50 sampled estates as follows:

- We reviewed BCPA estate files for documentation such as BCPA inspection reports, New York City Police Department Property Clerk Invoices, nursing home and guardianship final accounting reports, safe deposit opening reports, inquiry and confirmation letters, financial institution records and documents, insurance policies, income/estate tax returns, and appraisal reports.
- We reviewed BCPA mail logs, which record the nature, and when applicable the dollar value of decedents' mail. We determined the estate files contained documentation that potential assets indicated on the mail log were investigated and collected as necessary.
- We also independently searched for potential assets using the following databases: ACRIS public database of real property records; OSC public database of unclaimed funds; NYS-DMV database of automobiles, boats, and other motorized vehicles records; and LexisNexis.

We then reviewed CompuTrust trial balances and inventory records to ensure assets were accurately recorded, and identified assets that were not identified, collected, or credited to decedents' estates.

For the 50 sampled open estates, we obtained CompuTrust trial balance reports detailing 140 income transactions totaling \$4,206,348 and 256 expense transactions totaling \$3,438,390. We then determined whether the BCPA maintained supporting documentation for reported income and expenses in estate files. For income transactions, we checked whether the BCPA maintained documentation, such as appraisal reports, bills of sale, receipts, and checks, to support amounts recorded in CompuTrust. For expense transactions, we checked whether the BCPA maintained completed Disbursement Vouchers detailing the amount, reason, and review and approval for expenses, and attached supporting documentation, such as vendor invoices, to them.

To determine whether the BCPA competitively solicited and selected vendors as required by Section V of the Guidelines, we requested that the BCPA provide us with advertisements for outside vendors and the lists providers that lists vendors by category and specifies their usual fee.

To determine whether the BCPA settled estates in a timely manner, we calculated the length of time that the 50 sampled estates were open between the date they were first recorded in CompuTrust and January 23, 2014 (i.e., the date the list of cases in BCPA counsel possession was provided to us). We also determined whether the dates of Letters of Administration or Testamentary were properly recorded in CompuTrust. Specifically, we reviewed the Letters of Administration and Letters of Testamentary maintained in the estate files. We compared the dates of the earliest hardcopy letter in the file to the date recorded in CompuTrust.

To assess the BCPA's access controls for CompuTrust, we obtained from CompuTrust the "Bronx PA User Permission Levels as of 09-10-13," and "Bronx PA User Permission Levels as of 03-23-15" detailing user names and levels of access for each CompuTrust module. We reviewed the profile list to determine whether access to CompuTrust was appropriately restricted. Specifically, we determined whether: only active BCPA staff, counsel, and accountants had access to CompuTrust; BCPA staff, counsel, and accountants access was appropriate for their job responsibilities; and the BCPA established unique user accounts for each user.

To determine whether all payments made from the BCPA Suspense Account were reasonable, appropriate, adequately supported, and properly approved, we reviewed the Disbursement Journal, identified all payees, and quantified payments made to them. We then segmented this data into payees that were paid more than \$5,000; between \$500 and \$5,000; and less than \$500. We then judgmentally selected all non-payroll payees over \$5,000, and randomly selected four

non-payroll payees between \$500 and \$5,000. For sampled non-payroll payees, we examined all payments made and related invoices to determine whether expenses were reasonable, appropriate, adequately supported, and properly approved.

For Personnel Services payments made from the Suspense Account, we checked whether individuals receiving wages from the Suspense Account were also receiving payments from the City's payroll by reviewing a City Human Resource Management System payroll summary report. We also reviewed employees' W-2 forms to ensure all wages were properly reported. For business related expense reimbursements, we reviewed reimbursement forms and receipts to ensure that payments were reasonable, appropriate, adequately supported, and authorized.

To ensure that the BCPA properly secured estate funds with FDIC insurance and collateralization agreements backed by approved government securities as required by Section III (A)(5) of the Guidelines, we reviewed the BCPA estate account bank statements to determine whether balances exceeded FDIC insurance coverage limits. For amounts in excess of coverage limits, we requested collateralization agreements backed by approved government securities.

To assess whether the BCPA properly administered bank accounts, we reviewed the BCPA's June 2013 bank reconciliations, and the bank reconciliations for the last quarter of Calendar Year 2014 to determine whether the BCPA reconciled CompuTrust and bank balances and adequately explained and promptly made adjusting entries. We also checked whether the June 2013 bank reconciliations were signed by a preparer and independently reviewed.

Using the Disbursement Journals and bank statements for the Suspense and Estate accounts, we identified checks that were outstanding more than 60 days as of June 30, 2013 and determined whether the BCPA voided these checks. We quantified the number and dollar amounts of checks outstanding more than 60 days. We also obtained the Outstanding Check Register as of March 30, 2015 for both the Estate and the Suspense accounts to determine whether there were any checks outstanding for more than 60 days.

To determine whether the BCPA filed required audits and reports with oversight agencies as required, we requested from the BCPA copies of the most recently submitted reports.

As noted, the BCPA could not generate from CompuTrust reports on closed estates. Nevertheless, we obtained a listing of closed estates from CompuTrust. To identify other potential closed estates, we obtained CompuTrust Account Balances Reports for May 2013 and June 2013 and identified estates that were reported in May 2013 but not in June 2013. For estates that did not appear on Account Balances Reports for June 2013, we reviewed CompuTrust estate profile and trial balances to determine whether the estates were closed. We then determined whether the BCPA reported on its Statement of Closed/Settled Accounts for June 2013 all estates reported as closed by CompuTrust or identified as closed by the auditors.

Since the BCPA did not identify in CompuTrust service providers who should receive Form 1099s and distinguish in CompuTrust between service providers and estate distributees, we could not identify the total number of vendors who were not issued 1099s and the dollar amounts paid to them. Consequently, we performed a cursory review to determine whether the BCPA issued certain categories of service providers 1099s as required. We obtained from the BCPA reports detailing total amounts paid to payees from the Suspense and Estate accounts during Calendar Year 2012 and identified all payees paid more than \$600. From these lists, we identified certain categories of estate service providers including funeral homes, accountants, and attorneys. We then excluded incorporated service providers. We then obtained all IRS Forms 1099-MISC issued by the BCPA for Calendar Year 2012 and determined whether the BCPA issued 1099s to all applicable payees.

PUBLIC ADMINISTRATOR



BRONX COUNTY

FRANK C. RANDAZZO
PUBLIC ADMINISTRATOR

ROOM 336
851 GRAND CONCOURSE
BRONX, NEW YORK 10451-2979
(718) 293-7660
FAX: (718) 293-7851

ESTATE OF:

MATILDE B. SANCHEZ
DEPUTY PUBLIC ADMINISTRATOR

FILE NO:

The Bronx County Public Administrator's Office (the "BCPAO") Response to the Final Draft of City of New York Office of the Comptroller's ("OC") "Audit Report on the Financial and Operating Practices of the Bronx County Public Administrator's Office" (the "Audit Report", "Audit" or "Report"), dated June 11, 2015

Preface:

The BCPAO has reviewed the draft Audit Report of the Office of the Comptroller (OC) and strongly disagrees with significant portions of the Report, and in particular with any notion that the BCPAO has failed to carry out its fiduciary responsibilities in administering the estates under its charge. After a nearly two (2) year examination of the BCPAO by the OC it is the BCPAO's firm contention that the OC has perhaps identified less than \$5,000 in assets, out of the tens of millions of dollars in estate assets that the BCPAO administers each year, that the BCPAO had not properly collected. While the BCPA strives to be perfect in the administration of every under its jurisdiction it is inevitable that some mistakes will occur. The BCPA makes every effort to keep the number of these to a minimum and the dollar amounts involved as small as possible. Unfortunately, the BCPAO feels the subject Report is replete with misstatements, mischaracterizations and outright inaccuracies as to what if any mistakes might have been made. And after finally, and only just recently – on May 28, 2015 – speaking substantively and comprehensively (see below) with the OC staff that produced the Report as to their "preliminary draft" of same, it is the BCPAO's contention that the reason for these misstatements, mischaracterizations and inaccuracies is the OC staff's utter and complete failure to understand and appreciate, or if they did understand and appreciate it to then accept, the law that governs the practices and procedures of the Public Administrator's Offices, and to instead choose to inappropriately apply

totally inapplicable general accounting principles to the very unique processes and procedures of the BCPAO.

First, while the Report in fact rightly acknowledges that the processes and procedures of the BCPAO are governed primarily by both the Surrogate Court Procedure Act (the “SCPA”) and the New York State Surrogate Court-initiated *Guidelines for the Operations of the Offices of the Public Administrators of New York State*, the Report, again either intention or due to a lack of understanding, very significantly completely fails both to a) acknowledge the **primacy** of these two governing structures and b) categorically state, let alone explain in any meaningful way, that the “fiduciary duty” of the BCPAO to which the Report only blithely refers is to in all cases act solely **in the best financial interests** of the estate under its administration. The failure by OC staff to grasp this as the paramount duty of the BCPAO, or if it was grasped to then intentionally not utilize this as the basis of their analysis for the Report, renders the Report nothing more than a superficial exercise in criticizing, for unknown reasons, the excellent work of the staffs of the BCPAO and Counsels associated with it in administering the estates under their jurisdiction during the time period that is the subject of the Report.

Further, by for some inexplicable reason discussing them only in bits and pieces in several spread-out sections of the Report, and thus at a minimum downplaying them and at a maximum perhaps trying to hide them, the Report fails to set forth, in the necessarily clear and meaningful way, the following essential facts: that the most-often 3-member team of the OC audit staff that produced the Report began its near-daily work on the Audit in August of 2013, only 4 months into the start of the tenure of the current BCPA; that the period of time to which the Audit ostensibly pertains began in 2009, which is nearly **4 ½ years before** the start of said tenure; that the Audit has thereafter been ongoing for thus **nearly the entire tenure** of the current BCPA; that during this nearly 2 year period the OC staff responsible for the Report did not regularly seek from anyone associated with the BCPAO, and in particular from prior Counsel to the BCPAO, though these people were readily available to them and willing and even desirous to provide information, almost any contemporaneous explanations as to any questions they might have had, which explanations, if they had been sought and had been listened to, would in all likelihood have educated the OC, understandably unfamiliar with estate public-administration law and practices, and thus perhaps have saved a great deal of time and taxpayer dollars; that, instead, the OC staff chose to proceed blindly with its review, or in any case to proceed in secret; and that, because the subject Audit has been on-going during nearly the entire tenure of the current BCPA, and because it would thus have been difficult if not impossible to, in mid-Audit, implement any wholesale changes to processes and procedures such as might be recommended by the Report, the Report disregards this fact and unfairly gives the impression of an unwillingness on the part of the current BCPA to do so where appropriate.

And lastly, in response to the summary list of so-called “Audit Recommendations,” and other, similarly conclusory statements contained in the initial portions of the Report, the current BCPA responds as follows:

- As to having “comprehensive written procedures,” as the Comptroller’s Office is well aware, at the time of the commencement of the tenure of the current BCPA there was already in force

and effect in the BCPAO a bound series of detailed directives and memos, promulgated to and initialed by all relevant BCPAO staff as having been read and agreed to by them, governing the many duties, practices and procedures to be followed by BCPAO employees, as to, but not limited to, those specifically mentioned by OC staff of: asset identification, collection, safeguarding and distribution; estate accounting including the recording, documenting and reporting of income and expense transactions; and estate management, monitoring and tracking;

- As to establishing “asset identification policies and procedures and checklists detailing basic databases to search and provide for access to databases, including but not limited to: the New York City Department of Finance’s (DOF’s) ACRIS public database of real property records;; the Office of the State Comptroller (OSC) public database of unclaimed funds; and the NYS-DMV database automobiles, boats, and other motorized vehicles records (sic),” as the Comptroller’s Office staff is also well aware, and as is explained more fully herein, both BCPAO employees and current and former Counsels to the BCPAO had, at all times, full and unfettered access to, and made use of as was required and in the best interests of the estate under administration, specifically all of the databases listed by OC staff; and that whereas the City refused to budget for the BCPAO funds to avail itself of the expensive yet useful pay-database of *Lexis-Nexus* both current and former Counsel to the BCPAO nevertheless had access to and extensively utilized this database; and that the current BCPA, when he began his tenure, and with the City still not providing budget funds to do so, nonetheless utilized BCPAO Suspense Account funds to implement the use of the *CLEAR* database/search service from Thompson-Reuters;
- As to tracking “inquiry, confirmation, and collection letters to ensure that letters are sent, responses are received, necessary follow up action is taken, and ultimately, that funds are collected in a timely manner,” as the OC staff is also well aware, and as is explained more fully herein, with only very minimal staff the BCPAO nonetheless very effectively collected, and, most relevantly, in reporting in a multitude of ways and multiple times per year both the open cases under its administration and those that were closed during the time period covered by a given report, thus also regularly and routinely advised the numerous agencies that oversee it, **including the OC**, in effect the timeliness of, and the effectiveness with which, the BCPAO performed its collections, and not once did any of the supervisory agencies, **including the OC**, complain that the BCPAO was not effectively doing and/or tracking its collections;
- As to ensuring that “BCPA staff properly complete Disbursement Vouchers detailing the amount, reason, and review and approval for expenses, and attach supporting documentation to them,” as the OC staff is also well aware, and as is explained more fully herein, while there were what OC staff has said were lapses in performing each and every one of the above-described described steps for a given disbursement and/or not fully including the back-up documentation for a particular disbursement, with the BCPAO performing literally thousands of disbursements per year OC staff did not find **any** that it indicated were unlawful;

- As to the BCPAO selecting “vendors who are competitive with other vendors providing the same services,” as the Comptroller’s Office is also well aware and as is explained more fully herein, during the period of the subject Audit the BCPAO fully complied with the *Guidelines* as to this;
- As to the BCPAO ensuring that “suspense account expenses are reasonable, appropriate, adequately supported, and authorized” and OC staff’s clarification of this later in the Report as pertaining almost entirely to 1) the renovation of the offices of the BCPAO by the prior BCPA and 2) the reimbursement of BCPAO field investigators for their automobile expenses, as to the office-renovation, because this was done entirely by the prior BCPA the current BCPA is thus not able to comment on the process for selecting the vendors that did it or the appropriateness of the magnitude of the expenditure, except to say that in my one prior visit to the offices of the BCPAO, perhaps as many 7 years ago, the current BCPA saw the office to have old furniture, walls that appeared to have not been painted in many years, and, most importantly, what appeared to be computer and/or electrical wires hanging out of the ceiling, and the current BCPA has been told that condition persisted until the subject renovation, and as to the reimbursement of field-investigator automobile expenses with a flat \$30/day, as opposed to the method described by OC staff, the nature of BCPAO’s field-investigators’ automobile use often involves numerous trips per day, as to multiple estates, and to and from multiple estate-related addresses, such that to use valuable investigator time-resources to document and calculate the reimbursement for this travel would be both a great detriment to effective operation of the BCPAO and breach of the fiduciary duty to act in the best financial interests of the estates; and further, the City has failed to budget the BCPAO a car for investigator use and so this has left the BCPAO subject to the willingness of its field-investigators to use their own personal vehicles, with all of the risks inherent in this;
- As to the BCPAO ensuring that “estate funds are secured with FDIC insurance of collateralization agreements between BCPA and financial institutions which are backed by approved government securities,” as the Comptroller’s Office is also well aware, and as is explained more fully herein, the BCPAO has at all times complied with *Guidelines* requirements AND the specific direction of the New York City Department of Finance and the City Treasurer as to collateralization;
- As to the BCPAO immediately “submitting to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Office, and the Mayor outstanding audits when they are issued and thereafter, conduct and submit audits within prescribed timeframes,” as the Comptroller’s Office is also well aware, and as is explained more fully herein, with OC staff clarifying that this particular “Recommendation” pertains specifically to the prior BCPA’s failure to conduct certain SCPA Section 1109 audits of its operations the current BCPA, while at the same time undergoing the OC audit, has nonetheless completed one and nearly completed a second SCPA 1109 audit not done by his predecessor, and will in short order complete the remaining two outstanding 1109 audits;

- As to the BCPAO ensuring that “it submits to the Surrogate’s Court, State Attorney General, State and City Comptroller’s Office, and the Mayor accurate and complete reports of open and settled estates,” as the Comptroller’s Office is also well aware and as is explained more fully herein, the BCPAO has in fact submitted reports that are accurate and complete as determined by the New York City Department of Finance and that have without complaint been accepted as such by the OC;
- As to the BCPAO appropriately report “all vendor payments and employee wages to the IRS and State Tax authorities and issue 1099–MISC forms to vendors paid more than\$600 in a calendar year,” as the Comptroller’s Office is also well aware and as is explained more fully the BCPAO has fully complied with governing law as to this.

Responses to specific Findings:

Response to Finding that “The BCPA did not Maintain a Reliable Case Management System”

The BCPAO has long acknowledged that there are roughly 19,000 old, closed estates that are coded as “open” in the CompuTrust system. This is the result of estates not having properly been coded as “closed” by certain prior BCPA’s, from the date when the universally-utilized CompuTrust system was first implemented, in 1987. It is the understanding of the current BCPA that in approximately 2008 the BCPA at that time instituted a proper system of closing files but that this prior BCPA, and subsequent prior BCPAs, for unknown reasons but likely due to it being impossible or at least a monumental waste of limited resources to do so, did not undertake to re-classify as closed the over 19,000 improperly-coded cases in the CompuTrust system. Similarly, the BCPAO does not currently have staff sufficient to undertake the enormous and irrelevant task of coding as closed the nearly 19,000 estates in question. As such, this condition will persist until the BCPA is budgeted sufficient resources by the City to address the project.

Further, the BCPAO agrees with the OC that some files did not in the Computrust system set forth have the date that Letters of Administration were issued to the BCPAO, and the BCPAO is presently attempting to do so going forward. The BCPAO notes, however, that this has in absolutely no way impacted the ability of the BCPAO to administer estates nor involved a breach of fiduciary duty.

And lastly, the BCPAO does not agree that a periodic review of the actual Letters of Administration to compare the date of the Letters to the date of the letters as entered in CompuTrust is a productive use of limited staff resources. Moreover, the above-noted going forward procedure to ensure that the date is recorded upon receipt of the letters will alleviate the need for a periodic review.

Response to Finding that “The BCPA Failed to Properly Account for Estates Assets”

The statements underlying this Finding are the most glaring, egregious, disingenuous, unfair and reckless misstatements, mischaracterizations and inaccuracies contained in the Report. The BCPAO takes this strident position because this Finding and the inaccurate and unfair nature of same was discussed extensively with OC staff at the audit exit conference and, despite OC staff’s acknowledgment at the exit conference that, after the BCPAO demonstrated the problems with this Finding, OC staff would change its language and contention, OC staff has nonetheless chosen to maintain virtually its original language on this Finding, which has forced BCPAO to conclude that OC staff has chosen to intentionally fabricate the situation and mislead any reader of the Report.

As previously stated by the BCPAO, OC staff has identified less than \$5,000 in estate assets that the BCPAO admittedly failed to identify, collect and credit to an estate. To illustrate how misleading the \$4.9 million figure put forth OC staff truly is, as OC staff is well aware fully \$2.4 million of that figure pertains to a parcel of real estate that the BCPA has been administering for several years and the proceeds of the sale of which were deposited into the relevant estate’s bank account upon the sale of the property in March of 2015. As such, and OC staff is well aware, any contention that the BCPAO failed to identify, collect and credit this asset to the estate is not absurd.

OC staff is also incorrect that the BCPA made the same failings as to real estate in 10 other estates. The part of real estate that is an estate-asset is only the equity in the property (i.e. its sale price less any mortgages, liens and expenses of sale). Therefore, a parcel of real property has a asset value of \$0 as an estate asset if it is worth \$1 million but has a \$1.1 million mortgage against the property. As an estate fiduciary, the BCPA has the obligation to make a determination as to whether the potential equity of a property warrants the resources and expenses of conducting a formal sale, or if the property appears to have little or no equity (because the obligations attached to the property will exceed or come close to exceeding the value), to allow the property to be foreclosed upon by the lien holders. Contrary to OC staff’s assertion to the contrary however, allowing a property to be foreclosed upon and awaiting any potential foreclosure surplus, is not abandoning the asset. Rather, the PA has in many instances received foreclosure surpluses, representing the estate’s equity in the property. And were the BCPA to act as OC staff proposes, and incur auction and/or other expenses for real estate that has no equity, the BCPAO would be breaching its fiduciary duty by wasting the other estate assets, if there are any, to pay for these expenses. And by extension, if the BCPAO were to incur sale expenses when there is insufficient equity to justify the same, and there are no other estate assets, the City, and ultimately the taxpayers, would bear these costs.

Further, as to the approximately \$645,000 in cash and personal property averred by OC staff as not being collected, this consists almost entirely of assets that do not belong to decedent’s estate because they had joint owners or beneficiaries, or were assets that were already collected by prior fiduciaries in estates where the BCPA is the second estate administrator. The BCPA disputes that such assets are properly recordable in the CompuTrust system. Rather, the BCPA believes that recording such non-assets in CompuTrust, prior to confirming that the asset is, in fact, payable to the estate and does, in fact, exist, would lead to far more errors than it would prevent. And moreover, the inaccurate

Computrust records generated by the proposed system would be discoverable litigation documents and would expose the BCPA to baseless accounting objections, unnecessarily delaying the closing of estates, thereby breaching the BCPA's fiduciary duty to the individual estates under administration.

The following example illustrates the lengths to which OC staff has gone to try to create the appearance of fault on the part of the BCPA: A significant portion of the \$645,000 in cash and personal property relates to an estate file that was closed in February of 2007, a date prior to the involvement of the current BCPA, current and prior Counsel, and even the prior BCPA; thus this estate is clearly outside of the parameters the Audit; and yet OC staff's persistent reliance upon this long-ago closed estate file, as it relates to this particular Finding and others below, over the BCPA's repeated, express objections, serves to undermine the legitimacy and credibility of the OC's findings.

Most importantly however, the BCPAO has properly collected the assets and the estate assets are properly "accounted for." All estate assets are reviewed multiple times, at multiple points in time, during the accounting process to ensure that all assets are properly identified, collected and "accounted for." The BCPA's estate accountings are also subject to review by various outside parties whose interests are not aligned with those of the BCPA. At no time during at least the last six (6) years, has any party to a BCPA accounting established a failure of the BCPA to collect or account for an asset of a decedent's estate.

Also, the BCPA notes that no mail forwarding request has ever been made to have the United States Postal Service to forward mail to Counsel or any other address other than the address of the BCPAO. If Counsel, in dealing with the administration of an estate informed another attorney or person or entity involved in an administration to send something directly to Counsel then this was likely a matter of efficiency and in no way negatively impacted any estate.

The OC has errantly read the *Guidelines* as requiring the BCPAO to obtain written confirmation from every financial institution that a possible estate asset is no longer in existence or payable to a beneficiary. The Guidelines impose no such requirement. Rather, they merely require the BCPAO to maintain whatever written responses it does actually receive in the estate files and to make note of oral conversations. The BCPAO has done exactly that. OC staff provided the BCPAO with a multi-page list of assets for which the BCPAO did not have written responses to the financial institution in question. However, after it received this the BCPAO provided the OC with the explanatory information and proof as to virtually each and every asset, which proof came from and thus had been contained in the estate files. OC staff simply missed this proof. And yet they still strangely maintain that the BCPAO has somehow failed somehow as to these assets. The BCPA obviously cannot force banks, brokerage firms and other financial institutions to provide written responses to BCPAO inquiries setting forth such things as an account is payable to a beneficiary or no longer exists. But despite this OC staff failed to accept this actual and practical reality of administering an estate.

Further, OC staff also takes issue with Counsel removing files from the offices of the BCPA, to work on those files. However, not allowing Counsel to as needed remove files would create an unworkable

situation that interferes with the legal work required in these matters and harms the estates under administration. And OC staff has thus not surprisingly made any suggestion as to how Counsel would or could actually perform the legal work on each estate without a permanent presence in the Office of the BCPAO, which, by Surrogate Court rule, is not allowed.

Further, the Audit did help the BCPAO discover that it did have a process issue with recording in Computrust real estate and other estate assets belonging to estates that the BCPA becomes involved in only through legal proceedings commenced by outside parties (as opposed to estates where the BCPA is the original petitioner for letters of administration). As such, the BCPAO has modified its processes for entering such property into the Inventory module of Computrust such that this should no longer be an issue.

Further, the Report also notes that when assets are distributed from one BCPAO estate to another BCPAO estate (for e.g.: a distribution from the estate of a mother to the estate of her post-deceased son), the documents supporting the transfer have historically only been maintained in the estate file for the estate making the transfer and not the estate receiving the transfer. While the BCPAO has always actually been in possession of all of the supporting documents in each instance, the BCPA intends to going forward also maintain copies of the supporting documents in both estate files.

And lastly as to this Funding, the BCPA also intends to have its investigators make greater efforts to, despite it being extremely difficult to do so in the Bronx environment where they work, nonetheless solicit independent witnesses to their visits of residences, while maintaining the security of the contents.

Response to Finding that “The BCPA Failed to Ensure Estate Expenses Were Authorized and Appropriate”

The Report also inaccurately asserts that it found 146 transactions that “lacked adequate supporting documentation and evidence of proper supervisory review and approval.” At no time during the nearly two (2) years that OC staff conducted the audit did anyone indicate that they could not locate supporting documentation for an expense or solicit assistance in locating the same in an estate file. Rather, OC staff, which consistently demonstrated a lack of understanding of basic estate administration and related issues and applicable law, silently forged ahead while saying absolutely nothing concerning this issue.

Then, on May 29, 2015, for the very first time, following the audit exit conference that took place on May 28, 2015, OC staff provided the BCPA with a spreadsheet ostensibly detailing the 146 transactions in question. The 146 transactions were from a total of eleven (11) estates, which means that the OC found no issues with 39 of the 50 sampled estates.

Of the 146 questioned transactions, 27 of those transactions were from the previously mentioned estate file that was closed in February of 2007, a date prior to the involvement of the current BCPA, current and prior Counsel, and even the prior BCPA. This file and the transactions by others related thereto, are

clearly outside of the time period covered by the Audit. And yet again, the OC's persistent reliance upon a long-ago closed estate file, as it relates to this particular finding and others below, over the BCPA's repeated, express objections to same, serves to undermine the legitimacy and credibility of the OC's findings.

But more specifically, after receipt of the aforementioned spreadsheet, the Deputy BCPA, BCPAO office staff and prior Counsel, as quickly as possible (as that was all the time the OC's approach afforded the BCPA) undertook a review of all but the one long-ago closed estate file. Of the 119 transactions that were properly the subject of the audit, supporting documentation was located in the estate files for all but 18 of the transactions. And as to some of these, prior Counsel, and so the BCPAO also, maintains that several these items of documentation were in fact located in one of the subject estate's files and have only gone missing only since OC staff's review. Additionally, most of the 18 transactions that lacked supporting documentation were for *di minimus* amounts. And moreover, nearly all of the transactions that were missing "evidence of proper supervisory review and approval" were paid on dates before the prior BCPA implemented a system for prior approval by the BCPA or Deputy BCPA of expense transactions. And finally, to further illustrate the inadequacy of the OC's review of the files in question, for one particular estate file, prior Counsel located in that estate file "supporting documentation and evidence of proper supervisory review and approval" for each and every one of the 22 transactions OC staff claims it could not locate documentation to support.

After conducting the quick review, the BCPA attempted to bring to the attention of the OC's staff that it had clearly missed significant documentation related to the transactions in question and suggested that the OC hold-off on issuing the Report until OC staff could review the located documentation. This suggestion was ignored by the OC's staff however.

The Report also notes that the BCPAO's 1109 auditors have previously cited the BCPA for not requiring disbursement vouchers for all expense checks. However, this misrepresents the position of the outside auditors. Rather, the BCPAO's 1109 auditors have made clear to the BCPA that a disbursement voucher is only required when a check request is not supported by an approved bill, which serves the same function as a disbursement voucher. And moreover, after the 1109 auditors made their finding, the prior BCPA did in fact implement a voucher and pre-approval procedure as recommended.

In light of all of the above, the BCPAO respectfully but forcefully disagrees with the OC's finding and strongly believes that the finding does not accurately reflect the condition of the BCPA during the audit period or at the present time.

Response to Finding that "The BCPA Failed to Document that it Properly Selected Vendors"

The BCPAO maintains that it followed the required advertising and selection procedure for Vendors, but will endeavor in the future to maintain better records as to this. The BCPA also notes that price is not the determining factor in the selection of Vendors, as the *Guidelines* clearly provide that "the vendors chosen must have the complete confidence of the PA based upon their prior working relationship or general reputation and standing in the community."

Response to Finding that “The BCPA Failed to Ensure that Estates Were Charged Proper Accounting Fees

The accounting firm utilized by the BCPA was selected by the prior BCPA in 2009. While the current BCPA was not able to locate any records related to that selection, it is noted that despite the annual publication of the required notice soliciting other accounting firms, the BCPA has not received a single response to the advertisement from another accounting firm. Moreover, the preparation of fiduciary income tax returns is a highly specialized area of tax practice and the current and prior Counsel of the BCPA are in a far better position than the PA to evaluate the quality of the accounting work and reasonableness of the accounting fees. And finally, in the last six (6) years, no party to a BCPA judicial accounting filed in the Surrogate’s Court has ever filed objections to an accountant’s fee listed an accounting. Yet despite these facts, the report asserts, without any explanation, that the accounting fees were not reasonable. The BCPAO could not more strongly disagree. OC staff has presented absolutely no documentation to support the position that an accounting firm with similar experience, that of having represented Public Administrators in the City for more than 35 years without a single adverse tax audit result, would charge lower fees than the extremely reasonable fees of the present accounting firm.

The Report also takes issue with the fact that the accounting firm provides services to the estates, but also performs separate services for the BCPA itself. The BCPA acknowledges that this system, implemented by the prior BCPA, is far from perfect. However, it does not create a conflict of interest as the OC alludes. The accounting services performed for the BCPA itself are very limited. The BCPA is fully prepared to retain a separate accounting firm to perform services for the BCPA itself, as soon as the City budgets the BCPA sufficient funds to employ that second accounting firm.

The Report also asserts the BCPAO’s outside accounting firm performed inadequate work as related to certain IRS Form 1099s that are claimed to have been filed with incorrect information. First, as discussed in more detail below, the BCPA (and all estate fiduciaries) are not legally required to file Form 1099s for estate expenses because the United States Supreme Court has established that the administration of an estate is not “engaging in a trade or business”. Somewhat ironically however, if not for the stubborn insistence of OC staff to the contrary, the PA would not have even undertaken to file the 1099s in question and there would have been no penalties.

Further, the incorrect information on the 1099s in question was not the fault of the BCPAO or the accounting firm. Rather, when the Surrogate’s Court appoints a Guardian ad Litem (GAL), the Court appoints the attorney and not the law firm that “employs” the attorney. The BCPAO requests the social security number of the GAL before releasing the guardian’s fee check. However, many GAL’s understandably do not want to provide their personal social security numbers, both for security reasons and because they intend to deposit their fee checks into their law firm’s bank accounts. Therefore, despite the BCPA’s request for their social security number, many GALs instead provided their firm’s employer identification. This was the source of the penalties for filing inaccurate 1099s and not due to

any negligence on the part of the BCPA or the accounting firm. The BCPA does not agree that requesting a Form W-9 from the GALs would have made any difference on this issue.

Further, OC staff provided the BCPA with a breakdown of the \$1,200 in penalties for 2011. To provide context to the OC audit finding, in 2011, the City was actually assessed 7,191 penalties, totaling \$329,240, only 12 of which, totaling \$1,200, were related to the BCPAO. The penalties included 5,381 attributable to CUNY and 1,029 attributable to ACS. Most importantly, when the BCPA and accounting firm met with the OC on the issue of these penalties the accounting firm and OC employee were in agreement that the penalties were improperly assessed based upon the BCPA's Form 1099s. The OC employee indicated that the OC would be seeking the reversal of the penalties. Bizarrely then, the OC Audit staff now takes to task the BCPAO for those penalties, when another division of the OC previously agreed the penalties were improperly assessed in the first place.

And lastly, the Report also maintains that the accounting firm "did not properly perform bank reconciliations." However, the OC has provided the BCPA with absolutely nothing to establish that the reconciliations were performed incorrectly other than they were not performed in a manner that the OC has unilaterally deemed to be proper. It must be said that, in contrast to the OC, the BCPAO's independent auditors have not taken issue with the manner in which the monthly reconciliations are performed. And it should also be noted that the accounting firm no longer prepares the reconciliations on the accounts holding estate funds, and they are instead prepared by a BCPA staff member and then reviewed by the outside accounting firm.

Response to Finding that "The BCPA Did Not Take Necessary Steps to Identify Distributees and Ensure that They Received Estate Assets"

The BCPA notes that this finding is based yet again on the same estate file that was opened in 2004 and closed in February of 2007, a date prior to the involvement of the current PA, current and prior Counsel, and even the prior Public Administrator. As such, the OC's issuance of this particular Finding can only be intended to unfairly malign the reputation of the BCPAO. The actions that the OC takes issue with occurred a decade ago and were performed by persons that the OC is well aware are no longer affiliated with the BCPAO. And any failure of the Counsel to the BCPA at the time, who has since pled guilty to crimes surrounding his tenure, has absolutely nothing to do with the period of the subject Audit.

Moreover, as was exhibited throughout the Audit, this Finding reflects a very basic misunderstanding by OC staff about how estate administration works, in that assets that have surviving beneficiaries or joint owners thereon are NOT estate assets and the BCPA has absolutely no authority or obligation to administer those assets.

The current BCPA, current Counsel and prior Counsel are obviously in no position to comment upon what the BCPA and counsel in office during 2004-2007 may or may not have done in connection with the estate in question and so the BCPAO will not further comment as to the substance of this Finding, other than to state that since the involvement of the subject prior Counsel to the BCPAO there has never been a single instance where a known necessary party was not served with required legal notice. And finally,

as OC is staff is well-aware, prior Counsel to the BCPAO has reviewed the estate file in question and determined that no action is required as to the Court record.

Response to Finding that “The BCPA Did Not Appropriately Restrict Access to CompuTrust”

No non-staff member had or has access to make entries or changes to the CompuTrust System. While the information contained in CompuTrust was never at risk of theft or loss, it could be made even more secure. The BCPA is working to further restrict access to certain areas of CompuTrust that most BCPA staff members do not require and to eliminate old, no longer utilized, user names. However, the BCPA has a limited number of user names that it may allow pursuant to its agreement with CompuTrust, such that group names for attorneys and accountants offices may still be necessary.

Response to Finding that “Suspense Account Expenses Totaling \$105,150 were not Reasonable, Appropriate, and Adequately Supported”

The office renovation project that is the basis of this finding was conducted by the prior BCPA, without the participation or involvement of the prior BCPA Counsel, and, obviously therefore, the current BCPA and Counsel had no involvement with that renovation. The current BCPA has been unable to locate the prior BCPA’s records as to any bidding out of the renovation and therefore has no basis upon which to respond to this aspect of this Finding.

The Report also takes issue with the BCPA paying one of its investigators a flat daily rate for using his car in connection with residence investigations for the individual estates rather than reimbursing the investigator based upon actual mileage. However, the nature of BCPA residence investigations is fluid and requires multiple destinations in a single day. The BCPAO has determined that the time and cost of calculating mileage to each destination would be difficult, time-consuming and a waste of resources. The BCPA investigators generously offer to use their personal vehicles for investigations and are paid a flat rate to cover both mileage and extensive wear-and-tear on these vehicles. As such, the BCPAO strongly disagrees that the actual mileage standard properly applies to the unique situation of the BCPA investigator. And the BCPAO further states that, if the OC disagrees, it may impress upon the City to budget the BCPA a vehicle, and funds to cover fuel and maintenance costs, to be utilized for investigations.

Response to Finding that “The BCPA Did Not Properly Administer Bank Accounts

As the OC is well-aware from the dozens of explanations the BCPAO has provided on this issue, the BCPA has at all times adhered to Guidelines and to the New York City Department of Finance (DOF) prescribed structure of using the City tax identification number for its estate fund accounts, and thus has, per the DOF, maintained these estate funds, as are all City public funds, as fully and completely collateralized by the City’s collateral agreements with the depository banks. And moreover, and as the OC is also well - aware that, during this entire time, this structure was registered with the OC. Only in April of 2015, did the BCPA receive instruction from DOF to maintain the estate funds under the BCPAO’s own TIN and

also utilizing the individual estates' tax identification numbers. As such, the BCPA is in the process of implementing that system, which should better comport with the current desire of the OC.

The OC takes issue with the manner in which the accounting firm prepared the reconciliations. The accounting firm performed the monthly reconciliations pursuant to its agreement first reached with the prior BCPA. Again, it must be made clear that, in contrast to the OC, the BCPA's independent annual auditor has never taken issue with the manner in which the monthly reconciliations were performed. Again, the OC has provided the BCPA with absolutely nothing to establish that the reconciliations were performed incorrectly other than they were not performed in a manner that the OC has unilaterally deemed to be proper.

Further, prior Counsel and the accounting firm have together reviewed the reconciliations for the months in question and, directly contrary to the OC's assertions, the accounting firm did in fact detect the \$131,069 and account for the same on the monthly reconciliations. Further, the BCPAO also confirmed that the accounting firm detected the amount in question and notified the appropriate BCPA staff member, who in turn notified the former BCPA, who was still in office in January 2013. The former BCPA specifically directed the staff member not to draw a check to move the amount in question from the suspense/Imprest account into the bank account holding estate funds. Instead, the former BCPA instructed the staff person to have the bank electronically transfer the funds directly from account-to-account. According to the BCPA staff person, what ensued was a dialogue with the bank that lasted months and that only concluded when the bank ultimately informed the staff persons that it would not transfer the funds. However, the accounting firm properly continued to carry the amount in question each month on the reconciliation, until it disappeared from the monthly reconciliation in August of 2013. Ultimately, the BCPA drew a check and moved the funds into the proper account at that time. The current BCPA was never informed as to this issue or its resolution and only learned of the situation when the correcting check was drawn.

And lastly, the BCPAO acknowledges that it often carries significant numbers of un-cashed checks in its system. This is a product of the large number of checks issued by the office and the large number of estates under administration. Most importantly, no funds have been lost in connection with these checks. The BCPA is working to shorten the time-frame for the voiding and replacement of un-cashed checks, but is, of course, limited by the staff resources at its disposal.

Response to Finding that "The BCPA Failed to Properly File Required Financial and Operating Reports With Various Oversight Authorities"

The BCPA acknowledges that the office is behind on the mandated independent annual audits. However, this is a condition that the current BCPA inherited from the prior BCPA. The 2011 annual audit was completed in early 2015. This 2011 audit had been commissioned by the prior BCPA, but it was not begun, let alone completed, by the end of the tenure of the prior BCPA in March of 2013. Thus, it was undertaken and commenced by the current BCPA in the summer of 2013, shortly after being appointed. After work began on it in the summer of 2013, in August of that year the OC commenced the within audit that lasted nearly two (2) years. Thereafter, issues of resource management and the possibility of

duplicate needs for records and the risk of records being commingled, confused and/or lost due to the fact of the OC's Audit made it virtually impossible to conduct as annual audit while this OC's audit was proceeding.

Additionally, the BCPA's 2011 audit required the production, review and explanation of information and materials from 4 years ago, often by BCPA staff that were not employed by the prior BCPA at that time and that thus neither worked on those materials nor utilized the processes and procedures in place at that time. And finally, it also required the extensive and, arguably, entirely voluntary cooperation of prior Counsel to the BCPAO. All of this combined to make the audit process as to 2011 extremely difficult and time-consuming. However, with the conclusion of the OC audit at hand, the 2012 audit is already commenced and the 2013 audit is already commissioned and will begin immediately upon completion of the 2012 audit. The BCPA expects to be complete with the 2012 and 2013 audits by then end of the current year, and if the 2014 audit is not concluded by the end of the current year, it will be concluded shortly thereafter.

Further, the BCPAO strenuously repudiates any notion that its reports on open estates were not filed or were inaccurate. The OC Report claims that the reports on open estates filed by the BCPA must be erroneous because, as noted above, there are roughly 19,000 old, closed estates that are coded as "open" in the CompuTrust system. The OC takes the position that these estates should have been included in the reports. However, an estate is not open simply because it is coded as "open" in CompuTrust. An estate is open if it is in the process of being administered. The BCPAO and Counsel (and during the time that the prior BCPA was in office, prior Counsel) maintain lists of the letters estates under administration, which are the estates required to be reported on the reports of open estates. The OCA has not identified a single open estate that was omitted from these reports.

Further, the BCPAO also strenuously refutes any notion that its reports on settled estates were not filed or were inaccurate. The OC claim that these reports were inaccurate because there were estates "not reported in whole or in part" on the reports on settled estates. Upon the request of the BCPA the OC provided the identity of the offending estates and prior counsel reviewed the same. As to these, the OC has utilized entirely disingenuous language because, based upon their own audit records, the OC did not find any estates that were not reported "in whole" (i.e. left off of the reports when they should have been included). Instead, the OC apparently based its entire finding upon only two estates that having been closed previously, reopened for the collection of additional assets, and then re-closed.

The OC's complaint is that in the month when both estates were re-closed, the BCPA only reported the legal fees and commissions that were paid in connection with the additional assets, rather than those paid in connection with the entire estate. However, according to prior Counsel, this method of reporting was implemented years ago, while prior counsel was representing the New York County PA, at the specific direction of the New York City Department of Finance (DOF) department that oversees the commissions and net estate deposit checks. DOF wanted the monthly report on settled estates to reflect only the expenses on the additional assets so that the checks they were receiving at that time would match the report. Therefore, if the OC is unhappy with the manner of the reporting, blame does not lie with the BCPA.

The BCPA also notes that the referenced OC directive on the monthly report on settled estates does not address how a PA should report estates that close, then re-open, then close again. The report requires the “date the estate was closed”. Therefore, it is reasonable to treat expenses in a re-opened estate separate from expenses that were paid the first time it was opened.

Most troubling to the BCPAO however is that, in all the years that the CO, as one of the agencies that receives a copy of the report, has received the BCPA’s month report on settled estates, the OC has never once indicated to the BCPA that it believed the BCPA was improperly preparing the report. It could appear that the CO was less interested in receiving the reports in the manner it believed correct than it was in attempting to unfairly malign the BCPAO in it’s the subject Audit Report.

Most importantly, despite the OC’s misleading finding language, the BCPAO did NOT fail to report any information whatsoever in connection with the two estates upon which the OC has entirely relied upon. Rather, the BCPAO just reported the required information on separate reports filed in two different months. And the BCPA further notes that the method of reporting the OC apparently advocates would actually result in double or multiple reporting of the same information.

The OC also takes issue with the BCPA not filing Form 1099s with the Internal Revenue Service for amounts paid to vendors from the individual estates under administration. This issue has been one of longstanding disagreement between the OC and BCPA, as well as, Public Administrators in other counties.

The OC claims that the BCPA may thereby be allowing persons that received payments from the estates to under-report their income. First and foremost, contrary to the clear implication made by the OC, the Internal Revenue Service and New York State Department of Taxation and Finance have absolutely no oversight over the BCPA. And second, the BCPA has absolutely no fiduciary obligation to ensure that payees of the various estates report all of their income to the taxing authorities. And third, the BCPA calls into question the suggestion that taxpayers only report their income if they receive a Form 1099.

There is no dispute that, under the Internal Revenue Code, if the BCPA is engaged in a “trade or business” it must file a Form 1099 for payments made to its vendors. The BCPA is, however, not engaged in a “trade or business” and as such there is no requirement to file a Form 1099. The BCPA does not dispute that when the Office of the BCPA makes payments to vendors from City funds that it is engaged in the trade or business of operating a governmental office and it is required to issue a Form 1099.

However, this is separate and distinct from payments made to vendors when acting as the administrator of a particular estate utilizing the funds belonging to that estate. The United States Supreme Court, in United States v. Pyne, Executors, clearly held that the administration of an estate is not engaging in a trade or business and therefore the BCPA has absolutely no legal obligation to file a Form 1099 for a payment made from an estate. The only exception the Supreme Court made to this rule is if the decedent actually owned and operated a business (for e.g. a hardware store), and the estate continues

to operate that business. The BCPA and prior Counsel also consulted several highly-regarded tax attorneys and they all confirmed this position. Plainly stated, the OC is incorrect as a matter of law that the BCPA is required to file Form 1099s for payments from the estates under administration.

Moreover, the OC has also misapplied the applicable income tax regulations to claim that the BCPA should itself, using its own employer identification number, rather than the employer identification numbers of the individual estates, file the Form 1099s. The OC has presented the PA with a non-binding general information letter that it relies upon for this position. First, the letter specifically states that it “provides general information only” and is “advisory only and has no binding effect”. Second, the letter simply regurgitates Internal Revenue Code sections and underlying regulations in this area as related to a specific set of facts presented by the OC, which was in itself inaccurately presented in the first place. In short, the BCPA is not a representative payee of the estates under its administration because the estates themselves make the payments utilizing their own funds. The BCPA is simply the estate fiduciary, the instrument by which the checks are drawn and signed. This does not serve to convert the BCPAO into a representative payee, which an actual review of the examples provided by the Internal Revenue Code regulations reflects.

But despite all of the above, the BCPAO is willing to relent and file Form 1099s for the payments made from the individual estates, even though it has absolutely no legal obligation to do so. However, the BCPA will only file the Form 1099s in accordance with actual law, not the OC’s misunderstanding thereof, and issue the 1099s from the individual estates under administration, rather than under the BCPA’s own employer identification number, as the BCPA does NOT pay those expenses from City funds. And as to this, the BCPAO has been unable to determine how to pay for the cost of issuing the Form 1099s, because, as discussed above, the City has yet to budget the BCPA funds to hire a second outside accounting firm to perform such tasks. The BCPA also does not have unused staff hours to perform this function and the City recently declined the BCPA’s request for an additional staff salary line.

Response to Statement on “Other Matters - Police Property Bags”

The OC is well-aware the situation that the surrounding the police property bags dates back to 2008 and was not a result of actions of the current BCPA or prior BCPA, who have both worked to alleviate the situation. The BCPA has no further comment beyond that the situation is addressed.

Respectfully yours,


Frank C. Randazzo
PUBLIC ADMINISTRATOR