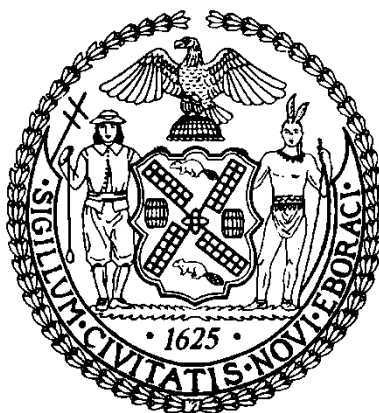


# **CITY OF NEW YORK OFFICE OF THE COMPTROLLER**

**John C. Liu  
Comptroller**

## **FINANCIAL AUDIT**

**Tina Kim  
Deputy Comptroller for Audit**



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

*FN12-076A*

**June 29, 2012**

<http://comptroller.nyc.gov>



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

John C. Liu  
COMPTROLLER

June 29, 2012

**To the Residents of the City of New York:**

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

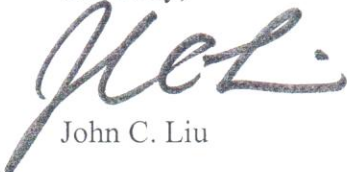
The NYCPA is responsible for administering the estates of individuals in New York County who die intestate (without a will) or when no other appropriate individual is willing or qualified to administer the estate. As the estate administrator, the NYCPA makes funeral arrangements, collects debts, pays creditors, manages decedents' assets, searches for possible heirs, and files tax returns on behalf of decedents. We audit public offices such as this as a means of ensuring that their operating practices are consistent with applicable laws and regulations.

The audit found that the NYCPA generally adhered to the administrative requirements for managing the estates. However, we found that the NYCPA did not issue all required 1099-MISC forms to its vendors, resulting in underreporting \$1,133,196 to the Internal Revenue Service; charged the Public Administrator's fee and the legal fees to closed informal estates in excess of the amount allowed; did not ensure that an annual independent Certified Public Accountant audit was performed as required; did not update written standard operating procedures for the proper management of estate accounts; and did not independently review its bank reconciliation statements.

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

If you have any questions concerning this report, please e-mail my audit bureau at [audit@comptroller.nyc.gov](mailto:audit@comptroller.nyc.gov).

Sincerely,



John C. Liu

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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 New York County Public Administrator's Office**  
**FN12-076A**

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**AUDIT REPORT IN BRIEF**

Public Administrators (PAs) are responsible for administering the estates of individuals in the county who die intestate (without a will) or when no other appropriate individual is willing or qualified to administer the estate. The general functions of the PA's Offices are governed by the New York State Surrogate's Court Procedures Act (SCPA). In addition, PAs are required to comply with New York City Comptroller's Directive #28 which establishes reporting requirements for PAs. The New York County Public Administrator (NYCPA) handles estates of such decedents in New York County.

Some of the functions of the PA's Offices are funded by the City through budget appropriations. The June 30, 2011, City Comptroller's Comprehensive Annual Financial Report, reported for NYCPA \$845,388 in revenues collected on behalf of the City and \$1,126,469 in appropriations received from the City consisting of \$518,887 for Personal Service expenditures and \$607,582 for Other Than Personal Service expenditures.

The objectives of this audit were to determine whether the NYCPA properly executed its fiduciary responsibilities including safeguarding of estate assets, accurately reporting all revenue and expenses, and managing all estate activities in accordance with Article 11 of the SCPA and other applicable State and City regulations.

**Audit Findings and Conclusions**

The NYCPA generally adhered to the administrative requirements of the SCPA and the Administrative Board for the Offices of the Public Administrator (Administrative Board Guidelines) for managing the estates. However, we found instances of non-compliance relating to certain practices. Specifically, the NYCPA:

- Did not issue all required 1099-MISC forms to its vendors, resulting in underreporting \$1,133,196 to the Internal Revenue Service (IRS).

- Charged the PA administrative and legal fees to closed informal estates in excess of the amount allowed.
- Did not ensure that an annual independent Certified Public Accountant (CPA) audit was performed as required.
- Did not update written standard operating procedures for the proper management of estate accounts.
- Did not independently review its bank reconciliation statements.

### **Audit Recommendations**

To address these issues, we make eight recommendations, including that NYCPA:

- Issue IRS 1099-MISC forms to vendors paid with estate funds.
- Ensure that IRS 1099-MISC forms are issued to all individuals with 1099-reportable income (payments made to individuals who provide a service relating to the NYCPA operations, including services provided on behalf of the estates).
- Properly calculate the PA administrative and legal fees in accordance with the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators pursuant to Article 11 §1128.
- Have an independent CPA conduct annual audits that comply with SCPA requirements.
- Select the independent CPA firm in accordance with Comptroller's Directive #5, "Audits of Agency Programs and Operations," which provides guidance on this topic.
- Revise and update all written policies and procedures to adequately and specifically address the current duties and procedures to be followed by key employees responsible for the handling of the decedents' estates from receiving the report of death to closing out the estates.
- Require the preparer to sign and date the bank reconciliation.
- Ensure that all monthly reconciliations are reviewed and signed off by a supervisor.

## **NYCPA Response**

In their response, NYCPA officials partially disagreed with the auditors' interpretation of some of the issues, but stated that they would take steps to address the report recommendations. Specifically, NYCPA officials continued to maintain that "[t]he NYCPA, when acting as administrator of an estate, is not a person 'engaged in a trade or business' under IRC § 6041 and the IRS' instructions for Form 1099-MISC." However, they stated, "[t]he NYCPA will consider the auditor's recommendation(s) regarding 1099-MISC reporting requirements."

NYCPA also stated, "[t]he auditors' interpretation of the Guidelines adopted by the Administrative Board effective October 3, 2002 is incorrect." Contrary to the NYCPA's interpretation, the 2002 Guidelines very clearly state that a 6 percent limitation is applied to any estate. Therefore, the NYCPA should have used this standard as a basis for its fees. Instead, the NYCPA chose to institute its own schedule which caused small estates to be overcharged. However, NYCPA officials agreed that the new Guidelines adopted by the Administrative Board, effective May 1, 2012, require that legal fees charged to small estates be calculated as a flat 6 percent of gross assets, and stated they have complied with the new Guidelines in all informative accountings filed since May 1, 2012.

Despite the areas of disagreement, NYCPA agreed to take steps to address all eight recommendations.

## INTRODUCTION

### **Background**

There are five PAs in New York City, each of whom serves one of the City's five counties and reports to the county Surrogate's Court. PAs are appointed by the Surrogate Court Judge of the county they serve and shall continue in office until removed. Each PA is responsible for administering the estates of individuals in the county who die intestate (those who die without a will) or when no other appropriate individual is willing or qualified to administer the estate. In this capacity, the PA makes funeral arrangements, collects debts, pays creditors, manages the decedents' assets, and searches for possible heirs. It is also responsible for filing tax returns on behalf of the decedents.

The SCPA requires that the PA: deposit all commissions and costs received in the City treasury; make all books, records, and documents available to the New York City Comptroller for examination; file monthly account information on estates that have been closed or finally settled; and have an annual audit of the office performed by a CPA, the cost of which is to be funded by the City. PAs must comply with the requirements of the Administrative Board Guidelines. These guidelines include: rules for record keeping; cash, property, and other asset management; maintenance of suspense accounts; payment of fees; and the initial inspection of a decedent's premises. In addition, PAs are required to comply with the reporting requirements under the New York City Comptroller's Directive #28.

PAs are required to submit a final accounting of all estate transactions to the Surrogate's Court of the county when an estate with assets having gross values of more than \$500 has closed or is in the process of being closed. A final accounting report documents all income and expenses associated with an estate and provide a record of the estate's financial transactions to aid the Surrogate's Court in its oversight of the PA's offices. If additional assets have been received after an estate is closed and final accountings have been submitted to the Surrogate's Court, the PAs reopen an estate in order to process the additional assets. A final accounting covering the period of the administration of those additional assets is prepared and filed with the Surrogate's Court indicating the transactions associated with the additional assets.

The City provides some funds for the operation of the PA's offices. To fund expenses that are not covered by the City's budget appropriations, the Administrative Board Guidelines authorize the PA to charge each estate an administrative fee of up to one percent of the gross value of each estate and to maintain a suspense account. These fees are deposited in a separate bank account and are used to supplement the PA budget. The Administrative Board Guidelines state that suspense account funds are to be used to pay expenses "necessary for the proper functioning of the office's operations and for the administration of estates." The funds can also be used as a loan to estates to pay expenses prior to the conversion of estate assets to cash.

The June 30, 2011, City Comptroller's Comprehensive Annual Financial Report, reported for NYCPA \$845,388 in revenues collected on behalf of the City and \$1,126,469 in appropriations received from the City consisting of \$518,887 for Personal Service expenditures and \$607,582 for Other Than Personal Service expenditures.

## **Objectives**

The objectives of this audit were to determine whether the NYCPA properly executed its fiduciary responsibilities including safeguarding of estate assets, accurately reporting all revenue and expenses, and managing all estate activities in accordance with Article 11 of SCPA and other applicable state and City regulations.

## **Scope and Methodology Statement**

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

The scope of this audit was Fiscal Year 2011. 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 NYCPA officials during and at the conclusion of this audit. A preliminary draft report was sent to NYCPA officials and discussed at an exit conference conducted on June 6, 2012. On June 11, 2012, we submitted a draft report to NYCPA officials with a request for comments. We received a written response from NYCPA officials on June 25, 2012. In their response, NYCPA officials partially disagreed with the auditors' interpretation of some of the issues, but stated that they would take steps to address the report recommendations. Specifically, NYCPA officials continued to maintain that "[t]he NYCPA, when acting as administrator of an estate, is not a person 'engaged in a trade or business' under IRC § 6041 and the IRS' instructions for Form 1099-MISC." However, they stated, "[t]he NYCPA will consider the auditor's recommendation(s) regarding 1099-MISC reporting requirements."

NYCPA also stated, "[t]he auditors' interpretation of the Guidelines adopted by the Administrative Board effective October 3, 2002 is incorrect." Contrary to the NYCPA's interpretation, the 2002 Guidelines very clearly state that a 6 percent limitation is applied to any estate. Therefore, the NYCPA should have used this standard as a basis for its fees. Instead, the NYCPA chose to institute its own schedule which caused small estates to be overcharged. However, The NYCPA officials agreed that the new Guidelines adopted by the Administrative Board, effective May 1, 2012, require that legal fees charged to small estates be calculated as a flat 6 percent of gross assets, and stated they have complied with the new Guidelines in all informative accountings filed since May 1, 2012.



Despite the areas of disagreement, NYCPA agreed to take steps to address all eight recommendations.

The full text of their response is attached as an addendum to this report.

## FINDINGS AND RECOMMENDATIONS

Our audit found that the NYCPA generally adhered to the administrative requirements of the SCPA and the Administrative Board Guidelines for managing the estates. However, we found instances of noncompliance relating to certain practices. Specifically, NYCPA:

- Did not issue all required 1099-MISC forms to its vendors, resulting in underreporting \$1,133,196 to the Internal Revenue Service.
- Charged the PA administrative and legal fees to closed informal estates in excess of the amount allowed.
- Did not ensure that an annual independent CPA audit was performed as required.
- Did not update written standard operating procedures for the proper management of estate accounts.
- Did not independently review its bank reconciliation statements.

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

### **Form 1099-MISC Payments Not Reported to the Internal Revenue Service**

For Fiscal Year 2010, the NYCPA failed to issue 1099-MISC forms to 40 individuals for payments totaling \$1,133,196 in our scope period. This amount included payments of \$822,384 to the NYCPA's attorneys who provide legal services for the administration of the estates as shown in Table I.

**Table I**  
**Total Amount of IRS 1099-MISC Not Issued**

<b>Provided Service</b>	<b># of Individuals</b>	<b>Total Payments</b>
Legal Services:		
NYCPA Attorneys	2	\$822,384
Other Legal	22	239,122
Other Services	16	71,690
<b>Total</b>	<b>40</b>	<b>\$1,133,196</b>

Based on § 6041 of the Internal Revenue Code (IRC), “a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make a return of information with respect to that payment if the person performs management or oversight functions with connection with the payment.” Further, Comptroller's Directive #28 also states that “if a Public Administrator is the payor, for purposes of information reporting, for payments to a service provider on behalf of an estate that it administers, the Public Administrator is required, by §6041 of IRC, to issue Form 1099-MISC to that service provider in its own name

and taxpayer identification number (TIN), and must aggregate amounts paid to the service provider during the year on behalf of the estate.”

As noted, for the third time, this issue appears as a repeated finding. In a previous audit (MD07-062A) of the NYCPA financial and operating practices issued June 27, 2007, the NYCPA was cited for not issuing the required IRS forms to 102 individuals. Additionally, in that report, reference was made to the report prior (FP00-190A, issued June 25, 2003), which stated that 100 individuals did not receive Form 1099 either.

Although the NYCPA contends that her office is “not engaged in a trade or business, does not appoint (hire), supervise or manage the payees and therefore is not subject to the requirement to issue a 1099 to the[se] payees,” the procedures required by the rules and regulations that govern the PA offices state otherwise. The NYCPA’s responsibilities, as outlined in the SCPA, mainly involve the proper management and oversight functions for the administration of an estate and the payment for services provided to the estate.

Consequently, NYCPA is not in compliance with Comptroller’s Directive #28 reporting requirements. In addition, NYCPA is in violation of IRC §6041. According to the Congressional Research Service report issued on August 6, 2010, for payments made after December 31, 2011, the information reporting requirements contained in §6041 have been expanded. Under the amended provisions, “a failure to file a timely and accurate information return with the IRS can result in monetary fines; criminal sanctions may be applicable where such failure is willful. Payers may also be penalized for failing to provide a timely and accurate copy of an information return to their payees.”

### **Recommendations:**

The NYCPA should:

1. Issue IRS 1099-MISC forms to vendors paid with estate funds.
2. Ensure that IRS 1099-MISC forms are issued to all individuals with 1099-reportable income (payments made to individuals who provide a service relating to the NYCPA operations, including services provided on behalf of the estates).

**NYCPA Response:** In their response, NYCPA officials stated that “[t]he NYCPA issues all appropriate 1099-MISC forms to vendors who perform services directly for the NYCPA. The NYCPA respectfully disagrees with the City auditors’ interpretation of the reporting requirements under Internal Revenue Code § 6041 and Comptroller's Directive #28. The NYCPA, when acting as administrator of an estate, is not a person ‘engaged in a trade or business’ under IRC § 6041 and the IRS’ instructions for Form 1099-MISC. The NYCPA will present this issue to its independent CPA auditor during the course of the upcoming annual audit, which will commence in August, 2012. The NYCPA will consider the auditor's recommendation(s) regarding 1099-MISC reporting requirements.”

**Auditor Comment:** We reaffirm our recommendation that the NYCPA should issue 1099-MISC forms to vendors it paid with estate funds. Contrary to the NYCPA's position, the NYCPA meets the IRS § 1.604-1(e) definition of the entity that is responsible for the management and oversight of the estates it administers. Therefore, if the NYCPA exercises these functions, it would be the payor for information reporting purposes pursuant to § 1.604-1(e) of the regulations.

### **Fees Charged to Informal Estates Were Inconsistent with SCPA Guidelines**

NYCPA charged inappropriate PA administrative and legal fees to closed estates valued at less than \$30,000. Our sample of 30 closed informal estates found that the NYCPA charged more than the allotted 1 percent fee for 20 out of 30 estates. According to the Guidelines of the Administrative Board, NYCPA is allowed to charge an administrative fee of 1 percent of the gross estate value at closing. The NYCPA's practice is to charge a minimum administration fee of \$15 regardless of the size of the estate. However, we found that by charging a minimum fee, the PA overcharged small estates.

Additionally, the NYCPA charged legal fees to closed informal estates based on a different interpretation of the Guidelines. According to the Interim Report and Guidelines of the Administrative Board approved in 2002, "...the Public Administrator shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a fee computed under the... sliding scale..." which is a maximum of 6 percent of the gross value of the estate for the first \$750,000. However, while the NYCPA applied the SCPA 2002 compensation schedule to formal estates, it did not consider this schedule to be applicable to informal estates. Instead, the NYCPA instituted its own compensation schedule for informal estates. Our sample test of 30 closed informal estates found that the NYCPA allowed its legal consultants to charge a fee that exceeds the 6 percent on 11 of the 30 estates reviewed.

### **Recommendation:**

The NYCPA should:

3. Properly calculate the PA administrative and legal fees in accordance with the Report and Guidelines of the Administrative Board for the Offices of the Public Administrators pursuant to Article 11 §1128.

**NYCPA Response:** In their response, NYCPA officials stated, "The auditors' interpretation of the Guidelines adopted by the Administrative Board effective October 3, 2002 is incorrect. Those Guidelines were intended to apply only to estates with gross assets more than the 'small' estate threshold, where formal letters of administration were issued and a judicial accounting was filed. This is made clear by the Report recently issued by the Administrative Board along with the new Guidelines effective May 1, 2012. The Report explains, at page 4, that legal fees charged in small estates were not consistent among the New York City Public Administrators, and '[i]t is for this reason that the Board found it appropriate to extend the uniform fee schedule [i.e., the October 3,

2002 Guidelines referred to by the auditors] to small estates administered by the Public Administrators within New York City’.”

**Auditor Comment:** Contrary to the NYCPA’s own interpretation, the 2002 Guidelines very clearly state that the 6 percent limitation is applied to any estate. Therefore, the NYCPA should have used this standard as a basis for its fees. Instead, the NYCPA chose to institute its own schedule which caused small estates to be overcharged. Nevertheless, we are pleased that the NYCPA is now willing to correct its interpretation and properly adhere to the Guidelines.

### **Independent Audit Not Performed**

The NYCPA did not ensure that an independent CPA audit was conducted as required. As a result, it failed to comply with Article 11, §1109, of the SCPA. According to the SCPA, “Each public administrator shall conduct annually an audit of his office by an independent certified accountant. . . . The audit shall be conducted in compliance with generally accepted government audit standards, and shall include a review of the performance of the office with respect to guidelines and uniform fee schedules established by the administrative board. The cost of such audit and report shall be included annually in the budget of the City of New York.” Although the City budget for Fiscal Year 2011 included a total of \$20,003 designated for audit services, the NYCPA did not ensure such an audit was conducted. More significantly, the NYCPA has not had an independent CPA audit conducted in at least the past four years. Consequently, the NYCPA did not comply with the SCPA’s administrative requirements by failing to properly report and disclose the financial information of the estates it administers. In addition, Directive #28 requires that the independent CPA report be sent to the Comptroller’s Office. NYCPA did not comply with this requirement.

This condition was cited in a previous audit (MD07-062A) of the NYCPA financial and operating practices issued June 27, 2007. During the course of this audit, NYCPA officials stated that they had suspended contracting with a CPA for an annual audit in order for the City Comptroller’s Office to perform this audit. However, our audit was announced in September 2011. At the time, the NYCPA was already behind its required deadline for issuing an independent CPA report. In addition, NYCPA did not provide any evidence that it attempted to procure the services of a CPA to perform the audit.

### **Recommendations:**

The NYCPA should:

4. Have an independent CPA conduct annual audits that comply with SCPA requirements.
5. Select the independent CPA firm in accordance with Comptroller’s Directive #5, “Audits of Agency Programs and Operations,” which provides guidance on this topic.

**NYCPA Response:** “The NYCPA has scheduled an audit by an independent CPA auditor to commence in August, 2012. The audit has been delayed so as not to conflict with the audit of the New York City Comptroller's Office.”

**Auditor Comment:** The NYCPA should not delay its independent CPA audit any further. As noted, the NYCPA has not conducted its requisite independent audit since 2008. Therefore, we continue to emphasize the importance of this oversight compliance requirement.

### **NYCPA Does Not Maintain Current Written Policies and Procedures**

The NYCPA has not updated its written policies and procedures for the handling of decedents’ estates since 1998. Current policies and procedures are necessary to provide the administrative staff with guidance on the process of approving, authorizing, verifying, reconciling, and reviewing the operating performance of the estate they administer. For example, policies and procedures currently kept by the NYCPA reflect FDIC coverage of \$100,000. However, the ceiling changed to \$250,000 in 2008. Additionally, NYCPA policies state that informal estates are valued at under \$20,000. However, the informal estate ceiling was changed, effective January 2009, to \$30,000. Without updated policies, staff may be confused as to the correct functions they are to take and there is a potential risk that the staff may not be carrying out all functions required in the best interest of the estates.

#### **Recommendation:**

The NYCPA should:

6. Revise and update all written policies and procedures to adequately and specifically address the current duties and procedures to be followed by key employees responsible for the handling of decedents’ estates from receiving the report of death to closing out the estates.

**NYCPA Response:** The NYCPA agreed. “The NYCPA will update its written policies and procedures to include all policy and procedural changes in the recently adopted Guidelines of the Administrative Board for the Office of the Public Administrator, effective May 1, 2012.”

**Auditor Comment:** We are pleased that the NYCPA agreed with this recommendation.

### **Bank Reconciliation Statements Were Not Signed and Independently Reviewed**

The NYCPA did perform bank reconciliations for their estate and suspense accounts in Fiscal Year 2011. However, the bank reconciliations lacked the proper signature of the preparer and were not independently reviewed by a supervisor. Because there is no segregation of duties, the NYCPA should ensure the reconciliations have supervisory approval. The New York State

Office of the State Comptroller's, *New York State Accounting System User Procedures Manual* states, "...all monthly reconciliations should be reviewed and signed by a supervisor that did not participate in the reconciling function." A supervisory review of bank reconciliations is a necessary internal control procedure that enhances accountability over cash assets. Consequently, the NYCPA is not ensuring that it has a proper system of checks and balances to safeguard the assets of the estates.

**Recommendations:**

The NYCPA should implement proper internal controls by requiring:

7. The preparer to sign and date the bank reconciliation.
8. Monthly reconciliations to be reviewed and signed off by a supervisor.

**NYCPA Response:** The NYCPA agreed. "The NYCPA has adopted the auditors' recommendations regarding bank reconciliation statements, and is now following their recommended procedures."

**Auditor Comment:** We are pleased that the NYCPA agreed to implement our recommendations.

## DETAILED SCOPE AND METHODOLOGY

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

The scope of our audit was Fiscal Year 2011. To obtain an understanding of the procedures and regulations with which the NYCPA must comply, we reviewed Article 11 of the SCPA; the Administrative Board Guidelines; Comptroller's Directive #1, "Principles of Internal Control"; Comptroller's Directive #28, "Reporting Requirements for Public Administrators"; NYCPA's SOPs and other applicable federal, State, and City laws, rules, and regulations. We interviewed NYCPA staff to gain an understanding of the office's practices relating to the handling of the estate and suspense-account funds. In addition, we interviewed NYCPA officials and conducted a walk-through of NYCPA's financial accounting system, Compu-Trust, which is used to manage the estate accounts and financial transactions of NYCPA.

To assess NYCPA internal controls applicable to our audit objectives, we evaluated the information obtained in the above-mentioned interviews and reviewed office operating procedures. We also examined and conducted tests of NYCPA record-keeping practices to determine the reliability of the controls in these areas.

To assess NYCPA compliance with Administrative Board Guidelines procedures for handling estate accounts, we selected a sample of 20 formal closed estates with gross estate values of at least \$30,000, for a total sample value of \$12.4 million; this sample was selected from a population of 47 estates, valued at \$21 million. Additionally, we selected a sample of 30 informal closed estates with a total gross estates value of \$44,418, which was randomly selected from a population of 445 estates valued at \$933,758. Informal estates are classified as estates valued as less than \$30,000.

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

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

To determine whether the NYCPA maintained adequate controls over estate administration, we reviewed the supporting documentation for each sampled estate. To ensure that all estate transactions were properly recorded, we traced the supporting documentation for



each sampled estate to the Trial Balance Report, which details all income and expense transactions made for individual estates. In addition, we determined whether inquiry letters regarding the decedent's assets were sent to the decedent's financial institutions and other institutions (such as nursing homes). We also determined whether the NYCPA correctly charged the estates for legal fees, Finance Administrator's costs and commissions, and NYCPA commissions.

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

To determine whether the investigators followed the Administrative Board Guidelines when conducting investigations of decedents' residences, we obtained copies of the Investigator's Report prepared for all sampled estates requiring residence searches. We reviewed the Investigator's Reports to determine whether two NYCPA investigators searched the decedents' residences, whether an independent witness was present at the time of the search, and whether the investigators sealed all entrances after their search. We also determined whether logs were maintained reflecting visits to the decedents' residences and whether detailed inventory lists were prepared identifying all items removed from the decedents' residences. In addition, for decedents' residences that contained furniture items, we determined whether an independent expert certification was obtained by the NYCPA indicating that all property of value was removed from the decedents' residences before being released.

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

To determine whether jewelry items secured at the NYCPA office were adequately accounted for and to verify their existence, we traced the items listed on the inventory list and appraisal sheets for 15 estates randomly selected to the items stored in the safe and storage room.

We determined whether the NYCPA had procedures to identify and track reportable IRS Form 1099-MISC payments and determined whether the NYCPA correctly reported all calendar year 2010 Form 1099-MISC payments to the IRS.

We determined whether an annual audit of the NYCPA was conducted by an independent CPA, in accordance with the SCPA, and that a copy was submitted to the City Comptroller's Office. We also determined whether the NYCPA filed the required monthly, semi-annual, and annual reports with the Surrogate's Court, State Comptroller's Office, and City Comptroller's Office. We reviewed previous audit reports of the NYCPA entitled, *Audit on the Financial and Operating Practices of the New York County Public Administrator's Office* (MD07-062A, issued June 27, 2007, and FP00-190A, issued June 25, 2003) to determine whether there were any recurring issues.



# Public Administrator

## County of New York

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

JOY A. THOMPSON, *Deputy Commissioner*  
*Deputy Public Administrator*

June 25, 2012

Tina Kim, Deputy Comptroller  
City of New York  
One Centre Street, Rm. 1100  
New York, NY 10007-2341

Re: Audit Report on the Financial and Operation Procedures of the New York County Public Administrator's Office FN12-076A

Dear Ms. Kim:

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

If you have any questions regarding this Response you may contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ethel J. Griffin", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ethel J. Griffin

**RESPONSES OF THE NEW YORK COUNTY PUBLIC ADMINISTRATOR  
TO AUDITORS' RECOMMENDATIONS**

**RESPONSE TO RECOMMENDATION CONCERNING  
FORM 1099-MISC REPORTING**

The NYCPA issues all appropriate 1099-MISC forms to vendors who perform services directly for the NYCPA. The NYCPA respectfully disagrees with the City auditors' interpretation of the reporting requirements under Internal Revenue Code § 6041 and Comptroller's Directive #28. The NYCPA, when acting as administrator of an estate, is not a person "engaged in a trade or business" under IRC § 6041 and the IRS' instructions for Form 1099-MISC.

The NYCPA will present this issue to its independent CPA auditor during the course of the upcoming annual audit, which will commence in August, 2012. The NYCPA will consider the auditor's recommendation(s) regarding 1099-MISC reporting requirements.

**RESPONSE TO RECOMMENDATION CONCERNING  
FEES CHARGED TO INFORMAL ESTATES**

The administration and legal fees charged by the NYCPA to informal (or "small") estates, as defined in Surrogate's Court Procedure Act ("SCPA") § 1301, are not "inconsistent" with the SCPA or the Guidelines adopted by the Administrative Board of the Offices of the Public Administrators.

The NYCPA charges an administration fee of 1% of gross estate assets to all estates, pursuant to SCPA § 1106, to help pay its miscellaneous office expenses. When the gross assets of an estate are less than \$1,500, the NYCPA charges a minimum administration fee of \$15. The auditors state that this minimum fee is "inappropriate".

The \$15 minimum administration fee was approved by both Surrogate judges in the 1980's and has been assessed since that time. In the many audits conducted by the New York City Comptroller's Office of the NYCPA over the past 25 years, no comment has ever been made regarding this minimum fee. The NYCPA believes that the \$15 fee – which does not come close to covering the actual costs involved in opening and administering an estate – has been authorized by the Court and is properly charged to estates under \$1,500.

Legal fees for counsel to the NYCPA in small estates have been calculated since the 1980's according to a Schedule of Fees which was approved by both Surrogate judges. The auditors state that this Schedule of Fees is "inconsistent" with the sliding scale of legal fees adopted by the Administrative Board for the Offices of the Public Administrators, effective

October 3, 2002. The New York City Comptroller's Office has made no prior comment regarding this Schedule of Fees in the two audits it has conducted of the NYCPA since 2002.

The auditors' interpretation of the Guidelines adopted by the Administrative Board effective October 3, 2002 is incorrect. Those Guidelines were intended to apply only to estates with gross assets more than the "small" estate threshold, where formal letters of administration were issued and a judicial accounting was filed. This is made clear by the Report recently issued by the Administrative Board along with the new Guidelines effective May 1, 2012. The Report explains, at page 4, that legal fees charged in small estates were not consistent among the New York City Public Administrators, and "[i]t is for this reason that the Board found it appropriate *to extend the uniform fee schedule* [i.e., the October 3, 2002 Guidelines referred to by the auditors] to small estates administered by the Public Administrators within New York City."

In response to the auditors' recommendation, the NYCPA obtained the opinion of the current counsel to the Administrative Board. The Board's counsel stated that the sliding scale of legal fees in the October 3, 2002 Guidelines was intended to apply only to formal estates. This opinion was provided to the auditors.

Finally, the NYCPA obtained an affirmation from Surrogate Renee R. Roth, who was Surrogate in New York County from 1983 through 2008, and was a member of the Administrative Board at the time the October 3, 2002 Guidelines were drafted and issued. Surrogate Roth states that the Schedule of Fees charged by the NYCPA in small estates was approved by the Surrogate judges in the 1980's and has been in effect since that time. Further, Surrogate Roth states that the October 3, 2002 legal fee Guidelines were never intended to apply to small estates. Surrogate Roth's affirmation is available to the auditors upon request.

The NYCPA agrees that the new Guidelines adopted by the Administrative Board, effective May 1, 2012, require that legal fees charged to small estates be calculated as a flat 6% of gross assets. The NYCPA and her counsel have complied with the new Guidelines in all informatory accountings filed since May 1, 2012.

#### RESPONSE TO RECOMMENDATION CONCERNING INDEPENDENT AUDIT NOT PERFORMED

The NYCPA has scheduled an audit by an independent CPA auditor to commence in August, 2012. The audit has been delayed so as not to conflict with the audit of the New York City Comptroller's Office.

#### RESPONSE TO RECOMMENDATION CONCERNING WRITTEN POLICIES AND PROCEDURES

The NYCPA maintains written policies and procedures which provide proper guidance to administrative staff.

The NYCPA will update its written policies and procedures to include all policy and procedural changes in the recently adopted Guidelines of the Administrative Board for the Offices of the Public Administrator, effective May 1, 2012.

**RESPONSE TO RECOMMENDATION CONCERNING  
BANK RECONCILIATION STATEMENTS**

The NYCPA has adopted the auditors' recommendations regarding bank reconciliation statements, and is now following their recommended procedures.