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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

September 28, 2005

Honorable Lee L. Holtzman
Chairman
Administrative Board for the Offices
Of the Public Administrators
821 Grand Concourse - Rm. 317
Bronx, NY 10451

Mr. Gary Gotlin
Public Administrator
130 Stuyvesant Place
Staten Island, NY 10301

Re: Report 2005-F-13

Dear Chairman Holtzman and Mr. Gotlin:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article III of the General Municipal Law, we have followed up on the actions taken by officials of the Administrative Board for the Offices of the Public Administrators (Administrative Board) to implement the recommendations in our audit report, *Administrative Board for the Offices of the Public Administrators, Richmond County Public Administrator, Selected Aspects of Estate Administration* (Report 2003-N-5).

Background, Scope and Objective

Section 1001(8) of the Surrogate's Court Procedure Act (the Act) holds the Public Administrators (PA) responsible for administering the estates of county residents who die intestate and either left no known heirs or leave heirs who are not qualified or willing to administer the estate. Headed by a Public Administrator, the Office of the Public Administrator also administer an estate if neither the executor nor any eligible beneficiary named in the decedent's will is able or willing to serve. A 13-member Administrative Board for the Offices of the Public Administrators set the policies for the Public Administrators activities. Five members are surrogate court judges appointed by the State appellate judges; three members are appointed by the State's chief administrative judge; two are selected by the president of the State bar association; and one each are appointed by the State Comptroller, the State Attorney General; and the president of the State surrogates' association.

In New York City (City) the County surrogate judges appoint both Public Administrator and their Counsels.

The Office of the State Comptroller (OSC) and the New York State Attorney General have conducted joint reviews of Public Administrator operations twice, in 1987 and 1992. Their 1987 joint report identified significant deficiencies and questionable practices in all Public Administrator offices in the City. Similar findings were reported in 1992. In 1995, the Administrative Board promulgated Guidelines for the Operations of the Public Administrators' Offices in New York State (Administrative Guidelines), which requires the Public Administrators to establish a case management system for tracking the administration of each estate. They also deal with office procedures and record keeping, cash management, property management, and other administrative functions. In 1996, OSC again reviewed Public Administrator activities and identified instances of estate values being understated, the lack of required audits, the payment of legal fees based on a percentage of estate assets rather than the value of the services provided, and unsupported expenses. As of March 31, 2005, the Richmond County PA had 257 open estates valued at \$4.5 million.

Our initial audit report issued on January 13, 2004 with a scope period of January 1, 2001 to March 6, 2003 found that the Richmond County Public Administrator needed to ensure that it obtained affidavits of legal services from its Counsel, that they complied with the Act's requirements, and the fees charged were commensurate with the services provided. In some cases commissions payable to the City were calculated incorrectly and not remitted timely, and indicated estate disbursements were not verified or documented adequately. We concluded that, because of these and other weaknesses, operations were not carried out in accordance with the Act and Administrative Guidelines. The objective of our follow up, which was conducted in accordance with generally accepted government auditing standards, was to assess the extent of implementation as of June 22, 2005 of the 16 recommendations included in our initial report.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State, several of which are performed by the Division of State Services. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. In addition, the Comptroller appoints members to certain boards, commissions and public authorities, some of whom have minority voting rights. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our opinion, these management functions do not affect our ability to conduct independent audits of program performance.

Summary Conclusions and Status of Audit Recommendations

The Richmond County Public Administrator has made significant progress in correcting most of the problems we noted in the initial audit. As our audit tests revealed some degree of exception with established procedures in the recommendations we categorized as partially implemented, we believe there is still some room for improvement. Of the 16 audit recommendations, 12 recommendations have been implemented and 4 recommendations have been partially implemented.

Follow-up Observations

Recommendation 1

Require the Public Administrator's Counsel to prepare detailed affidavits explaining how legal fees were established.

Status - Implemented

Agency Action - The Administrative Board promulgated that the PA shall require their counsel to support their compensation with an "affidavit of legal services setting forth the services rendered, time spent, and the method or basis by which requested compensation was determined." We sampled five estates closed in January 2004 and February 2005, and noted less detailed affidavits of legal services were prepared for 3 estates valued at less than \$20,000. For the two estates valued at more than \$20,000 or more the detailed affidavits were prepared. It is the PA's practice to prepare less detailed affidavits of legal services for estates valued at less than \$20,000 because the preparation time allowed for the affidavit of legal service may be a billable cost. We agree with the Public Administrator's position that it is not cost effective to prepare a detailed affidavit of legal services for estates valued at less than a predetermined amount.

Recommendation 2

Verify that the legal fees charged by the Public Administrator's Counsel are reasonable and commensurate with the services provided.

Status - Implemented

Agency Action - The PA provided the Report and Guidelines of the Administrative Board of the Public Administrator pursuant to the Surrogate Court Procedure Act 1128 approved November 13, 1995, revised October 3, 2002. In the absence of extraordinary circumstances, the PA shall require their Counsel to limit their request for compensation in any estate as follows:

<u>Gross Value</u>	<u>Percentage</u>
First \$750,000	6.0
Next \$500,000	5.5
Next \$250,000	5.0
Next \$500,000	4.5
Next \$3,000,000	3.0
Over \$5,000,000	1.5

We reviewed 21 legal fees that were paid from the estates and noted they were within the scale of the maximum fee. Our review of the document contained within the files for each

estate did not reveal any legal fees we reviewed that were excessive. In addition, we noted all were approved by the Surrogate Judge as appropriate.

Recommendation 3

Verify that the commission due to the New York City Department of Finance is calculated accurately.

Status - Implemented

Agency Action - The PA documented that the errors noted in the initial report were corrected and the proper amounts deposited with the New York City Department of Finance. In addition, we reviewed the commission calculations for the six estates that did not initially have zero balances and were closed during the months of February 2004 and January 2005. The review showed that the commissions due to the New York City Department of Finance were calculated correctly.

Recommendation 4

Establish adequate written procedures for reviewing the calculation of commission income.

Status - Implemented

Agency Action - The PA established the following written guidelines for calculations of commissions on estates valued over \$100,000 as follows:

- 5% of the first \$100,000.00
- 4% of the next \$200,000.00
- 3% of the next \$700,000.00
- 2.5% of the remainder

In addition, the written guidelines stipulate checks should be made to the Finance Administrator of the City of New York; copy of check goes in the file for the appropriate estate; and original checks deposited on a monthly basis.

Recommendation 5

Collect the underpaid commission income of \$1,547 (\$3,207 - \$1, 660) due to the Richmond County Public Administrator.

Status - Implemented

Agency Action - The PA provided correspondence demonstrating on April 12, 2004, it remitted check #2278 for \$1,547 to the Finance Administrator - City of New York for the underpayment.

Recommendation 6

Verify that estate disbursements are related directly to the settlement of the estates.

Status - Implemented

Agency Action - We reviewed all 68 checks issued for January 2005 disbursements including whether invoices were initialed and approved and other documentation supported the transactions. Where vendor invoices were not available, the transactions were supported by court settlements, Letter of Administration, or payroll checks issued to a non-City payroll employee working on PA activities. Of the 68 transactions reviewed, 66 transactions were related to the settlement of the estate and two transactions were for payroll checks.

Recommendation 7

Establish written procedures for verifying the accuracy of estate related expenses. Verify that expenses charged to decedent estates are calculated correctly and supported by sufficient documentation.

Status - Implemented

Agency Action - The PA provided the written guidelines established for payment of estate expense either from estate funds or from the suspense account. The guidelines included for invoices received by mail or hand delivered that the invoice/bill be reviewed by the Public Administrator and, if acceptable, stamped with the approval stamp of "Work Completed - Payment Approved." The invoice bill is then given to the person responsible for paying the bill for the PA to review and for payment. After payment is made, copies of check and invoice get filed in the file of the appropriate estate. We verified that these guidelines were being followed.

Recommendation 8

Deposit commissions with the New York City Department of Finance on a monthly basis.

Status - Partially Implemented

Agency Action - We determined from a PA provided monthly listing and supporting documentation for the 12 months March 2004 through February 2005, deposits were not made in the months of April 2004, June 2004 and December 2004. Commissions for these months were combined with the deposit made in the following month.

Recommendation 9

Establish written procedures for the timely deposit of commissions into the New York City Department of Finance's account.

Status - Implemented

Agency Action - The PA provided the written guidelines which described very detailed steps regarding recordkeeping, storage, and timely depositing of commission checks.

Recommendation 10

Verify that all invoices are being reviewed adequately before they are paid.

Status - Implemented

Agency Action - For the month of February 2005, we reviewed all 18 disbursements from the PA's Suspense Account. We reviewed a copy of the cancelled check and the invoice or other document attesting to the authenticity of the transactions. There were no exceptions.

Recommendation 11

Verify that all disbursements can be justified with an estate or business reason.

Status - Partially Implemented

Agency Action - The Deputy Public Administrator complied with the audit recommendation by completing a PA Form for Reimbursement identifying specific travel and other reimbursable costs. However, the PA continued to charge a flat \$15.00 daily rate for the use of his personal car for business purposes. The PA did provide his diary and a second log detailing, by date, business expenses, miles traveled and the reason for the travel. The PA indicated his actual cost exceeds the \$15.00 daily rate that was charged. We had no other audit exception with the disbursements made from the suspense account.

Recommendation 12

Establish written procedures for handling suspense account transactions.

Status - Implemented

Agency Action - The PA provided written guidelines for handling estate as well as suspense account procedures. The guidelines provide if a check is from the suspense account (no estate funds available at time of bill payment), a copy of both the check and invoice goes into the appropriate estate file as well as the file marked PA Administrative Expense Account Receipts for the appropriate year. Payment is then noted on the Administrative Account Invoice for the appropriate estate so funds can be reimbursed from individual estates when and if funds become available.

Recommendation 13

Reimburse the suspense account promptly for all estate-related disbursements if the estate has funds available.

Status - Partially Implemented

Agency Action - While the PA provided guidelines requiring that suspense account transactions be reimbursed when funds become available, our sample of 14 applicable checks issued for February 2005 suspense account transactions identified three instances when this did not occur appropriately: they were 8 days late; 47 days late and 72 days late. The remaining 11 disbursements were associated with estates that did not have any funds to reimburse the suspense account.

Recommendation 14

Continue to ask New York City to provide sufficient funds for the annual audit of the Richmond County Public Administrator as required by the Surrogate's Court Procedures Act.

Status - Implemented

Agency Action - On May 5, 2005, the PA sent a letter to the Budget Director, City of New York that stated, "The Offices of the Public Administrators are required by law to conduct an annual independent audit using generally accepted government auditing standards. Specifically such audit is required by SPCA, Article 11, Section 1109 which states, 'each Public Administrator shall conduct annually an audit of the office by an independent certified Public Accountant and such a report based on such an audit shall be filed with the Surrogate of the County where appointed, the Mayor and the Comptroller of the City of New York, the Attorney General of the State of New York and the Comptroller of the State of New York.'" Section 1109 indicates that the cost of such audit and report, "SHALL BE INCLUDED ANNUALLY IN THE BUDGET OF THE CITY OF NEW YORK." The PA provided documentation of several earlier requests to the City of New York for an annual audit. So far, the money for the audit has not been forthcoming.

Recommendation 15

Prepare the monthly report of closed or settled estates required by the Surrogate's Court Procedure Act.

Status - Implemented

Agency Action - For the period January 2004 through March 2005 the PA provided copies of the Report of Closed Public Administrator/ Richmond County which was submitted to the Comptroller of the City of New York.

Recommendation 16

To the Administrative Board: Revise the Administrative Guidelines that pertain to the selection of outside vendors. Require the expanded use of advertising for vendors, as well as the use of a Request for Proposal process that includes a well documented evaluation of all vendor responses.

Status - Partially Implemented

Agency Action - Some of the Administrative Board members have started the process of revising the guidelines that pertain to the selection of outside vendors. We received a copy of the draft revised guidelines as of July 29, 2005. The final version of the guidelines will be presented to the 13-member Board* for their approval. The Richmond PA provided evidence of advertising the need for services in two major newspapers.

* The Comptroller's appointee to the 13-member Board worked on the draft guidelines.

Major contributors to this report were Abraham C. Markowitz and Claude Volcy.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We also thank management and the staff of Richmond County Public Administrator and his staff for the courtesies and cooperation extended to our auditors during this process.

Very truly yours,

Carmen Maldonado
Audit Director

cc: G. Davis