

OFFICE OF THE NASSAU COUNTY COMPTROLLER



Limited Review of the Nassau County Office of the Public Administrator

December 18, 2018

**JACK SCHNIRMAN
COMPTROLLER**

OFFICE OF THE NASSAU COUNTY COMPTROLLER

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NOTE: This audit began under the prior Comptroller's administration.

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OFFICE OF THE NASSAU COUNTY COMPTROLLER
LIMITED REVIEW OF THE NASSAU COUNTY OFFICE OF THE PUBLIC ADMINISTRATOR
REPORT SUMMARY

WHY WE DID THIS REPORT

The Nassau County Public Administrator was established under the New York State Surrogate's Court Procedure Act and administers the estates of individuals who die without a will and leave either no known heirs, or heirs who are not qualified or willing to administer the estate. The Public Administrator, who is appointed by the Surrogate's Court of Nassau County, provides an important service to residents in need, and manages tens of millions of dollars in estate assets each year. The purpose of this review was to ensure the Office is operating in compliance with governing laws, performing the numerous functions of its mission and to evaluate the internal controls over the Office's operations.

WHAT WE FOUND

- The Public Administrator was not involved in the daily operations of the Office, which is short staffed, leading to internal control and segregation-of-duty issues and excessive reliance on outside parties, which can be expensive (i.e. \$425 an hour attorney services). *The majority of expenditures made by the Office are paid by estates, therefore higher costs reduce the amounts ultimately distributed to estate heirs.*
- Lack of management oversight was found, including inaccurate staff time and leave balances, and inadequate personal property inventory records for estates.
- The vendor selection process was not in accordance with departmental procedures or best practices, which could both stifle competition and result in favoritism.
- The Public Administrator misrepresented his arrival times to work in the time and leave system on multiple occasions.
- Reports to the Internal Revenue Service of vendor and professional service payments (Form 1099-MISC) were potentially understated, which could result in the underpayment of vendor income taxes. The Public Administrator hires vendors and others to provide a variety of services required to assist with the disposition of estate assets, including appraisers, accountants, movers, contractors, cleaning services, investment advisers, funeral directors, genealogists, insurance brokers, auctioneers, and lawyers.
- The use of multiple record keeping systems creates a manually intensive process to oversee estate administration.

WHAT WE RECOMMEND

- The County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office. Outside parties should not be excessively involved in Office operations.
- Management should properly oversee all functions of the Office including implementing proper time keeping practices.
- Additional staff should be hired in the Office, including an in-house Accountant to oversee estate assets.
- The Public Administrator should advertise for vendors timely and require complete and accurate applications to assure the most qualified vendors and others are hired at competitive prices. **The costs for these vendors are paid by the estates, and the County should do everything possible to protect the assets of the deceased for their families and heirs.**
- Departmental staff should properly record all time worked and keep a log of offsite field work.
- The Comptroller will seek an advisory opinion from the Internal Revenue Service regarding issuance of Form 1099-MISC for vendors and professional service providers, as requested in the Public Administrator's response.
- A unified electronic case management system should be funded and implemented to efficiently track and record estate activity.

WHAT WAS THE RESPONSE?

The audit response provided by the Office of the Public Administrator disagreed with the majority of findings. For nine of the twelve findings, their response was:

"The NCPA acknowledges the audit recommendations and submits the NCPA is in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same."

The Public Administrator's Office agreed, however, to make best efforts to comply with recommended timekeeping practices, and promulgate internal procedures to ensure continuing accurate safe room record keeping and estate inventory listings. It should be noted that the individual serving as the Public Administrator during the audit process retired suddenly after the draft audit was provided to the Department for response.

WHY IS THIS REPORT IMPORTANT?

It is critical that the Public Administrator operate efficiently and effectively to protect estate assets for Nassau County residents, and audits such as this provide important guidance and recommendations to improve departmental operations and strengthen internal controls.

Executive Summary

Purpose

The purpose of the review was to ensure the Office of the Public Administrator is:

- operating in compliance with governing laws;
- performing the numerous functions of its mission; and
- to evaluate the internal controls over the department's operations.

Introduction:

The Nassau County Office of the Public Administrator (“NCPA” or “Public Administrator” or “PA”) was established under the New York State Surrogate’s Court Procedure Act¹ (“SCPA”) to administer the estates of individuals who die without a will (“intestate”) and leave either no known heirs or heirs who are not qualified or willing to administer the estate. The Public Administrator is appointed by the Surrogate’s Court of Nassau County.

The Summary of Findings and Recommendations as a result of this audit can be found on the next page.

¹ New York State Surrogate’s Court Procedure Act, Article 12 and Sections 1201-1219.

Executive Summary

Summary of Audit Findings and Recommendations

| # | Audit Finding | Audit Recommendation(s) |
|---|---|---|
| 1 | The Public Administrator is Not Involved in Day-to-Day Operations - Outside Parties Have Excessive Involvement with Office Operations | <p>a) The County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office.</p> <p>b) The NCPA's appointed estate attorney only perform duties related to the administration of the individual estates they represent.</p> <p>c) All legal matters pertaining to the operations of the Nassau County Office of the Public Administrator be forwarded to the Nassau County Attorney's Office.</p> <p>d) The NCPA consider issuing an RFP for estates attorneys services and consider using multiple attorneys to represent estates with sliding scales depending on complexity of the estate.</p> <p>e) The NCPA cease from relying on an outside CPA for internal accounting operations and immediately hire an in-house Accountant.</p> |
| 2 | Reports to Taxing Authorities of Vendor and Professional Service Payments Were Not Made | <p>The NCPA:</p> <p>a) require vendors complete Form W-9 or require such information on their internal vendor application for Form 1099-MISC reporting purposes;</p> <p>b) issue Form 1099-MISC to all attorneys utilized by the NCPA who received over \$600 in a calendar year;</p> <p>c) issue Form 1099-MISC to all qualifying vendors using the NCPA's Tax Identification Number;</p> <p>d) aggregate the total amount paid to vendors regardless of their source of payment, without excluding payments under \$600 to determine if vendors would require a 1099-MISC; and</p> <p>e) utilize their pre-existing QuickBooks application, or other similar software, to track 1099 eligible vendor payments and generate 1099s to ensure accuracy and reduce costs paid to the outside accountant.</p> |
| 3 | The Public Administrator Deviated from Departmental Procedures Regarding the Selection and Compensation of Vendors | <p>The NCPA:</p> <p>a) ensure newspaper advertisements for outside vendors be published timely in the year preceding the advertised year of service to allow vendors appropriate time to respond and NCPA staff adequate time to review vendor applications and select vendors for use and inclusion on NCPA's annual vendor list;</p> <p>b) thoroughly review all vendor applications for completeness. All applications should be time stamped immediately upon receipt, indicate the vendor's type of business entity, list the vendor's fees, be signed by the vendor and notarized, include copies of all applicable business licenses and have supplementary vendor information packages completed as necessary;</p> <p>c) educate itself on the business licenses needed to perform services in Nassau County and verify all vendors have the required licenses;</p> <p>d) require all vendors submit a properly completed Form W-9 along with all vendor applications denoting the vendor's appropriate federal tax classification;</p> <p>e) ensure that complete and accurate applications are received for all vendors included on NCPA's annual vendor list;</p> <p>f) annual vendor lists include the vendor fees and an indication of a vendor's past experience with NCPA;</p> <p>g) keep written documentation to justify the selection of the particular vendors included on the annual vendor list; and</p> <p>h) use only vendors who are included on their annual vendor list and have submitted a properly completed vendor application.</p> |

Executive Summary

Summary of Audit Findings and Recommendations

| # | Audit Finding | Audit Recommendation(s) |
|---|---|--|
| 4 | Cash Receipt, Cash Disbursement and Inter-Bank Transfer Procedures Require Improvement, Largely Caused by Lack of Departmental Accounting Staff | <ul style="list-style-type: none"> a) All cash receipts be recorded on the estate's Inventory Listing and a supervisory review be performed. b) The Public Administrator request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each Certificate of Deposit. c) Original invoices be maintained in the estate files and attached to copies of disbursement checks. In instances where there is no invoice, a payment authorization form indicating the vendor's name, date of service, type of service provided, or hours being charged, and dollar amount must be attached to the check. d) The NCPA select one consistent means to document their approval of disbursements. e) An appropriate level of checks and balances be instituted whereby the same individual is not permitted to approve an expense and also prepare the check for all disbursements and inter-bank transfers. f) Invoice numbers of the associated payments be written in the memo section of the check or on the check stub for audit trail purpose. g) Vendors are used only for work stipulated on their vendor application and are paid in accordance with the terms of their applications for all work performed. h) Bills for advertising and calculations supporting an estate's proportionate share of expenses be maintained in the estate folder. i) Payment authorization forms indicating the reason for bank transfers be maintained in the estate folder. |
| 5 | Auditors Found Inadequate Personal Property Inventory Records for the Safe and Safe Room | <ul style="list-style-type: none"> a) The NCPA update their Safe Room Log to ensure an accurate list of all estates with personal property. b) The NCPA perform a count of cash and coins found at estates as soon as possible after its discovery. The count should be re-performed by a supervisor or a second party and documented on the estate's Inventory Listing and recorded on NCPA's "Cash/Checks log." c) The description and quantity count of personal property items be re-performed by a separate employee through a supervisory review to increase the accuracy of estate Inventory Listings and verify all items have been accounted for. d) All estate Inventory Listings be properly filled out with applicable estate information such as the address, date of death, Surrogate's numbers, date of Letter of Administration or social security numbers. The Inventory Listings should be perpetually updated. e) Personal property items be individually tagged in an effort to increase accountability and decrease the risk for items to be lost or stolen or items of jewelry switched with one of lesser value. f) Appraised item values be recorded individually on the Inventory Listings. g) The NCPA consider hiring a different external audit firm to perform their annual operational audit in order to obtain a fresh perspective on their internal controls. The NCPA should speak with other neighboring Public Administrators to compare fees and results for their annual operational audits. |

Executive Summary

Summary of Audit Findings and Recommendations

| # | Audit Finding | Audit Recommendation(s) |
|---|--|--|
| 6 | The Public Administrator Needs A Unified Electronic Case Management System to Track Estate Activity as Required by NYS Guidelines | <ul style="list-style-type: none"> a) The Public Administrator speak with Nassau County and New York State Court Administration about implementing a central case management system for tracking and recording estate activity. A centralized system is imperative to accurately reflect the cases being handled by the NCPA. b) NCPA maintain management reports to detail how many cases the NCPA started a calendar year with, how many new cases were opened, how many cases were closed and how many cases remain open at any given time. c) All supporting documentation used in the creation of the OCA Annual Report be reviewed and retained. |
| 7 | Discrepancies with the Estate Closing Process Lead to Inconsistent Report Data and Estate Activity Not Being Reported to the Surrogate's Court | <ul style="list-style-type: none"> a) The NCPA perform supervisory reviews of all "Final Accountings" prepared by their estates attorneys for accuracy and completeness. b) The NCPA update their ledgers to include a key/legend to tie information listed in their ledgers to the Final Accounting. c) The Affidavit Bringing Account to Date include a time frame. d) Any activity not previously reported to the Surrogate's Court via an Affidavit Bringing Account to Date or Final Decree be reported to the Surrogate's Court. e) The Surrogate's Court consider adding a post Final Decree clause to explicitly stipulate the method for distributing and reporting any additional assets identified subsequent to the Final Decree. |
| 8 | Lack of Management Oversight and Incomplete Suspense Account Personnel Files Have Resulted in \$49,070 of Overpayments to Suspense Account Personnel | <p>The NCPA:</p> <ul style="list-style-type: none"> a) publicly advertise for all future Suspense employee positions; b) document the justification for the hiring of employees financed by the Suspense account; c) create employee contracts for all Suspense employees detailing their duties and responsibilities, scheduled work hours, agreed upon salaries, types of benefits, waiting timeframe for receiving benefits and compensated time off policies; and d) disseminate Human Resources' New Hire Packet Orientation Checklist to all employees (Appendix A). |
| 9 | Manual Timekeeping Practices for Suspense Account Employees Have Resulted in Inaccurate Time & Leave Balances | <ul style="list-style-type: none"> a) The accrual of Time & Leave balances be performed in accordance with the CSEA contract. b) Routine supervisory review be performed of Suspense employee Time & Leave records and balances to verify the accuracy of balances and minimize potential errors. c) The NCPA properly document the accrual and approval of any compensated time and its subsequent usage. d) INTIME attendance records for Suspense employees be reviewed and certified each pay period and traced to manual time & leave records. |

Executive Summary

Summary of Audit Findings and Recommendations

| # | Audit Finding | Audit Recommendation(s) |
|----|--|--|
| 10 | The Public Administrator Failed to Perform the Required Review and Certification of Timekeeping Records Resulting in Significant Time & Leave Errors | a) All employee time sheets be certified by either the designated Payroll Supervisor or Department Head every two weeks to ensure employee absences are supported by a time off request or a designated County holiday. b) Manual entries for time on/time off be recorded daily. |
| 11 | NCPA Administrative Staff is Not Properly Accounting for Time When They Are Not Physically at Work | a) The NCPA establish a departmental log for all employees to record time they are physically out of the office when they are attending to departmental business or using time off for personal reasons in order to establish accountability. b) The Public Administrator accurately enter his actual arrival and departure time manually into INTIME noting any lateness, or the Public Administrator and Deputy Public Administrator be required to swipe in/out of work with their INTIME Proximity ID Badges. |
| 12 | The Public Administrator May Not Be in Compliance with Executive Order 1-2018 Which Prohibits Agency Heads from Holding Certain Political Positions | We recommend that the County Attorney review this situation and determine if the position of the Public Administrator, which is a position appointed by the Surrogate Court, but employed by Nassau County, is subject to Executive Order 1-2018. Based upon the results of the County Attorney's review, appropriate action to bring the Public Administrator into compliance with Executive Order 1-2018 be immediately taken if required. |

The matters covered in this report have been discussed with the officials of the Nassau County Office of the Public Administrator. On October 18, 2018 we submitted a draft report to the Office of the Public Administrator for their review. An Exit Conference was held on November 1, 2018 and a revised draft was submitted to the Deputy Public Administrator on November 20, 2018. The Nassau County Office of the Public Administrator provided their response on December 7, 2018. Their response and our follow up to their response are included at the end of this report.

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Introduction

Background

The Nassau County Office of the Public Administrator (“NCPA” or “Public Administrator” or “PA”) was established under the New York State Surrogate’s Court Procedure Act² (“SCPA”) to administer the estates of individuals who die without a will (“intestate”) and leave either no known heirs or heirs who are not qualified or willing to administer the estate. The Public Administrator is appointed by the Surrogate’s Court of Nassau County.

The NCPA must follow the SCPA and the Guidelines for the Operations of the Offices of the Public Administrators of New York State³ (“NYS Guidelines”) which were established by the Administrative Board for the Offices of the Public Administrators pursuant to SCPA Article 11 Section 1128.

The Public Administrator's primary duty is to administer intestate estates to:

- protect the decedent’s property from waste, loss or theft;
- make appropriate burial arrangements when no close relative is available to make the decisions;
- conduct thorough investigations to discover all assets;
- liquidate assets at public sale or distribute assets to heirs;
- pay the decedent's bills and taxes; and
- locate persons entitled to inherit from the estate and ensure they receive their inheritance.

Cases handled by the Public Administrator typically include estates of individuals who died without a will (formal estates valued at \$30,000 and over and small estates valued under \$30,000), estates where the executor is removed by the Surrogate’s Court Judge, or where the executor declines to serve, as well as Guardianships, Trusts, Creditor’s Petitions and Wrongful Death Lawsuits.

The NCPA annually files a report of open estates with the New York State Office of the State Comptroller⁴ (“OSC”). **As of December 31, 2017, the NCPA reported their office was administering 142 cases with gross estate values of \$33.2 million and undistributed values of \$26.1 million.**

The staffing structure of the Public Administrator’s Office is presently comprised of:

- two Surrogate’s Court appointees (Public Administrator and Deputy Public Administrator),
- four civil service employees, and

² New York State Surrogate’s Court Procedure Act, Article 12 and Sections 1201-1219.

³ Guidelines for the Operations of the Offices of the Public Administrators of New York State.
<http://www.nycourts.gov/ip/pa/PA-Guidelines.pdf>

⁴ The report is done in accordance with 2 CRR-NY 71.1 which is the Official Compilation of Codes, Rules and Regulations of the State of New York, Title 2. Department of Audit and Control, Chapter II. Municipal Affairs, Subchapter E. Administration of Funds Paid Into Courts of Record, Part 71. Report of Open Estates.

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- one Suspense account employee.

The Nassau County annual operating budget includes funding to cover the Court appointees and civil service employee salaries, general office supplies and funding for an annual operational audit. Suspense employees are paid by revenues controlled directly by the Public Administrator’s office.

The NCPA is required to be audited annually by an independent certified public accountant as mandated by New York State Surrogate’s Court Procedure Act §1208 (3). All annual audits performed from 2010 through 2017 “...did not result in any findings, instances of noncompliance with applicable laws and regulations or irregularities.”⁵ However, the New York State Office of the State Comptroller conducted an audit of selected financial management and administrative practices of the NCPA, for the period January 1, 2010 to February 28, 2014, which identified significant findings.⁶

Exhibit I below summarizes budgeted vs. actual revenues and expenses for the years 2014 to 2017. Budgeted salaries, wages and fees represented 96% of budgeted operating expense for 2014 and 97% for 2015, 2016 and 2017 respectively.

Exhibit I

| Nassau County Office of the Public Administrator County General Fund Revenues & Expenses Budget vs. Actual 2014 - 2017 | | | | | | | | |
|---|--------------------------|---------------------|--------------------------|-------------------|---------------------------|--------------------|-------------------------|-------------------|
| Description | 2014 | | 2015 | | 2016 | | 2017 | |
| | Budget | Actual | Budget | Actual | Budget | Actual | Budget | Actual |
| Dept Revenues | \$ 400,000 | \$ 1,067,163 | \$ 500,000 | \$ 410,603 | \$ 500,000 | \$ 147,724 | \$ 250,000 | \$ 600,122 |
| Revenue Total | \$ 400,000 | \$ 1,067,163 | \$ 500,000 | \$ 410,603 | \$ 500,000 | \$ 147,724 | \$ 250,000 | \$ 600,122 |
| Salaries, Wages & Fees | \$ 506,013 | \$ 499,395 | \$ 475,249 | \$ 464,814 | \$ 520,777 | \$ 492,598 | \$ 593,925 | \$ 576,123 |
| General Expenses | \$ 9,250 | \$ 2,660 | \$ 9,250 | \$ 1,663 | \$ 3,602 | \$ 2,221 | \$ 3,354 | \$ 1,285 |
| Contractual Services | \$ 14,650 | \$ 14,600 | \$ 7,350 | \$ - | \$ 14,650 | \$ 7,300 | \$ 14,600 | \$ 7,300 |
| Expense Total | \$ 529,913 | \$ 516,655 | \$ 491,849 | \$ 466,477 | \$ 539,029 | \$ 502,119 | \$ 611,879 | \$ 584,708 |
| Revenue Less Expenses | \$(129,913) | \$ 550,508 | \$ 8,151 | \$(55,874) | \$(39,029) | \$(354,395) | \$(361,879) | \$ 15,414 |
| Under/(Over) Budget | <u>\$ 680,421</u> | | <u>\$(64,025)</u> | | <u>\$(315,366)</u> | | <u>\$377,293</u> | |

Source: Nassau Integrated Financial System (“NIFS”)

In addition to their annual budgeted expenses, **the NCPA is also permitted to maintain a “Suspense” account⁷, funded by a commission set by the Surrogate’s Court, to pay for office**

⁵ Independent Auditors’ Reports, 2nd paragraph.

⁶ NYS Office of the State Comptroller, Office of the Nassau County Public Administrator Selected Financial Management and Administrative Practices (Report 2013-S-37)
<http://osc.state.ny.us/audits/allaudits/093015/13s37.htm>

⁷ Surrogate’s Court Procedure Act §1207-4 allows the Nassau County Office of the Public Administrator to receive a “reasonable amount for the expenses of his office, to be fixed by the court” upon the settlement of an estate. The NCPA has established a separate checking account known as the “Suspense” account to maintain these funds.

Introduction

expenses not funded by the PA's budget such as office equipment/supplies and salaries and benefits for office personnel. Suspense account funds are also used to pay estate-related expenses prior to the collection of estate assets.⁸ The Suspense account is then reimbursed upon asset liquidation for these estate-related expenses. As of December 31, 2017, the Suspense account bank balance in this account was \$19,086.

As previously stated, the County budget and Suspense account funds are used to cover the cost of staffing the Office of the Public Administrator as well as minor operating and office expenses. However, **the majority of financial transactions handled by the Public Administrator deal directly with estate funds ("Escrow") and as such are not recorded in the County's internal financial accounting system as they are not County assets.**

Exhibit II below summarizes the disbursements from both the Suspense account and Escrow account for the years 2014-2016 based on the NCPA's QuickBooks databases.

Exhibit II

| Nassau County Office of the Public Administrator Total Disbursements from Suspense and Escrow Accounts 2014-2016 | | | |
|---|--------------------|---------------------|----------------------|
| Year | Suspense | Escrow* | Total |
| 2014 | \$ 358,095 | \$22,168,351 | \$ 22,526,446 |
| 2015 | \$ 424,345 | \$15,828,899 | \$ 16,253,244 |
| 2016 | \$ 317,199 | \$15,002,502 | \$ 15,319,702 |
| Total | \$1,099,640 | \$52,999,752 | \$ 54,099,392 |

* Escrow figures do not include Suspense reimbursements.
Note: Data obtained from NCPA's Quickbook databases

Audit Scope, Objectives and Methodology

The audit covered the period from January 1, 2014 to present. The purpose of the audit was to determine whether the NCPA operates in compliance with governing laws and guidelines, performs the numerous functions of its mission; evaluate the internal controls over the department's operations and revenues; and follow up on the State Comptroller's audit recommendations.

The specific objectives of the audit were to: gain an understanding of the NCPA's business processes and assess the adequacy of internal controls over decedents' estates; evaluate whether the investigation process, the collection and safeguarding of assets, and the liquidation and settlements of estates were performed according to NYS Guidelines; determine that the expenses

⁸ According to a 9/21/1990 judgement by the Honorable C. Raymond Radigan, "a charge of 1% against each estate shall be allowed against each estate to reimburse the reasonable and necessary costs and disbursements of the office of the Public Administrator pursuant to SCPA 1207."

Introduction

financed by the Suspense account are properly supported and justified and the account balance is being managed properly; and determine that all documentation and retention requirements are being met.

We reviewed applicable New York State and County laws, ordinances, resolutions, and directives and interviewed key employees of the NCPA to obtain an understanding of their internal operations. We examined the various categories of cash receipts to determine if revenue records were reconciled to Nassau County's Financial Accounting System and the department's Suspense account. In addition, Auditors followed up on recommendations made in the NYS Comptroller's audit report of the NCPA to determine if appropriate corrective action have been taken.

We believe our review provides a reasonable basis for the findings and recommendations contained herein.

AUDIT FINDING (1)

(1) The Public Administrator is Not Involved in Day-to-Day Operations - Outside Parties Have Excessive Involvement with Office Operations

During the scope of the audit, Auditors frequently observed that the Public Administrator was not involved in the daily operations of the department, could not answer questions posed by Auditors and relied heavily upon the Deputy Public Administrator and outside parties. Two specific outside parties, an attorney employed for estates (“estates attorney”) and a vendor Certified Public Accountant (CPA) who both previously worked in the Public Administrator’s Office, demonstrated excessive involvement in Office operations:

I. Estate Attorney:

The NCPA’s appointed estate attorney⁹ who had previously served as both Deputy Public Administrator from 1988-1999 and Public Administrator from 1999-2001, represented himself to Comptroller staff as “Counsel” or “General Counsel” to the Public Administrator on multiple occasions. It was later clarified that this individual was a private attorney appointed by the Public Administrator to represent various estates. Over the three years reviewed, this attorney was paid \$2.8 million in fees from various estates. The attorney’s rate is \$425 per hour.

Specific examples of when the estates attorney had excessive involvement in daily operations include the following:

July 11, 2017 Entrance Conference

- The Entrance Conference for the audit was held on July 11, 2017 and was attended by the Public Administrator, Deputy Public Administrator, the estates attorney and the Field Audit team. The estates attorney identified himself as the Counsel to the Public Administrator and signed the attendance sheet as “Department – *Counsel PA*”, Title “*Attorney for PA.*” At one point, he noted that he is an estate attorney currently handling all of the Public Administrator’s office’s legal filings. He answered the majority of questions asked by the Audit staff.

April 24, 2018 – Meeting with Public Administrator

- Audit staff met with the Public Administrator to discuss some issues identified during their review of an estate closing. The Public Administrator was unable to answer a multitude of direct agency related questions, such as who prepares the Final Accounting and how commissions are calculated and recorded on the County’s books. The Public Administrator stated that he does not assist in the compilation of annual reports.

⁹ Per SCPA §1206 (3), “Each public administrator may employ counsel in any estate, whose fees and expenses therein shall be approved by the court of his county and shall be charged against the estate.”

Findings and Recommendations

November 1, 2018 Exit Conference:

- An Exit Conference to discuss the initial draft audit was held in the Comptroller's Office on November 1, 2018. This meeting was requested by the Public Administrator's Office to review the draft findings in preparation for a departmental response. The Public Administrator did not attend this meeting. Comptroller staff were informed by the estates attorney that the Public Administrator was out sick, and he was attending to represent the Public Administrator.
- The Comptroller's Chief Counsel began the Exit Conference by asking the estates attorney why he was present. The attorney stated that he is "General Counsel" to the Public Administrator and was there to represent the Office.

II. Outside Vendor Certified Public Accountant

The Public Administrator contracts with a Certified Public Accountant (CPA) as an outside vendor to perform accounting and tax services including assisting in the compilation of estate Final Accountings, preparation of estate tax returns and Form 1099s. It was noted this individual previously worked in the Public Administrator's Office. This CPA was paid over \$263,000 during the scope of our audit.

The CPA attended the November 1, 2018 Exit Conference with the estates attorney and strongly disagreed with the scope and methodology of the audit and objected to the findings in the draft report. The CPA aggressively answered a number of questions relating to the internal controls of the Public Administrators daily operations despite the fact that the CPA has nothing to do with the daily cash receipt, disbursement, bank transfer, inventory and payroll related process tested during the audit.

At the Exit Conference the CPA also presented previously requested investment related documents that were not seen in the estate files during the Auditor's field work. This documentation should have been maintained in the estate files kept at the Public Administrator's Office.

Reliance on the CPA for other than estate related matters, has most likely evolved over time due to a shortage of accounting staff in the NCPA's Office and the CPA's knowledge of operations from being a former department employee. It should be noted that the Public Administrator's Office does not have a staff Accountant / Finance Manager. The NCPA has tried unsuccessfully on several occasions to obtain Accounting staff to handle the department's internal finances. Their most recent request was rejected by the Office of Management and Budget in August of 2018.

As the CPA is not a department employee, is not physically stationed in the department, and is not responsible for the fiscal operations of the department, it is inappropriate for her to address operational issues and to speak in place of the Public Administrator at the Exit Conference.

Findings and Recommendations

It is imperative that the Public Administrator be competent and fully engaged in daily operations and that appropriate staff are employed to protect the over \$30 million in assets the department oversees.

Audit Recommendations:

We recommend:

- a) the County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office;
- b) the NCPA's appointed estates attorney only perform duties related to the administration of the individual estates they represent;
- c) all legal matters pertaining to the operations of the Nassau County Office of the Public Administrator be forwarded to the Nassau County Attorney's Office;
- d) the NCPA consider issuing an RFP for estates attorneys services and consider using multiple attorneys to represent estates with sliding scales depending on complexity of the estate; and
- e) the NCPA cease from relying on an outside CPA for internal accounting operations and immediately hire an in-house Accountant.

AUDIT FINDING (2)

(2) Reports to Taxing Authorities of Vendor and Professional Service Payments Were Not Made

Auditor review of the Nassau County Public Administrator's compliance with IRS Regulations regarding miscellaneous income reporting on Form 1099-MISC ("1099") found that 1099s were not prepared for numerous vendors, some vendors received more than one 1099 in a reporting year, and 1099s did not always include the total amount paid to each vendor for a given reporting year. **Auditors estimated that vendor payments included in NCPA's 1099 filings to the IRS for the period 2014-2016 were understated by a minimum of \$3.3 million. Non-issuance of 1099 filings could result in these earnings not being reported to the IRS.**

During their administration of estates, the NCPA pays vendors such as locksmiths, genealogists and kinship investigators, real estate appraisers and brokers, auctioneers, commodities traders, moving companies, funeral directors, cleaning services, private investigators, warehousemen plumbers, electricians, etc. These payments are issued from either the NCPA's Suspense account or directly from the estates' funds ("Escrow"), depending on whether or not the NCPA has received

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a Letter of Administration¹⁰ for the estate. The NCPA is required to issue a Form 1099-MISC for all payments made to a vendor for services which exceed \$600 in a calendar year.¹¹

The IRS Code states the NCPA, as a third party, making payment on behalf of the estates, should issue one Form 1099-MISC in their Tax Identification Number to each vendor. “Section 1.604-1(e) of the regulation provides that a person that makes a payment in the course of its trade or business on behalf of another person is the payor that must make the information return with respect to that payment if the person performs management or oversight functions in connection with the payment...” It continues, “A person that arranges services for another, including hiring service providers and overseeing the services provided, generally exercises management or oversight over the payments to such providers.”

Auditors noted that prior audits conducted by the Office of the NYC Comptroller found the New York County Public Administrator’s Office did not issue the required IRS Form 1099-MISC or report to the IRS when making payments to vendors from estate accounts. Although estates are not engaged in a trade or business, the Public Administrator’s responsibilities clearly include management and oversight functions for the administration of an estate and payment for services provided to the estate and therefore would require 1099s to be filed.

The NCPA’s responsibilities, as outlined in the SCPA, clearly include management and oversight functions for the administration of an estate and payment for services provided to the estate. The NCPA makes payments to vendors as well as deciding which vendors to use and ensures services are properly performed before payments are made. As such, the NCPA is required to issue Form 1099-MISC for any payments made on behalf of the estates the department administers.

The following four sections detail four separate 1099 issues. These issues were discussed with NCPA and their outside accountant in January 2018, in an effort to achieve proper 1099 filing for 2018.

A. Failure to Report a Minimum of \$3.3 Million of Income Paid to Vendors on Form 1099-MISC

Auditors found the NCPA does not require vendors to complete IRS Form W-9¹² (“W-9”) and instead relies on NCPA’s internal vendor application to collect vendor data. The tax classification of a Limited Liability Company¹³ (“LLC”) is not requested on the NCPA’s internal vendor application and is needed to determine whether the LLC vendor is not a corporation and therefore required to be issued a 1099.

Auditors reviewed vendor payment transaction detail reports from the NCPA’s QuickBooks application for both the Suspense and Escrow accounts for the years 2014-2016. QuickBooks has built in functionality to generate and file Form 1099-MISC. However, the QuickBooks databases used by the NCPA do not include the specific vendor information needed to perform these functions within the software. The majority of the vendor names in QuickBooks alone are not

¹⁰ Letters of Administration appoints a Decedent's distributee (in this case the NCPA) and gives them the authority to collect and distribute the Decedent's property according to the law.

¹¹ About Form 1099-MISC, Miscellaneous Income. <https://www.irs.gov/forms-pubs/about-form-1099-misc-miscellaneous-income>

¹² IRS Form W-9 Request for Taxpayer Identification Number and Certification. www.irs.gov/pub/irs-pdf/fw9.pdf

¹³ An LLC is an entity created by state statute. 1099s are not required to be filed for LLCs that are treated as corporations for tax purposes. Single member LLCs and LLCs treated as partnerships are required to receive 1099s.

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enough information to determine the vendor's type of business or distinguish if they are an estate beneficiary or service providing vendor. As a result, Auditors performed an analysis of vendor payments from the Suspense account since beneficiaries are normally only paid from the Escrow account. These Suspense vendors were then compared to the Escrow account to determine the total amount paid to the vendor from the NCPA. Therefore, our sample only included vendors that received payments from both the Suspense and Escrow accounts.

Based on this analysis, Auditors identified a potential \$3.5 million paid for vendor services that should have been reported on 1099s. Further review noted only \$190,803 was actually reported on 1099s resulting in \$3.3 million of under-reporting. Our review noted that Sole Proprietors, Partnerships, LLC's that were not Corporations, and Attorneys were excluded from receiving 1099s. The \$190,803 represented payments to individuals who performed house clean out services. Exhibit III summarizes the total estimated amount under-reported for each year. There is potential for additional under-reported vendor payments not included in the Auditors' sample.

Exhibit III

| Nassau County Office of the Public Administrator | | | | | | | |
|--|-------------------------------------|--------------------|--------------------|------------------------|-----------------|------------------|--|
| Form 1099-Misc: Amount Underreported | | | | | | | |
| 2014-2016 | | | | | | | |
| Year | 1099's That Should Have Been Issued | | | 1099's Actually Issued | | | Total Amount of 1099's Underreported 2014-2016 |
| | Suspense | Escrow | Total | Suspense | Escrow | Total | |
| | \$ Paid per QB | \$ Paid per QB | \$ | \$ | \$ | \$ | |
| 2014 | \$ 142,685 | \$1,493,265 | \$1,635,949 | \$ 37,020 | \$ 17,868 | \$ 54,887 | \$ 1,581,062 |
| 2015 | \$ 206,099 | \$ 668,374 | \$ 874,473 | \$ 57,904 | \$ 15,320 | \$ 73,224 | \$ 801,248 |
| 2016 | \$ 141,891 | \$ 806,287 | \$ 948,178 | \$ 54,669 | \$ 8,023 | \$ 62,692 | \$ 885,486 |
| Total | \$ 490,675 | \$2,967,925 | \$3,458,600 | \$149,593 | \$41,210 | \$190,803 | \$ 3,267,796 |

QB - QuickBooks used by the NCPA.

B. Failure to Report \$2,818,437 of Attorney Fees on Form 1099-MISC

NCPA hires outside attorneys to perform legal services on behalf of the estates. The IRS instructions for issuing Form 1099-MISC¹⁴ state that all attorneys, regardless of whether they are incorporated or not, must receive a 1099 for services rendered. Auditors found the NCPA did not issue 1099s to any attorneys that provided legal services on their behalf. Of the \$3.3 million noted in Exhibit III, Auditors determined the NCPA paid a total of \$2.8 million for attorney services.

When questioned as to why the attorneys did not receive 1099s, the Accounting Assistant responded that attorneys were never given them in the past. The NCPA only issues 1099s to vendors who have previously received 1099 from the department, which are a select list of vendors who perform clean out services. This list of vendors is what is provided to the outside accountant to prepare 1099s. It is our opinion that the NCPA's outside accountant, who prepared the 1099s

¹⁴ Instructions for Form 1099-MISC. <https://www.irs.gov/pub/irs-pdf/i1099misc.pdf>

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for the NCPA and is a CPA familiar with their business practices, should have been aware of this requirement.

C. Incorrectly Issuing Separate 1099s Based on Source of Funds

According to the IRS Code, the NCPA, as the third-party making payment on behalf of the estates, should issue one Form 1099-MISC in the NCPA's Tax Identification Number to each vendor.¹⁵ Our review revealed that the Public Administrator issued separate 1099s to vendors based on the source of payment for individual payments over \$600.

Vendors paid from the Suspense account received a 1099 issued with the NCPA's Tax Identification Number. If the same vendor also performed a service paid from the estate funds (Escrow account), a separate 1099 was issued to the vendor using the Tax Identification Number of the estate. One vendor received as many as five separate 1099s in calendar year 2016 using this methodology.

D. Incorrect Filing of 1099s Resulted in Under-Reporting of \$15,343

Auditors determined the NCPA was only filing 1099s to vendors for individual payments made over \$600; the NCPA was not aggregating all vendor payments, including those under \$600, to determine the total amount paid to a vendor over the course of the year as required by the IRS Code.¹⁶ As shown in Exhibit IV below, **due to incorrect calculations, issued 1099s were under-reported by \$15,343.**

Exhibit IV

| Nassau County Office of the Public Administrator Form 1099-Miscellaneous vs. Vendor Expenses 2014-2016 | | | | |
|---|--------------------------------|---------------------------------|--|---|
| Year | Total # of 1099's Issued | Total \$ of 1099's Issued | Total Suspense + Escrow Expenses | Diff 1099 \$ Over/(Under) Expenses |
| 2014 | 16 | \$ 54,887 | \$ 58,938 | \$ (4,051) |
| 2015 | 10 | \$ 73,224 | \$ 79,506 | \$ (6,282) |
| 2016 | 12 | \$ 62,692 | \$ 67,702 | \$ (5,010) |
| | 38 | \$ 190,803 | \$ 206,146 | \$ (15,343) |

¹⁵ IRS Code Section 1.604-1(e).

¹⁶ IRS Code, Title 26 Section 6041-1.

Findings and Recommendations

Audit Recommendations:

We recommend the NCPA:

- a) require vendors complete Form W-9 or require such information on their internal vendor application for Form 1099-MISC reporting purposes;
- b) issue Form 1099-MISC to all attorneys utilized by the NCPA who received over \$600 in a calendar year;
- c) issue Form 1099-MISC to all qualifying vendors using the NCPA's Tax Identification Number;
- d) aggregate the total amount paid to vendors regardless of their source of payment, without excluding payments under \$600 to determine if vendors would require a 1099-MISC; and
- e) utilize their pre-existing QuickBooks application, or other similar software, to track 1099 eligible vendor payments and generate 1099s to ensure accuracy and reduce costs paid to the outside accountant.

AUDIT FINDING (3)

(3) The Public Administrator Deviated from Departmental Procedures Regarding the Selection and Compensation of Vendors

Auditor testing revealed the NCPA was not following its departmental procedures and some NYS Guidelines for the selection and compensation of outside vendors.¹⁷ Testing revealed that vendor advertisements were not made timely, vendor applications were not always completed properly by the vendors or reviewed by the NCPA for completeness, the annual vendor lists did not contain all required information and ultimately payments totaling \$17,128 were made from the Suspense account to outside vendors not on the annual vendor list.

NYS Guidelines Section V.A. (Selection of Outside Vendors) state the requirements for the selection and compensation of outside vendors used by the Public Administrator. The Guidelines specifically require the following:

- The PA shall advertise for outside vendors by posting a standing announcement on the PA's website;
- In the alternative, the PA may, on an annual basis, advertise in a newspaper of general circulation within the PA's county. The announcement should detail the services sought, a description of the work involved, and the requirements for employment by the PA;

¹⁷ "Outside vendors" shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, genealogists, kinship investigators, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors. (NYS Guidelines p. 10)

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- 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 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;
- The list shall be updated at least annually and shall be available for public inspection at the PA's office; and
- The PA shall select a vendor 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.

In addition to the above NYS Guidelines the NCPA has also developed departmental procedures for the selection and compensation of outside vendors. These procedures state that an annual Request For Proposals ("RFP") is published in the Legal Notices section of Newsday in January during each calendar year. The RFP states that applications in response to the RFP may be obtained by written request only addressed to the Nassau PA's office. All respondents to the RFP receive an application for completion. In addition, the Nassau PA requests that all of its current vendors submit a new application annually. A listing of vendors selected for each category is maintained by the Nassau PA.

The previous NCPA audit report released by the New York State Office of the State Comptroller ("OSC") noted the Public Administrator did not maintain their vendor list until 2013, made payments to vendors who did not have an application on file and/or were not on the annual vendor list, and did not maintain written documentation justifying the selection of vendors. In their response to the audit the NCPA stated they require all vendors to provide a completed vendor application annually, will maintain an annual list and will maintain a log justifying vendor selection within each category.

Auditors reviewed NCPA's compliance with the NYS Guidelines for the procurement of outside vendors as well as the department's internal procedures. The following subsections detail the numerous issues noted during our testing.

Annual Outside Vendor Advertisements are Not Timely

Our review found that the NCPA appropriately advertised for vendor services on its website¹⁸ as required by the NYS Guidelines and additionally advertises in Newsday.

However, our review found some of **the annual advertisements placed in Newsday were after that year had already started**. We noted that 2014's advertisement was published on 2/24/2014 and 2015's was published on 1/15/2015. Publishing the advertisements *after* the business year has begun rather than before the year begins **does not allow sufficient time for proper review or selection of vendors**.

¹⁸ <https://www.nassaucountyny.gov/1864/Vendor-Services>

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For 2016 and 2017, the advertisements were published on 12/3/2015 and 12/15/2016 respectively. Although these publication dates pre-dated the year they were advertising for, they did not allow appropriate time for vendors to apply and NCPA staff to review the applications, especially around the holiday season.

Incomplete Annual Outside Vendor Applications

At the 11/1/2018 Exit Conference, representatives from the Office of the Nassau County Public Administrator stated the NYS Guidelines do not require applications from vendors when preparing their annual vendor list. However, department procedures state all respondents to the RFP receive an application for completion. The NCPA's procedures also state that the NCPA requests all of its current vendors submit a new application annually. Requiring applications promotes increased competition and affords the Public Administrator the option to obtain quality services at the lowest price.

From 2014-2017 the NCPA received a total of 128 vendor applications, from 56 different vendors, in response to their annual advertisements. The NCPA uses the applications to review vendor qualifications and select vendors for NCPA's annual vendor list. The Auditors' review of the completeness of the vendor applications on file noted the following:

- A significant amount of applications reviewed were not properly date stamped upon receipt;
- Applications did not denote the vendor's type of business entity (i.e. Corporation, Partnership/LLP, Sole Proprietor) nor were IRS Form W-9 requested to determine the taxable status of vendors for Form 1099-MISC compliance.
- Applications submitted did not contain information on the vendor's fee associated with the services to be provided;
- Applications submitted by vendors were either not notarized as required or notarized improperly. In two instances Auditors noted the application was notarized by the Deputy Public Administrator instead of an outside notary;
- Applications received in 2017 did not contain the new required attachment for all vendor contracts noting there is no conflict of interest or relationship between the applicant and the Public Administrator or any member of his staff;
- One application was missing the first page, rendering Auditors unable to determine the vendor's date received, entity type or quoted fee;
- Two applications were missing their second page, rendering Auditors unable to verify if the application was properly signed by the vendor and notarized; and
- Auditors also noted the NCPA was unaware of all the licensing requirements for the businesses who performed the needed services. The NYS Guidelines state that "PA shall include on the list only those outside vendors that hold all necessary licenses for their field". Auditors review found numerous vendor applications did not include a copy of a valid business license along with their application. Additionally, two vendors did not indicate the type of service they performed rendering Auditors unable to determine if a license was required.

Findings and Recommendations

NCPA's Annual Vendor List Issues

Our review of the annual vendor lists created by the NCPA noted the following areas not in compliance with NYS Guidelines or best practices:

- Vendor fees were not present on the annual vendor lists as required.
- There was no indication of a vendor's past experience with NCPA on the annual vendor lists.
- No written documentation existed to justify the selection of preferred vendor.
- As noted in Exhibit V below, the NCPA did not have vendor applications on file for a total of 27% of the vendors who appeared on their annual vendor lists. Although these vendors may not have been used by the NCPA, they should not have been included on the vendor list without an application. Additionally, the NCPA departmental procedures require that all of its current vendors submit a new application annually.

Exhibit V

| Nassau County Office of the Public Administrator Annual Vendor Lists No Vendor Application on File 2014 - 2017 | | | |
|---|---------------------------------------|--|--|
| Year | Counts | | % on List with No Application on File |
| | Vendors on Annual List | Vendors With No Application on File | |
| 2014 | 49 | 16 | 33% |
| 2015 | 44 | 4 | 9% |
| 2016 | 42 | 14 | 33% |
| 2017 | 28 | 10 | 36% |
| Total | 163 | 44 | 27% |

Payments to Vendors without Applications and/or Not on Annual Vendor List

Auditors attempted to sample the NCPA's payments made to vendors for the scope of the audit. However, vendor data maintained in the NCPA's QuickBooks files¹⁹ did not contain sufficient information to denote if a name represented a vendor and the type of service they provided. Additionally, vendors could not be differentiated from beneficiaries based on the vendor name in QuickBooks.

¹⁹ The NCPA maintains two QuickBooks databases (one "Escrow" account and one "Suspense" account) to track and record all receipts, disbursements, journal entries and cut checks for any payments.

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As a result, Auditors sampled vendor payments from only the Suspense account due to the lack of vendor information in QuickBooks and in an attempt to exclude payments to beneficiaries which are normally made from the estate's funds (Escrow accounts). Auditors identified a number of vendors who received payments but were not on the annual vendor list and did not have an application on file.

At the Exit Conference on 11/1/18, the Deputy Public Administrator stated that many of the vendors the Auditors identified were selected either by the estates attorney or were vendors selected by the decedent that carried over because they were impractical to replace or had to be reimbursed because they were owed money from the estate. The Deputy Public Administrator was able to identify vendors due to her familiarity with the vendor process, however, there was no documentation to support how the vendor was selected.

After taking the Deputy Public Administrator's comments into consideration, Auditor analysis revealed \$17,128 was paid to vendors who were not included on a vendor list and did not submit an application. An additional \$83,358 was paid to vendors who were included on the annual vendor list but did not have applications on file. Although unable to be tested by Auditors, these procedural deficiencies could result in a significant monetary impact if they also pertain to the Escrow account.

Audit Recommendations:

We recommend the NCPA:

- a) ensure newspaper advertisements for outside vendors be published timely in the year preceding the advertised year of service to allow vendors appropriate time to respond and NCPA staff adequate time to review vendor applications and select vendors for use and inclusion on NCPA's annual vendor list;
- b) thoroughly review all vendor applications for completeness. All applications should be time stamped immediately upon receipt, indicate the vendor's type of business entity, list the vendor's fees, be signed by the vendor and notarized, include copies of all applicable business licenses and have supplementary vendor information packages completed as necessary;
- c) educate itself on the business licenses needed to perform services in Nassau County and verify all vendors have the required licenses;
- d) require all vendors submit a properly completed Form W-9 along with all vendor applications denoting the vendor's appropriate federal tax classification;
- e) ensure that complete and accurate applications are received for all vendors included on NCPA's annual vendor list;
- f) annual vendor lists include the vendor fees and an indication of a vendor's past experience with NCPA;

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- g) keep written documentation to justify the selection of the particular vendors included on the annual vendor list; and
- h) use only vendors who are included on their annual vendor list and have submitted a properly completed vendor application.

AUDIT FINDING (4)

(4) Cash Receipt, Cash Disbursement and Inter-Bank Transfer Procedures Require Improvement, Largely Caused by Lack of Departmental Accounting Staff

Our review of cash receipt and disbursement transactions and inter-bank transfers of closed estates revealed that cash receipts were not always logged on the estate's inventory listing; and cash disbursements and inter-bank transfers were not always properly documented and approved. In addition, cash disbursement functions were not adequately segregated. Although Auditors found no instances of misappropriated funds in their testing, these internal control weaknesses increase the risk for transaction errors and the potential for improper handling of estate funds.

According to the NCPA's annual reports²⁰ for 2014-2016, there were a total of 92 formal estates which were closed with a total gross value of \$39.7 million. In their role as fiduciary the Public Administrator collects and distributes all assets of an estate. This responsibility results in a significant number of cash receipts, cash disbursements and inter-bank transfers for each estate which require proper support, authorization and reconciliation.

The NCPA records each estate's financial activity (cash receipts, cash disbursements and inter-bank transfers) throughout a multitude of different files within both Microsoft Excel and QuickBooks:

- Each estate's financial activity is recorded in two QuickBooks databases, one for Suspense account activity and one for Escrow activity with sub-accounts to track activity by estate.
- Each estate also has two Microsoft Excel "ledger" files which are utilized to separately track financial activity for the Suspense account and the individual estate's funds ("Escrow").
- Within each estate's ledger files are multiple Excel worksheets to detail the financial transaction by each individual bank account used by the particular estate.
 - The NCPA utilizes one bank account for all Suspense account activity. The Suspense transactions pertaining to each individual estate are recorded within that estate's Suspense account Excel ledger and their respective QuickBooks file.

²⁰ New York State Unified Court System Annual Report of the Public Administrator to the Surrogate Pursuant to Uniform Rule 207.63

Findings and Recommendations

- The NCPA utilizes one Escrow checking account (“Master”) which all Escrow disbursements are drawn from. Each estate has a sub bank account tied to this Master account to track the individual estate’s funds. Whenever disbursements are made from the Master account, a bank transfer will be initiated from the actual sub bank account to the Master account to cover the expense. These transactions are also recorded in the Excel ledgers and QuickBooks. QuickBooks is used to write any checks for payment.
- Additionally, the NCPA tries to maintain less than \$100,000 in the individual sub bank accounts and deposits any balances over this amount into separate interest bearing money market accounts or certificates of deposit. Each estate can have multiple investment accounts that accrue interest which must be recorded in the estate’s Excel ledgers and QuickBooks files.
- In addition to the Excel ledgers, the NCPA maintains a Cash/Check log in Excel which is used to record all cash or checks when initially obtained by the department. The information from this log is used to prepare deposits and is also recorded within the estate’s ledger and QuickBooks.
- Each estate also maintains an Inventory Listing in Excel to record numerous types of assets upon their receipt.

To properly test the NCPA’s procedures over estate administration, Auditors had to trace each individual transaction through all of the above mentioned records. As a result of this arduous task, and in an effort to trace estate activity from inception to close, Auditors selected a sample of one closed estate for each year from 2014-2016.

Auditors reviewed all individual transactions for each sampled estate to verify the NCPA’s procedures were functioning properly and ultimately that the estate was accurately closed out (see Finding 7 for more information on estate closings). The three estates selected for testing had a combined gross value of \$1.5 million and necessitated the review of 681 individual transactions.

The results of this testing are summarized below by topic.

Cash Receipts

Auditors tested cash receipts to determine if proper supporting documentation existed, proper approval was obtained, receipts were recorded on the Cash/Check logs, transactions were posted to the estate’s Inventory Listing, estate Excel ledgers, QuickBooks and ultimately if the receipts were deposited into the appropriate bank account. Individual interest transactions were also traced to bank statements to ensure interest was properly credited to each estate account.

A total of 387 cash receipts were tested by Auditors. Nine of the 387 were voided transactions and 293 were for interest, resulting in a review of 85 actual cash receipts. Auditors determined that 49 of 85 (or 58%) cash receipts were not recorded on their respective estate’s Inventory Listing. Cash is considered an intangible piece of personal property and as such should be listed under the

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appropriate section of the NCPA's Inventory Listing²¹. At the 11/1/2018 Exit Conference the estates attorney quoted law on what is personal property and what is not. NCPA staff stated that recording cash receipts on the estate's Inventory Listing is not required because they have all cash/checks recorded on a Cash/Checks log upon initial receipt by the department. Auditor testing found all 85 cash receipts to be properly recorded on the Cash/Check log.

Auditors also reviewed the 293 interest deposits. In an effort to maximize revenues earned by the estate, the NCPA will open Certificates of Deposit at several different banks. It was noted that one particular bank was not reporting the interest earned on Certificates of Deposit on the monthly or quarterly statements. This resulted in NCPA's staff manually calculating the interest in an effort to maintain accurate ledger balances.

Cash Disbursements

Auditors tested cash disbursements to determine if proper supporting documentation existed, proper approval was obtained, transactions were posted to the estate's ledgers and QuickBooks accounts, if the correct transfer of funds to cover expenses took place and ultimately if the disbursements cleared the appropriate bank account.

A total of 267 cash disbursement transactions were tested by Auditors. Of the 267 transactions, 11 were voided leaving Auditors with a remaining test sample of 256 cash disbursements. **A review of the 256 cash disbursement transactions revealed the following issues:**

- There was inadequate supporting documentation in the estate file to support the payment such as an original invoice. In several instances, photocopies were present, however the copy was often cut off rendering Auditors unable to verify the disbursement information. In several instances, the description provided for the disbursement was simply "Surrogate Court Fees" without an itemization listing the type of documents being requested or the fees being charged.
- Proper approval was not observed on the supporting documentation for several transactions reviewed. Department procedures indicate that either the Public Administrator or the Deputy Public Administrator is responsible for approving all estate payments. This approval is documented by the use of an approval stamp and signature on vendor invoices or a "payment authorization form" for expenses that don't have an invoice. Auditors noted a consistent authorizing procedure would be beneficial in properly processing disbursements.
- An appropriate level of checks and balances was not in place for some of the cash disbursements reviewed since the individual approving the payment was the same individual that signed the check.

²¹ The NCPA Inventory Listing sheet includes blank areas for the following asset related items: Decedent's Bank Accounts, Safe Deposit Box, Stocks, Investment Accounts, Bonds, NY State Unclaimed Funds, Insurance, Realty, Apartment Contents, Vehicles, Coins/Currency, Stamp Collection, Miscellaneous, Money Held Prior to Deposit, Personal Property and Items at Warehouse.

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- The invoice number of the associated payment was often not written in the memo section of the check or on the check stub. Recording the invoice number on the check would allow for a paper trail to track payments to their respective invoice.
- For two of the estates, payments were made which were for an amount and type of work not in accordance with the vendor application on file.
- For two of the three estates reviewed, Auditors identified journal entries prepared by the Accounting Assistant for the estate's proportionate share of advertising expenses for a house auction. Auditors noted that although this documentation was eventually provided, it was not maintained in the estate folders at the time fieldwork was performed.

Inter-Bank Transfers

Inter-bank transfers are performed between estate accounts or from the Suspense account to the Estate account when accounts are closed, or Certificates of Deposit are opened.

Auditors reviewed a total of 27 inter-bank transfers to determine if a payment authorization form was present noting the reason for the transfer and if the bank transfer was properly approved. The following issues were noted:

- 10 of 27 (or 37%) inter-bank transfers did not have a payment authorization form on file stating the reason for the transfer. In these instances, the only documentation was a printed copy of the estate's ledger with an approval written on it; no reason for the transfer was stated.
- 17 of 27 (or 63%) inter-bank transfers were approved by the same individual that signed the check. Due to a lack of staff, proper segregation of duties was not adhered to for these transactions.

Audit Recommendations:

We recommend:

- a) all cash receipts be recorded on the estate's Inventory Listing and a supervisory review be performed;
- b) the Public Administrator request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each Certificate of Deposit;
- c) original invoices be maintained in the estate files and attached to copies of disbursement checks. In instances where there is no invoice, a payment authorization form indicating the vendor's name, date of service, type of service provided, or hours being charged, and dollar amount must be attached to the check;
- d) the NCPA select one consistent means to document their approval of disbursements;

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- e) an appropriate level of checks and balances be instituted whereby the same individual is not permitted to approve an expense and also prepare the check for all disbursements and inter-bank transfers;
- f) invoice numbers of the associated payments be written in the memo section of the check or on the check stub for audit trail purposes;
- g) vendors are used only for work stipulated on their vendor application and are paid in accordance with the terms of their applications for all work performed;
- h) bills for advertising and calculations supporting an estate's proportionate share of expenses be maintained in the estate folder; and
- i) payment authorization forms indicating the reason for bank transfers be maintained in the estate folder.

AUDIT FINDING (5)

(5) Auditors Found Inadequate Personal Property Inventory Records for the Safe and Safe Room

Auditor review determined that **inadequate records exist to facilitate the proper safeguarding of estate personal property maintained in NCPA's safe room and safe, thus increasing risk for potential theft or misappropriation.**

After being notified of a death in a NCPA case, the Deputy Public Administrator and the Estate Aide,²² are dispatched to the premises of the decedent to assess the residence and search for family contact information and valuables. Digital photographs and video are taken of the exterior and interior of the premises. The Deputy PA and Estate Aide supervise the changing of the locks by a licensed locksmith and verify all windows and other points of entry are secured.

Personal property and jewelry that are found at the home are brought back to the NCPA's office and stored in a secure safe room. The safe room is kept locked at all times and access to the room is controlled by a sign in log whereby two persons must be present at all times. **Jewelry and any potentially valuable personal property, such as coins and collectibles, are separated by estate, tagged with an inventory tag and logged by the NCPA staff to individual estate Inventory Listings.** Once inventoried, such items are stored in the immovable safe or locked cabinets within the secure safe room. The safe is kept locked at all times other than when being accessed by certain authorized PA staff members. Other personal property such as photo albums are stored in the safe room in individual inventoried bins. The safe room is monitored 24 hours a day by closed circuit video surveillance.

Any cash/coins found at a decedent's estate are brought back to the NCPA office where they are counted by two employees and manually recorded with a denomination breakdown on a

²² Two or more people must be present upon entering a decedent's home and each room is searched in the presence of both people.

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“Receipt for Checks & Cash” form. The money is then logged into a “Cash/Check log” and the estate’s Inventory Listing and placed in the safe until their eventual deposit²³.

Public auctions of jewelry, vehicles and other items of tangible personal property are held periodically to liquidate estate assets. All estate jewelry, vehicles and other items are appraised by a licensed appraiser prior to the auction.

Auditors performed testing to determine if estate assets were properly inventoried and safeguarded against potential loss or theft. Testing included (1) comparing the safe room log to the Auditor’s physical observation and (2) comparing the estate’s inventory listings to Auditor observations. Additionally, Auditors compared their results to the findings of the NCPA’s annual operational audit report which is performed by an independent CPA.

Safe Room Log vs. Auditor Observation

On February 27, 2018 the Auditors took an inventory of estates with personal property physically present in both the safe room and safe and compared their inventory to NCPA’s Safe Room Log. The following issues were noted:

- Auditors’ physical observation revealed there were assets held in the safe for 20 estates. The NCPA’s Safe Room Log only listed 15 estates. After comparing estate names, it was determined that six estates with assets that Auditors observed in the safe were not listed on the NCPA Safe Room Log. Additionally, one estate on the NCPA listing did not have any assets actually in the safe.
- NCPA’s Safe Room Log indicated 17 estates had a box/bin containing photos or papers in the safe room whereas Auditors’ physical observation noted 16 estates. Upon further investigation it was revealed that two estates listed on NCPA’s Safe Room Log did not have any personal property stored in the room and an additional box of photos/papers was found in the room that was not listed on the Safe Room Log.

Estate Inventory Listings vs. Auditor Observations:

Auditors selected eight estates to trace their contents back to each estate’s Inventory Listing. Auditors observed the following issues:

Inadequate Accounting of Cash and Coins:

Four of eight estates reviewed by Auditors had cash or coins in the safe which was pending deposit. The following issues were noted:

- Four estates (with cash) had money observed in the safe that was not recorded on the Inventory Listing, amounting to \$2,394.29.

²³ If Letters of Administration (“Letters”) were granted for the estate, a separate subsidiary bank account will be setup and the funds will be deposited. If Letters have yet to be received, the money will be held in the safe until it is deposited into NCPA’s main bank account; at which point a check will be cut from NCPA’s account to the estate and kept in a separate accounting safe within the safe room until Letters are received and a subsidiary bank account can be opened.

Findings and Recommendations

- Four estates had cash totaling \$10,783.29 not included on the Check/Cash Logs.
- One estate had \$6,600 listed as being stored in the safe on its Inventory Listing. However, after investigation it was determined that this money was for another estate and was incorrectly recorded on the wrong estate's Inventory Listing. Additionally, this \$6,600 was also not included on the Cash/Check Logs as noted in the previous bullet. Once the Auditors brought this to the attention of the Deputy Public Administrator, the funds were listed to the correct estate.

Errors noted with Personal Property Inventory Listing vs. Auditor Observation:

- Two estates had one instance each where items were physically present in the safe but not recorded on their Inventory resulting in a total under-recording of 22 items.
- Three estates had one instance each of miscounted quantities on their Inventory Listings, resulting in a total of six items that were physically present in the safe but not recorded on the Inventory.
- Three estates had a combined 12 instances where item descriptions were listed but no quantity of items was recorded on the Inventory Listing, amounting to 53 items not being specified.

Procedural Weaknesses:

- Eight estate Inventory Listings were not properly completed with pertinent estate information such as the address, date of death, Surrogate's numbers, date of Letter of Administration or social security numbers.
- Items are typically not individually tagged by NCPA, instead they are grouped together by category (i.e. necklaces, bracelets, etc.) and placed under one group tag. This increases the risk for items to be lost or stolen.
- Appraised item values were not recorded individually on the Inventory Listings. If listed, the grouped value was recorded.

These issues were discussed with NCPA on 3/2/2018 and 3/9/2018 due to the high risk for potential loss or theft of funds in an effort to increase their internal controls.

Concerns with Outside External Audit:

An annual audit by an independent certified public accountant is required by New York State Surrogate's Court Procedure Act §1208(3). Auditors reviewed all external audit reports of the NCPA from 2010²⁴ through 2017 and noted the following procedures were performed by these outside auditors, "Property randomly selected from estate inventory lists was physically observed

²⁴ The 2010 operational audit states "Property randomly selected from centralized lists was physically observed in the safe room."

Findings and Recommendations

in the safe area, and property randomly selected from the safe was traced back to the estate's inventory list.”

The results of each of these external audits “...did not result in any findings, instances of noncompliance with applicable laws and regulations or irregularities.”

This is concerning in light of the multitude of inventory issues Comptroller's Field Auditors uncovered while performing similar inventory testing.

Furthermore, the NCPA has hired the same audit firm to perform their annual operational audit since 2011. NCPA management has stated this firm has been the only one to respond to their annual advertisement for services. Best practice is to change auditors every five years to increase independence.

Audit Recommendations:

We recommend:

- a) the NCPA update their Safe Room Log to ensure an accurate list of all estates with personal property;
- b) the NCPA perform a count of cash and coins found at estates as soon as possible after its discovery. The count should be re-performed by a supervisor or a second party and documented on the estate's Inventory Listing and recorded on NCPA's "Cash/Checks log";
- c) the description and quantity count of personal property items be re-performed by a separate employee through a supervisory review to increase the accuracy of estate Inventory Listings and verify all items have been accounted for;
- d) all estate Inventory Listings be properly filled out with applicable estate information such as the address, date of death, Surrogate's numbers, date of Letter of Administration or social security numbers. The Inventory Listings should be perpetually updated;
- e) personal property items should be individually tagged in an effort to increase accountability and decrease the risk for items to be lost or stolen or items of jewelry switched with one of lesser value;
- f) appraised item values be recorded individually on the Inventory Listings; and
- g) the NCPA consider hiring a different external audit firm to perform their annual operational audit in order to obtain a fresh perspective on their internal controls. The NCPA should speak with other neighboring Public Administrators to compare fees and results for their annual operational audits.

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AUDIT FINDING (6)

(6) The Public Administrator Needs A Unified Electronic Case Management System to Track Estate Activity as Required by NYS Guidelines

The NCPA has not implemented an electronic case management system to record and track estate activity nor do they maintain accurate operating statistics for the department. The Guidelines for the Operations of the Office of Public Administrators of New York State (“NYS Guidelines”) **specifically state that each Public Administrator shall implement and maintain an electronic case management system containing a record of each estate under administration that provides:**

- report generating capability to reflect the status of each estate;
- an individual inventory of each item of real and personal property of saleable value relating to each estate, and the location of such assets; and
- an accounting system to record and summarize all receipts and disbursements for each estate.²⁵

Our review found that despite having an **open case load of 142 cases with gross estate values of \$33.2 million and undistributed values of \$26.1 million as of December 31, 2017, the NCPA is not using one comprehensive electronic case management system.** NCPA staff stated they are meeting the NYS Guideline’s requirement by using a combination of Microsoft Office (Excel and Word) and QuickBooks to record estate activity. Keeping data separately in Excel and QuickBooks does not qualify as an electronic system and does not meet with spirit of the requirement. Although data is entered into an electronic format, the information is not integrated as is the case with a “system.” NCPA has disjointed electronic data stored on drives or devices with no cohesiveness and no integrated controls.

The NCPA creates and maintains the following records:

- **Two QuickBooks** databases, one “Escrow” Account and one “Suspense” account, to track and record all receipts, disbursements, journal entries and cut checks for any payments.
- **Microsoft Excel files** are used to create accounting ledgers to maintain each estate’s receipts and disbursements, the inventory listings of personal and real property, perform monthly bank reconciliations, and create required reports to send to the Surrogate’s Court, County Comptroller, and State Attorney General.
- **Microsoft Word files** used for recording field reports of decedent’s properties by the NCPA’s Estate Aide.
- **Hard copy files** organized in two separate expandable folders: a “case” folder and an “accounting” folder (instead of documents scanned into an estates case record.)

²⁵ Guidelines for the Operations of the Office of Public Administrators of New York State (2012), Subsection I.B, pages 1-2.

Findings and Recommendations

NCPA's lack of a centralized comprehensive case management system to perform all these functions in an automated fashion, results in a labor intensive process of extracting data from multiple sources to compile information for the numerous monthly, semi-annual, annual and closed estate reports.

Auditors also observed the accounting ledger data in both QuickBooks and Excel to be similar, representing a duplication of effort by the NCPA staff and an increased opportunity for errors/omissions of data.

Additionally, Auditors observed numerous copies of the same paperwork in each estate folder; specifically, copies of checks, Letters of Administration and Death Certificates. **Maintaining this documentation in one organized folder would eliminate duplication of efforts.**

Operational Statistics

Without an electronic case management system, the NCPA does not have a practical means to produce any real-time management data or operational statistics to give a true picture of the magnitude of work the department is responsible for and the status of each estate.

Auditors attempted to gain an understanding of the caseload the NCPA manages by requesting:

- how many cases the NCPA had at the start of a calendar year;
- how many new cases were opened;
- how many cases were closed; and
- how many cases remained open at the end of the year.

However, NCPA management was unable to produce these statistics. As a result, Auditors attempted to recreate these figures by tracing data reported to NYS on the Annual Report of all open estates to data reported in the OCA Annual Report; however, Auditors were unable to do so as the data did not agree and could not be easily reconciled.

When the Deputy Public Administrator was asked about this, Auditors were told it is not possible to reconcile this information since the numbers are constantly changing and NCPA treats the final closing of estates different than what is reported to the Surrogate's Court and State. The Surrogate's Court and NYS deem a formal estate closed once a Final Decree detailing the amount of commissions due the NCPA and the remaining amounts to be distributed to the decedents' heirs is approved by the Surrogate's Court Judge. At this point all legal responsibility for NCPA to administer the estate is finalized and the bonding for the estate is closed. The NCPA does not consider an estate closed until all outstanding disbursements have been successfully paid, the estate's bank balances are zero and all bank accounts are closed. The financial differences related to this are further addressed in Finding 7.

Auditors requested documents to support the figures presented in the OCA Annual Report but were not provided with any information that agreed to the data in the report. **Auditors noted the following issues regarding the OCA Annual Report:**

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- When the Public Administrator was questioned regarding the information in the report, he was unaware of where the numbers in the report were coming from, indicating a lack of supervisory review;
- Exhibits in the OCA Annual Report do not contain totals, making any type of reconciliation a manual procedure.
- Total §2307 and §1207(4) (“Suspense”) commission amounts as presented in the OCA Annual Reports do not tie to any supporting schedules found within the report. The commissions listed are inclusive of all types of cases the NCPA administers (Formal Estates, Informal Estates, Creditor’s Petitions, Wrongful Death Lawsuits, Trusts²⁶ or Guardianships). Only formal and informal estate data is listed in exhibits to the Annual Report.
- Commission data listed in the OCA Annual Report does not reconcile to Nassau County’s Financial Accounting System as this data can include prior year commission deposits due to the timing of when commissions were earned, and deposits were made. A reconciliation is not performed to ensure that the commission amounts are in agreement after accounting for the timing differences.
- Any cases that were opened and closed within the same calendar year would not be detected nor would a case that was never officially administered by the Public Administrator be accounted for in the report.

When asked about these discrepancies, the NCPA responded that they answer the questions exactly how they are asked by NYS in the report template. Due to this, the statistical summary information presented within the OCA Annual Report will inherently not tie to the exhibits in the report.

Cost of Implementation

The financial burden to implement a case management system could be mitigated by the improved controls and increased efficiencies that the system would provide. This would allow staff to spend less time performing the arduous tasks of manually creating reports and instead spend more time managing their workload and closing out cases, thus speeding up the process of heirs being paid and the County receiving its commissions. Additionally, the NCPA’s small staff causes numerous segregation of duties issues as one person is performing the majority of all accounting functions. The use of an electronic case management system can be used to greatly improve the department’s internal controls.

Audit Recommendations:

We recommend:

- a) The Public Administrator speak with Nassau County and New York State Court Administration about implementing a central case management system for tracking and

²⁶ NCPA stated the 2017 OCA Annual Report §2307 commission report figure improperly included commissions from Trusts. Trusts are covered by a different section of the SCPA and should be excluded from this calculation.

Findings and Recommendations

recording estate activity. A centralized system is imperative to accurately reflect the cases being handled by the NCPA;

- b) NCPA maintain management reports to detail how many cases the NCPA started a calendar year with, how many new cases were opened, how many cases were closed and how many cases remain open at any given time; and
- c) all supporting documentation used in the creation of the OCA Annual Report be reviewed and retained.

AUDIT FINDING (7)

(7) Discrepancies with the Estate Closing Process Lead to Inconsistent Report Data and Estate Activity Not Being Reported to the Surrogate's Court

Auditor review of the estate closing process has revealed **issues including financial activity which was not reported to the Surrogate's Court and inconsistent reporting documentation.**

When an estate is ready to be closed by the NCPA²⁷, the estate's ledgers are sent to NCPA's outside legal firm to transpose the ledger information into the "Final Accounting" for the Surrogate's Court which details all money which has been received and paid out by the estate and any outstanding disbursements.

The Final Accounting is submitted to the Court, along with an "Affidavit of Service" for both the NCPA's estates attorney and their accountant, for review. The Surrogate's Court Judge will issue a Decision based on these two documents that state the amounts to be paid to NCPA's estates attorney, accountant, and the amount of Commission to the NCPA.

After all remaining disbursements are paid and all receipts are collected, an "Affidavit Bringing Account to Date" is prepared by the NCPA with their estates attorney to update the Final Accounting numbers with any subsequent activity since the Final Accounting was filed.

The Surrogate's Court Judge will review the "Affidavit Bringing Account to Date" and issue a "Final Decree," stating the final payment amounts for legal fees, accounting fees, NCPA Commissions and the remaining balance distributions to the estate's beneficiaries. After all the payments are made, the bond is cancelled and "...the surety and the Public Administrator are discharged and released" from their fiduciary responsibilities.

After a formal estate is closed by Final Decree it will be included in the NCPA's OCA Annual Report with the NYS Court system.²⁸ Within the OCA Annual Report is an Exhibit detailing information for each formal estate closed within the reporting year including the estate's gross

²⁷ Estates cannot be closed until a minimum of seven months have passed since the issuance of Letters of Administration. Per SCPA §1802, this is to allow vendors sufficient time to submit claims against the estate for outstanding balances for goods/services.

²⁸ The NCPA must file the New York State Unified Court System UCS Form 879, Annual Report of the Public Administrator to the Surrogate Pursuant to Uniform Rule 207.63 ("OCA Annual Report").

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value, total legal fees disbursed, and the total commissions paid to the NCPA based on New York State Surrogate's Court Procedure Act ("SCPA") §2307 and §1207(4). Section 2307 commissions are paid to the NCPA for their administrative service which are based on the gross estate value and calculated on a sliding scale as follow:

- For receiving and paying out all sums of money not exceeding \$100,000 at the rate of 5 percent.
- For receiving and paying out any additional sums not exceeding \$200,000 at the rate of 4 percent.
- For receiving and paying out any additional sums not exceeding \$700,000 at the rate of 3 percent.
- For receiving and paying out any additional sums not exceeding \$4,000,000 at the rate of 2 1/2 percent.
- For receiving and paying out all sums above \$5,000,000 at the rate of 2 percent.

SCPA §1207(4) pertains to the Suspense account and allows the NCPA to be paid for "...reasonable and necessary expenses and disbursements...[and] a reasonable amount for the expenses of his office, to be fixed by the court." According to a 9/21/1990 judgement, "a charge of 1% against each estate shall be allowed against each estate to reimburse the reasonable and necessary costs and disbursements of the office of the Public Administrator pursuant to SCPA 1207." This one percent charge is applied to the total gross value of the estate.

Auditors reviewed three estates (out of 92) and performed the following tasks:

- traced individual revenue and expense transactions from the estate Ledgers to the Final Accounting and/or Affidavit Bringing Account to Date;
- compared fees paid for legal and accounting services to the Decision and Final Decree;
- reviewed the commissions paid to the NCPA per the ledger for §2307 and §1207(4) to determine if they agreed with the Decision and Final Decree;
- calculated the gross value of each of the three estates based on our ledger analysis to ensure NCPA commissions were calculated properly; and
- compared the Auditor calculated estate gross value to the gross value reported in the Final Decree and Annual Report.

Our review revealed issues which are listed below by topic.

Issues with Final Accounting & Affidavit Bringing Account to Date vs. NCPA Estate Ledgers

For one of the three estates reviewed, Auditors were unable to substantiate all information listed on the Final Accounting. Specifically, the following investment activity was unable to be verified because investment account documentation was not present in the NCPA's estate file at the time of our field work:

- Acquisition value of money market accounts totaling \$81,407.28;
- Gains from the sale of investments totaling \$40,686.14;

Findings and Recommendations

- Decreases from the sale of investments totaling \$1,280.45; and
- Dividends earned totaling \$2,123.26.

Auditors questioned the NCPA and their estates attorney and accountant about these transactions and initially did not receive any clarification. These documents were subsequently provided to the Auditors at the Exit Conference on 11/1/2018. However, they should have been maintained in the NCPA's estate files.

Auditors noted that no supervisory review of the Final Accounting is performed by the NCPA, they rely on their estates attorney to prepare the document. NCPA's ledgers do not contain any type of coding or legend to easily cross-reference the ledger transactions to the Final Accounting's schedules.

Activity which takes place after the Affidavit Bringing Account to Date is not reported to the Surrogate's Court Judge

Auditors noted that no time period was specified on the Affidavits Bringing Account to Date and received conflicting information as to what the actual end date was for this report from both the NCPA and their estates attorney²⁹. Auditor review found that **certain transactions** which took place **close to when the Final Decree was issued, or after, are reported on NCPA's ledgers but are not reported to the Surrogate's Court** to amend their records. The following types of transactions were identified³⁰:

- Interest earned on accounts;
- NYS Unclaimed Funds and distribution to beneficiaries;
- Bond premium payment;
- Bond cancellation refunds and distribution to beneficiaries;
- Reimbursements for expenses paid from the Suspense account;
- Additional Accountant Fees;
- Nassau County Surrogate's Court fees; and
- Additional §2307 and §1207(4) commissions.

Auditors noted these types of transactions increased the gross estate value as compared to what was originally presented to the Surrogate's Court and reported on the Final Decree. As noted in Exhibit VI below, these unreported transactions increased the gross values for all three estates by a combined \$24,324.

²⁹ After discussion with NCPA and their estates attorney, Auditors were told a time period will be added to all future Affidavit Bringing Account to Date.

³⁰ **Note:** Funds received from interest and unclaimed funds are subject to additional §2307 and §1207(4) commissions as they increase the gross value of the estate.

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Exhibit VI

| NCPA Estate Gross Value Comparisons: Final Decree vs. Auditor Calculation | | | |
|--|-------------------------|-------------------------------|-------------------|
| Estate | Final Decree | Auditor Calculated | Difference |
| A | \$ 188,936 | \$ 210,341 | \$ 21,405 |
| B | \$ 319,498 | \$ 320,054 | \$ 556 |
| C | \$ 977,082 | \$ 979,445 | \$ 2,363 |
| Total | \$ 1,485,516 | \$ 1,509,840 | \$ 24,324 |

The NCPA's commissions were also affected by these unreported transactions since commission calculations are based on the estate's gross value. Therefore, both the NCPA's §2307 and §1207(4) commissions were higher than what was originally reported on each estate's Final Decree. Exhibits VII below illustrates the amount of §2307 commissions that were reported on each estate's Final Decree as compared to the actual commissions that were paid.

Exhibit VII

| NCPA §2307 Commissions Comparisons: Final Decree vs. Actual Paid | | | |
|---|-------------------------|------------------------|----------------------------|
| Estate | Final Decree | Actual Paid | Paid vs. Decree |
| A | \$ 8,557 | \$ 9,414 | \$ 857 |
| B | \$ 13,585 | \$ 13,602 | \$ 17 |
| C | \$ 33,293 | \$ 33,364 | \$ 71 |
| Total | \$ 55,435 | \$ 56,380 | \$ 945 |

Exhibit VIII below illustrates the amount of §1207(4) commissions that were reported on each estate's Final Decree as compared to the actual commissions that were paid.

Exhibit VIII

| NCPA §1207(4) Commissions Comparisons: Final Decree vs. Actual Paid | | | |
|--|-------------------------|------------------------|----------------------------|
| Estate | Final Decree | Actual Paid | Paid vs. Decree |
| A | \$ 1,889 | \$ 2,103 | \$ 214 |
| B | \$ 3,195 | \$ 3,201 | \$ 6 |
| C | \$ 9,771 | \$ 9,782 | \$ 11 |
| Total | \$ 14,855 | \$ 15,086 | \$ 231 |

Differences between the Estate Gross Values as Reported in the Estate's Final Decree vs. OCA Annual Report vs. Auditor Calculations

Findings and Recommendations

Auditors compared their calculation of estate gross values to those reported in each estate's Final Decree and the OCA Annual Reports and noted differences. Exhibit IX below displays the variances for the gross estate values.

Exhibit IX

| NCPA Estate Gross Value Comparisons: Final Decree vs. OCA Annual Report vs. Auditor Calculation | | | |
|--|-------------------------|------------------------------|-------------------------------|
| Estate | Final Decree | OCA Annual Report | Auditor Calculated |
| A | \$ 188,936 | \$ 189,041 | \$ 210,341 |
| B | \$ 319,498 | \$ 319,995 | \$ 320,054 |
| C | \$ 977,082 | \$ 962,009 | \$ 979,445 |
| Total | \$ 1,485,516 | \$ 1,471,045 | \$ 1,509,840 |

The NCPA reports the gross estate value for all estates closed within the year on that year's OCA Annual Report. Auditors noted that activity which takes place after the Final Decree but within the year the estate was closed could be reflected in the OCA Annual Report. However, conversations with the NCPA revealed that the OCA Annual Report figures are not amended to reflect any estate activity which took place in a year subsequent to that which was originally reported. For example, if an estate is reported as closed in 2015, but then has subsequent activity in 2016, the 2016 report will not include the additional activity, nor will the 2015 report be amended.

Auditors spoke with the Special Counsel for the NYS Unified Court System who clarified that post Final Decree activity is not required to be reported on the OCA Report unless the estate has to be formally reopened. She stated "the report is intended to cover activity within a specific calendar year. It would not be appropriate to amend a report. If an estate has to be reopened due to discovering new assets, then it would be necessary for the Public Administrator to report subsequent activity."

Although not a requirement, it appears the ultimate gross estate value is never reported to the Surrogate's Court of Nassau County or the NYS Unified Court System.

Audit Recommendations:

We recommend:

- a) the NCPA perform supervisory reviews of all "Final Accountings" prepared by their estate attorneys for accuracy and completeness;
- b) the NCPA update their ledgers to include a key/legend to tie information listed in their ledgers to the Final Accounting;
- c) the Affidavit Bringing Account to Date include a time frame;
- d) any activity not previously reported to the Surrogate's Court via an Affidavit Bringing Account to Date or Final Decree be reported to the Surrogate's Court; and

Findings and Recommendations

- e) the Surrogate’s Court consider adding a post Final Decree clause to explicitly stipulate the method for distributing and reporting any additional assets identified subsequent to the Final Decree.

AUDIT FINDING (8)

(8) Lack of Management Oversight and Incomplete Suspense Account Personnel Files Have Resulted in \$49,070 of Overpayments to Suspense Account Personnel

Our review found that personnel files for Suspense account employees did not include employment contracts explicitly stating the employees’ duties and responsibilities, salaries, benefits and compensated time off policies. Further analysis revealed full-time Suspense employees were overpaid \$49,070 since being converted from hourly to salaried positions in 2014.

According to Section I.D.2 of the Guidelines, *“The PA may use the suspense account to pay office expenses not funded by the PA’s budget...Expenses 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.”*

The NCPA’s annual budget financed by Nassau County covers the salaries of six employees, including the Public Administrator and the Deputy Public Administrator, and office-related expenses.

During 2014-2016, two additional full-time workers, an office manager and an estate administrator, were employed by the NCPA. Their salaries and benefits were paid through the Suspense account and are noted in Exhibit X below.

Exhibit X

| NCPA Suspense Account Payments Suspense Employee Earnings & Benefits 2014-2016 | | | | | | | | | |
|---|-------------------------|-----------------------------|-------------------------|-----------------------------|-------------------------|-----------------------------|-------------------------|-----------------------------|-------------------|
| Suspense Employee | 2014 | | 2015 | | 2016 | | 2014-2016 Totals | | |
| | W-2 Earnings | Health Insurance | W-2 Earnings | Health Insurance | W-2 Earnings | Health Insurance | W-2 Earnings | Health Insurance | Total |
| Employee A | \$ 53,832 | \$ 7,350 | \$ 58,240 | \$ 8,262 | \$ 58,240 | \$ 6,562 | \$ 170,312 | \$ 22,174 | \$ 192,485 |
| Employee B <i>Notes 1&2</i> | \$ 86,793 | \$ 22,005 | \$ 87,360 | \$ 23,546 | \$ 52,080 | \$ 16,646 | \$ 226,233 | \$ 62,197 | \$ 288,430 |
| Total | \$ 140,625 | \$ 29,355 | \$ 145,600 | \$ 31,808 | \$ 110,320 | \$ 23,208 | \$ 396,545 | \$ 84,371 | \$ 480,915 |

Note 1: Employee B's 2016 W-2 does not reflect \$4,937 of severance pay for compensated absences which were paid via check directly from the Suspense account. Total annual earnings should have been \$57,017. The \$4,937 of severance pay was reported separately on a 1099-MISC.

Note 2: Employee B was terminated on 7/29/16. The full amount for the group health insurance policy had to be paid until the billing cycle was corrected. The excess paid was credited towards Employee A's future monthly payments.

Findings and Recommendations

As mentioned in the Background of this report, in 2015 the New York State Office of the State Comptroller (“OSC”) issued an audit of the NCPA for the time period 2010-2014.³¹ The report identified numerous errors related to personnel files including the following: **The NCPA does not maintain records justifying the hiring of the Suspense employees, their overall duties and responsibilities, their respective salaries and any subsequent raises, their paid work schedules, and the type and waiting period for receiving benefits. The audit also found, unlike all other department employees, the Suspense employees worked through their lunch period and were paid for every hour in attendance.**

In response to OSC’s findings, the NCPA stated they would maintain personnel files for their Suspense account employees which include the justification for their hiring as well as the justification for their pay rate increases. In July 2014 the NCPA also converted Suspense employees from hourly paid employees to salaried and included them on the County’s time record system, “INTIME”, to be in compliance with Section 162 of the State Labor Law³².

Auditors attempted to follow up with the NCPA’s implementation of corrective actions for the OSC report. However, only two Suspense personnel changes had taken place during the scope of our audit:

- One of the two full-time Suspense employees referred to in OSC report was terminated in July 2016; and
- A new part-time Suspense employee was hired in September 2017 to take over the duties of the NCPA’s Civil Service Estate Aid who retired and was paid from the Nassau County budget. The new part-time Suspense employee was granted provisional employment as an Estate Aid (CSEA) and subsequently added to the County payroll pending a civil service examination (scheduled for January 2018) and appointment from a Civil Service list.

Our review noted the following significant deficiencies, with regards to NCPA’s Suspense employee personnel folders:

- Despite being previously addressed in the OSC report, there was still no documented justification for the hiring of Suspense account employees.
 - No advertisements or job postings were solicited (either in local newspapers, the Public Administrator’s website, etc.) for open Suspense employee positions; thus, decreasing the NCPA’s ability to hire the most qualified candidates.
 - All Suspense employees have been hired via “word of mouth” as per Auditor conversations with the Public Administrator and Deputy Public Administrator.
 - No documentation of job interview notes or matching of the candidate’s qualifications and experience to those of the job.

³¹ NYS Office of the State Comptroller, Office of the Nassau County Public Administrator Selected Financial Management and Administrative Practices (Report 2013-S-37)
<http://osc.state.ny.us/audits/allaudits/093015/13s37.htm>

³² Pursuant to Section 162 of the State Labor Law, an employee who works a shift of more than six consecutive hours is entitled to at least a 30-minute meal break.

Findings and Recommendations

- Suspense employee personnel files did not contain employment contracts stating their duties and responsibilities, scheduled work hours, agreed upon salaries, types of benefits, waiting timeframe for receiving benefits and compensated time off policies.
- Suspense employee's personnel file did not contain various payroll and human resources related paperwork such as:
 - Form I-9, Form W-4, emergency contact information;
 - County ID Badge, County Parking Permit; and
 - Employer Workplace Policies (EEO Policy & Acknowledgement Letter, County Code of Ethics, Electronic Mail Policy, Family Medical Leave Act Policy, Drug & Alcohol Free Workplace Policy, etc.)

Additionally, we found errors in the salary computation of Suspense employees. In their response to the OSC audit, the NCPA stated "As of July 2014 suspense account employees were converted from hourly paid to salaried employees..." An Internal Memo was present in the personnel files for these Suspense employees noting their work hours, lunch break, frequency of pay and the change from hourly to a yearly salary. However, the annual salary for each employee was not stated.

NCPA's daily scheduled work hours are for 7 hours of work and a 45-minute unpaid lunch break (typically 9:00 AM – 4:45 PM), or 35 working hours per week. County employees are paid bi-weekly resulting in 26 pay periods throughout the year. **Auditors noted NCPA's hourly to salary conversion was performed using a 40-hour work week instead of a 35-hour work week, which resulted in \$49,070 of overpayments for both employees from 2014-2017.** See Exhibit XI below for Auditors' calculation.

Findings and Recommendations

Exhibit XI

| Nassau County Office of the Public Administrator Suspense Employees Annual Salary Overpayment 2014 - 2017 | | |
|--|------------------|------------------|
| Payroll Information | Employee A | Employee B |
| Salary: 35 hr Work Week | \$ 50,960 | \$ 76,440 |
| Salary: 40 hr Work Week | \$ 58,240 | \$ 87,360 |
| Annual \$ Difference (40 vs 35) | \$ 7,280 | \$ 10,920 |
| Pre-Salaried Hourly Rate | \$ 28 | \$ 42 |
| Recalculated Hourly Rate | \$ 32 | \$ 48 |
| Hrly Rate Difference (40 vs 35) | \$ 4 | \$ 6 |
| 2014 Overpayment | \$ 3,920 | \$ 5,880 |
| 2015 Overpayment | \$ 7,280 | \$ 10,920 |
| 2016 Overpayment | \$ 7,280 | \$ 6,510 |
| 2017 Overpayment | \$ 7,280 | N/A |
| 2014-2017 Overpayment | \$ 25,760 | \$ 23,310 |
| Total Overpayments | | \$ 49,070 |

When questioned about the salary calculations the Public Administrator and Deputy Public Administrator stated the calculations were performed by the former Office Manager who was paid from the Suspense account (Employee B in Exhibits X and XI).

This lack of appropriate segregation of duties, coupled with no supervisory review, allowed the Office Manager to be in full control over her pay and attendance records. The conversion from hourly to salary resulted in an additional \$10,920 of annual pay which did not receive any formal supervisory review. It was further noted that during her employment with the NCPA this employee handled all payroll and time and leave functions for the department (additional issues with time and leave records are covered in Findings 9 and 10).

This Office Manager was terminated in July 2016 and received severance pay of \$4,937 for accumulated time off that had not been used. Auditors noted this amount was not reported on the employee's 2016 Form W-2. After questioning NCPA, it was noted that a separate 1099-MISC was filed for the severance pay.

Audit Recommendations:

We recommend the NCPA:

- a) publicly advertise for all future Suspense employee positions;
- b) document the justification for the hiring of employees financed by the Suspense account;

Findings and Recommendations

- c) create employee contracts for all Suspense employees detailing their duties and responsibilities, scheduled work hours, agreed upon salaries, types of benefits, waiting timeframe for receiving benefits and compensated time off policies; and
- d) disseminate Human Resources' *New Hire Packet Orientation Checklist* to all employees (Appendix A).

AUDIT FINDING (9)

(9) Manual Timekeeping Practices for Suspense Account Employees Have Resulted in Inaccurate Time & Leave Balances

Our review found inaccuracies in the manually documented time & leave records of the NCPA's Suspense account employees.

Although attendance for Suspense account employees is tracked via INTIME³³, recording of their time & leave balances must be performed manually due to their exclusion from the Nassau Unified Human Resource System ("NUHRS")³⁴. Therefore, the oversight of Suspense employee time & leave balances is performed manually through the use of the County's annual *Employee Time & Leave Record* paper forms.

Auditors were informed by the NCPA that Suspense employees are treated the same as civil service employees for the accrual of their time & leave balances and therefore follow the stipulations of the current CSEA contract³⁵. Auditors recalculated both Suspense employees' annual ending time & leave balances in accordance with the CSEA contract and the employees' used time off and compared their results to the ending time balances computed by the NCPA. As noted in Exhibit XII below, Auditors found a cumulative over-accrual of 4.5 days for one employee and an initial under-accrual of 3.0 days for the other employee. Further review noted a lack of proper documentation to support the accrual of 3.5 days of compensated time which was used between 2013 and 2016. As a result, Auditors applied this 3.5 days of compensated time against their initial under-accrual of 3.0 days to compute a net over-accrual of 0.50 days.

³³ Nassau County utilizes an electronic, web-based system called *Integrated Nassau Time Management for Employees* ("INTIME") for recording time and leave activities.

³⁴ NUHRS only tracks time off balances for County employees paid with budgeted County funds. The NCPA's Suspense account employees are paid directly from the Suspense account not with budgeted County funds.

³⁵ Agreement between the County of Nassau and Nassau Local 830, Civil Service Employees Association, Inc. Local 1000, AFSCME, AFL-CIO. January 1, 2008 – December 31, 2015.

Findings and Recommendations

Exhibit XII

| NCPA Suspense Employees Time & Leave Over/Under Balance Accruals 2011 - 2017 | | | | | | | | |
|--|--------------------------|----------------|-----------------|----------------|--------------------------|----------------|-----------------|----------------|
| Year | NCPA Suspense Employee A | | | | NCPA Suspense Employee B | | | |
| | Sick (Days) | | Vacation (Days) | | Sick (Days) | | Vacation (Days) | |
| | Per NCPA | Per Auditor | Per NCPA | Per Auditor | Per NCPA | Per Auditor | Per NCPA | Per Auditor |
| 2011 | 3.75 | 4.00 | 0.00 | 0.00 | 8.75 | 8.50 | 3.00 | 3.00 |
| 2012 | 9.00 | 9.50 | 9.00 | 9.00 | 14.00 | 14.50 | 6.00 | 6.50 |
| 2013 | 13.50 | 14.00 | 10.50 | 11.00 | 17.50 | 18.50 | 9.50 | 10.50 |
| 2014 | 11.50 | 9.00 | 13.00 | 14.00 | 20.00 | 21.00 | 4.00 | 5.00 |
| 2015 | 9.25 | 5.75 | 9.50 | 11.00 | 21.00 | 22.00 | 2.00 | 4.00 |
| 2016 | 4.50 | 2.00 | 5.75 | 7.25 | 14.25 | 15.00 | 7.50 | 9.75 |
| 2017 | 7.75 | 4.75 | 6.25 | 4.75 | N/A | N/A | N/A | N/A |
| Ending Balance Diff Over/(Under) | 3.00 | | 1.50 | | (0.75) | | (2.25) | |
| Total Difference Over/(Under) | 4.50 | | | | 0.50 * | | | |
| * Further review of Employee B's annual time & leave records noted 3.5 days of compensated time was used between 2013 and 2016. However; proper supporting documentation for earning this time did not exist. Auditors applied this 3.5 comp days against the 3.0 under accrued days to compute a net over accrual of 0.50 days. | | | | | | | | |

Additionally, Auditors noted Employee A had a significant amount of time unaccounted for in INTIME. **For the time period 1/1/2017-11/17/17, Auditors noted 2,393 minutes (equating to 39.9 hours or 5.7 work days) of missing time from Employee A's INTIME records.** The missing time is comprised of the following:

- Eight instances (totaling 662 minutes) of arriving more than six minutes late to work;³⁶
- Four instances (totaling 471 minutes), of leaving early from work; and
- Three instances (totaling 1,260 minutes) of No Clock ON/OFF in INTIME.

Audit Recommendations:

We recommend:

- a) the accrual of Time & Leave balances be performed in accordance with the CSEA contract;

³⁶ An employee is considered "Tardy" in INTIME when arriving more than six minutes after the scheduled start time or leaving before the scheduled end time. All tardiness is accumulated in an INTIME Tardy balance in minutes and when the resulting Tardy balance reaches 105 minutes, the employee is charged against their leave time.

Findings and Recommendations

- b) routine supervisory review be performed of Suspense employee Time & Leave records and balances to verify the accuracy of balances and minimize potential errors;
- c) the NCPA properly document the accrual and approval of any compensated time and its subsequent usage; and
- d) INTIME attendance records for Suspense employees be reviewed and certified each pay period and traced to manual time & leave records.

AUDIT FINDING (10)

(10) The Public Administrator Failed to Perform the Required Review and Certification of Timekeeping Records Resulting in Significant Time & Leave Errors

Our review found a multitude of significant timekeeping errors that went undetected due to the NCPA's time and leave records not being reviewed and certified at the end of every pay period.

Nassau County utilizes a web-based system called Integrated Nassau Time Management for Employees ("INTIME") for recording time and leave activities.³⁷

INTIME data is to be reviewed and certified at the end of every pay period and exported to the Nassau Unified Human Resources System ("NUHRS"), the County's payroll system. NUHRS will validate the INTIME records and release records for payment and/or reject them to a suspension status for follow-up. NUHRS performs all HR transactions and is the official source for employee records such as (new hires, salary increases, terminations, etc.), payroll calculations (including OT) and leave balances and accruals.

INTIME security is role based. Hierarchies define the reporting structure within departments and across the County and establish which employees report to which supervisors. The User Roles dictate an employee's access level and the INTIME functions that can be performed for an assigned Team of employees. The various INTIME User Roles and their related responsibilities are displayed in Exhibit XIII below.

³⁷ Employees can access the INTIME application through the main page or Human Resources ("HR") section of the County's Intranet site. Alternately, a link to INTIME also appears on the County's HR website which is accessible from home or other outside locations at <https://www.nassaucountyny.gov/1681/Human-Resources>. INTIME is a rules-based system based on County policies and procedures and collective bargaining agreements that maintains employee time entry and scheduling, requests for time off, overtime, balance and time authorization.

Findings and Recommendations

Exhibit XIII

| Nassau County INTIME System Security Groups and Roles | | |
|---|---|---|
| Security Group/Role | Overall Role Responsibility | Key Tasks |
| User Badge User Timesheet | Maintain work schedule | User - Badge: Proximity Badge is the method to Swipe In and Out |
| | | User - Timesheet: Start and End times are entered directly on the electronic Timesheet |
| | | Submits Time Off Request Forms to use leave time |
| | | Submits Missed Clock Forms for missed swipes (User Badge) |
| Timekeeper | Reviews and edits employee timesheets for Assigned Employees | Submits OT Authorization Forms for preapproved OT worked |
| | | Modifies shifts/shift patterns and keys in time entries once approved |
| | | Enters Overrides (i.e., Corrects Missed Punches) |
| | | Point of contact to assist employees and Supervisors in obtaining information maintained in NUHRS when needed |
| Supervisor | Approves employee time and exceptions for Assigned employees. | Can Perform all Timekeeper Tasks |
| | | Approves Time Off Requests and Missed Clock Forms |
| | | Enters Overrides (from Temporary to Permanent Time Codes) |
| | | Reviews INTIME Reports |
| | | Certifies Time (Pay Period Summary) |
| | | Can delegate Supervisor task |
| Department Head | Overall responsibility for time and leave activities within department. | Monitors for Time Entry Leave Abuse and Enforces County policies. |
| | | Can Perform Supervisor Tasks |
| | | Reviews and Approves/Rejects OT Authorization Forms |
| Department HR | Assigns and maintains employee data. | Can assigns a Delegate to approve/reject OT Authorization Forms |
| | | Assigns default shift patterns |
| | | Assigns Security data, including Proximity Badge number and Security Group |
| | | Modifies and maintains Reader Groups and Employee Teams |
| | | Updates/Edits Proxies and Delegates |

Our review found that despite errors, the NCPA’s Timekeeper was performing her duties. However, the department’s Supervisor and Department Head were not performing any oversight or certification in INTIME as required. As a result, any timekeeping errors/omissions that were not identified by the Timekeeper were not detected during a secondary review.

Auditors analyzed NCPA’s INTIME records for 1/1/2017-11/6/2017. Our review found over 50 instances of timekeeping deficiencies/errors including the following:

- time off requests were submitted 25 days or more after the time off date;
- two lunch breaks in the same day;
- time off classifications (Sick, Vacation, Personal) being changed over a month after the time off date;
- manually entering a start time 64 days after it occurred;
- manual clock on/clock off errors (two clock on/off in a single day, or only one clock on but no clock off, vice versa);
- an employee did not clock on or off for the entire day resulting in 21 hours of missing time;
- two employees were each missing one hour of time in a day;

Findings and Recommendations

- one employee is not recording manual clock on/clock off entries daily; and
- manual time in/time out was entered for the day; however, time off was charged.

Audit Recommendations:

We recommend:

- a) all employee time sheets are certified by either the designated Payroll Supervisor or Department Head every two weeks to ensure employee absences are supported by a time off request or a designated County holiday; and
- b) manual entry for time on/time off should be recorded daily.

AUDIT FINDING (11)

(11) NCPA Administrative Staff is Not Properly Accounting for Time When They Are Not Physically at Work

Auditor observations found that the Public Administrator is manually clocking in for time when he was not physically present at work.

All NCPA Staff, with the exception of the Public Administrator and Deputy Public Administrator, use an INTIME Proximity ID Badge to Clock ON/OFF when they arrive and leave work. The Public Administrator and Deputy Public Administrator manually enter their own time into the INTIME system.

During the course of our review, Auditors noticed that the Public Administrator and Deputy Public Administrator were frequently not present at the NCPA Office for their 9:00 AM start time. Auditors questioned other NCPA staff as to their whereabouts and were usually told the Deputy Public Administrator was in the field at a decedent's residence. These claims were later supported when Auditors would speak with the Deputy Public Administrator after her arrival to the office. However, the NCPA staff was always unaware of where the Public Administrator was or when he was coming in.

Auditors noted the department does not maintain a written log for employees to sign out when they are not in their office for work related business. Such a log would allow staff to document where they were at a particular point in time when they are not present in the office.

Auditors performed observations to determine when the Public Administrator arrived for work and compared it to his manually recorded INTIME Clock ON time. Physical observation of arrival times were performed for 15 different days between November 2017 and March 2018.

In all 15 instances tested, the Public Administrator arrived late to work³⁸ but manually recorded his arrival time as 9:00 AM, thereby bypassing the accrual of any tardy time. **Auditors calculated**

³⁸ An employee is considered Tardy in INTIME when arriving more than 6 minutes after the scheduled start time or leaving before the scheduled end time. All tardiness is accumulated in an INTIME Tardy balance in minutes.

Findings and Recommendations

the Public Administrator arrived late to work a minimum of 760 minutes (12.67 hours) during the time period observed, with tardiness ranging from 30 to 75 minutes per occurrence. (See Appendix B for a detailed schedule of these observations.)

Three of these fifteen instances were corroborated by Comptroller's investigators, who noted that the Public Administrator did not travel to any locations that could be construed as work related business on his way to the office, such as the Surrogate's Court, bank, or vacant home of a decedent.

Audit Recommendations:

We recommend:

- a) the NCPA establish a departmental log for all employees to record time they are physically out of the office when they are attending to departmental business or using time off for personal reasons in order to establish accountability; and
- b) the Public Administrator accurately enter his actual arrival and departure time manually into INTIME noting any lateness, or the Public Administrator and Deputy Public Administrator be required to swipe in/out of work with their INTIME Proximity ID Badges.

AUDIT FINDING (12)

(12) The Public Administrator May Not Be in Compliance with Executive Order 1-2018 Which Prohibits Agency Heads from Holding Certain Political Positions

Executive Order Number 1-2018 issued by County Executive Curran on January 18, 2018, prohibits some County staff including agency heads from holding "*any office or position of authority within any political party or committee of any political party.*"³⁹

Based upon an anonymous tip received regarding the Public Administrator's involvement in a local political party, Comptroller's staff reviewed open source information available, from which it appears the current Public Administrator holds a leadership role in relation to the Nassau Republican Party and/or the Salisbury Republican Club.⁴⁰

Audit Recommendations:

We recommend that the County Attorney review this situation and determine if the position of the Public Administrator, which is a position appointed by the Surrogate Court, but employed by Nassau County, is subject to Executive Order 1-2018. Based upon the results of the County

Whenever the resulting Tardy balance reaches 105 minutes, the INTIME Supervisor must charge the Tardy time in ¼ day increments against the employee's vacation leave, sick leave, personal leave, or compensatory time, in that order. Each lateness is accumulated in the Tardy balance until one year has elapsed. If the balance has not reached 105 minutes after a year the INTIME Supervisor should manually delete the late minutes from the balance.

³⁹ Executive Order Number 1 -2018, <https://www.nassaucountyny.gov/DocumentCenter/View/21932>.

⁴⁰ <https://nassaucountygop.com/local-clubs-1>.

Findings and Recommendations

Attorney's review, appropriate action to bring the Public Administrator into compliance with Executive Order 1-2018 should be immediately taken if required.

APPENDICES

Appendix A - New Hire Packet Orientation Checklist

Name of Employee _____

Job Title _____

HR Representative _____

NEW HIRE PACKET ORIENTATION CHECKLIST

I certify that the information, forms, notifications and policy statements as listed below regarding program benefits or obligations pertaining to Nassau County employment were given to me today.

Employee Signature _____

Date _____

| | | Rev'd | Rec'd |
|--|---|-------|-------|
| Folder Side 1 | Constitutional Oath of Office Card | | |
| | Official County Holidays Memo | | |
| | Nassau County Federal Credit Union Welcome Kit and Pamphlet | | |
| | Employee Assistance Plan Pamphlet | | |
| | NYPERL Long-Term Care Insurance Information Card | | |
| | Nassau County Code of Ethics and Policy Acknowledgment Form | | |
| | EEO New Employee Welcome Letter | | |
| | EEO Policy and EEO Policy Acknowledgment Form | | |
| | Family Medical Leave Policy and Acknowledgment Form | | |
| | Countywide Electronic Mail Policy (E-Mail) and Acknowledgment Form | | |
| | Drug & Alcohol-Free Workplace Policy & Acknowledgment Form | | |
| | Employee Benefits Summary and Contact Sheet | | |
| | New Hire ATTR Form | | |
| | Request for County ID Badge | | |
| | Work Schedule Sign Off | | |
| Folder Side 2 | Direct Deposit Application Form | | |
| | I-9 Form | | |
| | W-4 Withholding Allowance Certificate | | |
| | Employee Emergency Information Card | | |
| | NYS Retirement Membership Application (Article 15) | | |
| | NYS Retirement System Membership Information | | |
| | NYS Health Insurance Transaction Form | | |
| | NYS Health Insurance Claim Form | | |
| | Prescription Drug Information Booklet | | |
| | Health Insurance Rate Schedule | | |
| | Health Insurance Benefits Summary Comparison | | |
| | Notice of Health Insurance Marketplace | | |
| | Health Benefit Buyback Form and explanatory sheet | | |
| | NYS Health Insurance Declination of Health Insurance Form | | |
| | Dental Enrollment Card and Dental Plan Summary and Participating Provider directory | | |
| Vision Plan Summary, VDT Operator Certification form and Vision Plan Enrollment form | | | |
| County of Nassau Auto Notice Statement | | | |
| Employee Parking Permit Application | | | |
| Prior Service Credit Notification | | | |
| Employee Time and Leave Record Form | | | |
| Notification of Requirement to Return Issued County Property | | | |
| Flexible Spending Benefits | | | |
| Deferred Compensation Information | | | |

Appendix B – Public Administrator Arrival Times vs. INTIME Clock On

| Nassau County Office of the Public Administrator Public Administrator Arrival Times Auditor Observed Arrival vs. INTIME Clock ON 11/17/2017 - 3/12/2018 | | | | | |
|--|---|--|--------------------|--|------|
| Date | Auditor Observed Arrival to Office | Estimated Clock ON <i>See Note (1)</i> | INTIME Clock ON | Clock ON Difference (In Minutes) | Note |
| 11/17/17 | 9:42:00 AM | 9:37:00 AM | 9:00:00 AM | 37 | |
| 11/20/17 | N/A | N/A | 9:00:00 AM | 60 | 2 |
| 11/28/17 | 9:55:00 AM | 9:50:00 AM | 9:00:00 AM | 50 | |
| 11/30/17 | 9:49:00 AM | 9:44:00 AM | 9:00:00 AM | 44 | |
| 12/01/17 | 10:00:00 AM | 9:55:00 AM | 9:00:00 AM | 55 | |
| 12/05/17 | 9:40:00 AM | 9:35:00 AM | 9:00:00 AM | 30 | |
| 12/20/17 | 9:40:00 AM | 9:35:00 AM | 9:00:00 AM | 35 | |
| 01/08/18 | 10:00:00 AM | 9:55:00 AM | 9:00:00 AM | 55 | |
| 01/10/18 | 10:20:00 AM | 10:15:00 AM | 9:00:00 AM | 75 | |
| 01/17/18 | 9:50:00 AM | 9:45:00 AM | 9:00:00 AM | 45 | |
| 02/08/18 | 10:20:00 AM | 10:15:00 AM | 9:00:00 AM | 75 | |
| 02/22/18 | 10:05:00 AM | 10:00:00 AM | 9:00:00 AM | 65 | 3 |
| 02/23/18 | 9:45:00 AM | 9:40:00 AM | 9:00:00AM | 45 | |
| 02/28/18 | 9:35:00 AM | 9:30:00 AM | 9:00:00AM | 45 | 3 |
| 03/12/18 | 9:49:00 AM | 9:44:00 AM | 9:00:00 AM | 44 | 3 |
| Total Estimated Minutes Not Worked | | | | 760 | |

Note 1: Auditors assessed a 5 minute window for Clock ON time from their actual observed arrival time since NCPA's offices are on the 6th Floor.

Note 2: Auditors present in NCPA Office from 9:00 AM- 10:00 AM. During this time the PA had not yet arrived to work. Auditors calculate a minimum 60 minute difference between arrival and INTIME Clock ON.

Note 3: Observation of travel from home to work performed by Nassau County Comptroller's investigators.

Appendix C – Auditor’s Follow Up Comments to NCPA Response

Auditor’s Introductory Follow-up Comment to Auditee’s Response

The main purpose of a governmental internal audit (as opposed to an audit of financial statements) is to report on an organization that delivers services that serve the public good and that are established by governmental policy.

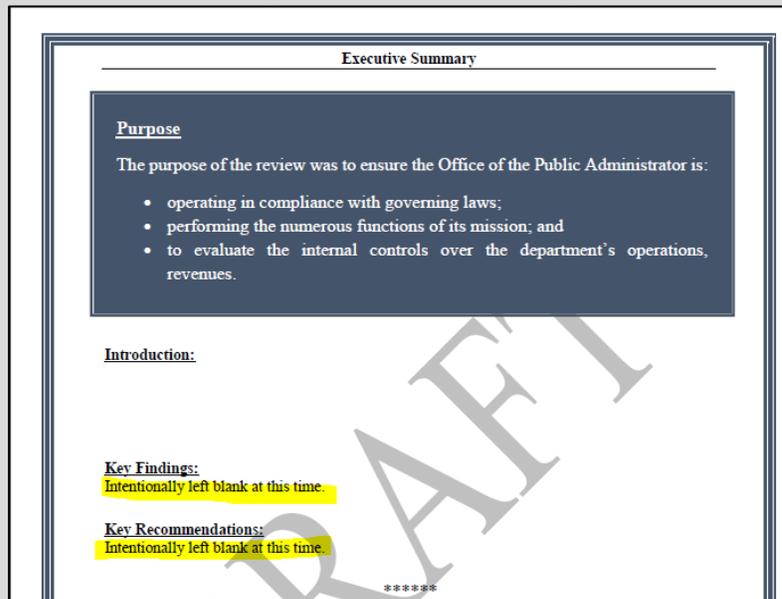
A governmental audit by the Office of the County Comptroller allows a view into the public sector entity to see if they fulfill their duty to be accountable and transparent to the County residents and taxpayers while achieving their objectives effectively, efficiently, economically, and ethically.⁴¹

NCPA’s Comment on the Executive Summary on Page i of the Report

“The Introduction, Key Findings and Key Recommendations sections of the Executive Summary were left blank on the Draft Review and thus no responses can be made by the NCPA to these sections.”

Auditor’s Follow Up to NCPA’s Comment

The Deputy Public Administrator who signed the Departmental response was present at the November 1, 2018 Exit Conference when the estate attorney asked about these sections and was informed by the Auditors that, as shown below, the sections were **“intentionally left blank at this time”** and would not be completed until the final audit report is released as the Public Administrator’s response is needed to complete these summary sections.



⁴¹ “Public Sector Definition and the role of Auditing in Public sector Governance”, Institute of Internal Auditors / Global, 2012

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Comment on the Introduction on Page 2 of the Report

“On page 2 of the Draft Review, the 2015 New York State Comptroller Report, is referenced in the Background section, and the findings of the New York State Comptroller are identified as “significant.” The word “significant” was not set forth in the Report from the New York State Office of the State Comptroller.”

Auditor’s Follow Up to NCPA’s Comment

The terminology “significant” is used within the New York State Comptroller’s report. In the Audit Scope and Methodology, the NYS Comptroller’s report stated **“We identified certain control deficiencies that were significant to the audit’s objectives.** These are discussed in the appropriate sections of our audit report.” Additionally, one of the NYS Comptroller’s report’s key findings noted that “The NCPA’s Annual Reports to the State Comptroller did not list non-cash estate assets as required by statute. Thus, the values of many estates were significantly underreported.”

NCPA’s Comment on the Background on Page 3 of the Report

“The Draft Review on page 3 in the Background section, correctly indicates that “...the majority of financial transactions handled by the Public Administrator deal directly with estate funds (“Escrow”) and as such are not recorded in the County’s internal financial accounting system as they are not County assets.” The use of the term Escrow, however, is incorrect. Black’s Law Dictionary defines an escrow account as “a special account for holding specific monies for disbursement under specific conditions.” Funds held by the NCPA for the individual estates are not held in escrow accounts because they are funds to be used for general purposes of the respective estates, and are not held under specific conditions. The accounts are opened in the name of the estates with their own separate Federal Tax Identification Number.”

Auditor’s Follow Up to NCPA’s Comment

NCPA staff referred to the main estate account information (i.e. non Suspense account) as either “escrow” or “estate” throughout the course of the audit and Field Audit thus referred to it as the same.

NCPA’s Comment on the Audit Scope on Pages 3-4 of the Report

“The Audit, Scope Objectives and Methodology sections of the Draft Review state that “[t]he audit covered the period from January 1, 2014 to the present.” The engagement letter sent to the NCPA, by the Nassau County Comptroller, dated May 8, 2017, however, set forth that “[t]he review will cover the period from January 2015 to the present.” The audit period of the Draft Review covered 2014, a year earlier than the engagement letter outlined. No explanation was given by the Comptroller for the change in the dates for the audit period.”

Appendix C – Auditor’s Follow Up Comments to NCPA Response

Auditor’s Follow Up to NCPA’s Comment

The audit scope was discussed with the Public Administrator, Deputy Public Administrator and their estate attorney at the Entrance Conference on July 11, 2017. The Director of Field Audit stated, “although the Engagement Letter states that the review will cover the period January 2015 to the present, in some instances the audit will cover 2014 and earlier time periods, especially during the follow-up of the findings of the NYS Comptroller’s 2015 Audit Report.” The Public Administrator and estate attorney both stated they “had no problem with that.” Requests for closed estate files pertaining to 2014, or any other documentation predating 2015 were never questioned by the NCPA during fieldwork.

NCPA’s Comment on the Methodology on Page 4 of the Audit Report

“The Draft Review fails to set forth a methodology. The New York State Office of the State Comptroller report, dated April of 2015, details the methodology used.”

Auditor’s Follow Up to NCPA’s Comment

The Audit Scope, Objectives and Methodology are clearly presented on pages 3-4 in the Introduction section of this report. In addition, the Audit Protocol, which explains the entire audit process, was provided to the Public Administrator, along with the engagement letter on May 8, 2017. The information in these documents was also discussed at the Entrance Conference held on July 11, 2017.

NCPA’s Comment on Audit Sampling

“Furthermore, pursuant to Government Accounting Auditing Standards (GAAS) AU-C 530, audit sampling is to be representative of the entire population. Without a representative population, it is unlikely that a reasonable basis for conclusions can be drawn. Globally, in the Draft Review, the samplings being used are not representative of the entire population(s) being reviewed.”

Auditor’s Follow Up to NCPA’s Comment

Government Accounting Auditing Standards (GAAS) AU-C 530 pertains to “audits of financial statements for periods ending on or after December 15, 2012.” The internal audit performed by Field Audit is not an audit of the NCPA’s financial statements.

In accordance with The Institute of Internal Auditors (IIA) Practice Advisory 2320-3: Audit Sampling, “**Nonstatistical sampling may be used when results are needed quickly and needed to confirm a condition rather than being needed to project the mathematical accuracy of the conclusions....Judgmental sampling [is] based on the auditor’s professional judgement; meant to focus and confirm a condition that is reasonably thought to exist.**”

AUDIT FINDING (1)

(1) The Public Administrator is Not Involved in Day-to-Day Operations - Outside Parties Have Excessive Involvement with Office Operations

Audit Recommendations:

We recommend:

- a) the County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office;
- b) the NCPA’s appointed estates attorney only perform duties related to the administration of the individual estates they represent;
- c) all legal matters pertaining to the operations of the Nassau County Office of the Public Administrator be forwarded to the Nassau County Attorney’s Office;
- d) the NCPA consider issuing an RFP for estates attorneys services and consider using multiple attorneys to represent estates with sliding scales depending on complexity of the estate; and
- e) the NCPA cease from relying on an outside CPA for internal accounting operations and immediately hire an in-house Accountant.

NCPA’s Comment on Finding 1

“In addition, the Draft Review overinflates the fees paid to the attorney for the NCPA from the estates for the audit period, by 25%, without explanation.”

Auditor’s Follow Up to NCPA’s Comment

Per the NCPA’s QuickBooks files the following payments were made to the estate attorney, amounting to a total of \$2.8 million:

| Year | Escrow | Suspense | Total |
|--------------|-----------------------|---------------------|-----------------------|
| 2014 | \$ 1,382,638.39 | \$ 58,500.00 | \$ 1,441,138.39 |
| 2015 | \$ 576,556.90 | \$ 66,036.00 | \$ 642,592.90 |
| 2016 | \$ 680,855.63 | \$ 51,750.00 | \$ 732,605.63 |
| Total | \$2,640,050.92 | \$176,286.00 | \$2,816,336.92 |

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Response to Recommendation 1

“The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same.”

Auditor’s Follow Up Response to Recommendation 1

We stand by our finding and reiterate our recommendations **that the County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office**; the NCPA’s appointed estates attorney only perform duties related to the administration of the individual estates they represent; all legal matters pertaining to the operations of the Nassau County Office of the Public Administrator be forwarded to the Nassau County Attorney’s Office; the NCPA consider issuing an RFP for estates attorneys services and consider using multiple attorneys to represent estates with sliding-fee scales depending on complexity of the estate; and the NCPA cease from relying on an outside CPA for internal accounting operations, and immediately hire an in-house Accountant.

AUDIT FINDING (2)

(2) Reports to Taxing Authorities of Vendor and Professional Service Payments Were Not Made

Audit Recommendations:

We recommend the NCPA:

- a) require vendors complete Form W-9 or require such information on their internal vendor application for Form 1099-MISC reporting purposes;
- b) issue Form 1099-MISC to all attorneys utilized by the NCPA who received over \$600 in a calendar year;
- c) issue Form 1099-MISC to all qualifying vendors using the NCPA’s Tax Identification Number;
- d) aggregate the total amount paid to vendors regardless of their source of payment, without excluding payments under \$600 to determine if vendors would require a 1099-MISC; and
- e) utilize their pre-existing QuickBooks application, or other similar software, to track 1099 eligible vendor payments and generate 1099s to ensure accuracy and reduce costs paid to the outside accountant.

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Response to Recommendation 2

“The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. With respect to vendor 1099-Misc forms, the NCPA will continue to issue same in the aggregate, from the Suspense Account, at the request of the Nassau County Comptroller. The NCPA requests the Nassau County Comptroller seek an advisory opinion from the Internal Revenue Service on the NCPA’s obligation to issue 1099-Misc Forms by the NCPA, from both suspense and estate accounts, for GAL attorney appointments by the Surrogate, and for the attorney for the Public Administrator.”

Auditor’s Follow Up Response to Recommendation 2

In accordance with the request by the NCPA, the Comptroller will request an advisory opinion on the requirement of issuing 1099-MISC forms from the Internal Review Service.

AUDIT FINDING (3)

(3) The Public Administrator Deviated from Departmental Procedures Regarding the Selection and Compensation of Vendors

Audit Recommendations:

We recommend the NCPA:

- a) ensure newspaper advertisements for outside vendors be published timely in the year preceding the advertised year of service to allow vendors appropriate time to respond and NCPA staff adequate time to review vendor applications and select vendors for use and inclusion on NCPA’s annual vendor list;
- b) thoroughly review all vendor applications for completeness. All applications should be time stamped immediately upon receipt, indicate the vendor’s type of business entity, list the vendor’s fees, be signed by the vendor and notarized, include copies of all applicable business licenses and have supplementary vendor information packages completed as necessary;
- c) educate itself on the business licenses needed to perform services in Nassau County and verify all vendors have the required licenses;
- d) require all vendors submit a properly completed Form W-9 along with all vendor applications denoting the vendor’s appropriate federal tax classification;
- e) ensure that complete and accurate applications are received for all vendors included on NCPA’s annual vendor list;
- f) annual vendor lists include the vendor fees and an indication of a vendor’s past experience with NCPA;

Appendix C – Auditor’s Follow Up Comments to NCPA Response

- g) keep written documentation to justify the selection of the particular vendors included on the annual vendor list; and
- h) use only vendors who are included on their annual vendor list and have submitted a properly completed vendor application.

NCPA’s Comment on Finding 3

“Contrary to the Draft Review, the NCPA does not have written departmental procedures that conflict with or restrict the PA guidelines with regard to the advertisement of outside vendors.”

Auditor’s Follow Up to NCPA’s Comment

NCPA includes their internal procedures in the Annual Reports they file with New York State. As detailed in these Annual Reports, the NCPA’s internal procedures state “All respondents to the RFP receive an application for completion. In addition, the Nassau PA requests that all of its current vendors submit a new application annually.”

Although the PA Guidelines do not impose a duty on the NCPA to ensure that vendors complete their applications, it is a good practice to verify vendor applications for completeness and validity during the vendor selection process.

NCPA’s Comment on Finding 3

“Although the NCPA advertises for vendors, more than is required by the PA Guidelines, the Comptroller still found fault with the NCPA advertisements, due to the timing of the advertisements. There is no requirement to advertise at any specific time of year.”

Auditor’s Follow Up to NCPA’s Comment

Despite being an alternative to the annual advertisement placed on the NCPA’s website, if the NCPA continues to advertise in local papers for vendors, the advertisements must be timely. To publish advertisements during the year for which services are being advertised, or immediately preceding the start of the year, defeats the purpose of advertising to stimulate competition amongst vendors and prevent favoritism.

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Response to Recommendation 3

“The NCPA acknowledges the audit recommendations and submits the NCPA is in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA is fully aware that the County of Nassau requires vendors to have the proper business licenses to perform services in Nassau County, and shall continue to verify that all vendors have the required license. NCPA will continue to use best efforts to have all vendors fill out applications, and list usual vendor fees on the annual Vendor List.”

Auditor’s Follow Up Response to Recommendation 3

We stand by our finding and reiterate all of our recommendations.

AUDIT FINDING (4)

(4) Cash Receipt, Cash Disbursement and Inter-Bank Transfer Procedures Require Improvement, Largely Caused by Lack of Departmental Accounting Staff

Audit Recommendations:

We recommend:

- a) all cash receipts be recorded on the estate’s Inventory Listing and a supervisory review be performed;
- b) the Public Administrator request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each Certificate of Deposit;
- c) original invoices be maintained in the estate files and attached to copies of disbursement checks. In instances where there is no invoice, a payment authorization form indicating the vendor’s name, date of service, type of service provided, or hours being charged, and dollar amount must be attached to the check;
- d) the NCPA select one consistent means to document their approval of disbursements;
- e) an appropriate level of checks and balances be instituted whereby the same individual is not permitted to approve an expense and also prepare the check for all disbursements and inter-bank transfers;
- f) invoice numbers of the associated payments be written in the memo section of the check or on the check stub for audit trail purposes;
- g) vendors are used only for work stipulated on their vendor application and are paid in accordance with the terms of their applications for all work performed;
- h) bills for advertising and calculations supporting an estate’s proportionate share of expenses be maintained in the estate folder; and

Appendix C – Auditor’s Follow Up Comments to NCPA Response

- i) payment authorization forms indicating the reason for bank transfers be maintained in the estate folder.

NCPA’s Response to Recommendation 4

“The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA shall continue to request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each certificate of deposit.”

Auditor’s Follow Up Response to Recommendation 4

We stand by our finding and reiterate all of our recommendations.

AUDIT FINDING (5)

(5) Auditors Found Inadequate Personal Property Inventory Records for the Safe and Safe Room

Audit Recommendations:

We recommend:

- a) the NCPA update their Safe Room Log to ensure an accurate list of all estates with personal property;
- b) the NCPA perform a count of cash and coins found at estates as soon as possible after its discovery. The count should be re-performed by a supervisor or a second party and documented on the estate’s Inventory Listing and recorded on NCPA’s “Cash/Checks log”;
- c) the description and quantity count of personal property items be re-performed by a separate employee through a supervisory review to increase the accuracy of estate Inventory Listings and verify all items have been accounted for;
- d) all estate Inventory Listings be properly filled out with applicable estate information such as the address, date of death, Surrogate’s numbers, date of Letter of Administration or social security numbers. The Inventory Listings should be perpetually updated;
- e) personal property items should be individually tagged in an effort to increase accountability and decrease the risk for items to be lost or stolen or items of jewelry switched with one of lesser value;
- f) appraised item values be recorded individually on the Inventory Listings; and

Appendix C – Auditor’s Follow Up Comments to NCPA Response

- g) the NCPA consider hiring a different external audit firm to perform their annual operational audit in order to obtain a fresh perspective on their internal controls. The NCPA should speak with other neighboring Public Administrators to compare fees and results for their annual operational audits.

NCPA’s Response to Recommendation 5

“The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA will promulgate internal procedures to ensure continuing accurate safe room record keeping and estate inventory listing.”

Auditor’s Follow Up Response to Recommendation 5

We stand by our finding and reiterate all of our recommendations. We are pleased the NCPA will promulgate internal procedures to ensure continuing accurate safe room record keeping and estate inventory listing.

AUDIT FINDING (6)

(6) The Public Administrator Needs A Unified Electronic Case Management System to Track Estate Activity as Required by NYS Guidelines

Audit Recommendations:

We recommend:

- a) The Public Administrator speak with Nassau County and New York State Court Administration about implementing a central case management system for tracking and recording estate activity. A centralized system is imperative to accurately reflect the cases being handled by the NCPA;
- b) NCPA maintain management reports to detail how many cases the NCPA started a calendar year with, how many new cases were opened, how many cases were closed and how many cases remain open at any given time; and
- c) all supporting documentation used in the creation of the OCA Annual Report be reviewed and retained.

NCPA’s Response to Recommendation 6

“The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. NCPA hereby requests that the County of Nassau provide increased budget funds for an additional

Appendix C – Auditor’s Follow Up Comments to NCPA Response

system, additional staff, training and IT support to maintain a singular electronic "comprehensive" case management system."

Auditor’s Follow Up Response to Recommendation 6

We stand by our finding and reiterate all of our recommendations. If properly utilized, a comprehensive case management system would greatly improve departmental efficiency and strengthen the department’s internal controls. The NCPA should be able to produce real time statistics with the press of a button instead of manually compiling data from multiple different sources. The status of each estate should not have to be determined by a manually intensive review process.

We are pleased the NCPA is requesting resources for a comprehensive electronic case management system, additional staff, training and IT support.

AUDIT FINDING (7)

(7) Discrepancies with the Estate Closing Process Lead to Inconsistent Report Data and Estate Activity Not Being Reported to the Surrogate’s Court

Audit Recommendations:

We recommend:

- a) the NCPA perform supervisory reviews of all “Final Accountings” prepared by their estates attorneys for accuracy and completeness;
- b) the NCPA update their ledgers to include a key/legend to tie information listed in their ledgers to the Final Accounting;
- c) the Affidavit Bringing Account to Date include a time frame;
- d) any activity not previously reported to the Surrogate’s Court via an Affidavit Bringing Account to Date or Final Decree be reported to the Surrogate’s Court; and
- e) the Surrogate’s Court consider adding a post Final Decree clause to explicitly stipulate the method for distributing and reporting any additional assets identified subsequent to the Final Decree.

NCPA’s Comment on Finding 7

“The auditors only reviewed 3.2% of the closed estates. Of the 3.2%, the auditors were unable to verify investment activity because they lacked account documentation. Such documentation was provided to the comptroller's office auditors at the November 1, 2018 exit conference. Accordingly, the issue is moot.”

Appendix C – Auditor’s Follow Up Comments to NCPA Response

Auditor’s Follow Up to NCPA’s Comment

As noted in our report, investment documentation was missing from the estate files maintained in the NCPA’s office at the time of our review for one estate in our sample. After multiple requests, this information was finally presented to Auditors by the NCPA’s outside accountant at the November 1, 2018 Exit Conference. We maintain our opinion that this information should have been retained in the NCPA’s estate files, not with their outside accountant, especially after the estate had been closed for over one year.

NCPA’s Response to Recommendation 7

“NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA shall add a provision in its proposed decrees to provide for the distribution for that of monies received subsequent to the issuance of said decrees.”

Auditor’s Follow Up Response to Recommendation 7

We stand by our finding and reiterate all of our recommendations. We are pleased the NCPA will add a provision in its proposed decrees to provide for the distribution of monies received after the decrees are issued.

AUDIT FINDING (8)

(8) Lack of Management Oversight and Incomplete Suspense Account Personnel Files Have Resulted in \$49,070 of Overpayments to Suspense Account Personnel

Audit Recommendations:

We recommend the NCPA:

- a) publicly advertise for all future Suspense employee positions;
- b) document the justification for the hiring of employees financed by the Suspense account;
- c) create employee contracts for all Suspense employees detailing their duties and responsibilities, scheduled work hours, agreed upon salaries, types of benefits, waiting timeframe for receiving benefits and compensated time off policies; and
- d) disseminate Human Resources’ *New Hire Packet Orientation Checklist* to all employees (Appendix A).

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA Comment on Finding 8

“The Draft Review cites two employees being paid from the Suspense Account during the audit period. The justification for the hiring of these employees is maintained in a personnel file that has been provided to the auditors. The PA Guidelines do not require that the NCPA enter into a written employment contract to hire an employee using the Suspense Account. The Suspense Account hire is an employee at will and is not a Nassau County employee or a Civil Service Union worker. Employment from the Suspense Account is absolutely necessary for the proper function of the Office. A Suspense Account employee would not be required if the County budgeted more funds for staffing.

Exhibit 11 of the Draft Review references a salary overpayment with no explanation.”

Auditor’s Follow Up to NCPA’s Comment

Contrary to the NCPA’s response, the justification for the hiring of Suspense account employees was not maintained in the personnel files provided to the Auditors. The NYS Comptroller noted in their 2015 Audit Report that “The Public Administrator advised us that he used his personal judgment in the hiring of the suspense account employees based on an increased office workload. However, he did not provide us with the required records to support the hiring.” Field Auditors from the Nassau County Comptroller’s Office noted the same. In a November 20, 2017 discussion with the County Auditors, the Public Administrator noted that “[Suspense] employees were hired via word of mouth. No advertisements were put out.”

Regardless of what the PA Guidelines may suggest, best practice when hiring staff is to maintain a complete and accurate personnel file including justification for an employee’s hiring, interview notes, references, salary and all other required human resource paperwork.

Additionally, justification for Suspense account employee salaries was not present in their personnel files. During a November 20, 2017 discussion with Auditors, the Public Administrator stated that the Deputy Public Administrator and estate attorney “decide what they feel is fair and equitable for the position” when asked how Suspense employee salaries were determined. It is unclear why the estate attorney would have any input to the salaries of the Suspense employees.

In regard to Exhibit XI, the paragraphs preceding the Exhibit provide an explanation as to information presented in the Exhibit. The information presented in this Exhibit was discussed extensively with NCPA staff on 12/6/2017, 12/20/2017, 12/28/2017 and at the 11/1/2018 Exit Conference.

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Response to Recommendation 8

“NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA will review all employees’ personnel files and use best efforts to make sure required human resource paper work is up to date.”

Auditor’s Follow Up Response to Recommendation 8

We stand by our finding and reiterate all of our recommendations. We are pleased the NCPA will review all employees’ personnel files and use best efforts to make sure required human resource paper work is up to date.

AUDIT FINDING (9)

(9) Manual Timekeeping Practices for Suspense Account Employees Have Resulted in Inaccurate Time & Leave Balances

Audit Recommendations:

We recommend:

- a) the accrual of Time & Leave balances be performed in accordance with the CSEA contract;
- b) routine supervisory review be performed of Suspense employee Time & Leave records and balances to verify the accuracy of balances and minimize potential errors;
- c) the NCPA properly document the accrual and approval of any compensated time and its subsequent usage; and
- d) INTIME attendance records for Suspense employees be reviewed and certified each pay period and traced to manual time & leave records.

NCPA Comment on Finding 9

“The Draft Review, contrary to the engagement letter, went back to 2011 to track the time and leave of Suspense Account employees. During the period under review as detailed in Exhibit XII, each of the employees worked in excess of 10,000 hours during that period. The auditors found a total time and leave discrepancy, including sick and vacation time, of 4.5 hours for employee A and .5 hours for employee B.

The Draft Review incorrectly views Suspense Account employees through the lens of an employee of the County of Nassau. The employees hired through the Suspense Account are not Nassau County employees and they are not Civil Service Union workers. As such they are not subject to County or Union rules or requirements.”

Appendix C – Auditor’s Follow Up Comments to NCPA Response

Auditor’s Follow Up to NCPA’s Comment

The comment about the audit scope is addressed in the Auditor’s Follow-up to NCPA’s Comment box on the top of page 48.

During the audit, the Department informed the Auditors that the Suspense employees were treated the same as the civil service employees for leave time purposes. An email received from the NCPA on July 12, 2017 stated, “We follow the civil service handbook when it comes to [the Suspense account employees’] sick leave, personal days, etc. [The Suspense account employees] are treated the same as the other ...civil service employees.” The email also noted that Suspense employees have proximity badges and clock in and out.

NCPA’s Response to Recommendation 9

“NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same.”

Auditor’s Follow Up Response to Recommendation 9

We stand by our finding and reiterate all of our recommendations.

AUDIT FINDING (10)

(10) The Public Administrator Failed to Perform the Required Review and Certification of Timekeeping Records Resulting in Significant Time & Leave Errors

Audit Recommendations:

We recommend:

- a) all employee time sheets are certified by either the designated Payroll Supervisor or Department Head every two weeks to ensure employee absences are supported by a time off request or a designated County holiday; and
- b) manual entry for time on/time off should be recorded daily.

Appendix C – Auditor’s Follow Up Comments to NCPA Response

NCPA’s Response to Recommendation 10

“NCPA acknowledges the audit recommendations and will make best efforts to comply with said recommendations.”

Auditor’s Follow Up Response to Recommendation 10

We are pleased the NCPA will make best efforts to comply with our recommendations.

AUDIT FINDING (11)

(11) NCPA Administrative Staff is Not Properly Accounting for Time When They Are Not Physically at Work

Audit Recommendations:

We recommend:

- a) the NCPA establish a departmental log for all employees to record time they are physically out of the office when they are attending to departmental business or using time off for personal reasons in order to establish accountability; and
- b) the Public Administrator accurately enter his actual arrival and departure time manually into INTIME noting any lateness, or the Public Administrator and Deputy Public Administrator be required to swipe in/out of work with their INTIME Proximity ID Badges.

NCPA Comment on Finding 11

“It is the nature of the job of the Public Administrator and the Deputy Public Administrator to conduct field work.”

Auditor’s Follow Up to NCPA’s Comment

On the days that the Comptroller’s investigators followed the Public Administrator, fieldwork **was not being performed** and the Public Administrator manually entered his arrival time in INTIME prior to when he actually arrived at work.

NCPA’s Response to Recommendation 11

“NCPA acknowledges the audit recommendations and will make best efforts to keep accurate time and leave records.”

Appendix C – Auditor’s Follow Up Comments to NCPA Response

Auditor’s Follow Up Response to Recommendation 11

We are pleased the NCPA will make best efforts to keep accurate time and leave records. We reiterate our recommendations that the NCPA establish a departmental log for all employees to record time they are physically out of the office when they are attending to departmental business or using time off for personal reasons in order to establish accountability; and the Public Administrator accurately enter his actual arrival and departure time manually into INTIME noting any lateness, or the Public Administrator and Deputy Public Administrator be required to swipe in/out of work with their INTIME Proximity ID Badges.

AUDIT FINDING (12)

(12) The Public Administrator May Not Be in Compliance with Executive Order 1-2018 Which Prohibits Agency Heads from Holding Certain Political Positions

Audit Recommendations:

We recommend that the County Attorney review this situation and determine if the position of the Public Administrator, which is a position appointed by the Surrogate Court, but employed by Nassau County, is subject to Executive Order 1-2018. Based upon the results of the County Attorney’s review, appropriate action to bring the Public Administrator into compliance with Executive Order 1-2018 should be immediately taken if required.

NCPA’s Response to Recommendation 12

“Executive Order 1-2018 does not apply to the Public Administrator.”

Auditor’s Follow Up Response to Recommendation 12

Although the Public Administrator is appointed by the Surrogate's Court of Nassau County, the position is paid with Nassau County funds as included in the annual operating budget of the County. The individual who served as the Public Administrator during the scope of our audit retired as of November 9, 2018.

We stand by our finding and reiterate our recommendation that the County Attorney review this situation and determine if the position of the Public Administrator, which is a position appointed by the Surrogate Court, but employed by Nassau County, is subject to Executive Order 1-2018.

Appendix D – Nassau County Public Administrator’s Response

LAURA CURRAN
NASSAU COUNTY
EXECUTIVE



JEFFREY E. DELUCA
PUBLIC ADMINISTRATOR
DOMENICA LEONE
DEPUTY PUBLIC ADMINISTRATOR

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December 7, 2018

Nassau County Office of the Comptroller
240 Old Country Road, Room 211
Mineola, New York 11501

Re: *Nassau County Comptroller’s Limited
Review of the Nassau County Office
of the Public Administrator*

Dear Sir or Madam:

In response to the Nassau County Comptroller’s Limited Review of the Nassau County Office of the Public Administrator (Draft Review), the Nassau County Public Administrator’s Office (NCPA) responds as follows:

The NCPA acknowledges the stated purpose of the Draft Review is to ensure that the NCPA’s Office is:

- Operating in compliance with governing laws;
- Performing the numerous functions of its mission; and
- To evaluate the internal controls over the office’s operations and revenues.

The Introduction, Key Findings and Key Recommendations sections of the Executive Summary were left blank on the Draft Review and thus no responses can be made by the NCPA to these sections.

The Surrogate’s Court Procedure Act (SCPA) established a court-appointed Public Administrator in 11 counties, in the State of New York, including Nassau County. Pursuant to the authority granted by SCPA, the Administrative Board for the Office of the Public Administrators in 2012 approved “Guidelines for the Operations of the Offices of the Public Administrators of New York State” (PA Guidelines-See Exhibit A). Accordingly, the Office(s) of the Public Administrator(s) is/are governed by the SCPA and the PA Guidelines respectively.

The last sentence of the first paragraph of the Background section of the Draft Review accurately reports that: “[t]he Public Administrator is appointed by the Surrogate’s Court of Nassau County” (SCPA 1202). The prior Surrogate Edward W. McCarty, appointed Public Administrator, Jeffrey E. DeLuca and Deputy Public Administrator, Domenica Leone.

On page 2 of the Draft Review, the 2015 New York State Comptroller Report, is referenced in the Background section, and the findings of the New York State Comptroller are identified as “significant.” The word “significant” was not set forth in the Report from the New York State Office of the State Comptroller. The New York State Office of the State Comptroller set forth only five (5) key findings. Moreover, SCPA 1208 (3) and Section 1(E) of the PA Guidelines entitled “Annual Audit,” requires an external annual audit of the New York State Public Administrator’s Offices. In accordance with SCPA and the PA Guidelines, for the past seven (7) years, the external annual audit of the NCPA did not result in any findings, instances of noncompliance with applicable laws and regulations, or irregularities. The NCPA has relied on such audits and the opinion of an independent Certified Public Accountant (“CPA”) in its daily operations.

As evidenced by the chart listed as Exhibit 1 in the Draft Review, the NCPA is a revenue producing office and has, over the course of the audit period, from 2014 to 2017, earned Nassau County a surplus of \$678,323.00.

The Draft Review on page 3 in the Background section, correctly indicates that “... the majority of financial transactions handled by the Public Administrator deal directly with estate funds (“Escrow”) and as such are not recorded in the County’s internal financial accounting system as they are not County assets.” The use of the term Escrow, however, is incorrect. Black’s Law Dictionary defines an escrow account as “a special account for holding specific monies for disbursement under specific conditions.” Funds held by the NCPA for the individual estates are not held in escrow accounts because they are funds to be used for general purposes of the respective estates, and are not held under specific conditions. The accounts are opened in the name of the estates with their own separate Federal Tax Identification Number. The chart listed as Exhibit II in the Draft Review demonstrates the uniqueness of the NCPA. The function of the NCPA is to administer private estates. The majority of the monies being managed by the NCPA are private funds, except for the fact that the County provides the limited budget for the NCPA.

The Audit, Scope Objectives and Methodology sections of the Draft Review state that “[t]he audit covered the period from January 1, 2014 to the present.” The engagement letter sent to the NCPA, by the Nassau County Comptroller, dated May 8, 2017, however, set forth that “[t]he review will cover the period from January 2015 to the present.” The audit period of the Draft Review covered 2014, a year earlier than the engagement letter outlined. No explanation was given by the Comptroller for the change in the dates for the audit period. Moreover, the Draft Review included findings from 2010, without any explanation. Said findings were not found by the outside auditors, nor were they included in the New York Office of the State Comptroller’s report in 2015.

The Draft Review fails to set forth a methodology. The New York State Office of the State Comptroller report, dated April of 2015, details the methodology used. Moreover, the

Annual Audit Section of the PA Guidelines clearly contains the methodology to be used for the Annual Audit. Section E of the PA Guidelines reads in relevant part as follows:

“The annual audit of the offices of the PA’s office by an independent auditing firm, pursuant to SCPA 1109 (PA’s within the City of New York) or SCPA 1208 (PA’s in Erie, Monroe, Nassau Onondaga, Suffolk and Westchester Counties) shall be conducted in compliance with generally accepted government audit standards, and shall:

1. review a random sample of cases handled by the PA, which shall include proportionate representation of the population of formal and small estates as well as guardianship or trust accounts handled by the PA, for compliance with the Guidelines;
2. review and test any procedures that the PA is directed to promulgate by these Guidelines;
3. review the integrity and efficacy of any specialized fiduciary management software used by the PA to manage a “pooled” account maintained at a financial institution pursuant to Section III(A)(1) of these Guidelines;
4. include, where applicable, recommendations for improvement and corrective action; and
5. attest to the validity of the total value of the estate accounts as reported on the PA’s last report filed with the Office of the New York State Comptroller pursuant to 2 NYCRR 72.1 (PA’s within New York City) or 2 NYCRR 71.1 (PA’s in Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester).”

Furthermore, pursuant to Government Accounting Auditing Standards (GAAS) AU-C 530, audit sampling is to be representative of the entire population. Without a representative population, it is unlikely that a reasonable basis for conclusions can be drawn. Globally, in the Draft Review, the samplings being used are not representative of the entire population(s) being reviewed.

AUDIT FINDING (1)

SCPA 1213(1) provides that “the Public Administrator shall have all the powers specially granted herein and also the powers given by law to a fiduciary of a decedent’s estate.” SCPA 1206 (3) sets forth that “[e]ach public administrator may employ counsel in any estate, whose fees and expenses therein shall be approved by the court of his county and shall be charged against the estate.” Accordingly, the NCPA has statutory authority to employ counsel of his/her choosing.

The Draft Review mentions three specific instances of the attorney for the NCPA’s involvement in the NCPA’s operations and labels the involvement as excessive. Other than the attorney for the NCPA attending the entrance and exit conferences, the attorney for the NCPA was present when the audit staff met with the Public Administrator on one occasion. The attorney in all three instances answered questions because they were posed directly to him. The

attorney for the NCPA must have a close relationship with the NCPA because of the uniqueness of the NCPA’s role as fiduciary and the NCPA’s duty to administer estates. The Draft Review’s findings are not supported by the facts. In addition, the Draft Review overinflates the fees paid to the attorney for the NCPA from the estates for the audit period, by 25%, without explanation.

The PA Guidelines further provide:

“The PAs are reminded that as fiduciaries appointed by the court they should, in the absence of explicit direction in these guidelines, be guided by established principles of fiduciary accountability, statutory authority, and /or direction by the court.”

Accordingly, as a fiduciary, the NCPA may employ an outside accountant. During the audit period, the NCPA managed estates valued in excess of \$30,000,000.00 dollars and made total disbursements out of the main NCPA’s account in excess of \$74,000,000.00 dollars. The involvement of a CPA is prudent, proper, and necessary. The outside CPA was never an employee of the NCPA and never on any payroll of the NCPA. Fees charged by the outside CPA were for tax services for the individual estates. These fees are not related to accounting functions of the NCPA. The Draft Review indicates that the outside CPA was paid \$263,000.00 dollars during the audit period. That amount represents an average of approximately \$58,000.00 dollars per year. The NCPA submits that amount is reasonable for ensuring tax compliance for an average of 142 estates, trusts and guardianships open at any one time. Moreover, the NCPA is understaffed with four county employees and two appointees. The NCPA has tried unsuccessfully on several occasions to obtain accounting staff. Most recently, a request, dated March 26, 2018, for an accountant was rejected by the Nassau County Office of Management and Budget on August 20, 2018.

Audit Recommendations

The Draft Review recommends that: the County employ a knowledgeable Public Administrator who is fully engaged in the daily operations of the Office; the NCPA’s appointed estates’ attorney only perform duties related to the administration of the individual estates they represent; all legal matters pertaining to the operations of the NCPA be forwarded to the Nassau County Attorney’s Office; the NCPA consider issuing an RFP for estates’ attorney’s services and consider using multiple attorneys to represent estates with sliding scales depending on complexity of the estate; the NCPA cease from relying on an outside CPA for internal accounting operations and immediately hire and in-house accountant. The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same.

AUDIT FINDING 2

In the PA Guidelines “...“outside vendors” shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, genealogists, kinship investigators, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians,

locksmiths, carpenters), and investment advisors.” Furthermore, 26 CFR 1.6041-1 (*See Exhibit C*) requires a person engaged in a trade or business on behalf of another person to file an information return (1099-Misc form). The regulation defines a person as a payor of fees and other forms of compensation for services rendered aggregating \$600.00 or more in a calendar year. The Public Administrator is a fiduciary for each estate that is independent and private, and is not engaged in a trade or business on behalf of another person. As such, there is no obligation or duty for the issuance of a 1099-Misc form from each estate. 26 CFR 1.6041-(e)(4) entitled *Optional Method to Report* provides that “[a] person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established by the Commissioner. The NCPA has effectively elected under the regulation to report payments made by individual estates to vendors who are paid \$600.00 or more in a calendar year.

Pursuant to SCPA 1207(4), the court, may allow a Public Administrator, the reasonable and necessary expenses and disbursements incurred in the course of an estate administration. SCPA 1207(4) reads in relevant part as follows:

“On the settlement of the account of the public administrator in each instance, ... the court may allow his reasonable and necessary expenses and disbursements and in addition, in the counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester, a reasonable amount for the expenses of his office, to be fixed by the court.”

In 1990, an order was signed by the Hon. C. Raymond Radigan. That order provided, that the NCPA, upon judicial settlement of his/her account may impose “a charge of 1% against each estate to reimburse the reasonable and necessary costs and disbursements of the Office of the Public Administrator pursuant to SCPA 1207.” The reasonable and necessary expenses awarded from the court pursuant to SCPA 1207 are maintained by the NCPA in an account, commonly referred to as a Suspense Account. The NCPA, at the request of the auditors, in January of 2018, determined requirement for 1099-Misc form filings based upon the aggregation of payment in a calendar year and will continue to do so.

The Draft Review recommends the completion of a Form W-9 by vendors. A Form W-9 facilitates obtaining a Tax Identification Number (TIN). The NCPA requires either a Social Security Number or a TIN from vendors, as defined by the PA Guidelines. Payments to vendors, by the NCPA are not approved unless the required Social Security Number or TIN has been provided. Attorneys are specifically excluded from the extensive list of vendors in the PA Guidelines. Also, pursuant to 26 CFR 1.6041-1, “fees for professional services paid to attorneys... are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business.” An estate, trust, or guardianship is not engaged in a trade or business. The attorneys perform work for the individual estates and are paid for services from the estates and not by the NCPA. Furthermore, a portion of the alleged potential “under-reporting” is attributed to payments to the attorney for the NCPA, a payment not requiring a 1099-Misc form. The Draft Review overinflates the fees paid to the attorney for the NCPA from the estates by 25%, without explanation. The Exhibit III chart reflects incorrect and inaccurate information.

Exhibit IV in the Draft Review is misleading. The chart indicates that from 2014 to 2016 \$15,343 was underreported from the total disbursements paid out. The disbursements for 2014 to 2016 totaled in excess of \$54,000,000. The \$15,343 is approximately only .02% of the total amount of disbursements paid, which is de minimis.

Audit Recommendations

The Draft Review recommends that the NCPA: require vendors complete Form W-9 or require such information on their internal vendor application for Form 1099-Misc reporting purposes; issue Form 1099-Misc to all attorneys utilized by the NCPA who received over \$600 in a calendar year; issue Form 1099-Misc to all qualifying vendors using the NCPA’s TIN; aggregate the total amount paid to vendors regardless of their source of payment, without excluding payments under \$600 to determine if vendors would require a 1099-Misc form; and utilize their pre-existing QuickBooks application, or other similar software, to track 1099 eligible vendor payments and generate 1099’s to ensure accuracy and reduce costs paid to the outside accountant. The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. With respect to vendor 1099-Misc forms, the NCPA will continue to issue same in the aggregate, from the Suspense Account, at the request of the Nassau County Comptroller. The NCPA requests the Nassau County Comptroller seek an advisory opinion from the Internal Revenue Service on the NCPA’s obligation to issue 1099-Misc Forms by the NCPA, from both suspense and estate accounts, for GAL attorney appointments by the Surrogate, and for the attorney for the Public Administrator.

AUDIT FINDING 3

As set forth in the Draft Review, the NCPA is in full compliance with the PA Guidelines regarding advertising for outside vendors. The PA Guidelines require the following:

“The PA shall advertise for outside vendors by posting a standing announcement on the PA’s website, or on a website maintained by the county where the PA maintains his or her office, or on a website maintained by the City of New York, as applicable, soliciting outside vendors to apply to provide services to the PA. In the alternative, the PA may, on an annual basis, advertise in a newspaper of general circulation within the PA’s county.”

The NCPA advertises for outside vendors continuously on a website maintained by Nassau County (www.nassaucountyny.gov) pursuant to the PA Guidelines. There is a vendor services link on the website that continually solicits outside vendors to apply to provide services to the NCPA. <https://www.nassaucountyny.gov/1864/Vendor-Services> In addition, although not required by the PA Guidelines, the NCPA annually advertises in a newspaper of general circulation (Newsday). The advertisements for the period of the audit were published on: 2/24/14; 1/15/15; 12/3/15; and 12/15/16, respectively. Contrary to the Draft Review, the NCPA does not have written departmental procedures that conflict with or restrict the PA Guidelines with regard to the advertisement of outside vendors. Although the NCPA advertises for vendors,

more than is required by the PA Guidelines, the Comptroller still found fault with the NCPA advertisements, due to the timing of the advertisements. There is no requirement to advertise at any specific time of the year. None of the months of the additional annual publications were found to be “sufficient” to the Comptroller. The annual advertisement is an alternative requirement.

The PA Guidelines do not require vendors to submit applications. The Draft Review mistakenly puts responsibility on the NCPA by requiring them to ensure that all vendors’ applications are fully completed. The New York State Comptroller, in 2015, recommended that the NCPA “not use vendors that have not properly applied.” The PA Guidelines do not impose a duty on the NCPA to ensure that vendors complete their applications. Rather, what is required by the PA Guidelines is that:

“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.”

Furthermore, the NCPA maintains a list of vendors, as required by the PA Guidelines, and updates that list continuously, not merely annually. The PA Guidelines require the following:

“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 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 provides goods of serviceable quality. The list shall be updated at least annually and shall be available for public inspection at the PA’s office.”

The Public Administrator as a fiduciary, at times, uses vendors based on the wishes of the family (i.e., funeral services, lawn services, etc.). Not all of these vendors fill out an application because the vendors in these situations are selected by the families.

Audit Recommendations

The Draft Review recommends: that the NCPA ensure newspaper advertisements for outside vendors be published timely in the year preceding the advertised year of service to allow vendors appropriate time to respond and NCPA staff adequate time to review vendor applications and select vendors for use and inclusion on NCPA’s annual vendor list; thoroughly review all vendor applications for completeness. All applications should be time stamped immediately upon receipt, indicate the vendor’s type of business entity, list the vendor’s fees, be signed by vendor and notarized, include copies of all applicable business licenses and have supplementary vendor information packages completed as necessary; educate itself on the business licenses needed to perform services in Nassau County and verify all vendors have the

required licenses; require all vendors submit a properly completed Form W-9 along with all vendor applications denoting the vendor’s appropriate federal tax classification; ensure that complete and accurate applications are received for all vendors included on NCPA’s annual Vendor List; annual Vendor Lists include the vendor fees and an indication of a vendor’s past experience with NCPA; keep written documentation to justify the selection of the particular vendors included on the annual Vendor List; and use only vendors who are included on their annual Vendor List and have submitted a properly completed vendor application. The NCPA acknowledges the audit recommendations and submits the NCPA is in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA is fully aware that the County of Nassau requires vendors to have the proper business licenses to perform services in Nassau County, and shall continue to verify that all vendors have the required license. NCPA will continue to use best efforts to have all vendors fill out applications, and list usual vendor fees on the annual Vendor List.

AUDIT FINDING 4

NCPA is in compliance with the PA Guidelines and maintains an inventory of each item of real and personal property of saleable value relating to each estate. Cash receipts are not required to be set forth on an asset inventory, and as such, are not real and/or personal property. This issue was discussed and recognized at the 11/1/2018 exit conference. The Draft Review provides:

“At the 11/01/2018 Exit Conference, the estates attorney quoted law on what is personal property and what is not. NCPA staff stated that recording cash receipts on the estate’s Inventory Listing is not required because they have all cash/checks recorded on a cash/checks log upon initial receipt by the department. Auditor testing found all 85 cash receipts to be properly recorded on the cash/check log.”

In addition, of the 49 deposits auditors mention in the Draft Review, only 6 represented assets to be collected. These minor refunds totaling \$386.08. (This represents .0005% of total cash receipts for the period of \$65,677,297.32). The remaining 43 deposits represented sale of assets already identified on inventory listings and dividend income on assets already identified and so forth.

With respect to disbursements, the Draft Review indicates that 256 items were tested out of a total of 7,149 individual disbursements during the audit period. This represents 3.5%, and is not a representative sample. Disbursements from estate accounts or from the Suspense Account are in all instances issued based upon an invoice. An invoice may be a photocopy or an email. The PA Guidelines do not require an original invoice. The Draft Review imposes the additional requirement of an original invoice that in this day and age is often impossible. Invoices are always reviewed, approved and signed off by the Public Administrator or the Deputy Public Administrator before a check is issued. All checks are reviewed by the accountant assistant III and also by the signer of the check.

The PA Guidelines require the following:

“All 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.”

The auditor’s work product alleges that 40 disbursements did not have adequate supporting documentation. Nineteen of the 40 were disbursements made from the Suspense Account. The estate file will have a copy of the listing of payments on an excel sheet which were disbursed by the Suspense Account on behalf of each particular estate. ALL supporting document for payments out of the 1207 account is kept in a locked drawer in the Accounting Assistant’s III office. The Auditors did not request access to this information. At the Exit conference, this was brought to their attention. Eleven of the 40 were distributions to beneficiaries by Court Order. The Court Order is the supporting documentation.

Payment authorizations for Inter-Bank Transfers are not required by either the SCPA or the PA Guidelines and, as such, the system employed by the NCPA is in compliance with the SCPA and the PA Guidelines. The Auditors did not find any instances of misappropriated funds in their testing. Moreover, the transactions mentioned and tested here were not Inter-Bank Transfers. They were reimbursements to the Suspense fund by the estate for expenses paid on behalf of the estate prior to the collection of assets. The support for this transaction is the ledger sheet detailing the payments made.

Audit Recommendations

The Draft Review recommends: all cash receipts be recorded on the estate’s Inventory Listing and a supervisory review be performed; the Public Administrator request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each Certificate of Deposit; the NCPA select one consistent means to document their approval of disbursements; the NCPA select one consistent means to document their approval of disbursements; an appropriate level of checks and balances be instituted whereby the same individual is not permitted to approve an expense and also prepare the check for all disbursements and inter-bank transfers; invoice numbers of the associated payments be written in the memo section of the check or on the check stub for audit trail purposes; vendors are used only for work stipulated on their vendor application and are paid in accordance with the terms of their applications for all work performed; bills for advertising and calculations supporting an estate’s proportionate share of expenses be maintained in the estate folder; and payment authorization forms indicating the reason for bank transfers be maintained in the estate folder. The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA shall continue to request all banks send monthly or quarterly statements indicating the amount of interest credited and the current balance of each certificate of deposit.

AUDIT FINDING 5

The Draft Review did not find any instances of theft, loss, or misappropriation with regard to the safe room. The NCPA does have internal controls to prevent loss or theft of funds. The auditors’ safe room concerns were addressed with the NCPA on March 3, 2018 and March 9, 2018. In light of the discussion with the auditors, and to further ensure accurate record keeping, the NCPA has reviewed the safe room log and compared it with the contents of the safe. Currently, the safe room log accurately reflects the contents of the safe.

SCPA 1208 (3) provides, “[e]ach Public Administrator shall conduct an annual audit of his office by an independent certified public accountant and such a report based on such audit is to be filed with the surrogate of the county where appointed, the attorney general of the state of New York and the comptroller of the State of New York.” The Draft Review expresses concern that the external audit(s) from 2010-2017 did not find any instances of noncompliance with applicable laws and regulations or irregularities. It is important to note that the reports were filed with the comptroller of the state of New York and the attorney general of the state of New York, pursuant to SCPA 1208 (3) and neither agency has challenged those reports.

As required by the PA Guidelines, the NCPA advertises for an annual independent audit. The County of Nassau provides a budget of less than \$7,000 for such audit. The firm that conducts the audit is a recognized reputable CPA firm and for the past 7 years has been the only firm to accept the assignment and respond to the published Request for Proposals (“RFP”). NCPA has requested that the budget be increased to \$10,000 in order to encourage a greater response for an annual audit. The NCPA has relied on the annual outside audit which was conducted by an independent CPA utilizing generally accepted accounting principles.

Audit Recommendations

The Draft Review recommends: the NCPA update their Safe Room Log to ensure an accurate list of all estates with personal property; the NCPA perform a count of cash and coins found at estates as soon as possible after its discovery. The count should be reperformed by a supervisor or a second party and documented on the estate’s Inventory Listing and recorded on NCPA’s “Cash/Checks log”; the description and quantity count of personal property items be reperformed by a separate employee through a supervisory review to increase the accuracy of estate Inventory Listings and verify all items have been accounted for; all estate Inventory Listing be properly filled out with applicable estate information such as the address, date of death, Surrogate’s numbers, date of Letters of Administration or social security numbers. The Inventory Listings should be perpetually updated; personal property items should be individually tagged in an effort to increase accountability and decrease the risk for items to be lost or stolen or items of jewelry switched with one of lesser value; appraised item value be recorded individually on the Inventory Listings; the NCPA consider hiring a different external audit firm to perform their annual operational audit in order to obtain a fresh perspective on their internal controls; and the NCPA should speak with other neighboring Public Administrators to compare fees and results for their annual operational audits. The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to

adhere to same. The NCPA will promulgate internal procedures to ensure continuing accurate safe room record keeping and estate inventory listing.

AUDIT FINDING 6

The Draft Review provides that the NCPA is not using one “comprehensive” electronic case management system. A “comprehensive” electronic case management system is not required by the PA Guidelines. The PA Guidelines require the following:

1. “Each PA shall implement and maintain an electronic case management system containing a record of each estate under administration. Such records shall be maintained after administration is complete in accordance with all state, local, and/or administrative requirements regarding records retention.”
2. All estate activity shall be recorded promptly in the case management system. The Case management system shall provide:
 - a. a tracking and recording system which 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;
 - b. 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 (\$25) may be described in lots; and
 - c. 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 the receipt and the source of the 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 NCPA maintains electronic case management systems, specifically two Quickbook programs and a Microsoft Excel program. There is no directive to maintain one “comprehensive” case management system. Requiring the NCPA to follow the “spirit” of a guideline rather than the guideline as stated imposes an additional obligation that does not exist. While an electronic “comprehensive” case management system would make data retrieval quicker, the systems in place are able to access and produce the same data and operational statistics. Furthermore, an OCA annual report is reviewed, retained, and reconciled by the existing case management system. Pursuant to 22 NYCRR 207.63 the NCPA, with the participation of the counsel to the public administrator files a year-end annual report with the Surrogate, who in turn files the annual report with the Chief Administrator of the Courts. The Chief Administrator of the Courts (OCA) has not taken issue with the year-end annual audit reports filed by the NCPA.

Audit Recommendations

The Draft Review recommends: the Public Administrator speak with Nassau County and New York State Court Administration about implementing a central case management system for tracking and recording estate activity. A centralized system is imperative to accurately reflect the cases being handled by the NCPA; the NCPA is in compliance with the SCPA and the PA Guidelines but would implement such a system if the budget for the cost and operation of the system were provided by Nassau County; NCPA maintain management reports to detail how many cases the NCPA started a calendar year with, how many new cases were opened, how many cases were closed and how many cases remain open at any given time; and all supporting documentation used in the creation of the OCA Annual Report be reviewed and retained. The NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. NCPA hereby requests that the County of Nassau provide increased budget funds for an additional system, additional staff, training and IT support to maintain a singular electronic “comprehensive” case management system.

AUDIT FINDING 7

The process of closing an estate includes the filing of a final accounting. The final accounting brings the estate account balance down to date. The audit identified “financial activity” that occurred post decree, as data not reported to the Surrogate. This financial activity does in fact occur post decree. The PA Guidelines require the following:

“The PA shall judicially settle all accounts whenever the gross assets of the decedent’s estate exceeds the monetary amount defined for a small estate pursuant to subdivision 1 of SCPA 1301, unless otherwise directed by the court. This section shall not apply where the PA’s letters of administration have been vacated and the estate assets turned over to a successor fiduciary, unless otherwise directed by the court.”

The auditors only reviewed 3.2% of the closed estates. Of the 3.2%, the auditors were unable to verify investment activity because they lacked account documentation. Such documentation was provided to the comptroller’s office auditors at the November 1, 2018 exit conference. Accordingly, the issue is moot.

Contrary to the Draft Review assertion, a supervisory review by NCPA is performed. Prior to filing of the accounting, the Public Administrator reviews the ledgers and the file and reviews the accounting and determines that the administration has been completed. The attorney for the NCPA prepares and sends a draft accounting to the NCPA for review and approval. Thereafter the attorney for the NCPA then finalizes the accounting. Finally, the Public Administrator reviews the accounting prior to personally signing and notarizing.

Activities such as interest earned, bond refunds, and additional accountant fees that occur after the issuance of a judicial decree do not require the re-opening of an estate that has been

closed by decree. However, the NCPA shall add a provision in its proposed decrees that shall provide for the distribution for any monies received subsequent to the issuance of said decrees.

The Draft Review compared estate gross values set forth on the decrees of 3 closed cases selected by the auditors with the estate gross values recorded on the OCA Annual Reports. The auditors allege the estate gross values differ. That variation is attributed to the auditors not calculating pursuant to EPTL Article 11-A. The Draft Review acknowledges that “auditors spoke with the Special Counsel for the NYS Unified Court System, who clarified that post Final Decree activity is not required to be reported on the OCA Report unless the estate has to be formally reopened” The NCPA concurs that post final decree activity is not required to be reported on the OCA report.

Audit Recommendations

The Draft Review recommends: the NCPA perform supervisory reviews of all “Final Accountings” prepared by their estates attorneys for accuracy and completeness; the NCPA is in compliance with the SCPA and the Guidelines; the NCPA update their ledgers to include a key/legend to tie information listed in their ledgers to the Final Accounting; the Affidavit Bringing Account to Date include a time frame but will add a time frame on future Affidavits; any activity not previously reported to the Surrogate’s Court via an Affidavit Bringing Account to Date or Final Decree be reported to the Surrogate’s Court; and the Surrogate’s Court consider adding a post Final Decree clause to explicitly stipulate the method for distributing and reporting any additional assets identified subsequent to the Final Decree. NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA shall add a provision in its proposed decrees to provide for the distribution for that of monies received subsequent to the issuance of said decrees.

AUDIT FINDING 8

The NCPA hires employees that are paid out of the Suspense Account. These employees are not paid by the County of Nassau and are not Civil Service employees. The PA Guidelines provide the following:

“The PA may use the Suspense Account 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. Where Suspense Account funds are used to purchase office equipment or supplies, the PA shall maintain records which set forth the date, nature, and amount of the expenditure. 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.”

The Draft Review cites two employees being paid from the Suspense Account during the audit period. The justification for the hiring of these employees is maintained in a personnel file that has been provided to the auditors. The PA Guidelines do not require that the NCPA enter into a written employment contract to hire an employee using the Suspense Account. The Suspense Account hire is an employee at will and is not a Nassau County employee or a Civil Service Union worker. Employment from the Suspense Account is absolutely necessary for the proper function of the Office. A Suspense Account employee would not be required if the County budgeted more funds for staffing.

Exhibit 11 of the Draft Review references a salary overpayment with no explanation.

Audit Recommendations

The Draft Review recommends: publicly advertise for all future Suspense employee positions; document the justification for the hiring of employees financed by the Suspense Account; create employee contracts for all Suspense employees detailing their duties and responsibilities, scheduled work hours, agreed upon salaries, types of benefits, waiting timeframe for receiving benefits and compensated time off policies; and disseminate Human Resources’ *New Hire Packet Orientation Checklist* to all employees. NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same. The NCPA will review all employees’ personnel files and use best efforts to make sure required human resource paper work is up to date.

AUDIT FINDING 9

The NCPA uses both manual timekeeping and INTIME, an electronic web-based system for recording time and leave activities. The Suspense Account employee’s time is currently tracked via INTIME. However, manual recording is also necessary because that employee is not a county employee and therefore excluded from the time keeping system used by the County (NUHRS). The Draft Review, contrary to the engagement letter, went back to 2011 to track the time and leave of Suspense Account employees. During the period under review as detailed in Exhibit XII, each of the employees worked in excess of 10,000 hours during that period. The auditors found a total time and leave discrepancy, including sick and vacation time, of 4.5 hours for employee A and .5 hours for employee B.

The Draft Review incorrectly views Suspense Account employees through the lens of an employee of the County of Nassau. The employees hired through the Suspense Account are not Nassau County employees and they are not Civil Service Union workers. As such they are not subject to County or Union rules or requirements.

Audit Recommendations

The Draft Review recommends: the accrual of Time & Leave balances be performed in accordance with the CSEA contract; routine supervisory review be performed of Suspense employee Time & Leave records and balances to verify the accuracy of balances and minimize potential errors; the NCPA properly document the accrual and approval of any compensated time and its subsequent usage; and INTIME attendance records for Suspense employees be reviewed

and certified each pay period traced to manual and time & leave records. NCPA acknowledges the audit recommendations and submits they are in full compliance with the SCPA and PA Guidelines, and will continue to adhere to same.

AUDIT FINDING 10

The Draft Review acknowledges that the NCPA timekeeper was performing her duties with regard to time and leave.

Audit Recommendations

The Draft Review recommends: all employee time sheets are certified by either the designated Payroll Supervisor or Department Head every two weeks to ensure employee absences are supported by a time off request or a designated County holiday; and manual entry for time on/time off should be recorded daily. NCPA acknowledges the audit recommendations and will make best efforts to comply with said recommendations.

AUDIT FINDING 11

It is nature of the job of Public Administrator and the Deputy Public Administrator to conduct field work.

Audit Recommendations

The Draft Review recommends: the NCPA establish a departmental log for all employee to record time they are physically out of the office when they are attending to departmental business or using time off for personal reasons in order to establish accountability; and the Public Administrator accurately enter his actual arrival and departure time manually into INTIME noting any lateness, or the Public Administrator and Deputy Public Administrator be required to swipe in/out of work with their INTIME Proximity ID Badges. NCPA acknowledges the audit recommendations and will make best efforts to keep accurate time and leave records.

AUDIT FINDING 12

Nassau County Executive Order 1-2018 does not apply to the appointment of the Public Administrator as the Public Administrator is not appointed by the County Executive but by the Surrogate. Nassau County Executive Order 1-2018 reads in relevant part as follows:

“IT IS HEREBY ORDERED, that the holding of any office or position of authority within any political party or committee of any political party, other than being a committeeperson, or of any office or position of authority within any committee on behalf of any candidate for elected office by any member of the county executive staff, any deputy county executive, any county executive appointed commissioner or any other county executive appointed head of any county executive department or agency or any deputy

commissioner or any other deputy head or any county executive department or agency is prohibited.”

The last sentence of the first paragraph of the Background section of the Draft Review accurately reports that “[t]he Public Administrator is appointed by the Surrogate’s Court of Nassau County.” The Public Administrator is not a member of the county executive staff, any deputy county executive, any county executive appointed commissioner or any other county executive appointed head of any county executive department or agency or any deputy commissioner or any other deputy head or any county executive department or agency. Therefore, NCPA submits that Executive Order 1-2018 does not apply.

Audit Recommendations

The Draft Review recommends: that the County Attorney review this situation and determine if the position of the Public Administrator, which is a position appointed by the Surrogate’s Court, but employed by Nassau County, is subject to Executive Order 1-2018. Based upon the results of the County Attorney’s review, appropriate action to bring the Public Administrator into compliance with Executive Order 1-2018 should be immediately taken if required. Executive Order 1-2018 does not apply to the Public Administrator.

Very truly yours,



Domenica Leone
Deputy Public Administrator

Appendix D – Nassau County Public Administrator’s Response

LAURA CURRAN
NASSAU COUNTY
EXECUTIVE



JEFFREY E. DELUCA
PUBLIC ADMINISTRATOR

DOMENICA LEONE
DEPUTY PUBLIC ADMINISTRATOR

OFFICE OF THE PUBLIC ADMINISTRATOR

240 Old Country Road, Suite 603
Mineola, New York 11501
(516) 571-5911
FAX (516) 571-2924

December 7, 2018

Nassau County Office of the Comptroller
240 Old Country Road, Room 211
Mineola, New York 11501

Re: *Nassau County Comptroller’s Limited
Review of the Nassau County Office
of the Public Administrator*

Dear Sir or Madam:

In response to the Nassau County Comptroller’s Limited Review of the Nassau County Office of the Public Administrator (Draft Review), the Nassau County Public Administrator’s Office (NCPA) responds as follows:

The NCPA acknowledges the stated purpose of the Draft Review is to ensure that the NCPA’s Office is:

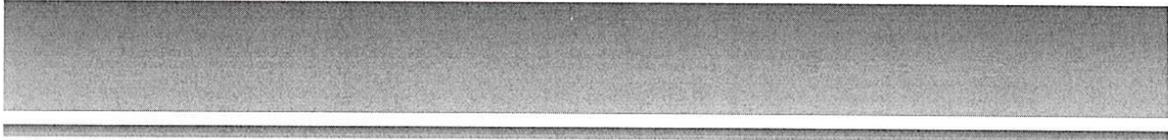
- Operating in compliance with governing laws;
- Performing the numerous functions of its mission; and
- To evaluate the internal controls over the office’s operations and revenues.

The Introduction, Key Findings and Key Recommendations sections of the Executive Summary were left blank on the Draft Review and thus no responses can be made by the NCPA to these sections.

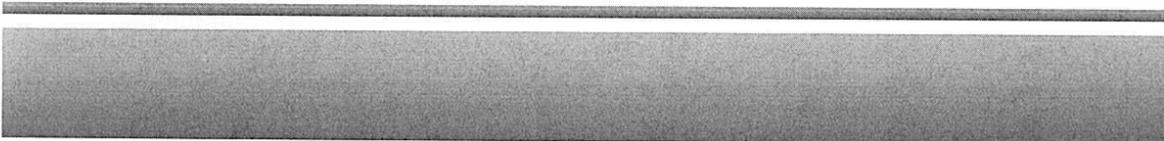
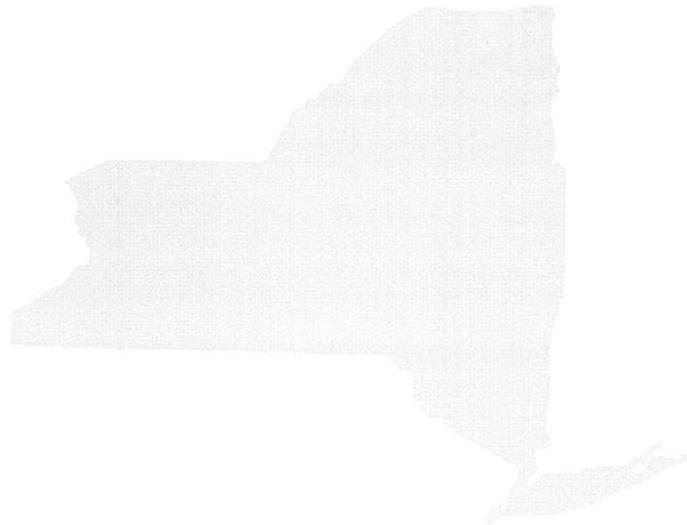
The Surrogate’s Court Procedure Act (SCPA) established a court-appointed Public Administrator in 11 counties, in the State of New York, including Nassau County. Pursuant to the authority granted by SCPA, the Administrative Board for the Office of the Public Administrators in 2012 approved “Guidelines for the Operations of the Offices of the Public Administrators of New York State” (PA Guidelines-See Exhibit A). Accordingly, the Office(s) of the Public Administrator(s) is/are governed by the SCPA and the PA Guidelines respectively.

The last sentence of the first paragraph of the Background section of the Draft Review accurately reports that: “[t]he Public Administrator is appointed by the Surrogate’s Court of

EXHIBIT A



**GUIDELINES
FOR THE OPERATIONS
OF THE OFFICES
OF THE PUBLIC ADMINISTRATORS
OF NEW YORK STATE**



Appendix D – Nassau County Public Administrator’s Response



ADMINISTRATIVE BOARD FOR THE OFFICES OF THE PUBLIC ADMINISTRATORS

HON. JOHN M. CZYGIER, JR., CHAIR

Judge of the Surrogate’s Court, Suffolk County

HON. EDMUND CALVARUSO

Judge of the Surrogate’s Court, Monroe County

HON. STEPHEN W. CASS

Judge of the Surrogate’s Court, Chautauqua County

HON. ROBERT J. GIGANTE

Judge of the Surrogate’s Court, Richmond County

HON. LEE HOLZMAN

Judge of the Surrogate’s Court, Bronx County

HON. MARY WORK

Judge of the Surrogate’s Court, Ulster County

HON. PETER WELLS

Judge of the Surrogate’s Court (Ret.), Onondaga County

EMILY FRANCHINA, ESQ.

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Goldfarb Abrandt Salzman & Kutzin, LLP

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JASON LILIEN, ESQ.

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Levene Gouldin & Thompson, LLP

DAVID SAMUELS, ESQ.

Duval & Stachenfeld, LLP

MICHELE GARTNER, ESQ., COUNSEL

Office of Court Administration

Approved February 10, 2012



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GUIDELINES FOR THE OPERATIONS OF THE OFFICES OF THE PUBLIC ADMINISTRATORS OF NEW YORK STATE

PURSUANT TO ITS AUTHORITY UNDER SECTION 1128 OF THE SURROGATE’S COURT PROCEDURE ACT (“SCPA”), the Administrative Board for the Offices of the Public Administrators (“Administrative Board”) hereby enacts guidelines for the operations of the Public Administrators (“PAs”) governed by Article 11 and Article 12 of the SCPA.

As used in these guidelines, the term PA shall refer to a Public Administrator within the City of New York, and of the counties of Eric, Monroe, Nassau, Onondaga, Suffolk, and Westchester, and shall include a Deputy Public Administrator authorized by statute or the court to perform duties belonging to the office of the Public Administrator. The word “estate” shall include guardianship and trust accounts handled by the PA.

A “party related to the PA,” as used in these Guidelines, shall be (a) any individual related by blood or marriage within the fourth degree, to the PA, or (b) any employee of the PA’s office, or (c) any corporation, firm, association or other entity in which one or more of its officers or directors or any person having a substantial financial interest is related by blood or marriage within the fourth degree to the PA or any employee of the PA’s office. For purposes of this section, counsel to the PA and counsel’s staff shall be regarded as employees of the PA’s office.

As the offices covered by these guidelines are vastly different in size, population, and resources, in promulgating these guidelines the Administrative Board has sought to balance the benefits of uniformity with the need for flexibility. The PAs are reminded that as fiduciaries appointed by the court they should, in the absence of explicit direction in these guidelines, be guided by established principles of fiduciary accountability, statutory authority, and/or direction by the court. In discharging the duties of office, 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.

I. OFFICE PROCEDURES AND RECORD KEEPING

A. Internal Controls

Each PA shall promulgate a written plan ensuring a segregation of duties for collection and custody of estate assets, authorizations for handling estate transactions, record-keeping, and the reconciliation of estate accounts. Where the resources of the office do not permit complete segregation of duties, the PA shall promulgate a written plan establishing those internal controls which are feasible.

B. Case Management System

1. Each PA shall implement and maintain an electronic case management system containing a record of each estate under administration. Such records shall be maintained after administration is complete in accordance with all state, local, and/or administrative requirements regarding records retention.



2. All estate activity shall be recorded promptly in the case management system. The case management system shall provide:
 - (a) a tracking and recording system which 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;
 - (b) 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; and
 - (c) 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.
3. The electronic case management system shall include appropriate security features including controlled access to the system and data backup.

C. Maintenance of Estate Documents

The PA shall 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. The estate file shall be maintained after administration is complete in accordance with all state, local, and/or administrative requirements regarding records retention. Electronic storage of all or some of the documents in the estate file is permissible.

D. Maintenance of Suspense Accounts

1. The PA may maintain an account (“suspense account”) containing (a) fees allowed by the court pursuant to SCPA 1106(3) or SCPA1207(4), (b) interest earned on monies in the account, (c) funds representing reimbursement of disbursements for particular estates made from the suspense account prior to the collection of estate assets, and (d) fees received by the PA for the performance of administrative services pursuant to Section II(E) of these Guidelines. Suspense account monies may not be commingled with estate funds.
2. The PA may use the suspense account 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. Where suspense account funds are used to purchase office equipment or supplies, the PA shall maintain records which set forth the date, nature, and amount of the expenditure. 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.
3. The suspense account may be used to pay disbursements such as filing fees or fees for death certificates for the individual estates prior to the collection of estate assets. The suspense account



shall be reimbursed promptly after estate assets are collected. Suspense account funds may be used to pay miscellaneous estate disbursements including those related to real estate where estate assets are insufficient to pay such expenses.

4. The PA shall keep and maintain accurate records of all receipts and disbursements to and from the suspense account, including back up documentation. All suspense account disbursements shall be approved in writing by the PA, and shall be supported by invoices setting forth the date, nature, and amount of such disbursement. Monthly reports of such receipts and disbursements and of the present balance of the suspense account shall be maintained and shall be provided upon request to the Surrogate, the Attorney General, the State Comptroller and, with respect to the offices of the PAs within the City of New York, the Comptroller of the City of New York.
5. PAs within the City of New York seeking approval of an increase in the suspense fee pursuant to SCPA 1106(3) shall include with their written request to the Administrative Board copies of the monthly reports for two years preceding the date of the request.

E. Annual Audit

The annual audit of the offices of the PAs office by an independent auditing firm, pursuant to SCPA 1109 (PAs within the City of New York) or SCPA 1208 (PAs in Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester Counties) shall be conducted in compliance with generally accepted government audit standards, and shall:

1. review a random sample of cases handled by the PA, which shall include proportionate representation of the population of formal and small estates as well as any guardianship or trust accounts handled by the PA, for compliance with these Guidelines;
2. review and test any procedures that the PA is directed to promulgate by these Guidelines;
3. review the integrity and efficacy of any specialized fiduciary financial management software system used by the PA to manage a “pooled” account maintained at a financial institution pursuant to Section III(A)(1) of these Guidelines;
4. include, where applicable, recommendations for improvement and corrective action; and
5. attest to the validity of the total value of the estate accounts as reported on the PA’s last report filed with the Office of the New York State Comptroller pursuant to 2 NYCRR 72.1 (PAs within New York City), or 2 NYCRR 71.1 (PAs in Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester).

II. ADMINISTRATIVE FUNCTIONS

A. Conducting Due Diligence

When the PA is notified of the death of a decedent, the PA shall promptly investigate whether it may be appropriate for the PA to petition for appointment as the estate fiduciary. In conducting this investigation, the PA shall comply with the Uniform Rules of the Surrogate’s Court and all local rules and practices with respect to searching for the decedent’s distributees.

Appendix D – Nassau County Public Administrator’s Response

B. Settlement of Estate Accounts

The PA shall judicially settle all accounts whenever the gross assets of the decedent’s estate exceeds the monetary amount defined for a small estate pursuant to subdivision 1 of SCPA 1301, unless otherwise directed by the court. This section shall not apply where the PA’s letters of administration have been vacated and the estate assets turned over to a successor fiduciary, unless otherwise directed by the court.

C. Administration of Small Estates Pursuant to SCPA 1115 (1)

Upon filing the informational account for small estates pursuant to SCPA 1115(1), the PAs governed by Article 11 of SCPA may disburse to counsel a sum not in excess of 6% of the gross estate to pay counsel for legal services rendered in connection with the administration of the estate.

D. Requesting and Disbursing Counsel Fees in Formal Estates

1. In the absence of special circumstances, the PAs governed by Article 11 of the SCPA shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a maximum fee, based on the gross value of the estate (“total charges” reported in the account), as set forth below:

| GROSS VALUE | PERCENTAGE |
|------------------|------------|
| First \$750,000 | 6 |
| Next \$500,000 | 5.5 |
| Next \$250,000 | 5 |
| Next \$500,000 | 4.5 |
| Next \$3,000,000 | 3 |
| Over \$5,000,000 | 1.5 |

2. In the absence of special circumstances, the PAs governed by Article 11 of the SCPA shall require that where the PA is appointed to prosecute a wrongful death or personal injury action on behalf of a decedent’s estate, the combined fee of tort counsel retained to prosecute the tort action and the fee of counsel to the PA for legal services rendered for estate administration shall not exceed the customary fee allowed in the PA’s county for tort cases in which the PA is not



the fiduciary. The PA shall require that the fee requested by their estate administration counsel shall not exceed the percentages in the above schedule based on the net value of the estate after deducting tort counsel's fees and disbursements.

3. The above provisions shall not in any way infringe on either the rights of interested parties to object to counsel fees or on the jurisdiction of the court to determine such fees, nor shall they apply to any PA governed by Article 12 of the SCPA unless so ordered or permitted by the Surrogate of the PA's county.
4. Counsel for the PAs governed by both Article 11 and Article 12 of the SCPA shall be required to maintain in their files contemporaneous time records for all legal services rendered, and to support their request for compensation with an affidavit of legal services that complies with the requirements of SCPA 1108[2][c] or Uniform Rule 207.45, as applicable, and any additional requirements as directed by the Surrogate of the PA's county. Such time records shall be provided upon request to any party to the proceeding.
5. In the absence of a court order:
 - (a) the PA shall not disburse to counsel on account of legal fees an amount that exceeds 50% of the amount calculated pursuant to the schedule set forth in paragraph 1 of this section; and
 - (b) no payment on account of legal fees shall be made by the PA until counsel has filed with the PA an affidavit of legal services and an affirmation that jurisdiction is complete in the proceeding for judicial settlement of the PA's account.
6. Paragraph 5 of this section shall apply to disbursements by the PAs governed by both Article 11 and Article 12 of the SCPA, even in counties where counsel's total compensation is not computed pursuant to the schedule set forth in paragraph 1, but Paragraph 5 shall in no way authorize the PA to disburse counsel fees in the absence of a court order where that practice is prohibited by the court.

E. Services on behalf of Estates for which no Commissions are Awarded

Where the PA or the PA's staff performs substantial administrative services on behalf of an estate, for which the office is not awarded commissions as a permanent fiduciary, the PA may assert a claim against the estate in quantum meruit for the administrative services rendered, and, in the absence of extraordinary circumstances, the amount of the claim shall not exceed one receiving commission as set forth in SCPA 2307.

III. CASH MANAGEMENT

A. Estate Accounts

1. Upon receipt by the PA of any funds from any source for a decedent, the PA shall open at a financial institution a separate interest-bearing account in the name of decedent's estate ["the estate account"]. The deposit of estate funds into a "pooled" account shall be prohibited, except for the deposit of funds into an interest bearing sub account where (a) the PA maintains at a financial institution a master account for making disbursements, and interest bearing sub



accounts for each estate; or (b) the PA maintains a “pooled” account at a financial institution and employs a specialized fiduciary financial management software system to record and maintain separate sub account ledgers for each estate. Such software system shall contain appropriate security features including controlled access to the system and data backup, and shall incorporate a system of checks and balances to ensure that estate funds are appropriately credited, debited, and reported.

2. The PA shall without undue delay liquidate accounts held solely in the name of the decedent, and shall deposit all funds received into the estate account or sub account.
3. Interest shall be posted to each estate account or sub account no less than monthly, within a reasonable time after the end of the applicable month.
4. Each estate account or sub account shall be reconciled no less than monthly with the balance maintained by the financial institution.
5. Estate 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.
6. The PA shall promulgate written procedures to ensure compliance with the requirements of this section.

B. Estate Disbursements

All 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.

C. Assets Not Passing Through the Estate

1. 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. The PA shall include the information obtained concerning joint and beneficiary assets statement of other pertinent facts in Schedule J of the judicial accounting. 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.



2. PA's counsel shall not solicit or enter into retainer agreements with the beneficiaries of assets not passing through the estate, nor shall PA's counsel seek compensation from the beneficiaries of such assets for services performed in connection with the collection or liquidation of such assets, except where such services are performed to facilitate a necessary payment of funds to the PA as fiduciary of the decedent's estate from such assets or in connection with the determination or apportionment of tax under EPTL 2-1.8(h).

IV. PROPERTY MANAGEMENT

A. Property Search and Collection

1. The PA shall 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.
2. The search of a decedent's residence, if feasible, shall be conducted as soon as possible after notice of the decedent's death is received and the PA determines that such search is appropriate.
3. At least two employees employed by the PA's office shall be present during the initial search for personal property at the residence of a decedent. Where the size and budget of the PA's office precludes the dispatch of two employees to search the decedent's residence, at least one employee of the PA's office, or the PA, must be present at all times. Prior 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.
4. The person(s) authorized to conduct the search of a decedent's residence shall remove cash and easily transportable valuables from the residence to a secure location as soon as feasible. The PA shall establish and maintain written procedures to ensure the secure transportation and storage of cash and valuables removed from the decedent's residence.
5. After the initial search of a decedent's residence, the PA shall evaluate relevant information including the inventories, documentation, and employees' reports to determine if any further action concerning the residence is required. Further action may include an additional search, procuring insurance, appraisal of real or personal property, the release of the premises to the landlord, sale of the residence's contents by public auction, sealed bid, or household sale, or directing that the contents of the residence be brought to the PA's warehouse, safe, or elsewhere for later sale.

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6. After the PA's employees have searched the residence, its entrance and windows are to be sealed or otherwise secured, unless the premises are released to the landlord. If the premises are released to the landlord or the landlord's agent, the employees shall secure a signed receipt or release from the landlord or its agent.
7. The PA shall maintain a log reflecting every visit to the decedent's residence, the individuals who entered the residence and the reason for the entry. The PA shall maintain keys to decedents' residences in a secure place and control access to such keys.
8. Where the PA is required to open a safe deposit box maintained by the decedent, at least two employees employed by the PA's office shall be present at all times. Where the size and budget of the PA's office precludes the hiring of two employees, at least one employee of the PA's office, or the PA, must be present at all times. Prior to the search, the employee(s) shall endeavor to secure at the search the presence of an independent witness, such as a bank employee. The employee(s) shall, to the extent feasible, document the contents of the safe deposit box by photograph or video recording, and such documentation shall be reviewed by the PA and maintained by the PA in the estate file. The employee(s) shall contemporaneous with the search 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 independent witness. If no independent witness is available, or if the witness refuses to sign the report and inventory, the PA's employee(s) shall document such in the report. The PA shall establish and maintain written procedures to ensure the secure transportation and storage of cash and valuables removed from safe deposit boxes.
9. As soon as possible after notice of the decedent's death is received and it appears that it may be appropriate for the PA to petition for appointment as the estate fiduciary, the PA shall contact the appropriate police property clerk or precinct to determine whether the police department is holding any of decedent's property. If such property is in police custody, the PA shall promptly collect such property. Any members of the PA's staff who collect such property shall execute a written statement to be attached to the police inventory form attesting that the staff person has collected all of the property enumerated on the inventory.

B. Sale of Personal Property

1. Each PA shall maintain a roster of individuals and/or companies that have indicated an interest in purchasing a decedent's personal property. The PA shall advertise the opportunity to bid at such sales and invite individuals and/or companies to be listed on this roster by posting a permanent announcement on the PA's website, or on a website maintained by the PA's county, or on a website maintained by the City of New York, as applicable. In the alternative, the PA shall, on an annual basis, advertise in a paper of general circulation in the PA's county the opportunity to bid at such sales and invite individuals and/or companies to be listed on their roster. All those listed on the roster shall be notified of all sales held by the PA no less than five (5) business days prior to such sale. If the PA becomes aware that a decedent's friends, family members, or alleged family members have an interest in purchasing property from a particular decedent's estate, the PA shall notify them of the sale and also accept bids from them as well.



2. The PA shall sell any item of a decedent’s personal property at public auction unless specific factors make sale at public auction impractical. The PA shall be responsible for selecting the property to be auctioned and may not leave this decision to the discretion of the auctioneer. The PA shall supervise all aspects of auction sales of estate property and should require that the auctioneer or someone acting on his behalf reconcile items sold or left unsold at auction to estate property inventory records to ensure that all the items are accounted for. The PA shall maintain in the estate file a summary of the results of the auction. For each auctioned item, the PA shall indicate the sale price, the item sold, the name and address of the purchaser, and the estate to which the sale price should be credited.
 3. Where the PA reasonably believes that sale at public auction is not in the best interest of the estate, the PA may dispose of a decedent’s personal property by sealed bid auction or household sale. Where the personal property consists of furnishings or fixtures of less than significant value, or where specific factors make sale by other means impractical, such property may be sold in conjunction with the sale of the real property. Personal property that has no value may be disposed of at the PA’s discretion.
 4. Each time the PA disposes of estate property by sealed bid auction, the PA shall offer the property to at least three purchasers from the roster on a rotating basis. At least three sealed bids are to be solicited for each sale. The highest bid shall be selected. The PA shall ensure that information regarding the bid amounts and the identity of bidders is not disclosed during the bidding process. A copy of each bid shall be retained in the estate file.
 5. All payments by purchasers of personal property shall be promptly deposited in the estate account.
 6. In no event may the individual or companies bidding on or purchasing personal property be parties related to the PA as defined herein. The PA shall devise and implement procedures to ensure compliance with this section.
 7. The use of third parties to conduct the auction or household sale of personal property is permissible, and the PA shall select and compensate such third-parties in the manner prescribed below for the selection and compensation of vendors.
- C. Sale of Real Property and Cooperative Apartments*
1. With respect to real property of decedents other than condominium apartments located within New York, Kings, Queens, or Bronx Counties, the PAs of those counties shall have such real property appraised and sold at public auction. Broad advance notice of each public auction shall be given, inviting attendance at the auction and/or bids on real property available for purchase. No real estate brokerage fees in excess of three (3%) percent of the price for which the property is purchased shall be paid to any real estate broker in connection with auction sales. If the PAs of those counties are unable to sell such real property at a public auction, such property may be sold by private sale at the highest and best price available. Reasonable real estate brokerage fees may be paid in connection with such sales. At any time that the PA reasonably believes that an auction sale of a particular parcel of real property is not in the best interest of the estate, the PA may seek court permission to dispose of the property by private sale.

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2. With respect to cooperative and condominium apartments of decedents which are located within New York, Kings, Queens, or Bronx Counties, the PAs within those counties shall determine the fair market value and sell cooperative and condominium apartments either by public auction, as set forth in paragraph 2 of this section, or by private sale at the highest and best price available. Reasonable real estate brokerage fees may be paid in connection with private sales.
3. With respect to real property or cooperative apartments of decedents which are located in counties other than those enumerated above, the PA shall determine the fair market value and sell this property at public auction or by private sale at the highest and best price available. Where the real property is sold at public auction, broad advance notice of each public auction shall be given, inviting attendance at the auction and/or bids on real property available for purchase. No real estate brokerage fees in excess of three (3%) percent of the price for which the property is purchased shall be paid to any real estate broker in connection with auction sales. Reasonable real estate brokerage fees may be paid in connection with private sales.
4. Where the PA sells real property at public auction, the PA shall maintain a roster of individuals and/or companies that have indicated an interest in purchasing a decedent’s real property. The PA shall advertise the opportunity to be included in this roster in the manner prescribed for personal property in Section IV(B)(1).
5. In no event may the individual or companies bidding on or purchasing real property or cooperative apartments be related to the PA as defined herein. The PA shall devise and implement procedures to ensure compliance with this section.

V. COMPENSATION AND SELECTION OF OUTSIDE VENDORS

A. Selection of Outside Vendors

1. As referred to herein, “outside vendors” shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, genealogists, kinship investigators, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors. Except as otherwise provided herein, whenever the PA determines that the services of an outside vendor are necessary to properly administer an estate, the PA may employ an outside vendor, following the procedures set forth herein.
2. Except for filing due diligence to obtain jurisdiction in a proceeding, a PA shall not hire a genealogist or kinship investigator without court approval. Such hiring, including compensation, shall be made on the terms and conditions set by the court. Any retention of a genealogist or kinship investigator shall be conditioned upon agreement that such genealogist or kinship investigator shall not (a) represent any distributee discovered, (b) accept any compensation from such distributee, nor (c) suggest or recommend to the distributee the services of any attorney or kinship investigator, other than to suggest that a distributee might wish to confer with an attorney of the distributee’s own choosing.

Appendix D – Nassau County Public Administrator’s Response



3. The PA may not employ as an outside vendor any employee of the PA's office, or any individual related by blood or marriage to the PA, as defined herein. The PA shall establish and maintain written procedures to ensure compliance with this section. This section does not apply to permanent employees of the PA's office who receive compensation for services performed outside of normal working hours for showing real property prior to public auction.
4. The PA shall advertise for outside vendors by posting a standing announcement on the PA's website, or on a website maintained by the county where the PA maintains his or her office, or on a website maintained by the City of New York, as applicable, soliciting outside vendors to apply to provide services to the PA. In the alternative, the PA may, on an annual basis, advertise in a newspaper of general circulation within the PA's county. The announcement should detail the services sought, a description of the work involved, and the requirements for employment by the PA.
5. 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 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. The list shall be updated at least annually and shall be available for public inspection at the PA's office.
6. 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.

B. Compensation of Outside Vendors

Compensation paid to outside vendors by the PA shall be supported by a written agreement or invoice that sets forth a description of the work done or services performed, and shall be fair and reasonable considering the circumstances of each individual county.

VI. EFFECTIVE DATE

These Guidelines shall be effective May 1, 2012.

Approved February 10, 2012

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EXHIBIT B

Appendix D – Nassau County Public Administrator’s Response

PRF # PA1000011 - Rejected on 8/20/2018

Page 1 of 1



PE-3543, Rev 4/02

Position Request Form Rejected on 8/20/2018 rejected

PA1000011

This form is to be used when a department is requesting approval to fill a position.
This form must be completed and approved prior to hiring.

| | |
|---|--|
| County Department, Town, Village, School, Special District, or School District Library. | |
| Agency Name: PUBLIC ADMINISTRATOR - PA | Agency Code: PA10 |
| Title: ACCOUNTANT I View Class Spec --> | Class Code: CBA |
| CS-4 No. PA1000013 View CS4 --> | Juris Class: Competitive |
| Collective Bargaining Unit: CSEA | |
| # Of new requests for this title 1 (where applicable, and only if position and salary are exactly the same.) | |
| # Of funded positions in this title in your department included in adopted budget 0 | |
| # Of positions currently existing in this title in your department 0 | |
| Salary Range: 38181-74978 | |
| Job Duties: Reconciliation of escrow and suspense accounts. Sends reports of accounts with closed estates to Surrogate's Court Judge. Audits receipts and disbursements. Analyzes financial statements. Checks interest rates at various banks and initiates disbursement of funds to various banks. Completes department budget and annual audit report to OCA. | |
| Qualifications (include skills and education): Bachelors degree including accounting | |
| Add to Staff (name) | Grant Funded: % |
| Anticipated cumulative annual salary for hires requested | 38181 |
| Plus 39% for fringe benefits | 14891 |
| Subtotal: annual cost of hires | 53072 |
| Less outside reimbursement | |
| Less annual revenue generated by this employee | |
| Less annual expense savings generated by this employee | |
| Total net annual fiscal impact of hires | 53072 |
| Comments - Justification - Supporting Information | |
| The above statements are accurate and complete | |
| Date: 03/26/2018 | Title: Public Administrator |
| | Authorized By: Jeffrey E. DeLuca/PUBLIC ADMINISTRATOR - PA |
| | Submitted By: Mary E. Weidman/PUBLIC ADMINISTRATOR - PA |
| Date: 08/20/2018 | Title: OMB |
| Date: | Authorized By: Andrew D. Persich/OMB |
| | Authorized By: |

<https://www.nassaucivilserviceagency.com/NccsWeb/NCWebForms.nsf/0/2D34EBAA8B8B3DF7852...> 9/11/2018

EXHIBIT C

Appendix D – Nassau County Public Administrator’s Response

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Code, Regulations, Committee Reports & Tax Treaties

Final, Temporary, Proposed Regulations & Preambles

Final, Temporary & Proposed Regulations

Regs. §§ 1.6038C-1 thru 1.6042-5

Reg §1.6041-1 Return of information as to payments of \$600 or more.

Federal Regulations

Reg § 1.6041-1. Return of information as to payments of \$600 or more.

Caution: The Treasury has not yet amended Reg § 1.6041-1 to reflect changes made by P.L. 114-113



Effective: January 6, 2017. For dates of applicability, see §§ 1.871-14(j) , 1.1441-1(f) ,

1.1441-3(i) , 1.1441-4(g) , 1.1441-5(g) , 1.1441-6(i) , 1.1441-7(g) , 1.1461-1(i) , 1.1461-2(d) ,
1.6041-1(j) , 1.6041-4(d) , 1.6042-2(f) , 1.6042-3(d) , 1.6045-1(q) , 1.6049-4(h) , 1.6049-5(g) ,
31.3406(g)-1(g) , 31.3406(h)-2(i) , and 301.6402-3(f) .

(a) General rule.

(1) Information returns required.

(i) Payments required to be reported. Except as otherwise provided in §§1.6041-3 and 1.6041-4, every person engaged in a trade or business shall make an information return for each calendar year with respect to payments it makes during the calendar year in the course of its trade or business to another person of fixed or determinable income described in paragraph (a)(1)(i)(A) or (B) of this section. For purposes of the regulations under this section, the person described in this paragraph (a)(1)(i) is a payor.

(A) Salaries, wages, commissions, fees, and other forms of compensation for services rendered aggregating \$600 or more.

(B) Interest (including original issue discount), rents, royalties, annuities, pensions, and other gains, profits, and income aggregating \$600 or more.

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(ii) Information returns required under other provisions of the Internal Revenue Code. The payments described in paragraphs (a)(1)(i)(A) and (B) of this section shall not include any payments of amounts with respect to which an information return is required by, or may be required under authority of, section 6042(a) (relating to dividends), section 6043(a)(2) (relating to distributions in liquidation), section 6044(a) (relating to patronage dividends), section 6045 (relating to brokers' transactions with customers and certain other transactions), sections 6049(a)(1) and (2) (relating to interest), section 6050N(a) (relating to royalties), or section 6050P(a) or (b) (relating to cancellation of indebtedness). For information returns required under section 6045(f) (relating to payments to attorneys), see special rules in §§1.6041-1(a)(1)(iii) and 1.6045-5(c)(4). For payment card transactions (as described in § 1.6050W-1(b)) and third party network transactions (as defined in § 1.6050W-1(c)) required to be reported on information returns required under section 6050W (relating to payment card and third party network transactions), see special rules in §1.6041-1(a)(1)(iv).

(iii) Information returns required under section 6045(f) on or after January 1, 2007. For payments made on or after January 1, 2007 to which section 6045(f) (relating to payments to attorneys) applies, the following rules apply. Notwithstanding the provisions of paragraph (a)(1)(ii) of this section, payments to an attorney that are described in paragraph (a)(1)(i) of this section but which otherwise would be reportable under section 6045(f) are reported under section 6041 and this section and not section 6045(f). This exception applies only if the payments are reportable with respect to the same payee under both sections. Thus, a person who, in the course of a trade or business, pays \$600 of taxable damages to a claimant by paying that amount to the claimant's attorney is required to file an information return under section 6041 with respect to the claimant, as well as another information return under section 6045(f) with respect to the claimant's attorney. For provisions relating to information reporting for payments to attorneys, see §1.6045-5.

(iv) Information returns required under section 6050W for calendar years beginning after December 31, 2010. For payments made by payment card (as defined in §1.6050W-1(b)(3)) or through a third party payment network (as defined in §1.6050W-1(c)(3)) after December 31, 2010, that are required to be reported on an information return under section 6050W (relating to payment card and third party network transactions), the following rule applies. Transactions that are described in paragraph (a)(1)(ii) of this section that otherwise would be subject to reporting under both sections 6041 and 6050W are reported under section 6050W and not section 6041. For provisions relating to information reporting for payment card and third party network transactions, see §1.6050W-1. Solely for purposes of this paragraph, the de minimis threshold for third party network transactions in §1.6050W-1(c)(4) is disregarded in determining whether the transaction is subject to reporting under section 6050W.

(v) Examples. The provisions of paragraph (a)(1)(iv) of this section are illustrated by the following examples:

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Example (1). Restaurant owner A, in the course of business, pays \$600 of fixed or determinable income to B, a repairman, by credit card. B is one of a network of unrelated persons that has agreed to accept A’s credit card as payment under an agreement that provides standards and mechanisms for settling the transactions between a merchant acquiring bank and the persons who accept the cards. Merchant acquiring bank Y is responsible for making the payment to B. Under paragraph (a)(1)(iv) of this section, A, as payor, is not required to file an information return under section 6041 with respect to the transaction because Y, as the payment settlement entity for the payment card transaction, is required to file an information return under section 6050W.

Example (2). Restaurant owner A, in the course of business, pays \$600 of fixed or determinable income to B, a repairman, through a third party payment network. B is one of a substantial number of persons who have established accounts with Y, a third party settlement organization that provides standards and mechanisms for settling the transactions and guarantees payments to those persons for goods or services purchased through the network. Y is responsible for making the payment to B. Under paragraph (a)(1)(iv) of this section, A, as payor, is not required to file an information return under section 6041 with respect to the transaction because the transaction is a third party network transaction that is subject to reporting under section 6050W. Solely for purposes of determining whether A is eligible for relief from reporting under section 6041, the de minimis threshold for third party network transactions in §1.6050W-1(c)(4) is disregarded.

(2) Prescribed form. The return required by subparagraph (1) of this paragraph shall be made on Forms 1096 and 1099 except that (i) the return with respect to distributions to beneficiaries of a trust or of an estate shall be made on Form 1041, and (ii) the return with respect to certain payments of compensation to an employee by his employer shall be made on Forms W-3 and W-2 under the provisions of §1.6041-2 (relating to return of information as to payments to employees). For time and place for filing Forms 1096 and 1099, see §1.6041-6. For the requirement to submit the information required by Form 1099 on magnetic media for payments after December 31, 1983, see section 6011(e) and §301.6011-2 of this chapter (Procedure and Administration Regulations).

(b) Persons engaged in trade or business.

(1) In general. The term "all persons engaged in a trade or business", as used in section 6041(a), includes not only those so engaged for gain or profit, but also organizations the activities of which are not for the purpose of gain or profit. Thus, the term includes the organizations referred to in section 401(a), 501(c), 501(d) and 521 and in paragraph (i) of this section. On the other hand, section 6041(a) applies only to payments in the course of trade or business; hence it does not apply to an amount paid by the proprietor of a business to a physician for medical services rendered by the physician to the proprietor's child.

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(2) *Special rule for REMICs.* For purposes of chapter 1 subtitle F, chapter 61A, part III B, the terms "all persons engaged in a trade or business" and "any service-recipient engaged in a trade or business" includes a real estate mortgage investment conduit or REMIC (as defined in section 860D).

(c) Fixed or determinable income. Income is fixed when it is to be paid in amounts definitely predetermined. Income is determinable whenever there is a basis of calculation by which the amount to be paid may be ascertained. The income need not be paid annually or at regular intervals. The fact that the payments may be increased or decreased in accordance with the happening of an event does not for purposes of this section make the payments any the less determinable. A payment made jointly to two or more payees may be fixed and determinable income to one payee even though the payment is not fixed and determinable income to another payee. For example, property insurance proceeds paid jointly to the owner of damaged property and to a contractor that repairs the property may be fixed and determinable income to the contractor but not fixed and determinable income to the owner, and should be reported to the contractor. A salesman working by the month for a commission on sales which is paid or credited monthly receives determinable income.

(d) Payments specifically included.

(1) *In general.* Amounts paid in respect of life insurance, endowment, or annuity contracts are required to be reported in returns of information under this section-

(i) Unless the payment is made in respect of a life insurance or endowment contract by reason of the death of the insured and is not required to be reported by paragraph (b) of §1.6041-2,

(ii) Unless the payment is made by reason of the surrender prior to maturity or lapse of a policy, other than a policy which was purchased (a) by a trust described in section 401(a) which is exempt from tax under section 501(a), (b) as part of a plan described in section 403(a), or (c) by an employer described in section 403(b)(1)(A),

(iii) Unless the payment is interest as defined in §1.6049-2 and is made after December 31, 1962,

(iv) Unless the payment is a payment with respect to which a return is required by §1.6047-1, relating to employee retirement plans covering owner-employees,

(v) Unless the payment is payment with respect to which a return is required by §1.6052-1, relating to payment of wages in the form of group-term life insurance.

(2) *Professional fees.* Fees for professional services paid to attorneys, physicians, and members of

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(e) Payment made on behalf of another person.

(1) In general. 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 the payment is described in paragraph (a) of this section and, under all the facts and circumstances, that person-

(i) Performs management or oversight functions in connection with the payment (this would exclude, for example, a person who performs mere administrative or ministerial functions such as writing checks at another’s direction); or

(ii) Has a significant economic interest in the payment (i.e., an economic interest that would be compromised if the payment were not made, such as by creation of a mechanic’s lien on property to which the payment relates, or a loss of collateral).

(2) Determination of payor obligated to report. If two or more persons meet the requirements for making a return of information with respect to a payment, as set forth in paragraph (e)(1) of this section, the person obligated to report the payment is the person closest in the chain to the payee, unless the parties agree in writing that one of the other parties meeting the requirements set forth in paragraph (e)(1) of this section will report the payment.

(3) Special rule for payment by employee to employer. Notwithstanding the provisions of paragraph (e)(1) of this section, an employee acting in the course of his employment who makes a payment to his employer on behalf of another person is not required to make a return of information with respect to that payment.

(4) Optional method to report. A person that makes a payment on behalf of another person but is not required to make an information return under paragraph (e)(1) of this section may elect to do so pursuant to the procedures established by the Commissioner. See, e.g., Rev. Proc. 84-33 (1984-1 C.B. 502) (optional method for a paying agent to report and deposit amounts withheld for payors under the statutory provisions of backup withholding) (see §601.601(d)(2) of this chapter).

(5) Examples. The provisions of this paragraph (e) are illustrated by the following examples:

Example (1). Bank B provides financing to C, a real estate developer, for a construction project. B makes disbursements from the account for labor, materials, services, and other expenses related to the construction project. In connection with the payments, B performs the following functions:

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other professions are required to be reported in returns of information if paid by persons engaged in a trade or business and paid in the course of such trade or business.

(3) *Prizes and awards.* Amounts paid as prizes and awards that are required to be included in gross income under section 74 and §1.74-1 when paid in the course of a trade or business are required to be reported in returns of information under this section.

(4) *Disability payments.* Amounts paid as disability payments under section 105(d) are required to be reported in returns of information under this section.

(5) *Notional principal contracts.* Except as provided in paragraphs (b)(5)(i) and (ii) of this section, amounts paid after December 31, 2000, with respect to notional principal contracts referred to in §1.863-7 or 1.988-2(e) to persons who are not described in §1.6049-4(c)(1)(ii) are required to be reported in returns of information under this section. The amount required to be reported under this paragraph (d)(5) is limited to the amount of cash paid from the notional principal contract as described in 1.446-3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of §1.446-3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see 1.6049-5(b)(15)). See 1.6041-4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, §1.1461-1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of §1.6049-5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See §1.6049-4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in §1.6049-4(f)(4).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a non-U.S. payor or a non-U.S. middleman and is paid and received outside the United States (as defined in §1.6049-4(f)(16)).

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the amount is paid by a payor that has no actual knowledge that the payee is a U.S. person and is paid and received outside the United States (as defined in §1.6049-4(f)(16)), and the payor is-

(A) A U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business); or

(B) A foreign branch of a U.S. bank. See §1.6049-5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

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approves payments to the general contractor or subcontractors; ensures that loan proceeds are properly applied and that all approved bills are properly paid to avoid mechanics' or materialmen's liens; conducts site inspections to determine whether work has been completed (but does not check the quality of the work). B is performing management or oversight functions in connection with the payments and is subject to the information reporting requirements of section 6041 with respect to payments.

Example (2). Mortgage company D holds a mortgage on business property owned by E. When the property is damaged by a storm, E's insurance company issues a check payable to both D and E in settlement of E's claim. Pursuant to the contract between D and E, D holds the insurance proceeds in an escrow account and makes disbursements, according to E's instructions, to contractors and subcontractors performing repairs on the property. D is not performing management or oversight functions, but D has a significant economic interest in the payments because the purpose of the arrangement is to ensure that property on which D holds a mortgage is repaired or replaced. D is subject to the information reporting requirements of section 6041 with respect to the payments to contractors.

Example (3). Settlement agent F provides real estate closing services to real estate brokers and agents. F deposits money received from the buyer or lender in an escrow account and makes payments from the account to real estate agents or brokers, appraisers, land surveyors, building inspectors, or similar service providers according to the provisions of the real estate contract and written instructions from the lender. F may also make disbursements pursuant to oral instructions of the seller or purchaser at closing. F is not performing management or oversight functions and does not have a significant economic interest in the payments, and is not subject to the information reporting requirements of section 6041. For the rules relating to F's obligation to report the gross proceeds of the sale, see section 6045(e) and §1.6045-4.

Example (4). Assume the same facts as in Example 3. In addition, the seller instructs F to hire a contractor to perform repairs on the property. F selects the contractor, negotiates the cost, monitors the progress of the project, and inspects the work to ensure it complies with the contract. With respect to the payments to the contractor, F is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example (5). G is a rental agent who manages certain rental property on behalf of property owner H. G finds tenants, arranges leases, collects rent, responds to tenant inquiries regarding maintenance, and hires and makes payments to repairmen. G subtracts her commission and any maintenance payments from rental payments and remits the remainder to H. With respect to payments to repairmen, G is performing management or oversight functions and is subject to the information reporting requirements of section 6041. With respect to the payment of rent to H, G is subject to the information reporting requirements of section 6041 regardless of whether she performs management or oversight functions or has a significant economic interest in the payment. See §1.6041-3(d) for rules relating to rental agents. See §1.6041-1(f) to determine the amount that G should report to H as rent.

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Example (6). Literary agent J receives a payment from publisher L of fees earned by J's client, author K. J deposits the payment into a bank account in J's name. From time to time and as directed by K, J makes payments from these funds to attorneys, managers, and other third parties for services rendered to K. After subtracting J's commission, J pays K the net amount. J does not order or direct the provision of services by the third parties to K, and J exercises no discretion in making the payments to the third parties or to K. J is not performing management or oversight functions and does not have a significant economic interest in the payments and is not subject to the information reporting requirements of section 6041 in connection with the payments to K or to the third parties. For the rules relating to L's obligation to report the payment of the fees to K, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to K's obligation to report the payment of the commission to J and the payments to the third parties for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example (7). Attorney P deposits into a client trust fund a settlement payment from R, the defendant in a breach of contract action for lost profits in which P represented plaintiff Q. P makes payments from the client trust fund to service providers such as expert witnesses and private investigators for expenses incurred in the litigation. P decides whom to hire, negotiates the amount of payment, and determines that the services have been satisfactorily performed. In the event of a dispute with a service provider, P withholds payment until the dispute is settled. With respect to payments to the service providers, P is performing management or oversight functions and is subject to the information reporting requirements of section 6041.

Example (8). Assume the same facts as in Example 7. In addition, assume that after paying the service providers and deducting his legal fee, P pays Q the remaining funds that P had received from the settlement with R. With respect to the payment to Q, P is not performing management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to R's obligation to report the payment of the settlement proceeds to P, see section 6045(f) and the regulations thereunder. For the rules relating to R's obligation to report the payment of the settlement proceeds to Q, see paragraphs (a)(1)(i) and (f) of this section. For the rules relating to Q's obligation to report the payment of attorney fees to P, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example (9). Medical insurer S operates as the administrator of a health care program under a contract with a state. S makes payments of government funds to health care providers who provide care to eligible patients. S receives and reviews claims submitted by patients or health care providers, determines if the claims meet all the requirements of the program (e.g., that the care is authorized and that the patients are eligible beneficiaries), and determines the amount of payment. S is performing management or oversight functions and is subject to the information reporting requirements of section 6041 with respect to the payments.

Example (10). Race track employee T holds deposits made by horse owner U in a special escrow account in U's name. U enters into a contract with jockey V to ride U's horse in a race at the track. As directed by U, T pays V the fee for riding U's horse from U's escrow account. T is not performing

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management or oversight functions, does not have a significant economic interest in the payment, and is not subject to the information reporting requirements of section 6041. For the rules relating to U's obligation to report the payment of the fee to V, see paragraph (a)(1)(i) of this section.

Example (11). X is a certified public accountant employed by Firm Y, and is not a partner. Client Z pays X directly for accounting services. X remits the amount received to Y, as required by the terms of his employment. X does not have any reporting obligation with respect to the payment to Y. For the rules relating to Z's obligation to report the payment to Y for services, see paragraphs (a)(1)(i) and (d)(2) of this section.

Example (12). Bank contracts with Title Company with respect to the disbursement of funds on a construction loan. Pursuant to their arrangement, the contractor sends draw requests to Title Company, which inspects the work, verifies the amount requested, and then sends the draw request to Bank with supporting documents. Bank pays Title Company the amount of the draw request, and Title Company insures Bank against any loss if it cannot obtain the necessary lien waivers. Bank has a significant economic interest in the payment as a mortgagee, and Title Company exercises management or oversight over the payment. Since Title Company is closest in the chain to the contractor, Title Company should report the payment, unless the parties agree in writing that Bank will report the payment.

(f) Amount to be reported when fees, expenses or commissions are deducted.

(1) In general. The amount to be reported as paid to a payee is the amount includible in the gross income of the payee (which in many cases will be the gross amount of the payment or payments before fees, commissions, expenses, or other amounts owed by the payee to another person have been deducted), whether the payment is made jointly or separately to the payee and another person. The Commissioner may, by guidance published in the Internal Revenue Bulletin, illustrate the circumstances under which the gross amount or less than the gross amount may be reported.

(2) Examples. The provisions of this paragraph (f) are illustrated by the following examples:

Example (1). Attorney P represents client Q in a breach of contract action for lost profits against defendant R. R settles the case for \$100,000 damages and \$40,000 for attorney fees. Under applicable law, the full \$140,000 is includible in Q's gross taxable income. R issues a check payable to P and Q in the amount of \$140,000. R is required to make an information return reporting a payment to Q in the amount of \$140,000. For the rules with respect to R's obligation to report the payment to P, see section 6045(f) and the regulations thereunder.

Example (2). Assume the same facts as in Example 1, except that R issues a check to Q for \$100,000 and a separate check to P for \$40,000. R is required to make an information return reporting a payment to Q in the amount of \$140,000. For the rules with respect to R's obligation to report the

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payment to P, see section 6045(f) and the regulations thereunder.

(g) Payment made in medium other than cash. If any payment required to be reported on Form 1099 is made in property other than money, the fair market value of the property at the time of payment is the amount to be included on such form.

(h) When payment deemed made. For purposes of a return of information, an amount is deemed to have been paid when it is credited or set apart to a person without any substantial limitation or restriction as to the time or manner of payment or condition upon which payment is to be made, and is made available to him so that it may be drawn at any time, and its receipt brought within his own control and disposition.

(i) Payments made by the United States or a State. Information returns on-

(1) Forms 1096 and 1099 and

(2) Forms W-3 and W-2 (when made under the provisions of §1.6041-2)

of payments made by the United States or a State, or political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing, shall be made by the officer or employee of the United States, or of such State, or political subdivision, or of the District of Columbia, or of such agency or instrumentality, as the case may be, having control of such payments or by the officer or employee appropriately designated to make such returns.

(j) Effective/applicability date. This section applies to payments made on or after January 6, 2017. (For payments made after June 30, 2014, and before January 6, 2017, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2016. For payments made after December 31, 2010, and before July 1, 2014, see this section as in effect and contained in 26 CFR part 1, as revised April 1, 2013.)

T.D. 6364, 2/13/59 , amend T.D. 6628, 12/27/62 , T.D. 6677, 9/16/63 , T.D. 6888, 7/5/66 , T.D. 7284, 8/2/73 , T.D. 7580, 12/20/78 , T.D. 7888, 4/22/83 , T.D. 8458, 12/23/92 , T.D. 8734, 10/6/97 , T.D. 8804, 12/30/98 , T.D. 8881, 5/15/2000 , T.D. 9010, 7/25/2002 , T.D. 9270, 7/12/2006 , T.D. 9496, 8/13/2010 , T.D. 9658, 2/28/2014 , T.D. 9658_Correction_2_79FR37181, 7/1/2014 , T.D. 9808, 12/30/2016 .

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