



Niagara County Public Administrator Internal Controls Over Estate Assets

Report of Examination

Period Covered:

January 1, 2004 — October 6, 2009

2009M-238



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State of New York Office of the State Comptroller

Division of Local Government and School Accountability

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Dear Local Officials:

A top priority of the Office of the State Comptroller is to help local government officials manage government resources efficiently and effectively and, by so doing, provide accountability for tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of local governments statewide, as well as compliance with relevant statutes and observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations and county officials' governance. Audits also can identify strategies to reduce costs and to strengthen controls intended to safeguard local government assets.

Following is a report of our audit of the Niagara County Public Administrator, entitled Internal Controls Over Estate Assets. This audit was conducted pursuant to Article V, Section 1 of the State Constitution and the State Comptroller's authority as set forth in Article 3 of the General Municipal Law.

This audit's results and recommendations are resources for local government officials to use in effectively managing operations and in meeting the expectations of their constituents. If you have questions about this report, please feel free to contact the local regional office for your county, as listed at the end of this report.

Respectfully submitted,

*Office of the State Comptroller
Division of Local Government
and School Accountability*



State of New York Office of the State Comptroller

EXECUTIVE SUMMARY

The Surrogate's Court Procedure Act (Act) holds Public Administrators (Administrators) in New York State responsible for administering the estates of individuals who die intestate (without a will) and leave either no known heirs or heirs who are not qualified or willing to administer the estate. An Administrator may also be appointed by the Surrogate's Court to administer an estate when the named executor in the decedent's will is not qualified, willing, or able to administer the estate and there are no other known relatives eligible and willing to administer the estate.

The six counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester have created a separate office of Public Administrator, authorized by the Act to administer estates. In counties without a separate Public Administrator, such as Niagara County, the Surrogate's Court may appoint the County's chief fiscal officer to administer estates. In Niagara County (County), the Treasurer is the chief fiscal officer and is appointed when necessary by the County Surrogate's Court to serve as administrator of an estate.¹

An Administrator collects, secures, and liquidates the estate's assets in order to pay valid claims against the estate, such as those for the decedent's funeral and burial, as well as taxes owed by the decedent. After all reasonable expenses have been paid; the Administrator is responsible for distributing any residual value to the estate's beneficiaries. For fulfilling these responsibilities, the Administrator may receive a commission based on the value of estate assets.

Scope and Objective

We audited internal controls over estate management by the Niagara County Treasurer serving as Public Administrator for the period January 1, 2004 to October 6, 2009. The objective of our audit was to assess the Administrator's role as fiduciary of estates by addressing the following related question:

- Are internal controls over estate assets appropriately designed and operating effectively?

Audit Results

We reviewed the Administrator's processes for the identification, documentation, collection, safeguarding and liquidation of estate assets, cash management, recordkeeping, and the selection of service providers for 15 estates with gross assets totaling approximately \$1.8 million. For administering

¹ For purposes of this report, the Niagara County Treasurer, acting as the Public Administrator, will be referred to as Public Administrator or Administrator.

these estates, the Administrator will receive commissions totaling approximately \$73,000. We question whether the Administrator has consistently acted in the best interest of the estates and adequately fulfilled his responsibilities.

The Administrator has not established proper procedures or controls to adequately safeguard estate assets or to protect the interests of the estates' creditors and beneficiaries. Specifically, he did not ensure that all decedent assets are identified, documented, collected, safeguarded, appraised, liquidated and properly credited to the estate. For example, he did not control the identification, documentation, collection, and sale of assets found during the search of decedents' premises. He did not maintain adequate inventory records and there was minimal photographic or video evidence documenting the existence and condition of assets that were found and subsequently liquidated.

We found that typically the Administrator failed to have assets professionally appraised or document how he determined the value of the assets that were sold. In addition, we found that the Administrator may have received less than fair value for certain assets that he liquidated. For example, the Administrator sold three vehicles to a County employee (Sheriff Deputy) for a total of \$2,000. One of the three vehicles sold included a 1970 Chevrolet Monte Carlo which may have had substantial value to a classic car collector and/or enthusiast as we found seven listings for 1970 Monte Carlos with asking prices ranging from as low as \$9,850 to as high as \$38,000. The Administrator did not use a competitive selection process for individuals he retained to perform certain of his duties, such as attorneys, real estate agents and appraisers.

Moreover, because he did not use a competitive selection process and family and acquaintances of the Administrator benefited from estate activities, we question whether the Administrator has consistently acted in the best interest of the estate when retaining these individuals. He did not maintain adequate supporting documentation for certain estate expenditures and/or disbursements to individuals, especially attorneys. We also found that a Treasurer's Office employee spends a significant amount of County-compensated time performing estate-related work for which the Administrator (Treasurer) is compensated by commissions from the estates. As such, it is unclear the extent to which the Administrator himself is fulfilling many of his fiduciary duties for which he receives a commission.

We have referred this report to the Niagara County District Attorney for his consideration.

Comments of Local Officials

The results of our audit and recommendations have been discussed with the Administrator and his comments, which appear in Appendix A, have been considered in preparing this report. The Administrator disagreed with the findings and recommendations in our report. Appendix B includes our comments on the issues raised in the Administrator's response letter. We also discussed the results of our audit and recommendations with the Surrogate Judges. The Judges generally agreed with the findings and recommendations in our report and have already implemented new procedures that address the findings in our report.

Introduction

Background

The Surrogate's Court Procedure Act (Act) holds Public Administrators (Administrators) in New York State responsible for administering the estates of individuals who die intestate (without a will) and leave either no known heirs or heirs who are not qualified or willing to administer the estate. An Administrator may also be appointed by the Surrogate's Court to administer an estate when the named executor in the decedent's will is not qualified, willing, or able to administer the estate and there are no other known relatives eligible and willing to administer the estate.

The six counties of Erie, Monroe, Nassau, Onondaga, Suffolk, and Westchester have created a separate office of Public Administrator, authorized by the Act to administer estates. In counties without a separate Public Administrator, such as Niagara County, the Surrogate's Court may appoint the County's chief fiscal officer to administer estates. In Niagara County (County), the Treasurer is the chief fiscal officer and is appointed when necessary by the County Surrogate's Court to serve as administrator of an estate.²

An Administrator collects, secures, and liquidates the estate's assets in order to pay valid claims against the estate, such as those for the decedent's funeral and burial, as well as taxes owed by the decedent. After all reasonable expenses have been paid, the Administrator is responsible for distributing any residual value to the estate's beneficiaries. For fulfilling these responsibilities, the Administrator may receive a commission based on the value of estate assets.

As of December 31, 2008, the Administrator reported³ a caseload of 62 open estates with an estimated gross value in excess of \$1.8 million.⁴ According to the Administrator, he received \$306,415 in commissions for administering estates over a six-year period beginning January 1, 2003 and ending December 31, 2008. These commissions were in addition to his annual salary as County Treasurer, which is \$77,765 for the 2009 fiscal year.

² For purposes of this report, the Niagara County Treasurer, acting as the Public Administrator, will be referred to as Public Administrator or Administrator.

³ Open estates caseload as reported to the Office of the State Comptroller

⁴ Gross values were only reported for 36 of the 62 open estates. One estate's value was listed as unknown, one estate's value was listed as \$0 and 24 estates had no notation or value listed.

Objective

We audited internal controls over estate management by the Niagara County Treasurer serving as Public Administrator. The objective of our audit was to assess the Administrator's role as fiduciary of estates by addressing the following related question:

- Are internal controls over estate assets appropriately designed and operating effectively?

Scope and Methodology

We evaluated estate management by the Public Administrator for the period January 1, 2004 to October 6, 2009.

We conducted our audit in accordance with generally accepted government auditing standards (GAGAS). More information on such standards and the methodology used in performing this audit are included in Appendix C of this report.

Comments of Local Officials and Corrective Action

The results of our audit and recommendations have been discussed with the Administrator and his comments, which appear in Appendix A, have been considered in preparing this report. The Administrator disagreed with the findings and recommendations in our report. Appendix B includes our comments on the issues raised in the Administrator's response letter. We also discussed the results of our audit and recommendations with the Surrogate Judges. The Judges generally agreed with the findings and recommendations in our report and have already implemented new procedures that address the findings in our report.

The Treasurer and the Surrogate's Court Judges have the responsibility to initiate corrective action. A written corrective action plan (CAP) that addresses the findings and recommendations in this report should be prepared and forwarded to our office within 90 days, pursuant to Section 35 of the General Municipal Law. For more information on preparing and filing your CAP, please refer to our brochure, *Responding to an OSC Audit Report*, which you received with the draft audit report. We encourage the Treasurer and the Surrogate's Court Judges to make this plan available for public review in the Clerk of the Legislature's office.

Fiduciary Duties

In Niagara County, the Treasurer is the chief fiscal officer and is appointed by the County Surrogate's Court to serve as an Administrator of an estate when a decedent dies without a will or there is no one qualified, willing, or able to administer his or her estate. Once appointed by the Surrogate's Court, the Administrator assumes a fiduciary responsibility to protect the estate's assets and the interests of the estate's creditors and beneficiaries. At a minimum, the Administrator has a responsibility to ensure he maximizes the value of the estate and appropriately protects the related assets. To ensure that this responsibility is adequately fulfilled, the Administrator must develop a system of internal controls that provides for the appropriate accounting for and safeguarding of estate assets and resources. In general, the Administrator's procedures should be designed to ensure all assets are properly identified, documented, collected, secured, valued and disposed of, with the proceeds credited to the related estate.

An Administrator identifies, documents, collects, secures, values and liquidates the estate's assets to pay valid claims against the estate and ultimately distribute any residual value to the estate's beneficiaries.⁵ The Administrator has the authority to use estate resources to pay all reasonable and necessary expenses, which may include funeral and burial costs, taxes owed by the decedent, filing fees to the Surrogate's Court, estate administration costs, and any other outstanding bills of the decedent. After all valid claims have been satisfied and all reasonable administrative expenses have been paid,⁶ the Administrator is responsible for distributing any residual value to the estate's beneficiaries. The Administrator is entitled to receive a commission as established by statute⁷ and may even receive a commission when estate assets are not sufficient to pay all creditors or provide a distribution to beneficiaries.

We reviewed the Administrator's processes for the identification, documentation, collection, safeguarding and liquidation of estate assets, cash management, recordkeeping, and the selection of service providers for 15 estates with gross assets totaling approximately

⁵ In certain instances, not all estate assets are liquidated. For example, where the decedent had a will and the executor is unable or unwilling to perform that function, and the Surrogate appoints the Public Administrator to act, the will may identify that certain assets be distributed in a particular manner.

⁶ Statute sets the order in which debts and claims are to be paid and grants preferred status to administration and funeral expenses.

⁷ Section 2307 of the Act establishes the manner in which commissions are to be calculated.

\$1.8 million. For administering these estates, the Administrator will receive commissions totaling approximately \$73,000. We question whether the Administrator has acted in the best interest of the estates and adequately fulfilled his responsibilities.

The Administrator has not established proper procedures or controls to adequately safeguard estate assets or to protect the interests of the estates' creditors and beneficiaries. Specifically, he did not ensure that all decedent assets are identified, documented, collected, safeguarded, appraised, liquidated and properly credited to the estate. In general, the Administrator has not established processes for estate administration to demonstrate he has fulfilled certain essential duties. For example, he did not control the identification, documentation, collection, and sale of assets found during the search of decedents' premises. He did not maintain adequate inventory records and there was minimal evidence, such as photographs or video, documenting the existence and condition of assets that were found and subsequently liquidated. These assets may include personal property such as vehicles, jewelry, tools, electronic equipment and furniture, as well as real property. We found that typically the Administrator failed to have assets professionally appraised or document how he determined the value of the assets that were sold. In addition, we found that the Administrator may have received less than fair value for certain assets liquidated. The Administrator did not use a competitive selection process for individuals he retained to perform certain duties, such as attorneys, real estate agents and appraisers.

Moreover, because he did not use a competitive selection process and relatives and acquaintances of the Administrator, such as the Deputy Sheriff, the liquidator and the attorney, benefited from estate activities, we question whether the Administrator has consistently acted in the best interest of the estate when retaining these individuals. He did not maintain adequate supporting documentation for certain estate expenditures and/or disbursements to individuals, especially attorneys. We also found that a Treasurer's Office employee spends a significant amount of County-compensated time performing estate related work. As such, it is unclear the extent to which the Administrator himself is fulfilling many of his fiduciary duties for which he receives a commission.

Estate Administration

The Administrator maintained limited or no documentation for many of his estate administration activities. For example, the Administrator did not document his property search and collection process and we could not substantiate whether he performs the searches himself or if he relies on others to perform this duty. We also noted the following:

Attorney – The Administrator did not maintain adequate supporting documentation for disbursements to attorneys totaling approximately \$54,000. Specifically, he did not require that they provide an invoice detailing the estate for which services were provided, the specific services rendered and the amount of time spent rendering such services. The Administrator stated that the attorneys were not performing any of his duties as Administrator. However, he could not provide documentation from which to ascertain whether the services presumably provided by the attorneys were administrative or legal in nature.

Use of County Resources – A Treasurer’s office employee spends a significant amount of County time performing estate-related work. She indicated that she performs certain fiduciary duties on behalf of the Administrator. For example, she maintains the majority of the Administrator’s records including the accounting records for each estate and the files containing all correspondence, banking documentation, and court records. She estimated that she routinely spends between 15 and 20 percent of her time performing estate related work. However, she indicated that it sometimes takes significantly more of her time. We found her to have extensive knowledge about each estate and she adequately addressed our inquiries regarding unique circumstances for certain estates. We also observed that the Administrator was reluctant to meet with us on numerous occasions without her present and he requested that she be at all scheduled interviews and discussions. She often provided additional information or clarification during our interviews. This employee’s compensation⁸ is paid entirely by the County and the Administrator does not reimburse the County for the time she spends fulfilling certain of his duties as Administrator.

Property Search and Collection

An Administrator should conduct a thorough search of the decedent’s residence and grounds as soon as possible after being appointed by the Surrogate’s Court⁹ to help identify and document all estate assets, real and personal. An administrator should also establish an adequate system that evidences the existence and condition of the personal property found at the time of the initial search. For example, during this initial search and collection of assets, the Administrator could photograph and/or video the contents of the decedent’s residence, as well as the surrounding property, and prepare a detailed

⁸. The employee’s 2009 annual salary is approximately \$28,500.

⁹. The Administrator stated that he had no authority to secure assets of an estate until he was appointed by the Surrogate’s Court. It is important to note that in our review of 15 estates, the length of time between death and appointment varied greatly, ranging from as short as 7 days to over a year after the death of the decedent.

inventory of all personal property found. Along with photographic/video evidence, detailed inventory records also provide essential documentation to identify the items which were present at the time of the initial search, in the event that items are subsequently lost, stolen or damaged prior to sale by the Administrator.

As an additional control measure, the Administrator should have a witness present during this initial search. The witness can verify that all appropriate property was identified, photographed and collected, and can attest to the accuracy and completeness of the Administrator's inventory.

After the initial search, the Administrator should take adequate steps to physically secure the residence and its contents including maintaining physical control over the key and access to the residence. One approach would be to maintain a log documenting any visits he or others make to the residence noting the purpose for each visit.

We found that the Administrator failed to implement adequate procedures to ensure all assets were properly identified, inventoried, collected, and credited to the estates. Of the 15 estates we reviewed, 10 of the decedents occupied a personal residence¹⁰ at the time of death. However, there were 13 "residences" in total, as two of the 10 decedents owned more than one house.¹¹

- We found no record documenting the Administrator's initial visit and search of these residences. Therefore, we could not verify whether he indeed searched these residences for personal property. The Administrator indicated that he personally performs a search of all residences immediately after he is appointed but does not document the date, take photographs or prepare a written inventory. He also stated that he does not maintain any records documenting subsequent visits by himself or anyone else.
- Personal property was only collected and sold from five of the residences even though there was personal property belonging to the decedents in at least eight of the 13 residences. Based on documentation contained in the Administrator's estate files, we determined that the Administrator abandoned the personal

¹⁰ In circumstances where a decedent had no personal residence, or there was no documentation where they were living at the time of death, we assumed that there was little or no personal property to be collected by the Administrator other than a negligible amount of cash, jewelry or clothing in their possession at the time of death.

¹¹ The contents of the additional residences may have belonged to tenants or family members who were dwelling in them.

property of one decedent¹² at the decedent's apartment and sold the personal property at the two other residences with the decedents' houses.¹³ The Administrator did not document the approximate value of this property or his reasoning for not collecting, valuing, liquidating and crediting the items to these estates. As such, we could not establish the identity of the personal property that was sold or determine whether a fair value was obtained.

- There was no evidence that an independent witness was present during the Administrator's initial search of the decedents' residences. He stated that a coroner or landlord is sometimes present but that he often conducts the initial searches alone.
- For all estates reviewed, there were no detailed inventory records identifying the personal property found in the decedents' residences, the condition of the property, or the approximate value. Without these records, we could not determine whether all personal property was sold for a reasonable amount and credited to the estates.
- There was insufficient evidence, such as photographs or video, to document the Administrator's search of the decedents' residences. We found no photographs of the personal property or contents of 11 of the 13 residences. Although we found photographs of the interior of two residences, they were not labeled and did not appear to be of personal property items; rather, they were of entire rooms. As such, these photographs do not document specific pieces of personal property to provide evidence of their existence, condition and value.
- The Administrator told us that he does not typically inventory or photograph the contents of the residences because doing so would be too time consuming.

The lack of sufficient documentation leaves estate assets vulnerable to loss, theft, or misappropriation.

¹² Over \$14,000 in cash was collected from this decedent's apartment; however, no personal property was apparently identified or collected. The estate file contained a letter to the apartment manager, in which the Administrator stated he had no interest in the decedent's personal belongings and the manager could dispose of them at her convenience.

¹³ The sales contract indicated that the contents and all tools, equipment and machines on the premises were being sold with the house.

Disposal of Estate Assets

We found that the Administrator used an informal process to dispose of estate assets. He maintained no documentation to support how he determined whether fair value was received for the assets that were sold. In many instances we found little or no evidence that the Administrator solicited multiple offers to help ensure that the maximum value was obtained.

Although there was often minimal or no documentation to provide evidence of the condition and value of the assets sold by the Administrator, we identified several examples where the Administrator may have received below fair market value for the assets he liquidated.

Personal Property – Contents of Decedents’ Residences: The Administrator stated that he typically disposes of all the personal property contained in the decedents’ residences by selling the contents in their entirety to an estate liquidator (Liquidator). The Administrator indicated that this Liquidator¹⁴ also acts as a broker for other estate dealers. When the Administrator accompanies the Liquidator for a “walk-through” of the residence, she verbally provides him with an estimate of the total value of all the contents rather than inventorying and appraising individual assets. She then disposes of everything in bulk to a dealer who sells the assets at an estate sale or auction. The Administrator indicated that he usually asks the Liquidator to obtain three bids or offers for each estate but admitted he does not request or maintain any records documenting that such bids or offers were indeed received. He also maintains no record of her appraisal or records identifying the items sold to the dealers through the Liquidator.

The Administrator also stated that on occasion, the Liquidator will hold an auction or estate sale¹⁵ and sell the items herself. However, even when the personal property was disposed of at an estate sale, the Administrator stated that he does not usually go to observe and does not receive a record¹⁶ of the items sold or the selling prices. So, in effect, the proceeds, net of the Liquidator’s commission that results from such auctions, are simply accepted by the Administrator without documentation for him to verify that the amount received was appropriate. None of the Administrator’s files for the 10 estates we reviewed, where the decedent had a residence, reflected any evidence that an auction had been conducted.

¹⁴. This individual specializes in estate appraisal, liquidation and sales.

¹⁵. The Liquidator stated that she will hold an estate sale on the estate premises and sell the items herself when there are significant assets to be sold.

¹⁶. The Administrator stated that he only requests a listing when the items are “sold” or auctioned off to beneficiaries of an estate because he needs to track the amount distributed to each recipient.

The Administrator stated that the Liquidator receives a commission for her services which is deducted from the gross sales amount and that the proceeds are further used by the Liquidator to pay for cleaning costs. For the estate files we reviewed, the Administrator had no documentation for any cleaning costs incurred. The Administrator stated that he requires the Liquidator to sell and remove all items in the residence including items of little or no value and the residence is to be left in “broom-swept” condition, so that it is ready for sale.

The Liquidator indicated that once she and the Administrator have walked through a residence together and decide to liquidate its contents by bulk sale, she is given a key to the premises so that she can escort potential bidders or purchasers through the house to get offers for the personal property. She indicated that she often gets only one bid and that the Administrator is not present during these “walk-throughs” with potential bidders. She explained that the buyers are expected to reduce their offers by an amount they estimate it will cost them to remove and dispose of all the contents. Therefore, she stated that these costs are already reflected in the offer¹⁷ and there are no invoices for clean-up costs. She indicated that sometimes there are no salvageable assets and the bidder simply agrees to take everything in exchange for his or her services to dispose of the contents. Since no photographs or inventories were contained in the Administrator’s estate files, we could not verify the accuracy of this assertion by the Liquidator.

Of the 10 estates with one or more residences that we reviewed, net proceeds from the sale of personal property were received for only five. In all five instances, the personal property was sold to or by the Liquidator. The gross value of these five estates exceeded \$1 million. All the personal property contained in the residences of these five decedents sold for a total of \$6,476. The Liquidator received a total of \$1,311 in commissions; therefore, the five estates were credited with a total of only \$4,918 for personal property. The personal property was liquidated as follows:

- The contents of the residences of four estates were disposed of as bulk sales for a total selling price of \$2,220 less commissions to the Liquidator totaling \$460.
- The contents of the fifth estate were disposed of by the Liquidator at an estate sale. The total proceeds of the sale were \$4,256. The Liquidator was paid a commission from the proceeds totaling \$851.

¹⁷ For example, if the assets are estimated to be worth \$1,000, the buyer may offer to pay \$800 because he or she estimates it will cost \$200 to clean the residence and dispose of items with little or no value.

In all five estate liquidations, we found:

- The Administrator maintained no inventory records or photographs identifying the items or personal property that were found initially or the condition of the assets.
- There was no evidence that the Administrator had the contents appraised, so that anyone could subsequently establish whether the consideration received was appropriate.
- We found no evidence that multiple offers or bids were obtained by the Liquidator or the Administrator in an attempt to ensure the best price was obtained for estate assets.

After reviewing records provided by the Liquidator, we question whether the proceeds from the sale of all assets were properly credited to the estates and whether the manner the Administrator chose to liquidate personal property provided the most value for the estates. The Liquidator stated that she prepares a hand-written inventory with an estimate for each asset as she and a bidder walk through the residence. She provided us with these handwritten inventories with estimates for three of the five estates we reviewed. She indicated that for the other two estates, she no longer had records, because she retains them for only two years. According to the records she provided us for the three estates, the amount received for two of them was significantly less than the amount the Liquidator had estimated the contents to be worth. The Liquidator claimed the proceeds received for the contents were net of substantial cleaning costs. However, again there were no invoices or documentation supporting the cleaning costs and no photographs or records to document the condition of the personal property or the interior of the residences.

- The only personal property that apparently was sold for one of the estates with three¹⁸ residences was a boat motor for \$800, from which the Liquidator received a commission of \$160 and the estate received \$640. The Administrator's records identified no other assets contained in the decedent's three residences. However, the Liquidator's handwritten inventory documented the existence and "sale" of additional items. This record identified over 20 items¹⁹ with an estimated value of over \$1,600. The Liquidator indicated that she walked one buyer through the residence and she and the buyer decided that the amount of work to clean the residence to "broom-swept"

¹⁸ The decedent owned three houses but may have had tenants living in two of them. Therefore, it was unclear whether all of the contents belonged to the decedent.

¹⁹ Some of the items identified included a table saw, a table with chairs, a hutch, an oak desk, and an oil painting.

condition was so extensive that the buyer agreed to take all the contents in the residence, except the boat motor,²⁰ in exchange for cleaning services. The Liquidator had no record of the buyer's estimate for cleaning costs but stated that she obtained the Administrator's verbal approval before proceeding in this manner.

- The personal property of another estate with two²¹ residences was liquidated for a total of \$500. The Liquidator received a commission of \$100 and the estate received \$400. Again, the Liquidator provided us with a handwritten inventory from her walk-through of the residence. Her listing identified over 30 items²² with an estimated total value of \$2,090. She could not recall how much cleaning was required or how many potential buyers walked through the residence. However, in this case, the Administrator's files did contain several photographs of the residence's interior. The photographs were not taken of particular assets, but of rooms. These photographs showed no significant clutter and several pieces of furniture including a dining room set, bedroom set and appliances.
- The personal property of another estate, with a gross value exceeding \$462,000,²³ was liquidated for the net amount of \$270. Since neither the Administrator nor Liquidator maintained appropriate records or photographs, we were unable to determine whether this reflected a fair value for all of this decedent's personal property.

The Administrator stated that he chooses to dispose of the contents of residences in this manner because it saves time and is more convenient.²⁴ He stated that having everything inventoried and appraised would be too time-consuming and result in additional costs for the estate.

Without an adequate record documenting the contents of the decedent's personal residence, photographs documenting the condition of the residence and of each piece of significant personal property, the Administrator can not demonstrate that the selling price represented a fair value for the items sold. Further, without an adequate record

²⁰. The boat motor was sold to another party.

²¹. The contents of one of the houses were sold with the house.

²². Some of the items identified included a dining room set, sterling silverware, dressers and book cases.

²³. The decedent had approximately \$392,000 in cash held in various financial institutions at the time of death.

²⁴. The Administrator stated that using the Liquidator is more convenient because he does not have to worry about disposing items of no value and prefers everything to flow through the Liquidator's business.

of the assets identified by the Administrator and disposed of by the Liquidator there is a risk that assets might be lost or stolen and the value not credited to the estate.

Finally, during our review of the files of all 15 estates, we found evidence that only one estate had jewelry of any kind identified among the personal property of the decedents. We also found no evidence that jewelry of any kind was appraised or sold by the Administrator. After reviewing records provided by the Liquidator, we found that the personal property from one of the decedent's residences included a ring and a pair of opal earrings that presumably sold for \$40 and \$20, respectively.

Large Motorized Equipment: Of the 15 estates we reviewed, the decedents of six owned one or more vehicles or a boat. The Administrator sold nine vehicles and a boat from five estates.²⁵ For all 10 items, we found the Administrator failed to maintain sufficient records documenting their condition at the time of sale or any indication what their market value was. Market value could have been established by direct appraisal or by entering appropriate data regarding the condition, mileage and options of the vehicles into one of many internet sites. Regardless, in the absence of any documentation, the Administrator could not demonstrate that he obtained a fair value for the vehicles and the boat that he sold.

- There were no records documenting the odometer reading for eight of the nine vehicles.
- There was no photographic evidence documenting the condition of five vehicles and inadequate photographic evidence documenting the condition of the other four vehicles and the boat. The only photographs we found were of the exterior of four vehicles and boat which did not show the entire vehicle or the condition of the interior.
- There were no appraisals or any other documentation indicating the method used, if any, by the Administrator to determine the fair value for any of the 10 items.

We found no evidence the Administrator made an attempt to solicit multiple offers or interested buyers through the use of advertisements or by any other means of soliciting competition. Further, we found no evidence that multiple offers were obtained by the Administrator in an attempt to ensure the best price was obtained for the estates.

²⁵ We identified 12 vehicles in total but the Administrator transferred ownership of two vehicles belonging to one decedent to the sole beneficiary of the estate.

The Administrator admitted that he does not use advertisements to locate interested buyers. He stated that he generally relies on family members, neighbors, or friends of the decedents who contact him to inquire about the vehicles or he informally ‘advertises’ the vehicles during his routine interactions with the public and acquaintances. He stated if he receives an offer he believes to be fair, then he will simply sell the vehicle to the individual making the offer.

We identified several instances where the Administrator may have received below fair market value for a vehicle.

- In April of 2005, the Administrator sold a 1995 Dodge Avenger for \$250. The vehicle’s mileage and condition at the time of sale were not documented. We found no evidence the vehicle was advertised for sale. The Administrator indicated that he knew the buyer personally and had told the buyer about the vehicle. After searching local classified advertisements,²⁶ we found four listings for used 1995 Dodge Avengers within 500 miles of Lockport²⁷ and found the current asking price for this type of vehicle ranged from \$1,700 for a vehicle with 127,000 miles, to as high as \$4,995 for a vehicle with 117,000 miles. Therefore, the Administrator sold the vehicle for approximately \$1,450 less than the lowest current asking price for the same type of vehicle and \$4,745 less than the highest asking price. It should also be noted that these are current values, even though the vehicle was sold 4½ years ago. As such, in April 2005, the vehicle would have had a substantially greater market value.
- The Administrator sold four vehicles to a County employee who indicated that he is a friend of the Administrator’s son. The County employee, who is a Deputy Sheriff (Deputy), indicated that he had a dealer’s license and that he purchased the vehicles so that he could re-sell them. We found no evidence the Administrator advertised the vehicles for sale or any other evidence that he attempted to solicit multiple offers.
 - o In August of 2007, the Administrator sold three vehicles to the Deputy from one estate. The vehicles were sold for a total of \$2,000 and included a 1993 Nissan Sentra, a 1993 Ford Ranger Truck, and a 1970 Chevrolet Monte Carlo. There was no documentation in the Administrator’s files that provided evidence of the condition or mileage of these three vehicles. After searching local classified advertisements, we found seven listings for 1970 Monte Carlos within 1,000 miles of

²⁶. The search was conducted using the internet during out fieldwork in October 2009.

²⁷. Lockport was used as the search location because the Administrator’s offices and the Surrogate’s Court are located in Lockport, NY.

Lockport. The asking price for these seven vehicles ranged from as low as \$9,850 to as high as \$38,000. This Monte Carlo may have had substantial value to a collector. We also conducted a similar search for the other two vehicles. We found 10 Nissan Sentras and 13 Ford Ranger Trucks in the local area.²⁸ The asking price for the Nissan ranged from as low as \$1,000 to as high as \$3,995 and for the Ford Truck the price ranged from as low as \$1,563 to as high as \$4,995. Again, we note that the market values we documented are current and as such are over two years beyond when this transaction occurred. Therefore, the values at the time the Administrator sold these vehicles would have been greater. The Deputy was unable to provide complete and reliable information regarding the condition of the vehicles or the selling prices he received for these vehicles. He did not have business records regarding the Monte Carlo; however, he provided us documents that he stated were obtained from the Department of Motor Vehicles which indicated that the Nissan was sold for \$300 and the Ford for \$750. Based on this series of facts, we do not believe that the Administrator took steps to maximize the sales value of the vehicles.

- o In November 2007, the Administrator sold the Deputy a 1998 Ford Contour for \$400. We searched local classified listings and found 42 listings for 1998 Contours within 200 miles of Lockport. The asking prices ranged from as low as \$1,495 to a high of \$5,995. Although the Administrator did not document the mileage or odometer reading of this vehicle, we found a copy of the certificate of title in the Administrator's files which indicated the vehicle's odometer reading was 11,744 miles. The title was issued by the Department of Motor Vehicles to the Administrator in November of 2007. The Deputy stated that the vehicle had about 45,000 miles on it when he resold it. However, he was unable to provide adequate documentation to support this assertion. Although we were not provided evidence of the vehicle's condition, we obtained an estimate for the vehicle's value using both the 11,744 and the 45,000 mileage amounts. According to the Kelly Blue Book website, the vehicle would have a private party retail value ranging between \$1,800 and \$2,425 depending on the condition of the vehicle. The value of the vehicle was not affected by the different odometer readings. The Administrator sold the

²⁸. The 10 listings for the Nissan were located within 500 miles of Lockport and the 13 listings for the Ford were located within 200 miles of Lockport.

vehicle for a fraction of its Blue Book value with nothing to document the basis for the selling price.

Real Estate: Of the 15 estates we reviewed, seven houses were sold from six estates. Three of the seven were sold using the services of a real estate agency and four of the properties were sold through private sale.

Our review of these sales found the following:

- There was no evidence that professional appraisals were obtained for five of the seven houses sold and we found no other documentation indicating how the Administrator determined their market value.
- Of the four sold through private sale, we found no evidence that three were publicly advertised for sale and no documentation indicating how the buyers were solicited. We found no evidence the Administrator made an attempt to solicit multiple offers through the use of advertisements or other means of encouraging competition.
- Of the seven houses sold by the Administrator, we found no evidence that multiple offers or bids were obtained by the Administrator for six of the properties.

As a result, we question whether the manner in which the Administrator sold these properties was in the best interest of the estates and ensured the best price or maximum value was obtained. For example:

- In July 2008, the Administrator sold a decedent's house through private sale. We found no evidence the property was advertised or listed for sale and no documentation how the Administrator selected the buyer. At the time of sale, the property was assessed at \$74,800;²⁹ however, the property was sold for only \$38,000. In addition, as noted on the sales contract, all tools, trucks, and equipment on the premises were sold with the house for no additional consideration. The Administrator had no photographs, inventory or itemized list of assets sold with this house.

²⁹. According to the Office of Real Property Services, the Town of Lewiston's assessed values, where the property is located, are at 87 percent of market value, making the property's fair market value approximately \$86,000.

According to the Town of Lewiston Assessor's records, the property was assessed at \$74,800 during the 2004 through 2008 tax years. In May of 2008, the assessor was notified that the property was in poor condition by the individual intending to purchase the house. The assessment was reduced to \$40,000 for the 2009 tax year. The Assessor's records contained no explanation or rationale for the adjustment. There were two photographs of the front of the house, which showed missing siding and a porch in need of repair. The property was sold, by the individual who requested the reassessment, in May of 2009 for \$113,000. The Assessor's records indicated that the property is currently assessed at \$85,000 for the 2010 tax year. In October 2009 we observed that the outside of the house had apparently been repainted and repairs appear to have been made to the front porch.

- A decedent owned three houses located on two parcels of land.
 - o The Administrator sold one of the houses through a private sale for \$10,000. According to the Town Assessor's records, the property was assessed at \$55,300³⁰ at the time of sale in August 2007. We found no evidence the Administrator made an attempt to solicit multiple offers or interested buyers through the use of advertisements or any other public listing.
 - o The decedent's second parcel, which had the two houses on it, was listed and sold through a real estate agency for \$83,900. The Administrator's wife was listed as the selling agent on the sales contract for the property. At the time of its sale in August 2007, the property was assessed at \$106,900.³¹

Estate Disbursements

The Administrator has the authority to use estate resources to pay expenses relating to the estates being administered. It is essential he ensure only proper and reasonable expenses are paid by verifying the propriety, reasonableness, and accuracy of all estate-related expenses and maintaining supporting documentation for all disbursements. Supporting documentation could include invoices, written affidavits, or other records providing the date and purpose for each disbursement.

Compensation of Legal Counsel: The Administrator did not maintain adequate supporting documentation for payments to attorneys totaling approximately \$54,000. Specifically, there were no billing statements detailing the services that were presumably rendered, the amount of time

³⁰. According to the Office of Real Property Services, the Town of Niagara's assessments, where the property is located, were at 62 percent of market value, making the property's fair market value approximately \$89,000.

³¹. According to the Office of Real Property Services, the Town of Niagara's assessments, where the property is located, were at 62 percent of market value making the property's fair market value approximately \$172,000.

spent rendering such services, or the estate for which the services were provided. Further, the Administrator maintained no documentation identifying the method used to calculate the counsel's compensation. Although an Administrator has the authority to retain counsel for various legal services, he has a responsibility to ensure all legal fees are reasonable, proper and incurred only when necessary. By fulfilling this responsibility, the Administrator will minimize the expenses of the estate and ultimately protect the interests of all parties, including creditors and beneficiaries.

The undocumented payments to attorneys were made from nine estates with a gross value of over \$1.2 million. The majority of these disbursements were for unidentified attorney fees totaling over \$53,000 while the remaining \$1,000 represented reimbursements for unidentified expenses. The Administrator had retained legal counsel for four other estates we reviewed but no payments had been made because the estates remained open at the time we completed our fieldwork. The Administrator's records indicated that these attorneys were to receive approximately \$11,300 in legal fees for undocumented services. Only one attorney had submitted detailed invoices to support her payment request.³²

The Administrator indicated that the compensation he pays to most attorneys is not supported by a detailed record of legal services rendered. He explained that some attorneys choose to be compensated based on time records but typically they are provided a fee calculated on a percentage of the estate's gross value. He said that he calculates the compensation paid to attorneys in the same manner as his commission is calculated³³ for his role as fiduciary. After comparing the commission he received to the attorney fees he paid, we found the attorney received or was due to receive the same amount as the Administrator's commission for 10 of the 13 estates, as demonstrated by the following table:

³² For Estate # 15 in the table that follows

³³ The Administrator stated that his commission is calculated pursuant to Section 2307 of the SCPA that establishes the manner in which commissions of a fiduciary are to be calculated.

| Estate | Gross Assets | Date Closed | Admini- strator's Commission | Attorney Fees | Attorney |
|---------------|---------------------|--------------------|---|--------------------------|-----------------|
| 1 | \$49,471 | 3/21/2007 | \$1,711 | \$1,711 | Attorney A |
| 2 | \$462,172 | 2/3/2005 | \$17,865 | \$18,109 | Attorney B |
| 3 | \$2,874 | 12/8/2008 | \$144 | \$0 | None |
| 4 | \$103,516 | 6/6/2008 | \$5,176 | \$5,176 | Attorney B |
| 5 | \$235,016 | 11/1/2006 | \$10,321 | \$10,321 | Attorney B |
| 6 | \$180,737 | 4/13/2009 | \$4,687 | \$4,687 | Attorney B |
| 7 | \$16,009 | 2/6/2007 | \$800 | \$800 | Attorney B |
| 8 | \$67,024 | 11/18/2008 | \$3,351 | \$3,351 | Attorney B |
| 9 | \$6,360 | 3/9/2009 | \$318 | \$450 | Attorney B |
| 10 | \$78,728 | 4/15/2009 | \$3,938 | \$1,967 | Attorney C |
| 11 | \$53,057 | Open | \$2,653 | \$2,653 | Attorney B |
| 12 | \$77,338 | Open | \$3,974 | \$3,974 | Attorney B |
| 13 | \$47,626 | Open | \$2,381 | \$2,381 | Attorney B |
| 14 | \$45,900 | Open | \$2,295 | \$2,295 | Attorney B |
| 15 | \$327,834 | Open | \$13,364 | \$12,232 | Attorney D |
| Total | \$1,753,662 | | \$72,978 | \$ 70,107 | |

Without proper documentation or records, we could not verify the propriety, reasonableness, or accuracy of the attorney fees, determine the nature of the services being rendered by the attorneys, or even if any necessary legal services were indeed rendered. This lack of documentation, in conjunction with the compensation method used, raises a question as to whether, and in what capacity, the Administrator was fulfilling his responsibility as fiduciary for these estates or if he had, in essence, delegated many or all of his fiduciary responsibilities to the attorneys he retained and compensated from estate assets.

By not maintaining appropriate documentation, interested parties, such as the Surrogate's Court, can not readily determine whether the services obtained were appropriate and necessary and that the compensation paid was reasonable for the services provided. The Administrator explained that the attorneys are compensated for addressing any and all legal matters relating to the estate as needed. However, we found that an attorney was paid additional compensation for addressing real estate matters and other legal services, in addition to the fees listed in the above schedule.

- The Administrator sold seven houses³⁴ belonging to six decedents. The attorney he retained for all six of these estates had been, or was due to be, compensated based on the gross value of the estates,

³⁴ Of the 15 estates we reviewed, nine decedents owned 11 properties; however, two were lost in foreclosure, one was assumed by the sole beneficiary, and one is presently pending sale.

which totaled \$1.1 million. This attorney received \$41,644 in fees and is due to receive an additional \$2,653. Although the Administrator stated that the fees were for addressing all legal matters, an additional \$4,330 was paid to this law firm for legal services related to a real estate sale.

- One decedent's house was lost due to foreclosure. The same attorney also received an additional \$1,500 for "foreclosure defense" services rendered in relation to the property that was lost.

Again, we could not determine what legal services this attorney rendered for these estates, from which he was paid more than \$40,000 in fees computed as if he were the fiduciary.

Service Provider Selection

An Administrator may retain individuals or firms such as attorneys, real estate agents, appraisers, funeral directors, locksmiths, and others to provide specialized services. The Administrator can encourage competition by occasionally advertising for services in order to attract and identify a list of potential providers typically needed to assist him with estate administration. Based on responses from such advertisements, the Administrator could generate a list of interested providers to select from when a particular service is needed. Obtaining professional services, such as legal services, at a reasonable and fair price is not the only concern since the Administrator must also receive an appropriate quality of service. Therefore, another method that could be used to solicit competition is requests for proposals (RFPs), which is a formal means of requesting information from various providers regarding their qualifications, prior experience, and fees or expected compensation. The use of a competitive selection process not only ensures that services of adequate quality will be obtained at reasonable prices but also helps guard against favoritism, fraud and corruption.

The Administrator does not use a competitive process to select attorneys, real estate agents, appraisers, and other similar service providers. He does not advertise for providers or maintain a list of possible providers to choose from. He routinely uses the same individuals or businesses to appraise and liquidate the contents of decedent residences, provide legal services, and handle real estate listings and sales. He admitted that he does not solicit quotations, bids or RFPs for these services.

Due to the absence of a competitive selection process, we question whether the Administrator was acting in the best interest of the estates by ensuring he was selecting the most qualified individuals at the lowest cost for the estates and thereby minimizing estate expenses

and maximizing the assets available for distribution to beneficiaries. The practice of not selecting service providers through a competitive process also raises questions as to whether the Administrator's selection was influenced by other factors. For example, we found that family and acquaintances of the Administrator benefited from his estate activities.

- Real Estate Agency – Of the 15 estates we reviewed, the Administrator sold seven houses from six estates. Three of the seven were sold through a real estate agency. The same real estate agency was used for all three and we found no evidence that the Administrator used a competitive process to select an agency. Further, the Administrator's wife worked with the agency and was listed as the selling agent³⁵ for two of the three properties which would have resulted in a commission to her. The commissions on the sale of these two properties totaled \$9,338. The Administrator stated that he always uses the same agency his wife works with to list and sell decedents' real estate when it was not done through private sale. He confirmed that he had not used a competitive process to select an agency.
- Legal Counsel – The same attorney was retained for 11 of the 15 estates reviewed. The attorney's fees for these 11 estates totaled approximately \$54,000. In addition, we found the Administrator's brother had been retained as legal counsel for one estate at a cost of \$1,712. We found no evidence that the Administrator solicited competition or used any objective process to select these attorneys.

The appropriate use of competition provides assurance that services are of the desired quality, at the lowest possible price and that service provider selection is not influenced by favoritism, extravagance, fraud or corruption.

We have referred this report to the Niagara County District Attorney for his consideration.

Recommendations

1. The Administrator should prepare a detailed inventory of all significant personal property identified during the initial search in and around a decedent's residence.
2. The Administrator should maintain a record documenting all visits by him and others to the decedent's residence and the purpose for such visits.

³⁵ For one of the properties, the Administrator's wife acted as a dual agent representing both the buyer and seller.

3. The Administrator should have an independent witness accompany him during his initial search of a decedent's residence. This individual should either prepare the inventory or sign the listing attesting to its completeness and accuracy.
4. The Administrator should photograph and/or video all significant personal and real property for identification purposes and to document the condition of each asset.
5. The Administrator should obtain and retain documentation, such as professional appraisals, to support the value of each significant asset.
6. The Administrator should solicit multiple offers for estate assets through public advertisement, auction, or other means to encourage competition and maintain a record of all offers received.
7. The Administrator should maintain documentation for the propriety, reasonableness, and accuracy of all estate-related expenses.
8. The Administrator should advertise for service providers for estates. A documented and objective process should be implemented for evaluating the responses, which at a minimum, requires the Administrator to formally document the rationale for selection.
9. The Administrator should require all attorneys he retains to provide billing statements detailing the specific services that were rendered, the manner in which the fee was computed and the estate for which legal counsel was provided.

APPENDIX A

RESPONSE FROM LOCAL OFFICIALS

The local officials' response to this audit can be found on the following pages.

The Public Administrator's attorney provided a response letter on his behalf. Additionally, the attorney provided and referenced several other documents at the Public Administrator's direction. We have included these additional documents with the response letter.

The local officials' response letter refers to page numbers and appendices letters that appeared in the draft report. The page numbers and appendices letters have changed during the formatting of the final report.

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LEGAL ASSISTANTS

February 18, 2010

Robert E. Meller, Chief Examiner
Office of the State Comptroller
295 Main Street, Suite 1032
Buffalo NY 14203-2510

RE: David S. Broderick

Dear Mr. Meller

Enclosed is the response of David S. Broderick to be attached to Appendix A of your Report of Examination 2009M-238.

Very truly yours,



George V. C. Muscato

GVCM:atr
Enclosure

Please accept the following as my response to the Comptroller's Audit of the Niagara County Public Administrator's office covering the period of January 1, 2004, to October 6, 2009. In an effort to respond consistently with the Audit Report, I will attempt to follow the outline as set forth in the Comptroller's summary.

Initially this Audit was requested by the Niagara County Surrogate Court Judges, the Honorable Sara Sheldon Sperrazza and the Honorable Matthew J. Murphy. Specifically, the Judges asked: "In this Audit we would like you to address the report and guidelines of the Administrative Board for the offices of Public Administrator promulgated in 1995 pursuant to Surrogate Court Procedure Act Section 1128 as it applies to Article 12 Fiduciaries. However, this audit report is devoid of any response to that specific inquiry.

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| See Note 1 Page 49 |
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At our exit conference held on January 27, 2010, in the presence of the auditors, this author and my attorney inquired as to what objective standards were utilized in the preparation of this Audit; specifically, whether or not the Administrative Board Rules and Regulations as requested by the Judges were applied. You stated that these so-called Administrative Board Rules and Regulations were not applied, rather, that "best business practice standards" were utilized. When we asked as to where these standards can be found, it was further indicated that it was "common sense".

In effect, the audit of my office was completed without any defined auditing standards and without regard to uniformity. Normally, any audit would set forth or refer to an objective standard, whether they are rules, regulations, statutes, or administrative codes, which could be

compared from county to county. This report is replete with references to actions or procedures being inadequate without ever saying why or by what standard my actions are being judged. The reader is left to assume that because the auditor believes that things should have been done differently or documentation should have been created, the Public Administrator and/or the attorney's handling estates, and/or the vendors referred to in the report, did something wrong or did something unethical.

See Note 2
Page 49

Under Appendix B entitled Audit Methodology and Standards you failed to indicate or set forth any generally accepted standards by which my actions as the Public Administrator could be compared. While you do reference the fact that this performance audit is in accordance with General Accepted Government Auditing Standards (GAGAS), you discuss how the audit was conducted but set forth no standards other than a casual reference to the GAGAS referring to the standard governing auditing procedures, not any standard governing the conduct of the Public Administrator being reviewed.

Likewise you fail to indicate how you arrived at your sample of 15 cases audited. As Public Administrator during the time period set forth, I handled 240 estates, including the 62 currently open estate files. With respect to the open 62 files, there are 38 different attorneys involved. My further investigation shows that of the total 240 estates handled during this reporting period over 100 different attorneys were involved in representing these estates. The only information provided in your report is that "We selected a judgmental sample of 15 files to review which included 10 closed and 5 open estates". No information is given as to how or why the files selected were selected for this judgmental sample. We are extremely suspicious in light

See Note 3
Page 49

of the significant number of attorneys that were involved in estates during this period, that of the 15 files selected, 11 are being handled by a single attorney. One might speculate, as you have done repeatedly in this report, that instead of random selections, such files were selected specifically to review the actions of a single attorney upon the basis that such attorney was a friend or acquaintance of mine.

I, therefore, strongly disagree with the audit results based upon the lack of objective standards and any definitive basis for the selection of the so-called random sampling of Surrogate Court files.

In your initial statement you question whether this Administrator has consistently acted in the best interest of estates and adequately fulfilled his responsibilities. **Nowhere in the report is there any evidence found of a specific instance in which such was the case. Nowhere in your report is there any specific incident of assets missing or not properly administered.**

See Note 4
Page 49

Furthermore, the Comptroller's office previously audited the period of my service as Public Administrator for Niagara County from 1995 to 2002. I have followed the same procedures for all of those years. Your office's prior audit (attached hereto) fully accepted my procedures with no remarks or comments. One needs to ask what has changed in your standards from those applicable from 1995 to 2002. Is "common sense" now not so common?

See Note 5
Page 49

While you reference that the Administrator has not established proper procedures or controls to adequately safeguard estate assets or protect the interest of the estate creditors and

beneficiaries, you offer no specific example of assets that were not adequately protected. You offer no indication that a specific asset was not properly accounted for. You focus solely on the maintenance of so-called records without citing the standards for maintaining such records. This report fully ignores the practical aspects of dealing with small or difficult estates, particularly estates wherein the personal belongings of the decedent were of little or no economic value. In reality, in handling an estate the Administrator must deal with personal belongings to the extent warranted by the apparent value thereof. In many estates, regardless of the dollar amount of the bank accounts or investments held by the decedent, the personal belongings may consist of almost entirely of clothing, dishes and old worn out furniture and appliances of nominal value. In many cases, the cost of disposing of these items exceeds the value of such property. Oftentimes the most suitable distribution is to charitable organizations or the Salvation Army.

BACKGROUND

As County Treasurer and the Chief Fiscal Officer, I cannot refuse to accept the designation as the Public Administrator for estates in New York State. As Administrator, I may be appointed by the Surrogate Judge to administer an estate when there is no Will or in cases of a Will where there is a named executor who is not qualified, willing or able to act as the administrator or executor of the estate or where there are no known relatives eligible and willing to administer the estate.

In New York State there are 51 counties in which Chief Financial Officers, such as me, act as Public Administrators. Our duty as Public Administrator is in addition to our full-time

jobs as County Treasurer. During the period of time covered by this audit I handled 240 estates including the 62 files that are currently open. It is common practice that on a yearly basis that there are approximately 60 active estates at all times. Handling 60 estates for a full-time attorney would be a Herculean task, let alone a Public Administrator who acts in addition to his duties as County Treasurer.

You indicated that as of December 31, 2008, I reported a case load of 62 open cases with an estimated gross value of \$1.8 million. Of the 62 open estates, 24 involved the issuance of letters for purposes of commencement or defense of lawsuits; 38 of the remaining estates reported has an average asset value of approximately \$50,000 per estate, and many of the estates contained assets totaling less than \$10,000 in value.

The report continually refers to actions taken by the Public Administrator or procedures employed by him as being inadequate, but it does not explain the basis for such conclusion. However, there is no evidence that any procedures employed by the Public Administrator somehow failed, resulting in the loss of valuable properties or the failure to realize their actual value. Additionally, at the time each estate was proposed to be closed, the Public Administrator was required to file an accounting with the Court with notice to the beneficiaries and state agencies. The Public Administrator's actions were reviewed by both the persons interested in the estate and the Surrogate Court and in many instances, by other state agencies. At no time have my procedures and actions found to be inadequate.

See Note 6
Page 49

COMMISSION RECEIVED BY THE FIDUCIARY

Continual references are made as to the commissions received by the Fiduciary (Public Administrator). Over the 240 estates that I handled during the audit period, I received \$306,415, which averages out to a little less than \$1,300 per estate. It hardly amounts to over compensation for the amount of money, time and energy that goes into handling each of these estates. You further ignore the fact that fees or commission paid to the Public Administrator are set by statute, while leaving the impression that I overcharged estates. In other words, the law establishes the value of each commission that a Public Administrator is entitled to receive. There is no reference in any portion of this Audit that I received any more than I was entitled to. This also ignores the fact that many of the estates that the Public Administrator handles have little or no assets therefore resulting in no commissions paid to the Administrator. Nevertheless, the Public Administrator is required to faithfully perform his duties as directed by the Court.

See Note 7
Page 50

We disagree with the conclusion of the auditors, when they state that "we question whether the Administrator has acted in the best interest of the estates and adequately fulfilled his responsibilities", but gives not a single example of any actual loss or harm to anyone. It would seem that if no one has been harmed, then by definition the procedures are adequate. In some instances, what the audit report really claims is that the procedures are inadequate for auditing purposes. For example, the auditors would prefer to see a fact established one way or the other by documentation. However, the lack of documentary evidence is not in and of itself evidence of any failure or wrong doing. It is only evidence of the lack of documentation. If this entire audit does not uncover any loss or wrongdoing, how can it then claim that the procedures are

See Note 4
Page 49

inadequate? If the audit report was unbiased, it would simply have to report that question:
"While we would recommend more stringent controls in the future to protect against possible losses, we find no instance in which any losses actually occurred under this Administration."

ESTATE ADMINISTRATION

As Public Administrator, I rely upon the attorney that already represents the estate and files the petition for the appointment of a Public Administrator to continue to serve as attorney for the estate. It has been the practice of my office not to replace an attorney with someone else when initially an attorney is involved. In most cases the attorney is familiar with the estate, the possible beneficiaries, and usually brings a good sense of experience toward handling of the estate. It has been customary in estate matters that attorneys' fees approximate 4% of the gross assets of the estate. In many cases where there are little or no assets, the attorney receives very little compensation, but assists in bringing the matter to conclusion for the benefit of all involved. Numerous Surrogate Court Judges over my 37 years have approved this form of attorney compensation. This Audit is devoid of any example of an attorney handling an estate not performing his duties. The only criticism is the lack of a detailed invoice. This Audit even goes so far as to state that it would be in the best interest of the Public Administrator that attorney fees be put out for bid. In other words, the attorney with the lowest bid gets to handle the estate regardless of experience or qualifications. That practice would never be in the best interest of the estate and something that I would never do.

See Note 8
Page 50

See Note 9
Page 50

In your report you claim that I may have improperly received a full commission for one the estates that I handled where there was in fact a co-fiduciary acting as administrator. In Appendix B, Estate #5, the gross assets were \$235,000, in other words, under \$300,000. The auditor's attention is called to Surrogate's Court Procedure Action section 2307(5)(b), which establishes commissions for multiple fiduciaries as follows: \$100,000 [estate value] or more but less than \$300,000, each fiduciary is entitled to full compensation for receiving and paying out principle and income allowed herein to a sole fiduciary. In this estate, there were two fiduciaries; therefore, each of us was entitled to a full commission. Certainly the auditor should have recognized that no impropriety at all occurred and the reference to such impropriety is contrary to statute.

See Note 10
Page 50

The audit further criticizes the use of my assistant in handling these estates. Acting as a full-time County Treasurer and a part-time Public Administrator maintaining over 60 open estates per year, it is unrealistic to expect that I could do this work by myself. The Surrogate's Court often contacts my office for scheduling. My assistant, who is familiar with these files which are maintained in my office, is available to field these calls and assist in the scheduling when I am not readily available. As the auditors were made aware, our County Attorney has issued an opinion letter authorizing the use of my secretary, postage, etc. in the administration of these estates (copy annexed hereto). I am technically performing a function for the County and it would be unrealistic to expect that I would be required to reimburse the County for these expenses. I agree with your reference that "her knowledge of each estate is extensive" and only benefited Niagara County. I also recognize that I refused to meet with the auditors without her present for efficiency reasons. Any questions that I could not answer, she could answer and one

See Note 11
Page 50

would expect that would be the most "efficient procedure" to be followed under the circumstances. Also, your comments ignore the fact that my job as Public Administrator with her assistance brings substantial revenue reimbursement to the Niagara County Department of Social Services. For the years 2005 through 2009 I have returned to the Niagara County Department of Social Services the total amount of \$175,000. This was realized by collecting from estates Social Services liens, judgments, etc. that were owing to the County. The benefit to Niagara County far outweighs the costs of my secretary, postage, stationery, etc.

As an aside, perhaps some Public Administrators might hire outside collection agencies to collect the money owed to Niagara County Department of Social Services at the additional cost of collection fees, outside attorneys and expenses of this nature. This collection process was performed by my office without any additional cost to the county other than a small percentage of my secretary's time, postage and some stationery.

PROPERTY SEARCH AND COLLECTION

A great deal of your audit focuses on methods employed by this Public Administrator in the search and collection of assets. Yet, nowhere in your criticism do you specifically indicate that I did not collect assets or properly handle monies. Secondly, as previously set forth, it ignores the reality that many of these estates have assets that are valueless and the cost of appraisal and a liquidator would far exceed the value of the property. Videotaping inventory in valueless or worthless estates is frankly a waste of money. On one hand this audit criticizes my use of the secretary; on the other hand you fault me for not spending additional money on

See Note 12
Page 50

videotaping worthless estates. You also indicate in your audit that I should have a witness present at my initial search. My questions to you as auditors are: who is going to pay for the witness to go with me, and who, in the eyes of the auditors would be acceptable as being impartial?

As a practical matter, I am not appointed Administrator until a Petition is filed. When someone dies, I don't know until such time as a Petition is filed that in fact my services will be necessary sometimes months or even years after the death. I have no control prior to that time as to who may have entered the house and what items of personal property may have been removed. I can only take charge of the assets that are there when I am initially appointed. As a practical matter, any assets of any value might very well have been removed by relatives and divided amongst family according to their desires. The auditor's recommendations in this respect would solve absolutely nothing and do not recognize the reality of most of these estates.

In all cases upon being appointed, I either retain the key or change the locks. In cases in which the property is of little or no value, I would do a general inventory and contact the beneficiaries as to whether or not they wish to reclaim some of the property. As noted above, the report absolutely fails to indicate anything that was ever missing from any estate that was handled by my office.

In estates where there are assets that have a value, I always undertake to obtain an appraisal and as a result of the appraisal determine whether or not individual liquidation or liquidation in bulk is in the best interest of the estate. In most cases, no liquidator is interested in

bidding on assets of an estate because the value is not sufficient to cover the cost. Throughout my many years of service in this capacity, I have thorough knowledge of which local vendors are reputable and knowledgeable, and produce the greatest NET value upon liquidation of these types of assets.

On page 14 of your audit, you refer to the "only personal property that was apparently sold for one of the estates with three residences was a boat motor for \$800". That is because all of the property was removed by the relatives prior to any auction or sale and the only remaining asset was the boat motor. Again, while you question my procedures, in none of the cases do you indicate that any of the items have been unaccounted for or missing. To the contrary, in every case an accounting would be filed and beneficiaries and the Court would ultimately have the ability to indicate something is missing. This did not ever happen.

See Note 13
Page 50

Large motorized equipment usually involved vehicles that had many years and many miles on the particular vehicle. On page 16 of your report you reference vehicles that were sold as follows: 1995 Dodge (which was a 10 year old vehicle and did not run). I sold it as a Public Administrator and not as a retail dealer. I can not provide warranty as a dealer would. So when you reference higher values that a dealer might be able to receive, you need to take into consideration the fact that such dealer would be typically required to provide a vehicle in running order with warranties. In reference to the three vehicles that were sold to the "deputy sheriff", I obtained the amount of \$2,000 for the estate. The 1970 Monte Carlo was just a frame with a small engine and did not run. It is my understanding that this vehicle was sold by the deputy sheriff for parts. The 1993 Ford Ranger was inoperable with no brakes and 14 years old.

See Note 14
Page 50

See Note 14
Page 50

However, in following up with the deputy, you learned that he resold the 1993 Nissan for \$300, \$750 for the 1993 Ford and he could not recall the amount for the Monte Carlo. Hardly a significant profit over and above what he paid the estate for these vehicles. Furthermore, his occupation is irrelevant. Does it matter who buys vehicles as long as the sale price is fair?

REAL ESTATE

As a practical matter, most real estate properties are dilapidated, not maintained, in poor condition, or water is in the basement. In most cases the services of a real estate agency was used. In all cases where real estate is listed with the real estate agency, a competitive market analysis is completed thereby providing a fair market value. Therefore I would be provided with a professional opinion as to the value of the real estate. In any case in which the real estate was being sold in a private sale, for example, no real estate agency involved, I would always obtain an independent appraisal by a qualified appraiser. With respect to the July 2008 sale in which you criticize the administrator for selling the decedents house through a private sale for \$38,000.00 in spite of an assessed value of \$74,800, you reviewed in the file the appraisal by the independent qualified appraiser for \$38,000, which equaled the amount that I sold the property for. This sale was without the necessity of paying real estate commissions, a further benefit to the estate. You note that the purchaser ultimately sold the property for more money, but your audit ignores the fact that the property was in deplorable condition and subsequently rehabbed by the purchaser at considerable expense, and only then sold for more resulting at a higher sale price.

See Note 15
Page 51

See Note 16
Page 51

With reference to the second incident that you reference on page 19, "the decedent owned three houses located on two parcels of land". The house that the Administrator sold for \$10,000 was subject to an order of demolition. Regardless of the assessment (and most people in Niagara County know that sometimes the assessments are much higher than the property is worth), I learned that the property was scheduled to be demolished. I was able to obtain \$10,000 for the estate of an otherwise worthless property. The other two houses were sold on a multiple listing by a qualified real estate agency after a market analysis. It needs to be emphasized that even though my wife was the listing agent, any property listed on a multiple listing may be sold by any qualified real estate agent, not just the listing agent or broker. The audit makes no mention that the real estate commission was appropriate and customary, resulting in no additional cost to the estate.

See Note 17
Page 51

At page 22 your audit criticizes the use of the same real estate agency for three of the seven parcels sold and suggests that some sort of competitive process in selecting realtors would benefit the estates. However, the audit fails to recognize that most broker/agencies charge the same percentage usually 6 to 7 percent. In all of the cases of estates that were handled by this office, the listing commission was at or below 7 percent.

As indicated, all listings were multiple listings and any licensed real estate agent or broker could sell the property and receive a commission. You also indicate that the Public Administrator's wife was an employee of the agency. She was a listing agent in five parcels during the period audited covering 240 estates. However, she is not an employee of the real estate broker. She is what is technically called a "real estate sales person". This is not the same

as a broker and as a result she is not an employee or an owner, nor does she have any significant financial interest in the agency. Your criticism is unfounded and ignores the New York State Department of Licensing Services entitled Real Estate Licensing Law Article 12 of the Real Property Law defining real estate sales persons. The bottom line is there was no additional cost to the estates.

While I previously addressed the selection of legal counsel in this response, Surrogate's Court Procedure Action Section 1214 allows the Public Administrator great discretion in the employment of an attorney. However, as previously indicated, if an attorney petitioned the Surrogate Court for the appointment of a Public Administrator, I always retained the attorney that was representing the estate. This was the case with the largest estate (#2, Attorney B) mentioned in your report. There were occasions when other attorneys were selected. In those cases, I used several different attorneys known to me to be qualified to handle estates. The suggested bidding process for attorneys is just not practical.

Additionally, attorneys are always paid separately for services rendered when handling real estate closings. This service is not part of the customary work performed on the estate. There is good reason for this due to the myriad of title issues that often exist. This is uniformly accepted throughout the legal community.

CONCLUSION

This audit fails to answer the question initially raised by Surrogate Judges, Hon. Sara Sheldon Sperrazza and Hon. Matthew J. Murphy, in their letter of March 16, 2009, requesting this audit. You have ignored their specific requests that you address the Report and Guidelines of the Administrative Board for the Offices of Public Administrator promulgated in 1995 pursuant to SCPA Section 1128 as it applies to Article 12 Fiduciaries and the 2002 Interim Report. The Judges enclosed copies for your review. As I have stated publicly it is my position that these Rules and Regulations were never properly promulgated with respect to counties such as Niagara that utilizes the Chief Financial Officer as the Public Administrator. In light of your failure to respond, it would be my opinion that you concur in my conclusion. More importantly, a red flag should be raised in the office of every Public Administrator. In a 2008 audit of Otsego County, your office criticized that County's Public Administrator for failing to apply the aforementioned Guidelines. The Otsego County Public Administrator responded that she was not aware of such Guidelines. Now in the audit of my office, you fail to acknowledge the query of our Surrogate Judges, and you flat out tell me you did not apply the "guidelines", but some "common sense business practices".

You failed to set forth any reasonable standards by which anyone could judge my actions as compared to other counties. Your selection of the 15 estates to be audited causes any reasonable person to doubt your objectivity. In other words you failed to set forth any reasonable methodology by which you have reviewed my actions as Public Administrator. My

procedures for handling estates has not changed, yet previously resulted in positive reports from your office without any recommendations or comments. Your Audit ignores the practical aspects of dealing with small or difficult estates. It makes recommendations for the administration of estates that would cause any future Public Administrator nothing but headaches and unnecessary expense. In fact if your recommendations are followed, the cost to Niagara County residents would increase. You cite inadequate procedures, but yet you fail to identify any assets that have not been properly accounted for. Nowhere in this report does it indicate that a single dollar was missing from an estate. It is the conclusion of this Public Administrator that your Audit is flawed in its methodology, and unfairly, critical of my procedure, without candidly regarding that the audit found NO instance in which any loss occurred during my administration of these many estates.

Your referral to the District Attorney's Office is unwarranted and without any basis. You fail to establish any violation of statute or law and you fail to identify any missing assets.

Thank you for your consideration of these comments.

David Broderick
Niagara County Treasurer
And Chief Fiscal Officer, Retired

H. CARL McCALL
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

Report: 2002M-5
Period: January 1, 1999 - January 1, 2000
Filed: February 22, 2002

LETTER OF AUTHORITY

**TO THE COUNTY TREASURER,
THE COUNTY CLERK AND
THE COUNTY SURROGATE
OF THE COUNTY OF NIAGARA,
LOCKPORT, NEW YORK:**

Pursuant to the State Constitution, Article V, §1 and further authority vested in the State Comptroller by Article 2 and Article 12 of the State Finance Law, we have examined certain records and reports of the Court and Trust funds for the period January 1, 1999 through January 1, 2000.

Officials of the County of Niagara are responsible for safeguarding court and trust funds and/or estate assets entrusted to their care. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition; that transactions are executed in accordance with court orders and/or statutory authorization and are properly recorded; that appropriate reports are prepared; and that appropriate corrective action is taken in response to audit findings. Nevertheless, errors, irregularities, or instances of noncompliance may occur and not be detected because of inherent limitations in any internal control structure.

In performing our tests, nothing came to our attention that warrants finding or recommendation.

Very truly yours,

Office of the State Comptroller

OFFICE OF THE STATE COMPTROLLER
DIVISION OF MUNICIPAL AFFAIRS

**Albany, New York
November 12, 2001**

**Court and Trust Funds - County of Niagara
Page 1**

H. CARL MCCALL
STATE COMPTROLLER



110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

Report: 2002M-6
Period: January 1, 2000 - January 1, 2001
Filed: February 22, 2002

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THE COUNTY SURROGATE
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Pursuant to the State Constitution, Article V, §1 and further authority vested in the State Comptroller by Article 2 and Article 12 of the State Finance Law, we have examined certain records and reports of the Court and Trust funds for the period January 1, 2000 through January 1, 2001.

Officials of the County of Niagara are responsible for safeguarding court and trust funds and/or estate assets entrusted to their care. This responsibility includes establishing and maintaining an internal control structure to provide reasonable, but not absolute, assurance that resources are safeguarded against loss from unauthorized use or disposition; that transactions are executed in accordance with court orders and/or statutory authorization and are properly recorded; that appropriate reports are prepared; and that appropriate corrective action is taken in response to audit findings. Nevertheless, errors, irregularities, or instances of noncompliance may occur and not be detected because of inherent limitations in any internal control structure.

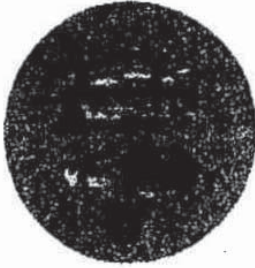
In performing our tests, nothing came to our attention that warrants

Very truly yours,

Office of the State Comptroller

OFFICE OF THE STATE COMPTROLLER
DIVISION OF MUNICIPAL AFFAIRS

Albany, New York
November 12, 2001



NIAGARA COUNTY
COUNTY ATTORNEY'S OFFICE
NIAGARA COUNTY COURTHOUSE
175 HAWLEY STREET
LOCKPORT, NEW YORK 14094

Claude A. Joerg
County Attorney

R. Joseph Foltz
First Assistant

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John S. Sansone
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Gary H. Lisowski
Assistants

May 12, 2009

(716) 439-7105
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Niagara County
Administration Committee

RE: IL-063-09 NIAGARA COUNTY TREASURER – ESTATE ADMINISTRATION

To the Members of the Administration Committee:

The Niagara County Treasurer is empowered to administer estates, based on the theory that an estate for which no distributees are entitled to act would be better administered by a competent public official than by a creditor who would manifestly be interested only to the extent of his or her own claim. The office of public administrator was created to provide a public official to take charge of estates where there is no distributee entitled to act. In re Hudson, 37 Misc. 539, 75 N.Y.S. 1053 (Sur. Ct. 1902).

Many of the large counties within this state have public administrators statutorily empowered to administer the estates of intestates who are not known to be survived by a person eligible to receive letters. In counties which have no public administrator, the Surrogate's Court may appoint the chief fiscal officer of the county as administrator of an estate.

Niagara County is such a County, where no separate office of public administrator has been created. Therefore, the Niagara County Surrogate's Court may appoint the chief fiscal officer [i.e. the Niagara County Treasurer] of the county as administrator of an estate. Section 1001 (8) of the New York State Surrogate's Court Procedure Act, entitled "Order of Priority for Granting Letters of Administration", provides as follows:

"When letters are not granted under the forgoing provisions and an appointment is not made by consent as hereinbefore provided then letters of administration shall be granted in the following order:

(a) To the public administrator, or the chief fiscal officer of the county";

The New York Courts have held that "[s]ince the chief fiscal officer of the county is required by the Surrogate's Court Procedure Act to act as public administrator, he is serving as a State agent performing an official act. (SCPA 1219, 1003 [3]; People v Insalaco, 142 Misc 2d 371 [Sup Ct. Erie

Page: Two

Date: May 12, 2009

Re: IL-063-09 NIAGARA COUNTY TREASURER-ESTATE ADMINISTRATION

County 1989]; County of Nassau v Bennett, 35 Misc 2d 586 [Sup Ct, Nassau County 1962]; Matter of Krabbe, 208 Misc 197 [Sur Ct, Suffolk County 1955].) Matter of Richmond, 187 Misc 2d 872, [Surrogate's Court, Broome County, 2001].

Section 1219 of the New York State Surrogate's Court Procedure Act, entitled "**Chief fiscal officer of county appointed administrator; qualifications; fees**", provides as follows:

A chief fiscal officer of a county appointed administrator of an estate shall qualify in the manner prescribed in 708 of this act, shall be vested with all the powers and rights of an administrator and be subject to the same duties and obligations.

Section 1219 of the New York State Surrogate's Court Procedure Act, further provides:

A chief fiscal officer of a county appointed administrator of an estate shall be allowed the same commissions as an administrator, **which commissions shall be in addition to the salary and fees now allowed by law to such chief fiscal officer.**

The New York courts have ruled that with respect to compensation of a chief fiscal officer serving as public administrator, the Section 1219 of the New York State Surrogate's Court Procedure Act controls and takes precedence over any general or local law providing that the salary of all officers paid from county funds is in lieu of all fees or other forms of compensation payable for services rendered. **Matter of Peetz's Estate, 83 Misc 2d 890, 374 N.Y.S.2d 247 (Sur. Ct. 1975).**

The New York State Comptroller, in Opinion No. 91-21, on June 5, 1991, in response to a request from Bonnie N. Feinzig, Esq., Deputy County Attorney County of Putnam gave the following opinion:

This Office has previously expressed the opinion that **fees and commissions under section 1219 are paid to a county chief fiscal officer in his or her capacity as administrator of estates and not as chief fiscal officer.** Therefore, we have concluded that, notwithstanding County Law, § 201, a county chief fiscal officer may retain the fees and commissions paid to him or to her as administrator [citations omitted]. We based our opinion, in part, on the case of County of Nassau v. Bennett, [citation omitted], in which the court,... held that fees earned as a result of the administration of estates by a county treasurer could be retained by him in addition to his salary as treasurer.

The conclusion reached in our prior opinions was confirmed in a subsequent judicial decision, Estate of Peetz, 83 Misc2d 890, 374 NYS2d 247. The court in Peetz, favorably citing 6 Opns St Comp, 1950, supra and the County of Nassau case, supra, held that a county chief fiscal officer is entitled to retain fees or commissions received in his or her capacity as administrator of estates,.... Therefore, in light of the Peetz case, supra, we hereby reaffirm our prior opinions

Page: Three

Date: May 12, 2009

Re: IL-063-09 NIAGARA COUNTY TREASURER-ESTATE ADMINISTRATION

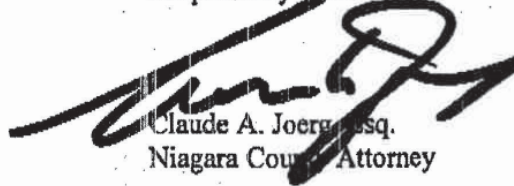
regarding the retention of commissions by a county chief fiscal officer when acting as administrator of estates.

Therefore, the Niagara County Treasurer has in all respects acted appropriately in receiving those commissions which were paid by decedent's estates to him for services which he rendered. Such fees are to be in addition to all amounts paid to him by Niagara County. I reaffirm my opinion that the conduct of the Niagara County Treasurer, when performing duties as a public administrator, are not subject to review by the Niagara County Legislature, but rather such matters are within the sound discretion of the Niagara County Surrogate's Court. This opinion is based upon the judicial decision, referenced above, which states that as public administrator he is serving as a State agent performing an official act. In addition, the New York State Comptroller has stated that fees and commissions under section 1219 are paid to a county chief fiscal officer in his or her capacity as administrator of estates and not as chief fiscal officer.

To sanction the Niagara County Treasurer with costs and thereby reduce the salary of such office, as contained within Legislator Virtuoso's resolution, would require a local law subject to a mandatory referendum [See Municipal Home Rule Law Section 23[2][e]]. Such local law could not be applied retroactively, but only prospectively. Therefore, the present resolution has no legal basis and cannot result in charges levied upon the Niagara County Treasurer for those statutory services he is required by the New York State Legislature and the courts to perform.

In considering how to respond to this issue, those who support this resolution should investigate those cases and services which are administered and provided by the Niagara County Treasurer annually at no charge to the public [i.e. the Infant Guardianships, as well as the Medicaid Burials]. Additionally, when reviewing the amount that the Niagara County Treasurer has received from decedent's estates, a similar analysis should be conducted as to the many thousands of dollars that have been collected from estates with no heirs and paid to the Niagara County Department of Social Services by the Niagara County Treasurer for amounts due and owing to the County.

Respectfully Submitted,



Claude A. Joerg, Esq.
Niagara County Attorney

CAJ/km

APPENDIX B

OSC COMMENTS ON THE LOCAL OFFICIALS' RESPONSE

Note 1

While the Judges did request that an audit be conducted by our Office, we decided to engage the audit and, as such, determined the appropriate scope and criteria, all in compliance with auditing standards.

Note 2

The criteria or appropriate business standards we used to evaluate the Administrator's procedures are explained at the beginning of each section and throughout the report.

Note 3

We selected our sample using a risk-based approach; in other words, we focused on estates where there was a greater risk that assets may not have been handled properly. We focused on estates with significant cash and assets and those with decedents who had owned real estate or had resided at a personal residence at the time of death. We also selected several small estates which had minimal assets to understand how they may have been handled.

Note 4

Throughout his response, the Administrator states that our audit did not identify any missing assets. Given the lack of records maintained by the Administrator, it is not possible to determine if assets are missing. The audit clearly shows that the estates were not properly administered. For example, he failed to have assets professionally appraised or document the condition of the assets or how he determined the value of the assets that he sold. We identify several examples in the report where the Administrator may have received less than fair value for assets he sold.

Note 5

Our prior audits were of Court and Trust activity and did not include the public administrator function.

Note 6

During a meeting, the Surrogate Judges provided us a copy of an order dated January 4, 2010, issued by the Surrogate Judges to the Public Administrator. This order required the Administrator to begin implementing many procedures similar to those recommended in this audit report. In fact, certain procedures now required by the Surrogate Judges are more stringent than the criteria we used to evaluate the Administrator's estate management practices.

Note 7

We clearly acknowledge that the fees paid to the Public Administrator are set by statute in the report. We questioned whether the Administrator fulfilled his fiduciary duties, not whether he overcharged the estates.

Note 8

Because appropriate documentation was not maintained, interested parties, such as the Surrogate's Court, can not readily determine whether the services obtained were appropriate and necessary or that the compensation paid was reasonable for the services provided.

Note 9

We do not suggest that the Administrator should competitively bid for attorney services. Rather, a process typically used by municipalities when procuring professional services is requests for proposals (RFPs). RFPs supply the requestor with information from various providers regarding their qualifications, prior experience, and fees or expected compensation. The individual or municipality soliciting the RFP is then able to make a determination that is in the best interest of the taxpayers of the municipality or, in this instance, the decedent's estate.

Note 10

Based on additional guidance and documentation provided by the Surrogate's Court, we removed this section from the report.

Note 11

We reviewed and considered the County Attorney's opinion during our audit.

Note 12

Without independent evidence, we have to rely on the Administrator's statement that an estate is worthless. Videotaping, a minor expense, would provide support and protect the public's interest.

Note 13

The Administrator was unable to provide documentation to support this assertion. The records provided by a third party (Liquidator) documented the existence of additional assets. It would be difficult to establish that something was "unaccounted for or missing" when no records were made available to demonstrate what assets were there initially.

Note 14

The Administrator did not document or maintain any record of the vehicle's condition at the time of sale to support this assertion or to demonstrate that he had obtained a fair price.

Note 15

The Administrator was not able to provide documentation or copies of the appraisals for two of the houses he sold through private sales.

Note 16

The Administrator was unable to demonstrate that he publicly advertised the property for sale or attempted to solicit multiple offers through the use of some other means of encouraging competition.

Note 17

The Administrator did not have documentation to support this assertion.

Note 18

The Administrator's wife was listed as the selling agent on the sales contract for at least two properties and most likely received a financial benefit in the form of a commission.

APPENDIX C

AUDIT METHODOLOGY AND STANDARDS

Our overall goal was to evaluate the controls over estate assets by the Niagara County Treasurer serving as Public Administrator. We assessed his fiduciary duties and management of estates by determining whether internal controls over estate assets were appropriately designed and operating effectively.

We reviewed the Administrator's processes for the collection of estate assets, cash management, recordkeeping, and the selection of service providers for the following 15 estates:

| Estate | Date of Decedent's Death | Date of Temporary Appointment | Date of Permanent Appointment | Date Closed | Gross Assets | Administrator's Commission |
|---------------|---------------------------------|--------------------------------------|--------------------------------------|--------------------|---------------------|-----------------------------------|
| 1 | 12/18/2004 | | 4/19/2005 | 3/21/2007 | \$49,471 | \$1,711 |
| 2 | 6/8/2004 | 6/16/2004 | 7/13/2004 | 2/3/2005 | \$462,172 | \$17,865 |
| 3 | 5/26/2007 | | 6/21/2007 | 12/8/2008 | \$2,874 | \$144 |
| 4 | 1/17/2007 | | 1/24/2007 | 6/6/2008 | \$103,516 | \$5,176 |
| 5 | 11/15/2005 | 11/29/2005 | 1/9/2006 | 11/1/2006 | \$235,016 | \$10,321 |
| 6 | 2/3/2007 | 7/10/2007 | 9/22/2008 | 4/13/2009 | \$180,737 | \$4,687 |
| 7 | 4/11/2006 | | 5/30/2006 | 2/6/2007 | \$16,009 | \$800 |
| 8 | 2/4/2005 | 12/21/2007 | 11/17/2008 | 11/18/2008 | \$67,024 | \$3,351 |
| 9 | 7/3/2007 | | 6/11/2008 | 3/9/2009 | \$6,360 | \$318 |
| 10 | 8/18/2007 | | 8/12/2008 | 4/15/2009 | \$78,728 | \$3,938 |
| 11 | 7/14/2007 | 8/8/2007 | 9/26/2007 | Open | \$53,057 | \$2,653 |
| 12 | 6/13/2007 | 10/23/2008 | 11/5/2008 | Open | \$77,338 | \$3,974 |
| 13 | 5/19/2006 | 12/21/2007 | 1/23/2008 | Open | \$47,626 | \$2,381 |
| 14 | 11/19/2006 | 10/16/2008 | 10/31/2008 | Open | \$45,900 | \$2,295 |
| 15 | 2/12/2008 | | 8/21/2008 | Open | \$327,834 | \$13,364 |
| Total | | | | | \$1,753,662 | \$72,978 |

To accomplish the objective of this audit, our procedures included the following:

- We interviewed the Administrator, appropriate County officials, employees, and other parties to determine the internal controls, procedures, systems, and records used to administer estates and safeguard assets.
- We reviewed relevant statutory provisions, regulations and other guidance pertinent to estate administration.
- We selected a judgmental sample of 15 files to review which included 10 closed and 5 open estates.

- We obtained and examined the records maintained by the Administrator and his staff for each estate selected. We examined bank statements, receipt and disbursement records, court documents, and other information in the estate files.
- We reviewed pertinent records to ensure receipts and disbursements were properly recorded and supported by sufficient documentation.
- We examined bank records to ensure estate monies were earning interest and all deposits were sufficiently collateralized.
- Through interviews, inquiries, and inspection of records:
 - o We evaluated whether estate assets were properly identified, documented, secured, and liquidated in accordance with good management practices and relevant statutes and regulations.
 - o We determined if inventory lists, photographic records and/or videos of estate assets were created when residences were initially searched and if logs were maintained to record and control access to the decedents' residences.
 - o We evaluated the Administrator's process for selecting service providers and other professionals.
 - o We evaluated the Administrator's process for disposing of and liquidating various estate assets.
- We contacted and interviewed third parties including relatives of the decedents, assessors, and appraisers to assist in evaluating whether the amount credited to estates for certain liquidated assets represented their fair market value.
- We contacted and interviewed the individual responsible for appraising and liquidating the contents of the decedents' residences. We also requested and reviewed her appraisal records.
- We contacted and interviewed a County employee (Deputy Sheriff) who presumably purchased for resale four vehicles from the estates we reviewed. On numerous occasions, we requested from this individual any personal records or documentation he maintained regarding the purchase and resale of these vehicles. However, he provided no personal records.
- We researched and estimated the value of assets sold by the Administrator and compared these estimates to the proceeds received.
- We reviewed commissions paid to the Administrator to ensure they were in accordance with statute.
- We identified and reviewed significant fees paid to service providers to ensure they were proper and supported by sufficient documentation.

We conducted this performance audit in accordance with generally accepted government auditing standards (GAGAS). Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX D

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APPENDIX E
OFFICE OF THE STATE COMPTROLLER
DIVISION OF LOCAL GOVERNMENT
AND SCHOOL ACCOUNTABILITY

Steven J. Hancox, Deputy Comptroller
John C. Traylor, Assistant Comptroller

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