

REPORT AND GUIDELINES
OF
THE ADMINISTRATIVE BOARD
FOR THE OFFICES
OF
THE PUBLIC ADMINISTRATORS
PURSUANT TO
SURROGATE COURT PROCEDURE ACT
SECTION 1128 (ARTICLE 12)
within the Counties of
Erie, Monroe, Nassau, Onondaga,
Suffolk and Westchester
and County Treasurers
within the State
Acting as Administrators

Approved by the Board
November 13, 1995

MEMBERS OF THE ADMINISTRATIVE BOARD
TO OVERSEE THE OPERATIONS OF
THE PUBLIC ADMINISTRATOR'S OFFICES
APPOINTED PURSUANT TO S.C.P.A. §1128

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DRAFT - November 13, 1995

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

Pursuant to the authority vested in it by Section 1128 of the Surrogate's Court Procedure Act ("SCPA"), the Administrative Board for the Offices of the Public Administrators ("PAs") hereby enacts guidelines for the operations of the Offices governed by Article 12 of the SCPA. It is specifically noted that the counties outside New York City which are covered by this article are vastly different in size, population, resources and the like than those governed by Article (11). The guidelines set forth herein are accordingly downsized, recognizing that each particular county is different.

1. Office Procedures and Record-Keeping

A. Central Record-Keeping

1. Each PA must maintain a central record for each estate under his or her administration, with individually numbered entries for every item of personal property, every stock or bond certificate, every bank account, and other miscellaneous assets. This master record shall enumerate all property for each estate maintained by the PA in safes, warehouses, banks and any other locations.

2. Each PA shall devise a system for maintaining the central record described above for all estates whose assets include more than one of the above items. To the maximum extent feasible, a uniform system shall be followed for all such estates. The record for any particular estate may consist of a file containing documents already maintained by the PA which list property maintained in various locations, such as police vouchers, appraisals, and insurance documents. Alternatively, each PA may develop computerized inventories and tracking systems as the central records for each estate.

3. Centralized Accounting Procedures

1. Each PA shall implement and maintain a double-entry bookkeeping system to record and summarize all receipts and disbursements for each estate. The entries in this accounting system shall reflect the estate to which they pertain, the date of receipt and the source of funds received, the date and nature of each disbursement and invoices or other documentation supporting the disbursement, and any other relevant information. All entries shall be made promptly after receipt or disbursement.

2. Each PA shall maintain a centralized journal to record all non-estate related receipts and disbursements received and paid by the PA. Journal entries as to disbursements must reflect the date, nature and amount of each disbursement and refer to invoices or other documentation supporting the disbursement.

Journal entries as to receipts for office operations must reflect the date, nature, and amount of each receipt.

3. Pursuant to the provisions of SCPA §1208(3), the annual audit of each PA's office by an independent auditing firm shall include an audit of the accounts described above.

C. Case Management Systems

The PA shall maintain a case management system to track the progress of each estate's administration. The system shall consist of a centralized tracking and recording system which reflects the status of each pending estate. All estate activity must be recorded promptly in the case management system. The system shall include a "tickler" function, so that the PA may monitor unusual delays in the administration of any estate.

II. Cash Management

A. Estate Accounts

1. Upon receipt by the PA of any funds from any source for a decedent dying within the PA's county, the PA shall have the option of opening separate accounts for estates less than \$500 or depositing such funds in a co-mingled miscellaneous receipt account. However, all such accounts must be interest bearing. The PA shall maintain accurate records of the estates whose funds have been deposited in this account. Whenever the total funds received and deposited in the Miscellaneous Receipts Account for any estate

exceeds \$500, the PA shall immediately open a separate account for that estate and shall deposit into that account all funds belonging to that estate, including any interest earned.

2. Upon the implementation of these guidelines, the PA shall reconcile any accounts which s/he has been maintaining that contain commingled estate funds and/or interest accrued on estate funds (i.e., house accounts) with any records s/he maintains concerning those estate funds. If the funds belonging to any individual estate are greater than \$500 in amount, these funds must be transferred to the estate to which they belong and, if the estate has already been closed, the estate must be reopened so that these additional funds can be distributed to heirs. Any estate funds belonging to closed estates which are less than \$500 in amount, and any funds or interest thereon which the PA cannot trace to a particular estate, shall be treated as abandoned property by the PA and deposited with the Abandoned Property Fund of the State Comptroller. This provision does not apply to any suspense account maintained by any PA; such accounts are governed by Section IV C below.

3. The PA shall review the records relating to the Miscellaneous Receipts Account on at least a semi-annual basis to assure that all estate funds, including interest, are properly allocated to the estate to which they belong, that estate funds are accounted for upon the settlement of an estate, and that separate accounts are opened for estates whose total fund balance has become greater than \$500.

4. If, upon the PA's examination of the Miscellaneous Receipts Account's records, it appears that any estate funds or interest accrued thereon cannot be traced to a particular estate, the PA shall treat these funds as abandoned property and deposit them with the Abandoned Property Fund maintained by the State Comptroller. In no event shall the PA use monies in the Miscellaneous Receipts Account to fund the operations of the PA's office.

5. The PA shall maintain procedures to insure that no funds held for an estate in a particular bank exceed the amount insured by the FDIC, currently, \$100,000 ("FDIC insured amount"). If funds held for an estate in a particular bank exceed FDIC insured amount, the PA shall immediately: 1) open a separate account or accounts in a different bank or banks so that no funds held for an estate in a particular bank exceed the FDIC insured amount; 2) invest such additional sums in U.S. Treasury Bills so that no funds held for an estate in a particular bank will exceed the FDIC insured amount; or 3) collateralize such sums with approved government securities, pursuant to a written security agreement between the PA and the bank.

6. Whenever the PA receives passbooks for bank accounts held solely in the name of the decedent, the PA must account for these accounts in the centralized record-keeping system described in Section I A above and, if appropriate, transfer the funds in these accounts to bank accounts earning higher yields.

B. Assets Not Passing Through the Estate

1. Whenever the PA receives passbooks or other evidence of joint or trust bank accounts, insurance policies, pension accounts or other similar assets not passing through the estate, the PA shall immediately contact the beneficiaries of such accounts or assets and transfer all funds to the appropriate parties subject to the proviso that the estate is solvent and that charges against such assets be paid or provided for before any such transfer. If the beneficiaries of any account cannot be found upon closing the estate, the PA shall list in the formal accounting the information concerning the above assets and a statement of the PA's efforts to locate the beneficiaries. The PA shall also notify the bank, the insurance company, or other institution holding such assets of the death of the decedent.

2. Upon the implementation of these guidelines, each PA shall immediately review the status of all assets not passing through the estate in his or her custody and shall dispose of them in a manner consistent with Section 1 above.

III. Property Management

A. Property Search and Collection

1. The PA shall take all steps necessary to assure that all personal property belonging to a person dying within the PA's county is collected and credited to the decedent's estate. It is

the duty of the PA to supervise and oversee the conduct of those who search for and collect personal property.

2. During all searches for personal property at the residence of a decedent, at least one investigator employed by the PA's office must be present at all times. The investigators shall secure an independent witness' presence, such as a landlord or building superintendent, at the search. The investigators will photograph the contents of the residence, preferably using video equipment, and will submit them to the PA after each search. The investigators will thoroughly search each residence and, contemporaneous with the search or immediately thereafter, make a complete and detailed inventory of its contents, which inventory shall be signed by both investigators and, if an independent witness has been present at the search, by the independent witness. The PA's investigators shall remove easily transportable valuables in the residence to a secure location as soon as feasible.

3. The search of a decedent's residence shall be conducted as soon as possible after notice of the decedent's death is received and it appears that the matter falls within the jurisdiction of the PA.

4. After the initial search of a decedent's residence, each PA shall evaluate appropriate information from his/her investigators including the inventories, pictures and investigators' reports to determine if any further action concerning the residence is required. Further action may include further search, appraisal of real or personal property, the release of the premises

to the landlord, sale of the residence's contents by sealed bids, or directing the contents of the residence be brought to the PA's warehouse, safe, or elsewhere for public auction or private sale.

5. After the PA's investigators have searched a decedent's residence, the residence's entrances and windows shall be sealed with seals unless the premises are released to the landlord. If the premises are released to the landlord or the landlord's agent, the investigators shall secure a signed receipt or release from the landlord or its agent.

6. The PA shall maintain a log reflecting every visit to a decedent's residence, the employees who entered the residence and the reason for the entry. The PA shall maintain keys to decedents' residences in a secure place and control access to such keys.

7. Each PA shall contact the appropriate police department or departments on an annual basis to determine whether such departments are holding any of the decedent's property. For this paragraph the word "contact" will also include a telephone call as well as a written communication. Any member of the PA's staff who collects such property shall execute a written statement to be attached to the police inventory form attesting that s/he has collected all of the property enumerated on the inventory.

8. Sale of Personal Property

1. Each PA shall maintain a roster of individuals and/or companies that have indicated an interest in purchasing

decedents' property. On an annual basis, the PA shall advertise in a paper of general circulation in the county where the PA maintains his/her office the opportunity to bid on such sales and invite individuals and/or companies to be listed on this roster. All those listed on the roster shall be notified of all public auctions held by the PA. Each time the PA disposes of estate property by private sale, the PA shall offer the property to at least three purchasers from the list on a rotating basis, following the procedures described below. If the PA becomes aware of individuals and/or companies with an interest in purchasing property from a particular decedent's estate, s/he may accept bids from them as well.

2. Each PA shall sell any item of a decedent's personal property which has significant value at public auction unless specific factors make sale at auction impractical. The PA shall be responsible for selecting the property to be auctioned and may not leave this decision to the discretion of the auctioneer. The PA shall supervise all aspects of auction sales of estate property and should require that the auctioneer or someone acting on his behalf reconcile items sold or left unsold at auction to estate property inventory records to ensure that all items have been accounted for. The PA shall maintain in the central record for each estate a summary of the result of the auction. For each auctioned item, the PA shall indicate the sale price, the item sold, and the estate to which the sale price should be credited.

3. The PA shall solicit, or direct one or more of his/her employees to solicit, at least three sealed bids for each sale. The PA or those acting under his/her direction shall select the highest bid. The PA shall ensure that information regarding the bid amounts and the identity of bidders is not disclosed during the bidding process.

4. As to any item of a decedent's personal property which the PA reasonably believes has less than significant value, the PA may dispose of the property by private sale.

5. All payments by successful bidders shall be by check payable to the specific estate owning the property or to the PA as administrator of that specific estate, or to the PA as administrator in the case of lot sales involving more than one estate.

6. In no event may the individuals or companies bidding on or purchasing personal property be parties related to the PA as defined herein. A "party related to the PA," as used in these Guidelines, shall be (a) any individual related by blood or marriage to the PA, or (b) any employee of the PA's office, or (c) any corporation, firm, association or other entity in which one or more of its officers or directors or any person having a substantial financial interest is related by blood or marriage to the PA or any employee of the PA's office. For purposes of this section, counsel to the PA and his or her staff shall be regarded as employees of the PA's office.

C. Sale of Real Property and Cooperative Apartments

1. The PA may appraise and sell real property at public auction or by private sale at the highest and best price available. Reasonable real estate brokerage fees may be paid in connection with such sales.

IV. Performance of Other Administrative Functions

A. Searching for Distributees

1. In each case under his or her administration, the PA shall discharge his or her responsibility to search for distributees of the decedent. Within the first six weeks after taking on responsibility for an estate, the PA should review the decedent's personal effects and correspondence, refer to bank, postal and telephone records and inquire of neighbors and take other reasonable steps under the circumstances to search for names of possible distributees of the decedent. Letters asking about kinship should be sent to all persons identified by the PA in the process of that search who can reasonably be expected to provide information about possible distributees. In addition, the mail of the decedent should be forwarded to the PA's office and reviewed periodically to identify any other possible lines of inquiry that should be pursued. Whenever possible, the use of computers to search for distributees should be considered.

2. A PA shall not hire a private investigator unless such hiring is approved by the court for good cause shown; such

hiring, including compensation, shall be made on terms and conditions set by the court. Any retention of a private investigator to search for distributees should be conditioned upon agreement that such private investigator will not (a) represent any distributee discovered, (b) accept any compensation from such distributee, nor (c) suggest or recommend to the distributee the services of any attorney or heir tracer, other than to suggest that a distributee might wish to confer with an attorney of his or her own choosing.

3. Legal counsel to the PA may not receive compensation for searching for distributees as part of his or her legal fees, although the PA may compensate his or her counsel out of the PA's commission for performing this executorial function.

B. Maintenance of Suspense Accounts

1. Each PA may maintain a suspense account containing (a) suspense fees charged to estates in accordance with law, (b) interest earned on monies in the account, (c) funds representing reimbursement of disbursements for particular estates made from the suspense account prior to the collection of estate assets, and (d) fees received by the PA for the performance of administrative services. (The term "suspense account" as used herein refers also to imprest accounts.) Monies from other sources may not be kept in the suspense account.

2. The PA may use the suspense account to pay certain office expenses not funded by the PA's budget, as set forth herein. Expenses which may be funded by the suspense account must be necessary for the proper functioning of the office's operations and

for the administration of estates. Where suspense account funds are used to purchase office equipment or supplies, the PA must maintain records which set forth the nature and amount of the expenditure. Where suspense account funds are used to pay salaries and benefits for office personnel, the PA must maintain records which set forth the reasons for employing such personnel and justify the reasonableness of their salaries and benefits. The suspense account may be used to pay disbursements such as filing fees or death certificates for individual estates if necessary prior to the collection of estate assets. Once estate assets are collected, the suspense account should be reimbursed promptly after the collection of such assets. The suspense account may also be used to pay miscellaneous estate disbursements where estate assets are insufficient to pay such expenses.

3. The PA shall keep accurate records of all receipts and disbursements to and from the suspense account. Monthly reports of such receipts and disbursements and of the present balance of the suspense account shall be supplied to the Surrogate. Copies of these monthly reports shall be supplied to the State Comptroller on an annual basis. The PA shall maintain back-up documentation such as receipts and invoices for all receipts and disbursements from the suspense account and shall make such records available to the Surrogate or the State Comptroller upon request.

V. Payment of Fees and Selection of Outside Vendors

A. Selection of Outside Vendors

1. As referred to herein, "outside vendors" shall be defined to include, without limitation: real estate appraisers, accountants, private investigators, real estate brokers, appraisers, auctioneers, movers, contractors, insurance brokers, stock and bond brokers, commodities traders, funeral directors, abstract companies, heir tracers, warehousemen, managing agents, cleaning services, tradesmen (such as plumbers, electricians, locksmiths, carpenters), and investment advisors. Except as otherwise provided herein, whenever the PA determines that the services of an outside vendor are necessary to properly administer an estate, the PA may employ an outside vendor, following the procedures set forth herein.

2. The PA may not employ as an outside vendor (a) any employee of the PA's office, (b) any individual related by blood or marriage to the PA or to any employee of the PA's office, or (c) any corporation, firm, association or other entity in which one or more of its officers or directors or any person having a substantial financial interest is related by blood or marriage to the PA or any employee of the PA's office. For the purpose of this paragraph, counsel to the PA and his or her staff shall be regarded as employees of the PA's office.

3. On an annual basis, the PA shall advertise in a newspaper of general circulation within the county where the PA

maintains his or her office, that the PA is formulating a list of outside vendors to provide services to the PAs. The advertisement should detail the services sought, a description of the work involved, and the requirements for inclusion on the list.

4. Based on response to the advertisement and the PAs' knowledge of competent outside vendors, the PA shall prepare a list of the providers in each category, specifying for each the provider's usual fee. The PA shall include on the list only those outside vendors (a) holding all necessary licenses for their field, (b) with a good reputation in the community, and (c) if they have provided goods or services in the past, those who have performed the services competently or have provided goods of serviceable quality. The list should be updated at least annually and shall be available for public inspection at the PA's office.

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

B. Fees to be Paid to Outside Vendors

Fees paid to outside vendors by the PA shall be fair and reasonable considering the circumstances of each individual county.