SURROGATE'S COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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In the Matter of the Account of Proceedings of
Eric P. Milgrim, Public Administrator of Nassau County,
as Administrator of the Estate of

MATTYE LEE WILLIAMS COOPER,

Deceased.

File No. 335806

Dec. No. 497

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Before the court is the first and final account of the Public Administrator for the estate of Mattye Lee Williams Cooper, who died intestate, a resident of Inwood, on January 3, 2004 at the age of 77. Letters of administration issued to the Public Administrator on January 26, 2005.

Decedent's estate began with $51,467.19 in gross assets and contained, at the time the account was filed on September 18, 2006, $40,452.67. This reduction reflects payment of administration expenses of $5,008.58 and payment of creditors' claims totaling $7,575.00.

Pursuant to decision 633, issued by this court on November 18, 2008, a kinship hearing was held on February 26, 2009. This decision will address the outcome of that hearing as well as petitioner's request that the court settle the account, approve commissions, fix the fee of counsel to the Public Administrator and authorize petitioner to distribute the net estate to the New York State Comptroller for the benefit of decedent's unknown distributees. The court must also set the fee of the guardian ad litem for the unknown heirs and discharge the surety.

As discussed in the court's prior decision, at the time of decedent's death she had been divorced for more than forty years and her only child, a son, had predeceased her without issue. The Public Administrator initially identified eleven alleged maternal first cousins, namely, (1) Ann Henry; (2) Ethel Drinks Townsend (3) Eula Hadley; (4) Perry Nails; (5) Acquaneeta Grant; (6) Aleda Morgan; (7) Preston Drinks (8) Gussy Mae Simons; (9) Charlie Mae Mickens (10)

Willie Drinks; and (11) Mae Ethel Anderson. Ms. Anderson post-deceased the decedent on September 14, 2004, leaving the following alleged children: (A) Glenda Redmen Finney; (B) Norman Vincent Redman; (C) Victor Redman; and (D) Charles Stokes.

Testimony and evidence were introduced at the hearing by three family members, Norman Vincent Redmen; Charles Stokes; and Acquaneeta Grant. The testimony of the witnesses was, for the most part, consistent, and it was entirely credible. Mr. Redmen and Mr. Stokes did not personally know the decedent, but each testified that their mother, Mae Ethel Anderson, was a first cousin of decedent. Ms. Grant testified that she knew decedent well, and was able to offer comprehensive testimony about decedent's maternal distributees. All parties stipulated to waive the report of the referee and to allow kinship issues to be decided by the court based upon the transcript of the hearing, the documentary evidence and the arguments made by the claimants and the guardian ad litem representing the interests of unknown distributees.

In order to establish their rights as distributees, the claimants, in a kinship proceeding, must prove: 1) their relationship to the decedent; 2) the absence of any person with a closer degree of consanguinity of the decedent; and 3) the number of persons having the same degree of consanguinity to the decedent or to the common ancestor through which they take (*Matter of Morrow*, NYLJ April 12, 2001, at 23, col. 1 [Sur Ct, Bronx County]; 2 *Harris, New York Estates*, 21.3 at 21-1 [5th ed 1996]). Claimants, who allege to be distributees of the decedent, have the burden of proof on each of these elements (*Matter of Cruz*, NYLJ, January 7, 2002, at 29, col. 4 [Sur Ct, Kings County]; *Matter of Balacich*, NYLJ, January 24, 1997, at 30, col. 2 [Sur Ct, King County]). The quantum of proof required to prove kinship is a fair preponderance of the credible

evidence (*Matter of Jennings*, 6 AD3d 867, 868 [3d Dept 2004]; *Matter of Whelan*, 93 AD2d 891 [2d Dept 1983] *aff'd* 62 NY2d 657 [1984]).

It is well established that the size of the estate and the degree of the relationship will affect the extent of a diligent search in a kinship or status hearing (Warren's Heaton on Surrogate's Court Practice § 74.17 [2] [b] [viii] [7th ed], citing *In re Whelan*, 93 AD2d 891 [2d Dept 1983] *affd* 62 NY2d 657 [1984]). In searching for decedent's distributees, counsel for the Public Administrator devoted time to "extensive research and review of Decedent's family, including (i) review of records available in ancestry.com, SSDI and Miami-Dade County web sites; (ii) retrieval of pedigree family documents from Carol L. Scal, Esq., [and] (iii) multiple telephone conversations with Decedent's alleged distributees," as set forth more fully in counsel's affirmation of legal services. The Public Administrator's affidavit dated January 11, 2005 reflects that counsel also examined the relevant portions of the court file in the decedent's guardianship proceeding in search of relevant kinship information and the report of the Court Evaluator, counsel also participated in the kinship hearing on February 26, 2009. In consideration of the relatively small size of decedent's estate, the court finds that a diligent and exhaustive search was rendered by counsel to the Public Administrator to discover evidence of all of decedent's distributees (*see, Matter of Whelan*, 93 AD2d 891 [2d Dept 1983] *aff'd* 62 NY2d 657 [1984] [internal citations omitted]). Indeed, had the Public Administrator's counsel undertaken additional and more costly searches, it is likely that the entire estate would have been depleted, leaving no funds for distribution to the heirs.

Based upon the evidence presented before the court attorney/referee, the court makes the following findings of fact and conclusions of law:

1. The decedent, Mattye Lee Williams Cooper, died intestate on January 3, 2004;

2. The decedent, Mattye Lee Williams Cooper, was married once, to Johnny Cooper, but at the time of her death had been divorced for more than forty years. Decedent never remarried;

3. The decedent, Mattye Lee Williams Cooper, had one child, Vincent Ray Cooper, who predeceased decedent in 1995, leaving no issue;

4. The decedent's mother was Charlene Webb, who predeceased decedent;

5. The decedent's father is unknown;

6. Decedent's paternal grandparents are unknown;

7. The decedent was the only child of her mother;

8. Decedent's maternal grandparents were Charlton Drinks and Gussie Prier Drinks. They predeceased the decedent;

9. Charlton Drinks and Gussie Prier Drinks had six children, (i) Jackson Drinks; (ii) Willie Frankling Drinks; (iii) Theodore Henry; (iv) Dorothy Holland; (v) Ella Mae Nails; and (vi) Charlene Webb, the mother of the decedent;

10. Decedent was survived by one maternal uncle, Willie Frankling Drinks;

11. Decedent's maternal uncle, Jackson Drinks predeceased the decedent. Three of his children survived the decedent: (i) Preston Drinks; (ii) Aleda Morgan; and (iii) Acquaneeta Grant;

12. Decedent's maternal uncle, Theodore Henry predeceased the decedent. One child of Theodore Henry survived the decedent: Ann Henry;

13. Decedent's maternal aunt, Dorothy Holland predeceased the decedent. Two of her children survived the decedent: (i) Gussie Mae Simmons and (ii) Charlie Mae Mickens;

> 14. Decedent's maternal aunt, Ella Mae Nails predeceased the decedent. Three of her children survived the decedent: (i) Eula Hadley; (ii) Alexander Perrie Nails; and (iii) Mae Ethel Anderson, a domiciliary of the State of Florida who post-deceased the decedent on September 19, 2004. No testimony or evidence was introduced concerning the appointment of a personal representative for the estate of Mae Ethel Anderson or whether she left a last will and testament. Mae Ethel Anderson was survived by (a) Glenda Redmen Finney, (b) Norman Vincent Redmen, (c) Victor Redmen and (d) Charles Stokes.

Thus, it appears that the surviving issue of decedent's maternal grandparents are one maternal uncle, Willie Frankling Drinks, and nine maternal first cousins, (1) Preston Drinks, (2) Aleda Morgan, (3) Acquaneeta Grant, (4) Ann Henry; (5) Gussie Mae Simmons, (6) Charlie Mae Mickens; (7) Eula Hadley; (8) Alexander Perrie Nails; and (9) Mae Ethel Anderson, who post-deceased decedent on September 19, 2004 and was survived by (A) Glenda Redmen Finney; (B) Norman Vincent Redmen; (C) Victor Redmen and (D) Charles Stokes.

Pursuant to EPTL 4-1.1(a) (b), one-half of the decedent's intestate property passes to the issue of maternal grandparents, by representation. The other half passes to the paternal issue by representation. As indicated above, the search for decedent's distributees yielded no information concerning the paternal side of decedent's family. Indeed, counsel was unable to locate, and decedent's maternal relatives had no knowledge of, the name of decedent's father. Without that information, the search for paternal relative was effectively rendered impossible. More than three years have elapsed since the decedent's death, and no paternal claimants have come forward. Therefore, based on the foregoing, the court is satisfied that there are no paternal distributees of the decedent (SCPA 2225 [b]) and, pursuant to EPTL 4-1.1 (a) (7), the maternal distributees are entitled to share equally the entire estate.

Regarding the fee of the attorney for the estate and the fee of the guardian ad litem, the court bears the ultimate responsibility for approving legal fees that are charged to an estate and has the discretion to determine what constitutes reasonable compensation for legal services rendered in the course of an estate (*Matter of Stortecky v Mazzone*, 85 NY2d 518 [1995]; *Matter of Vitole*, 215 AD2d 765 [2d Dept 1995]; *Matter of Phelan*, 173 AD2d 621, 622 [2d Dept 1991]). While there is no hard and fast rule to calculate reasonable compensation to an attorney in every case, the Surrogate is required to exercise his or her authority "with reason, proper discretion and not arbitrarily" (*Matter of Brehm*, 37 AD2d 95, 97 [4th Dept 1971]; *see Matter of Wilhelm*, 88 AD2d 6, 11-12 [4th Dept 1982]).

In evaluating the cost of legal services, the court may consider a number of factors. These include: the time spent (*Matter of Kelly*, 187 AD2d 718 [2d Dept 1992]); the complexity of the questions involved (*Matter of Coughlin*, 221 AD2d 676 [3d Dept 1995]); the nature of the services provided (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]); the amount of litigation required (*Matter of Sabatino*, 66 AD2d 937 [3d Dept 1978]); the amounts involved and the benefit resulting from the execution of such services (*Matter of Shalman*, 68 AD2d 940 [3d Dept 1979]); the lawyer's experience and reputation (*Matter of Brehm*, 37 AD2d 95 [4th Dept 1971]); and the customary fee charged by the Bar for similar services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *Matter of Freeman*, 34 NY2d 1 [1974]). In discharging this duty to review fees, the court cannot apply a selected few factors which might be more favorable to one position or another but must strike a balance by considering all of the elements set forth in *Matter of Potts* (123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241

NY 593 [1925]), and as re-enunciated in *Matter of Freeman* (34 NY2d 1 [1974]) (*see Matter of Berkman*, 93 Misc 2d 423 [Sur Ct, Bronx County 1978]). Also, the legal fee must bear a reasonable relationship to the size of the estate (*Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]; *Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], *affd* 16 NY2d 594 [1965]). A sizeable estate permits adequate compensation, but nothing beyond that (*Martin v Phipps*, 21 AD2d 646 [1st Dept 1964], aff'd 16 NY2d 594 [1965]; *Matter of Reede*, NYLJ, Oct. 28, 1991, at 37, col 2 [Sur Ct, Nassau County]; *Matter of Yancey*, NYLJ, Feb. 18, 1993, at 28, col 1 [Sur Ct, Westchester County]). The burden with respect to establishing the reasonable value of legal services performed rests on the attorney performing those services (*Matter of Potts*, 123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 App Div 59 [4th Dept 1925], *affd* 241 NY 593 [1925]; *see e.g. Matter of Spatt*, 32 NY2d 778 [1973]).

The executor has petitioned the court for approval of the payment of $5,731.25 to the attorney for services rendered in connection with the administration of the estate, of which $5,338.75 has been paid and $392.50 remains unpaid. The guardian ad litem has not objected to these payments. The court has carefully reviewed the affirmation of services and the time records submitted to the court. Contemporaneous records of legal time spent on estate matters are important to the court in determining whether the amount of time spent was reasonable for the various tasks performed (*Matter of Von Hofe*, 145 AD2d 424 [2d Dept 1988]; *Matter of Phelan*, 173 AD2d 621 [2d Dept 1991]). The record shows that the attorney devoted almost 100 hours since the filing of the final account, and that the actual billable time on this estate is more than $16,000.00. The services provided by the attorney included petitioning for letters of administration; identifying and collecting decedent's assets; preparing the final accounting,

participating in the kinship hearing and conducting the searches and interviews described above. In view of the exiguous balance that would remain if the attorney were to bill for the full amount of services provided, the attorney has offered to accept as a total fee the amount of $5,731.25, of which $392.50 remains unpaid. The court commends the attorney for his skillful representation of the Public Administrator and the voluntary reduction of his fee. The fee is approved in the amount requested.

The guardian ad litem has submitted his report and affidavit of services. They show he spent more than 47 hours on the matter including attendance at the hearing, resulting in billable time of $12,168.40. The guardian ad litem reviewed the accounting and rendered two reports that evaluated and clarified the kinship issues. The guardian ad litem provided valuable services that benefitted the estate, but the size of the estate can operate as a limitation on the fees payable (*Matter of McCranor*, 176 AD2d 1026 [3d Dept 1991]; *Matter of Kaufmann*, 26 AD2d 818 [1st Dept 1966], *affd* 23 NY2d 700 [1968]), without constituting an adverse reflection on the services provided. Based upon the criteria established by *Matter of Freeman*, (34 NY2d 1 [1974]) and *Matter of Potts* (123 Misc 346 [Sur Ct, Columbia County 1924], *affd* 213 AppDiv 59 [4th Dept 1925], *affd* 241 NY 593 [1925] as applied to guardians ad litem (*Matter of Burk*, 6 AD2d 429 [1st Dept 1958]); *Matter of Reisman*, NYLJ, May 18, 2000, at 34 [Sur Ct;, Nassau County]), and bearing in mind the total value of decedent's estate, the court awards the guardian ad litem a fee of $4,500.00. The foregoing guardian ad litem fee shall be paid within thirty (30) days of the date of the decree to be entered herein.

The court notes that none of the interested parties have otherwise objected to the account. Thus, the account is hereby approved. The commission of the Public Administrator (SCPA 2307 [1]) and the expenses of his office (SCPA 1207 [4]) are approved subject to audit.

The decree shall discharge the surety and shall authorize the Public Administrator to distribute the balance of the net estate, after payment of the above fees, in accordance with EPTL 4-1.1 as follows:

One fifth (1/5) of the net estate to decedent's sole surviving uncle, Willie Frankling Drinks.

Four fifths (4/5) of the net estate shall be divided into nine (9) equal shares, which is equivalent to 4/45ths each, or approximately 8.88% each, and one such share shall be distributed to each of decedent's nine first cousins who were living at the time of her death, (1) Preston Drinks, (2) Aleda Morgan, (3) Acquaneeta Grant, (4) Ann Henry; (5) Gussie Mae Simmons, (6) Charlie Mae Mickens; (7) Eula Hadley; (8) Alexander Perrie Nails; and (9) Mae Ethel Anderson, whose share shall be paid to her estate.

This constitutes the decision of the court.

The Public Administrator is directed to settle a decree within 60 days hereof and file the proposed decree with an affidavit bringing the account down to date.

Dated: September 24, 2009

JOHN B. RIORDAN
Judge of the
Surrogate's Court