

APPENDIX A

Surrogate's Court Procedure Article 12: Public Administrators in the Countries of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester and County Treasurers Appointed Administrators

ARTICLE 12 PUBLIC ADMINISTRATORS IN THE COUNTIES OF ERIE, MONROE, NASSAU, ONONDAGA, SUFFOLK AND WESTCHESTER AND COUNTY TREASURERS APPOINTED ADMINISTRATORS

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1. Definitions

Whenever used in this article the term public administrator, unless otherwise required by the context or unless a contrary intent is expressly declared, shall mean the public administrators of the counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester.

2. Office established; appointment of successor

The office of public administrator hereby is continued. The public administrator shall continue in office unless removed by the court. Vacancy in such office for any reason shall be filled by the court of the county by appointing a public administrator for the county immediately. In the counties of Westchester, Nassau and Suffolk, the court may appoint a deputy public administrator who shall act generally for and in place of the public administrator whenever required.

3. General bond

Except in the counties of Erie, Monroe and Onondaga the person so appointed shall execute a bond with sureties to be approved by the court to the county in a penal sum to be fixed by the board of supervisors on recommendation of the court and conditioned for the faithful discharge of the duties of his office and that he will fully and correctly account for and pay over all moneys and property which may come into his hands as public administrator according to law, which bond shall be filed with the clerk of the county and the premium thereon shall be a county charge. The bond in the counties of Erie, Monroe and Onondaga shall be in a penal sum fixed by the court and the premium shall be borne personally by the public administrator.

4. Separate bonds

Except in the counties of Erie and Onondaga the public administrator upon entering upon his duties in every estate the gross assets of which exceed the monetary amount defined as a small estate pursuant to subdivision 1 of section 1301 of this act, shall file a bond in a penal sum to be fixed by the court not less than the value of the personal property and the estimated gross rents for 18 months of the real property of which the decedent died seized or possessed and of the probable amount to be received by reason of any right of action granted to a fiduciary for damages for the wrongful death of the decedent. The public administrator in the counties of Erie and Onondaga shall file a bond in every estate in which he shall be appointed or be entitled to act pursuant to section 1211 of this article after the effective date of this act in a penal sum fixed by the court to be determined by such proof as the court deems proper. The bond must be conditioned that the public administrator or his successor will faithfully discharge the trust reposed in him as such and obey all lawful decrees and orders of the court touching the administration of the estate committed to him. The cost of the bond shall be borne by the estate in each instance.

5. Vacancy in office; delivery of money, papers and effects; discharge

Except in the counties of Erie and Onondaga the public administrator upon entering upon his duties in every estate the gross assets of which exceed the monetary amount defined as a small estate pursuant to subdivision 1 of section 1301 of this act, shall file a bond in a penal sum to be fixed by the court not less than the value of the personal property and the estimated gross rents for 18 months of the real property of which the decedent died seized or possessed and of the probable amount to be received by reason of any right of action granted to a fiduciary for damages for the wrongful death of the decedent. The public administrator in the counties of Erie and Onondaga shall file a bond in every estate in which he shall be appointed or be entitled to act pursuant to section 1211 of this article after the effective date of this act in a penal sum fixed by the court to be determined by such proof as the court deems proper. The bond must be conditioned that the public administrator or his successor will faithfully discharge the trust reposed in him as such and obey all lawful decrees and orders of the court touching the administration of the estate committed to him. The cost of the bond shall be borne by the estate in each instance.

6. Staff; office; counsel

Each public administrator, except in the counties of Erie and Onondaga, shall appoint such assistants and employees at such compensation as may be provided by the board of supervisors of his county.

Each such county except Erie, Monroe and Onondaga shall provide suitable office space, accommodations and storage space for its public administrator which shall be located conveniently to the court. The board of supervisors of the counties of Monroe and Onondaga may allow the public administrator a reasonable amount for the operation of his office and any allowance presently provided by the board shall continue unless modified or altered by it.

Each public administrator may employ counsel in any estate, whose fees and expenses therein shall be approved by the court of his county and shall be charged against the estate.

The court may depute any assistant or employee in the office of the public administrator or other suitable person to hold the title of deputy public administrator who shall perform in the absence of the public administrator such services and shall possess such powers as may be prescribed and vested in him by the court. The deputy public administrator so appointed shall continue in office until removed by the court. In case of vacancy in office for any cause the court may fill it by appointing a suitable assistant or employee as deputy public administrator to take office immediately upon his appointment and qualification. The appointment shall be in writing and shall be filed in the office of the court. Except in the counties of Erie and Onondaga such deputy public administrator shall not receive any extra compensation for acting unless authorized by the board of supervisors.

7. Salary; commissions; retention of commissions

Except as herein provided the public administrator shall receive an annual salary to be fixed by the board of supervisors of his county for the administration of all estates.

The public administrator of the counties of Erie and Onondaga shall be entitled to retain from all moneys or property which come into his hands, after deducting all reasonable and necessary expenses, the same commissions as are now allowed by law to a fiduciary other than a trustee.

If he be a licensed attorney-at-law he shall receive as his compensation, in addition to his commissions, the legal fees as attorney for the estate as may be allowed by the court together with his reasonable and necessary expenses and disbursements which shall be a charge against the estate in each instance.

The public administrator of the county of Monroe, if he be a duly licensed attorney-at-law shall receive no salary and may act as his own counsel and shall receive as his compensation such legal fees as the attorney of the estate as may be allowed by the court together with his reasonable and necessary expenses and disbursements which shall be a charge against the estate in each instance. If he shall not be an attorney-at-law he shall be compensated as is provided for in subdivision 1.

On the settlement of the account of the public administrator in each instance, except as provided in subdivisions 2 and 3 the court may allow his reasonable and necessary expenses and disbursements and in addition, in the counties of Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester, a reasonable amount for the expenses of his office, to be fixed by the court. In addition thereto he shall be entitled to receive commissions on all moneys or property of any decedent or the proceeds of a cause of action for wrongful death which may come into his hands as provided for a fiduciary other than a trustee.

Except as hereinabove provided the public administrator shall not receive to his own use any remuneration in addition to his salary for his services and he shall pay to the treasurer of his county all commissions and costs received by him. Such payments shall be made monthly and shall be accompanied by a sworn statement in such form as the comptroller of his county shall prescribe showing in detail the commissions and costs received and allowed to him.

8. Deposit of funds; report to court; annual audit

All moneys collected shall be deposited by the public administrator in a state or national bank, savings bank, savings and loan association or trust company and shall, in case of the insolvency or voluntary or involuntary liquidation of the depository be entitled to equal priority of payment with that given by law to deposits of moneys by the state superintendent of banks.

The public administrator or chief fiscal officer of a county appointed administrator of an estate shall file monthly with the surrogate of the county where appointed a statement of such of his accounts as have been closed or finally settled in such form as the surrogate may prescribe. Each public administrator or chief fiscal officer of a county appointed administrator of an estate shall file every six months with the surrogate of the county where appointed all estate accounts that are unsettled, stating the date the estate was opened, the gross assets of the estate and a list of current charges and disbursements of the estate.

Each public administrator shall conduct an annual audit of his office by an independent certified public accountant and such a report based on such audit shall be filed with the surrogate of the county where appointed, the attorney general of the state of New York and the comptroller of the state of New York. The audit shall be conducted in compliance with generally accepted government audit standards, and shall include a review of the performance of the office with respect to the guidelines and uniform fee schedules established by the administrative board. The costs of such annual audit and report shall be included annually in the budget of the county of appointment; provided however that any expenses of the public administrator's office permitted pursuant to section 1106 of this act may be used to pay the costs of such audit.

9. Reports of deaths and burials

Every person keeping a hotel, boarding or rooming house in any of the counties to which this article applies shall report to the public administrator of his county information concerning every person not a member of his family who shall die in his hotel, boarding or rooming house, within 12 hours after such death.

The chief medical examiner or such similar public officer of each county to which this article applies within 12 hours after an inquest shall report in writing to the public administrator of his county, information, if known, regarding the decedent.

Every undertaker shall file a report in writing with the public administrator of his county upon the form provided by him, within 12 hours after receiving an order for the burial by him of any decedent having no known distributees or having been survived only by cousins or relatives by marriage, such information regarding the decedent which he may have.

10. Application for letters; when court may direct probate

The public administrator shall have the power to apply for and receive letters as defined in this act. The court may, pursuant to 1402, direct the public administrator to present a petition for the probate of a will at any time after it is filed.

11. Letters not required; notice to be filed

Without the issuance of letters the public administrator in virtue of his office shall have all powers of a fiduciary of a decedent's estate whenever the gross assets of an estate do not exceed in value the monetary amount defined as a small estate pursuant to section 1301 of this act.

Upon commencing to act pursuant to this section the public administrator shall file with the court a statement showing the name and domicile of the decedent, the date and place of death and the names, addresses and relationship of any known distributees. The filing of such notice shall have the same effect as the issuance of formal letters.

In the event the aggregate sum of the assets of an estate in which the public administrator commences to act pursuant to subdivision 1 shall exceed the monetary amount defined as a small estate pursuant to section 1301 of this act the public administrator shall forthwith apply for letters and file separate bond in the estate.

In the event the public administrator acting in any estate pursuant to subdivision 1 shall ascertain the names and whereabouts of persons believed to be distributees in the estate, then and in that event he shall forthwith file a supplemental statement pursuant to subdivision 2.

12. Powers before issuance of letters

Before letters are issued to him and subject to the provisions of section 1128 of this act the public administrator is authorized to:

Take possession of, collect and secure the personal property within his county of any person who shall die intestate or testate either within this state or elsewhere or whose property shall arrive within the county after his death whenever there is no person eligible to act as fiduciary of an intestate or of a testator if the executor named in the will refuses or neglects to act or is dead or if his whereabouts are unknown or if he is not eligible to receive letters.

Take possession of, manage and collect the rents of the real property of an intestate whose distributees are unknown or whose distributees, if known, are non-domiciliaries, or of a testator, if the executor named in the will refuses or neglects to act or is dead or if his whereabouts are unknown or if he is not eligible to receive letters.

Make necessary funeral arrangements for the decedent and to pay the reasonable charges therefor.

Institute an inquiry as provided by 1216.

Sell, as and when authorized by the court, perishable property or such other property of the decedent as the preservation of the estate requires.

Defray the expenses of the foregoing activities and the expenses incidental to his application for letters.

13. General Powers

The public administrator shall have all the powers specifically granted herein and also the powers given by law to a fiduciary of a decedent's estate.

In addition to the foregoing grant of powers and without limitation thereon and subject to the provisions of section 1128 of this act he is authorized to

(a) Sell at public auction the personal property of the decedent delivered to him by any county officer or department, but such sale shall not be had until notice of the public auction shall be published once a week for two consecutive weeks in a newspaper published in the county, the first publication to be not less than 20 days prior to the public auction.

(b) Retain marketable securities beyond 4 months after he has commenced to act as fiduciary of the estate when authorized to do so by order of the court.

(c) File in the court after the expiration of 7 months from the time he commences to act as fiduciary of the estate an informative account in estates in which the gross value of the assets accounted for is less than \$5,000 and a copy of such account shall be mailed by certified mail, return receipt requested, to each of the persons entitled to receive process upon an accounting proceeding provided the names and addresses of such persons be known to him. Unless objection or claim be properly filed in the court within 30 days from mailing such account a final decree settling his account may be entered without further notice or proceedings and with the same effect as in an accounting proceeding and he shall be entitled to the commissions, costs and allowances allowed him by the court in the decree.

(d) Pay for the use and benefit of an infant distributee or legatee who has no guardian the share or legacy due him if not exceeding \$5,000 by payment thereof in his discretion to a parent or to an adult, competent person with whom the infant resides.

(e) Pay to the comptroller of the state of New York the balance of any moneys or other assets in his hands remaining after settlement of his accounts, formally or informally, where payable to unknown persons or to known persons whose residences are unknown.

(f) Apply ex parte or upon such notice as directed by the court for an order or decree in any appropriate proceeding requiring the county treasurer to return to the public administrator any money or unliquidated assets theretofore deposited by him and remaining in the treasury of the county for the account of unknown persons or of known persons whose domiciles are unknown and upon further order of the court to make distribution of such recovered funds to the persons entitled thereto.

14. Service of process

The public administrator is authorized to make service of process on creditors, legatees or distributees who are non-domiciliaries of his county by certified mail, return receipt requested, whenever the court by order made in any proceeding shall direct. The provisions of 308 notwithstanding, process so served shall be valid if made at least 30 days before the return date thereof.

15. When authorized to receive process or appear

The public administrator may be authorized by the court to receive process or other notice as a necessary party in the following proceedings:

(a) Any proceeding pending in the court where service of process or notice of or in behalf of any known or unknown persons is directed by the court or where the court by order directs the public administrator to appear therein.

(b) Every proceeding for the appointment of an administrator or for the probate of a will where it appears that the persons applying or named in the petition are not all of the distributees of the decedent or where it appears that such persons are related to the decedent in the fourth degree of consanguinity or are more remotely related.

(c) Every proceeding to effect distribution of moneys or property to be deposited or deposited for the account of unknown persons or of infants or incompetents, of known persons whose residences are unknown or of known persons whose shares were deposited pursuant to 2218. In any such proceeding when so authorized the public administrator shall be deemed an interested party.

In all such proceedings the public administrator, in his discretion, may take any action in behalf of such person or persons as a party interested might.

Whenever a public administrator acts pursuant to this section he shall be allowed by the court his proper expenses and his counsel shall be allowed his reasonable fee. Such expenses and fee shall be payable either from the estate generally or from the shares or interests of the respective persons represented by the public administrator, as may be directed by the court.

16. Inquiry and subpoena

The public administrator may institute an inquiry in any case in which he is authorized to act as to any matter affecting the estate of the decedent. For that purpose he may issue a subpoena or subpoena duces tecum in the name of the court either before or after the issuance of letters. Failure to comply with the directions of the subpoena or subpoena duces tecum shall be punishable as a contempt of court.

17. When superseded; accounting authorized

When the public administrator in virtue of his office has been superseded he shall deliver to the fiduciary who has superseded him all the personal property belonging to the estate which he has in his possession after deducting therefrom his expenses, costs and commissions as ordinarily allowed by the court upon the entry of a decree upon final accounting.

When letters issued to the public administrator have been revoked he shall institute a proceeding for the judicial settlement of his account.

18. Appeal; bond

The public administrator is authorized to appeal from any decree, order or judgment affecting an estate in his charge or in which he is a party.

No bond on his part shall be required to stay execution of the order, decree or judgment from which an appeal is taken.

19. Chief fiscal officer of county appointed administrator; qualifications; fees.

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 and 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. He may employ an attorney to act for him as such administrator other than the one, if any, appointed to act as the county attorney or the official attorney of such chief fiscal officer. Where the administrator appointed as above provided leaves office, resigns or is removed from office, or dies, his successor in office, with respect to each of the estates of which his predecessor in office was appointed administrator, shall apply to be appointed administrator de bonis non, within one hundred twenty days after assuming office. The chief fiscal officer shall be subject to the provisions of section 1128 as it pertains to his administrator's duties.