

INTERIM REPORT AND GUIDELINES
OF
THE ADMINISTRATIVE BOARD
FOR THE OFFICES
OF
THE PUBLIC ADMINISTRATORS
PURSUANT TO
SURROGATE'S COURT PROCEDURE ACT
SECTION 1128

Approved by the Board
October 3, 2002

Pursuant to Section 1128 of the Surrogate's Court Procedure Act ("SCPA"), the Administrative Board for the Offices of the Public Administrators hereby enacts the following amendment for the operations of the Public Administrators governed by Article 11 of the SCPA.

A. Compensation of Counsel

1. In the absence of extraordinary circumstances, the Public Administrators shall require their counsel to limit their request for compensation in any estate to an amount not to exceed a fee computed under the following schedule:
Schedule of sliding scale maximum legal fee based upon the gross value of the estate ("total charges" reported in the account)

<u>Gross Value</u>	<u>Percentage</u>
First \$750,000.	6
Next \$500,000.	5.5
Next \$250,000.	5
Next \$500,000.	4.5
Next \$3,000,000.	3
Over \$5,000,000.	1.5

2. The Public Administrators shall require their counsel to support their request for compensation with "an affidavit of legal services setting forth in detail the services rendered, the time spent, and the method or basis by which requested

compensation was determined" (SCPA 1108[2][c]).

3. These guidelines shall take effect immediately but shall not be applied to any estate where letters issued to the Public Administrator prior to October 3, 2002

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The adopted schedule provides the "customary fee charged...for similar services" in the overwhelming majority of estates that are administered by the Public Administrators and establishes a cap on the legal fees requested by counsel in these estates.

The amount of legal fees presently requested in most matters by the respective counsel for each of the Public Administrators is only one of the factors that the Board considered in enacting the schedule. The Board also considered that it is well settled that it is not appropriate to base a legal fee in this area of the law solely on a "time- clock" approach and, in some instances, time might be the least important factor to be considered (Matter of Brehm, 37 AD2d 95; Matter of Snell, 17 AD2d 490; Matter of Kentana, 170 Misc. 663). Additionally, in arriving at a fair fee for the services performed, the Board balanced the fact that each estate pays for its legal services against the economic reality that most estates administered by the Public Administrators are relatively modest and that the Public Administrators would be unable to retain competent counsel to provide legal services in many of these estates if counsel did not have the opportunity to receive more significant compensation in the more substantial estates. The "rule of thumb"

that the schedule adopts is a product of the input and the consensus of all members of the Board which includes representatives from the offices of the Attorney General and the Comptroller as well as several Surrogates and attorneys in private practice.

The Board in enacting the schedule recognized that it is left to the sound discretion of the Surrogate to fix the reasonable compensation of counsel to be paid from each estate based upon "the time and labor required, the difficulty of the questions involved, the skill required to handle the problems presented, the lawyer's experience, ability and reputation, the amount involved and benefit resulting to the estate from the services, the customary fee charged by the bar for similar services, the contingency or certainty of compensation, the results obtained, and the responsibility involved" (SCPA 1108[2][c]). The enacted schedule does not in any way impinge upon either the rights of interested parties with regard to counsel fees or the jurisdiction of the court to determine such issue. It is noted that SCPA 1108 (2)(c) requires that counsel for the Public Administrators submit an affidavit of legal services to support their requests for compensation and the enacted guidelines remind and direct the Public Administrators to have their counsel file the affidavit of legal services required by the statute.

The Board did not enact guidelines for the counties governed by SCPA Article 12 because the differences in the counties make a schedule impractical. B. Education

With the assistance of the Comptroller's office, the Board held an all-day conference for the Public Administrators and staff on September 25, 2002. The purpose of this seminar was not only to review with the Public Administrators the

existing guidelines and their fiscal responsibilities but also to give them an opportunity to exchange ideas and to make suggestions to the Board at the afternoon session. The Board is optimistic that it will be able to establish similar events in the different regions of the State on at least an annual basis.