

**AGENDA**  
**JEFFERSON COUNTY COMMISSION**  
**SPECIAL SESSION**  
**WEDNESDAY, MARCH 23, 2011**  
**10:00 A.M.**

County Commission Meeting Room  
located at the Old Charles Town Library  
200 E. Washington Street, Charles Town, WV

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**CALL TO ORDER**

**PLEDGE OF ALLEGIANCE**

**PRESENTATIONS:**

1. 10:00 a.m. Lynn Fields and Karen Olden - Probate Office  
- Hearing on Petition for Probate in Solemn Form of the Last Will and Testament of the Estate of Mildred Olga Valentine, deceased - Discussion/Action

—————AFTERNOON SESSION—————

2. 1:30 p.m. Public Hearing - to Approve the Levy Estimate for Fiscal year 2012 - Discussion/Action  
- Public comment will be received concerning the County's Budget

IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA  
IN RE: ESTATE OF MILDRED OLGA VALENTINE, DECEASED

ORDER

This 10th day of February, 2011, came Charles B. Howard, the Petitioner in this matter, in person and by his attorney, John K. Dorsey, Esquire; Mary Strickland, Frances Harrell and Ann Sheffield, in person and by their attorney, Robert Barrat, Esquire; Henry W. Morrow, Jr., Esquire, guardian ad litem in this matter; and Stephan V. Groh, Esquire, Assistant Prosecuting Attorney for Jefferson County; upon the prior filing by Charles B. Howard of his Petition for probate in solemn form of the Last Will and Testament of Mildred Olga Valentine, upon notice duly given to all interested parties for the hearing of the Petition.

The Commission proceeded to receive a preliminary report from S. Lynn Fields, Deputy Probate Clerk and Stephan V. Groh, Assistant Prosecuting Attorney, concerning the status of the Petition and a pending motion of Robert Barrat for the disqualification of Charles B. Howard, Esquire, from any further participation in this action.

Prior to the consideration of the Petition and Mr. Barrat's motion, the Commission temporarily recessed to allow the Assistant Prosecuting Attorney the opportunity to seek advice and counsel as to the presence of any conflict of interest, actual or perceived, that would prohibit the Jefferson County Prosecuting Attorney, or any of his assistants, from providing legal counsel to the Commission in light of a member of the office being a proponent of

the Will.

Upon expiration of the recess, Mr. Groh reported that he had received informal advice from the West Virginia Office of Disciplinary Counsel that under the factual situation he had presented to them the Jefferson County Prosecuting Attorney, and any assistant thereunder, would have a conflict of interest. Thereupon, the Assistant Prosecuting Attorney was granted leave to withdraw as counsel to the Commission.

Being without counsel, the Commission on its own motion unanimously elected to continue the matter until such time as the Commission is able to retain special counsel to advise it in this matter.

The Commission then considered the need for the appointment of a fiduciary for the estate in the absence of the appointment of an executor or administrator. Upon a motion from the guardian ad litem, with the acquiescence of Mr. Barrat coupled with a request for the appointment of the Sheriff, it is hereby **ORDERED** that, pending the grant of letters of administration, the Sheriff of Jefferson County is hereby appointed as Curator of the Estate of Mildred Olga Valentine, with all powers, duties, authorities and responsibilities as set forth in West Virginia Code §44-1-5.

It further appearing to the Commission that the Petition for Probate in Solemn Form is ripe for hearing, it is hereby **ADJUDGED** and **ORDERED** that this matter shall be brought on for a hearing on its merits on the 23<sup>rd</sup> day of March, 2011, at 10:00

o'clock, a.m., in the Meeting Room on the lower level of the Charles Town Library at 200 East Washington Street, Charles Town, West Virginia 25414, with access at the side entrance on Samuel Street.

The Clerk will enter the foregoing as of the day and year first above written and will transmit an attested copy thereof to John K. Dorsey, Esq., P.O. Box 42, Charles Town, WV 25414; Robert Barrat, Esq., 308 S. Queen Street, Martinsburg, WV 25401-3232; Henry W. Morrow, Jr., Esq., P.O. Box 459, Charles Town, WV 25414; and the following parties of record:

Susan Smith, 3617 Hurst Drive NE, Milledgeville, GA 31061-7997;

Peggy Dwyer, 711 Ramon Drive, Pittsburgh, PA 15238;

Georgia Z. Anderson, 7262 Cold Harbor Road, Apt. 101,  
Mechanicsville, VA 23111;

Mary Z. Strickland, 8810 N.W. 4th Street, Pembroke Pines, FL 33024;

Emily T. Pritchett, 1130 N. Grady Avenue, Lakeland, FL 33805;

Ann Z. Sheffield, 256 S. Beaver Dam Road, Waverly, VA 23890;

Frances A. Harrell, 210 E. Main Street, Waverly, VA 23890;

Claudia Clatterbuck, 12711 Harpers Ferry Road, Purcellville, VA  
20132;

Amanda Nay Hubert, 5785 Bencrest Way, Haymarket, VA 20169;

Janeen Smith Garpow, 241 Eagles Rest, Milledgeville, GA 31061;

Andrew Clark, 200 Stevenson Square, Alexandria, VA 22304;

The Holy Rosary Catholic Church, 35 Franklin Street, Buckhannon, WV  
26201-2253;

St. James Catholic Church, 49 Crosswinds Drive, Charles Town, WV  
25414;

St. Francis of Assisi Catholic Church, 115 1st Avenue, Brunswick,  
MD 21716;

St. Jude Children's Research Hospital, 501 St. Jude Place, Memphis,  
TN 38105;

Myrna Ryan, P. O. Box 682, Charles Town, WV 25414;

Omaha Home for Boys, 4343 N. 52nd Street, Omaha, NE 68104;

The City of St. Jude, 2048 W. Fairview Avenue, Montgomery, AL  
36108;

Missionary Oblates of Mary Immaculate, 9480 N. De Mazenod Drive,  
Belleville, IL 62223;

Salesian Missions, 2 Lefevre Lane, New Rochelle, NY 10801-5710;

Arthur L. Ryan, 208 Cheeskogili Lane, Loudon, TN 37774.

COUNTY COMMISSION OF JEFFERSON COUNTY  
WEST VIRGINIA

BY: \_\_\_\_\_  
Its President

IN THE JEFFERSON COUNTY COMMISSION, WEST VIRGINIA

IN RE: ESTATE OF MILDRED VALENTINE

MOTION TO DISQUALIFY EXECUTOR / CURATOR CHARLES B. HOWARD  
ESQ. FROM ANY FURTHER PARTICIPATION IN THIS ACTION:  
NOTICE OF HEARING

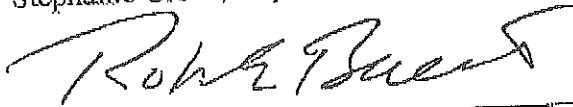
Now comes Mary Strickland, Frances Harrell, and Ann Sheffield, sisters and nieces (hereafter Nieces) of Decedent Mildred Valentine, (hereafter Decedent) by counsel Robert Barrat, Esq., WVASB # 6550, and respectfully move this Honorable Commission for the disqualification of Charles B. Howard, Esq., from any further participation as either executor or curator in this action. In support of this Motion, the Nieces state the following:

1. The Nieces have received and reviewed the Petition to Probate a Will in Solemn Form filed in this action, which Petition was signed by Charles B. Howard Esq. as the Executor of the Will of Mildred Valentine on or about the 12<sup>th</sup> of November 2010.
2. Charles B. Howard, Esq., an attorney licensed to practice in West Virginia, WVASB # 1794, prepared a document referred to in the Petition as the Will of Decedent dated June 18, 2002.
3. Charles B. Howard Esq. was named Executor in the 2002 Will and no alternate or successor Executor was named.
4. Charles B. Howard Esq. prepared a General Durable Power of Attorney executed by Decedent on December 16, 2002. That document was recorded March 7, 2008 in the Office of the Clerk of the County Commission of Berkeley County, W.Va. in Deed Book 1047 at Page 636. Within that document Charles B. Howard Esq. was named as the agent and attorney-in-fact for Decedent.
5. Upon information and belief Charles B. Howard Esq. prepared a document

CERTIFICATE OF SERVICE

A true and correct copy of this MOTION TO DISQUALIFY was either emailed, faxed or mailed by regular First Class U.S. Mail, postage prepaid to the following parties at their addresses as listed below on this the 7<sup>th</sup> of February 2011:

Susan Smith 3617 Hurst Drive NE, Milledgeville, GA 31061-7997  
Peggy Dwyer, 711 Ramon Drive, Pittsburgh PA 15238  
Georgia Anderson, 7262 Cold Harbor Road, Apt 101, Mechanicsville, VA 23111  
Emily Pritchett, 1130 N. Grady Ave., Lakeland, FLA 338005  
Claudia Clatterbuck, 12711 Harpers Ferry Road, Purcellville, VA 20132  
Amanda Hubert 5785 Bencrest Way, Haymarket, VA 20169  
Janeen Garpow, 241 Eagles Rest, Milledgeville, GA 31061  
Andrew Clark, 200 Stevenson Square, Alexandria, VA 22304  
Louise Hopkins, 7131 Mount Vista Road, Kingsville, MD 21087-1727  
The Holy Rosary Cath Church, 35 Franklin St., Buckhannon, VA 26201-2253  
St James Catholic Church, 49 Crosswinds Drive, Charles Town, WV 25414  
St Francis of Assisi Cath. Church, 115 1<sup>st</sup> Ave, Brunswick, MD 21716  
St Judes Childrens Hospital, 501 St Jude Place Memphis, TENN 38105  
Myrna Ryan, POB 682, Charles Town, WV 25414  
Omaha Home for Boys, 4343 N 52<sup>nd</sup> Street, Omaha, NE 68104  
The City of St. Judge, 2048 W Fairview Ave., Montgomery, ALA 36108  
Missionary Oblates of Mary Immaculate, Missionary Association of Mary Immaculate,  
9480 N. De Mazenod Drive, Belleville, TENN. 62223  
Salesian Missions, 2 Lefevre Lane, New Rochelle, NY 10801-5710  
Henry Morrow, Jr., GAL, POB 459, Charles Town, WV 25414, Fax 304-725-5056  
John Dorsey, Esq., POB 42, Charles Town, WV 25414 Fax 304-728-1130  
Hon. Jennifer S. Maghan, POB 208, Charles Town, WV 25414, Fax 304-728-1957  
Hon. Lyn Widmyer, 100 E. Wash St., Charles Town, WV 25414, Fax 304-725-7916  
Stephanie Grove, Esq., APA, POB 729, Charles Town, WV 25414, Fax 304-728-3293



ROBERT E. BARRAT, ESQ.

Prosecutor in Jefferson County experienced in land use proceedings. The case went on to state in dicta:

This Court recently stated in *State ex rel. Cosenza v. Hill*, 216 W.Va. 482, 488, 607 S.E.2d 811, 817 (2004) (upholding a disqualification order even though there was no actual evidence of any impropriety): As the repository of public trust and confidence in the judicial system, courts are given broad discretion to disqualify counsel when their continued representation of a client threatens the integrity of the legal profession.

13. W.Va. Rules of Professional Conduct, Rule 1.11. Successive government and private employment addresses conflicts in successive government and private employment. That rule generally recognizes conflicts that arise between private and governmental employment and generally prohibits and sanctions such participation. Mr. Howard would have a similar conflict acting as Executor while serving as Prosecutor and appearing before this County Commission in further Solemn Form proceedings. His employment in both areas would be concurrent, and not successive as contemplated in the rule.
14. Also see *State ex rel. Sowa v. Sommerville*, 280 S.E.2d 85, 167 W.Va. 353 (W.Va., 1981) which discusses the following concerning prosecutorial conflicts: Canon 9 of the Code of Professional Responsibility states that a lawyer should **avoid even the appearance of impropriety**. For the partners or associates of a prosecuting attorney or his assistants to represent criminal defendants in other state courts or in federal courts gives the appearance of impropriety. 2 W.Va.State Bar Journal No. 4 (1976). (Bold added)  
  
The Nieces would suggest Mr. Howard's participation as attorney for Decedent, executor in both Wills, curator, subscribing witness, Petitioner, attorney in fact and Prosecutor also gives the appearance of impropriety in these proceedings.
15. There are numerous existing conflict and potential conflict scenarios the Nieces could now raise to support the disqualification of Charles B. Howard Esq. from any further involvement in this matter. It is their Motion before this tribunal Charles B. Howard, Esq. now be disqualified and removed from any further proceedings as their remedy for this matter to proceed regularly, as follows W.Va.

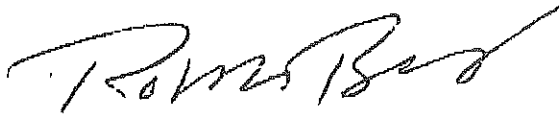
referred to within the Petition as the Will for Decedent dated August 18, 2004 however no original Will has been filed with the clerk of the county court (now County Commission) as required by W.Va. Code 41-5-1.

6. Upon information and belief Charles B. Howard Esq. was named the Executor within the 2004 Will and no alternate or successor Executor was named.
7. Upon information and belief Charles B. Howard Esq. was a subscribing witness to the 2004 Will.
8. That upon information and belief Charles B. Howard Esq. serves the Jefferson County Commission as a full time Assistant Prosecutor, with an office in the Judicial Center, POB 729, Charles Town, W.Va. Upon further information and belief, Charles B. Howard Esq. also serves as the Prosecuting Attorney for the City of Ranson, W.Va.
9. The Jefferson County Commission is counseled and given legal advice from the Office of the Prosecutor of Jefferson County as follows W.Va. Code 7-4-1 et seq.
10. That there has not been an accounting or inventory of the Estate of Decedent filed with the Clerk of the County Commission available for review from a recent search of the that website as of the date of this filing.  
(<http://jeffersoncountyclerkwv.com>)
11. That Charles B. Howard now has non-waivable conflict(s) in proceeding or participating any further in this matter as a result of his several roles in the Estate of Decedent, and in considering his position of employment with Jefferson County Prosecutor's Office. As a result he should be disqualified.
12. There is ample legal authority upon which to rely to disqualify Mr. Howard. In State of West Virginia ex rel. Jefferson County Board of Zoning Appeals, Petitioner, v. Honorable Christopher C. Wilkes, Judge of the Circuit Court of Jefferson County; Highland Farms, LLC; and Thorn Hill, LLC, Respondents, 655 S.E.2d 178 (2007) the W.Va. Supreme Court recently addressed conflicts another

Code 44-1-9.

16. The Nieces further move this Honorable Commission for the Sheriff of Jefferson County or some other neutral and responsible party to be appointed at least temporarily as administrator to receive and safeguard the property, file an inventory of all the assets of the Estate of Decedent Mildred Valentine and determine the heirs and beneficiaries of this estate, W.Va. Code 44-1-11.
17. The Nieces now give formal Notice they would intend to offer this Motion on **Thursday the 10<sup>th</sup> of February 2011 at 10:15 AM** before the Honorable County Commission of Jefferson County, W.Va., Charles Town Library Meeting Room, 200 East Washington Street, Charles Town, W.Va. 25414 or as soon thereafter as practical to be heard.

Mary Strickland, Frances Harrell, and Ann Sheffield by counsel



ROBERT E. BARRAT, ESQ.

WVASB # 6550

Counsel for Nieces Mary Strickland, Frances Harrell and Ann Sheffield

308 S. Queen St

Martinsburg, W.Va. 25401

Tel 304-263-4315

RBARRAT@EARTHLINK.NET

Commission Office Use Only	
Date on Agenda:	2/10/2011
Appt Time or New Business:	<del>10:15 AM</del> 10:15

AGENDA REQUEST FORM

REQ 2  
DELAY  
BY  
ONE MONTH

Name: Lynn Fields or Karen Olden

Department or Entity: Probate Office

Estimation of amount of time needed for appointment: 30-60 minutes

Date Requested – 1<sup>st</sup> Choice: February 10<sup>th</sup>, 2011

Date Requested – 2<sup>nd</sup> Choice: February 17<sup>th</sup>, 2010

If a specific date is needed, please provide reason for specific date:

Subject: **Probate in solemn form the Last Will and Testament of Mildred Valentine**

Please provide the County Commission with a description of your request or presentation, including any background information: **On December 16<sup>th</sup>, 2010 per an order signed by Lyn Widmyer, Henry Morrow, Jr. was appointed guardian ad litem for the estate of Mildred Valentine. On February 10<sup>th</sup>, John Dorsey, who represents the executor of the estate, Charles Howard, will petition the county commission to permit the probating in solemn form the Last Will and Testament of Mildred Valentine.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **The probate office has no recommended course of action. We would defer to the commission and legal counsel's decision.**

Attachments: **Petition to Probate in Solemn Form, Last Will and Testament(s) of Mildred Valentine**

## Lynn Fields

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**From:** John K. Dorsey [jdadmin@jddcpa.com]  
**Sent:** Friday, December 03, 2010 2:50 PM  
**To:** 'Lynn Fields'; 'KAREN OLDEN'; sgrove@jeffersoncountywv.org; 'Tim Boyde'; 'Sandy McDonald'  
**Subject:** RE: AGENDA REQUEST FORM

Dear Lynn and Mr. Boyde:

I wish to ensure that there is no misunderstanding of the request for a hearing date on the Mildred Valentine Estate. Ms. Valentine died a resident of Jefferson County, West Virginia, in January, 2010. After a thorough and exhaustive search by her attorney in fact, Charles B. Howard, Mr. Howard retained me to assist him in the probate of Ms. Valentine's Will, and the administration of her estate. To that end, I lodged a Petition for Probate in Solemn Form with the Jefferson County Clerk's Probate Office on November 16, 2010. At that time I also tendered a proposed order for the County Commission to consider and enter. The order requires two actions by the Commission: (1) to set a date for a hearing of the Petition; and (2) to appoint a guardian ad litem for unknown heirs. With regard to the guardian ad litem, I suggested Henry W. Morrow, Jr., as a potential candidate. For purposes of determining an appropriate hearing date, I suggested that it be a date at least 6 weeks after the date the Commission enters this preliminary order since we will be providing notice to all interested parties, and those parties most likely will be entitled to a 30 day notice. I anticipate that the presentation of evidence by Mr. Howard should not exceed 1 hour, but I am not aware at this time of the defenses and arguments that may be presented by the potential beneficiaries of the estate (and will not be aware of those prior to service upon those parties following the entry of this preliminary order).

Since more than 2 weeks have elapsed since I filed this Petition, and since the only decision to be made at this point is an appropriate time for the hearing, I respectfully request that this matter be placed before the Commission at its next regularly scheduled meeting.

Thank you for your consideration,

John K. Dorsey, Attorney at Law  
104 West Congress Street  
P.O. Box 42  
Charles Town, WV 25414

(304) 728-6000  
(304) 728-1130 FAX

**Confidentiality Disclosure:** The information in this email and in attachments is confidential and intended solely for the attention and use of the named addressee(s). This information may be subject to legal, professional or other privilege, or may otherwise be protected by work product, immunity or other legal rules. This information is the property of John K. Dorsey, Attorney at Law. It must not be disclosed to any person without our authority. If you are not the intended recipient, or a person responsible for delivering it to the intended recipient, you are not authorized to and must not disclose, copy, distribute, or retain this message or any part of it. If you have received this communication in error, please notify us immediately by return fax or by e-mail to [jdadmin@jddcpa.com](mailto:jdadmin@jddcpa.com), and destroy this communication and all copies thereof, including all attachments.

**Circular 230 Disclosure Notice.** To insure compliance with requirements imposed by the Internal Revenue Service, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code or any state or local tax law to which a governmental requirement similar to Circular 230 applies.

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**From:** Lynn Fields [<mailto:lfields@jeffersoncountywv.org>]  
**Sent:** Thursday, December 02, 2010 1:49 PM

IN THE COUNTY COMMISSION OF JEFFERSON COUNTY, WEST VIRGINIA

IN RE: ESTATE OF MILDRED OLGA VALENTINE

PETITION TO PROBATE A WILL IN SOLEMN FORM

COMES NOW your Petitioner, Charles B. Howard, and petitions for the admission and probate in solemn form of the Last Will and Testament of Mildred Olga Valentine pursuant to the provisions of West Virginia Code Chapter 41, Article 5, Section 5, and represents to the Commission the following:

1. That Charles B. Howard of P. O. Box 59, Charles Town, Jefferson County, West Virginia, is designated as Executor in a writing which is the subject of this Petition and which is a photocopy of the purported Last Will and Testament of Mildred Olga Valentine, deceased, dated August 18, 2004.

2. That Mildred Olga Valentine died January 17, 2010, at Charles Town, Jefferson County, West Virginia.

3. That the last place of residence of the domicile of Mildred Olga Valentine at her death was 74 Beauregard Boulevard, Charles Town, Charles Town District, Jefferson County, West Virginia, and the mailing address thereof was P. O. Box 1164, Charles Town, West Virginia 25414.

4. That at the date of her death the nature of the estate of Mildred Olga Valentine consisted of real estate situate in Charles Town District, Jefferson County, West Virginia, and tangible and intangible personal property.

5. That at the date of her death, the said Mildred Olga Valentine was a widow and had not remarried; that she had no surviving

issue; that her parents had predeceased her; and that all of her siblings had predeceased her, namely Irene Zazworsky Ryan, Catherine Zazworsky Mace and Emil William Zazworsky.

6. That the known heirs at law and distributees of Mildred Olga Valentine as defined under West Virginia Code Chapter 42, and their relationship to the Decedent are as follows:

a. Arthur Ryan, II (son of Irene Zazworsky Ryan who purportedly died in 1997, and was the sister of Mildred O. Valentine), nephew.

b. Susan Mace Smith (daughter of Catherine Zazworsky Mace who purportedly died in December, 1994, and was the sister of Mildred O. Valentine), niece.

c. Peggy Dwyer (daughter of Catherine Zazworsky Mace who purportedly died in December, 1994, and was the sister of Mildred O. Valentine), niece.

d. Mary Z. Strickland (daughter of Emil W. Zazworsky who purportedly died in May, 1984, and was the brother of Mildred O. Valentine), niece.

e. Emily T. Pritchett (daughter of Emil W. Zazworsky who purportedly died in May, 1984, and was the brother of Mildred O. Valentine), niece.

f. Ann Z. Sheffield (daughter of Emil W. Zazworsky who purportedly died in May, 1984, and was the brother of Mildred O. Valentine), niece.

g. Frances Z. Harrell (daughter of Emil W. Zazworsky who purportedly died in May, 1984, and was the brother of Mildred O. Valentine), niece.

h. Georgia Z. Anderson (sole child and daughter of William Zazworsky who purportedly died April 20, 2005, and who was the son of Emil W. Zazworsky who purportedly died in May, 1984, and was the brother of Mildred O. Valentine), grandniece.

7. That after a thorough and diligent search, the Petitioner has delivered to the Clerk of this Commission an original document entitled, "Last Will and Testament of Mildred Olga Valentine" executed by the Decedent on June 18, 2002, a copy of which is attached to this Petition as Exhibit 1, and a photocopy of a document entitled, "Last Will and Testament of Mildred Olga Valentine" executed by the Decedent on August 18, 2004, a copy of which is attached to this Petition as Exhibit 2.

8. That the beneficiaries under the Last Will and Testament of Mildred Olga Valentine dated June 18, 2002, and their relationship to her are as follows:

<u>Name</u>	<u>Relationship</u>
Claudia Clatterbuck	No Relation
Susan Smith	Niece
Amanda Nay	Godchild-No Relation
Janeen Smith	Grandniece
Andrew Clark	No Relation
Marcy Nesbeth	Niece
Louise Flarety	No Relation
Peggy Dwyer	Niece
Mary Strickland	Niece
Annie Sheffield	Niece
Frances Harrell	Niece
Emily (Bryant) Pritchett	Niece

Georgia Z. Anderson, daughter of William Zazworsky, deceased	Grandniece
The Holy Rosary Catholic Church	No Relation
St. James Catholic Church	No Relation
St. Francis of Assisi Catholic Church	No Relation
City of St. Jude	No Relation
St. Jude's Children's Hospital	No Relation
Myrna Ryan	No Relation
Omaha Home for Boys	No Relation

9. That the beneficiaries under the Last Will and Testament of Mildred Olga Valentine dated August 18, 2004, and their relationship to her are as follows:

<u>Name</u>	<u>Relationship</u>
Claudia Clatterbuck	No Relation
Susan Smith	Niece
Amanda Nay	Godchild-No Relation
Janeen Smith	Grandniece
Andrew Clark	No Relation
Marcy Nesbeth	Niece
Louise Flarety	No Relation
The Holy Rosary Catholic Church	No Relation
City of St. Jude	No Relation
Missionary Oblates of Mary Immaculate	No Relation
Salesian Missions	No Relation

10. That prior to the death of Mildred Olga Valentine on January 17, 2010, the Petitioner acted as her attorney in fact under a durable general power of attorney dated December 16, 2002, and recorded in the

Office of the Clerk of the County Commission of Jefferson County, West Virginia, in Deed Book 1047, at Page 636.

11. That during the course of his activities as attorney in fact, and following the death of Mildred Olga Valentine on January 17, 2010, Petitioner has made a diligent and thorough search for the original Last Will and Testament of Mildred Olga Valentine dated August 18, 2004, but has been unable to find the whereabouts thereof.

12. That during the course of his activities as attorney in fact, and preceding the death of Mildred Olga Valentine on January 17, 2010, Petitioner has had no reason to conclude that Mildred Olga Valentine revoked her Last Will and Testament dated August 18, 2004, but is without sufficient information and knowledge to determine whether the Decedent took such actions as to intentionally revoke the aforesaid Will, or whether Decedent either misplaced the same or it was accidentally destroyed without the intent to revoke the same.

13. Personal jurisdiction over the Defendants is asserted pursuant to West Virginia Code §41-5-1, et seq., West Virginia Code §44-1-1, et seq., and West Virginia Code §56-3-33.

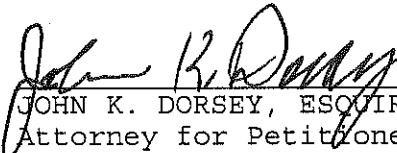
14. Subject matter jurisdiction is asserted pursuant to West Virginia Constitution Article VIII, §6, West Virginia Code §41-1-1, et seq., and West Virginia Code §44-1-1, et seq.

15. Venue lies within this Commission pursuant to West Virginia Code §41-5-4, as said Petition involves the probate of a Will of the Testatrix who at the time of her death had a mansion house or known place of residence in Jefferson County, West Virginia.

WHEREFORE, the Petitioner respectfully petitions this honorable County Commission to issue process and summons to all those persons

known as heirs at law of Mildred Olga Valentine, and those interested in the probate of the Last Will and Testament of Mildred Olga Valentine, deceased, to appear at a day named to show cause why the Last Will and Testament of Mildred Olga Valentine dated August 18, 2004, should not be admitted to probate pursuant to the provisions of Article 5, Chapter 41, of the West Virginia Code, to appoint a guardian ad litem to represent the interest of any unknown beneficiaries of the Estate of Mildred Olga Valentine, to appoint Charles B. Howard as Executor of said Will, and to take such further action as to this Commission may seem fair and just.

CHARLES B. HOWARD  
BY COUNSEL

  
JOHN K. DORSEY, ESQUIRE  
Attorney for Petitioner  
WV State Bar ID No. 1044  
104 West Congress Street  
Charles Town, WV 25414  
(304) 728-6000

STATE OF WEST VIRGINIA

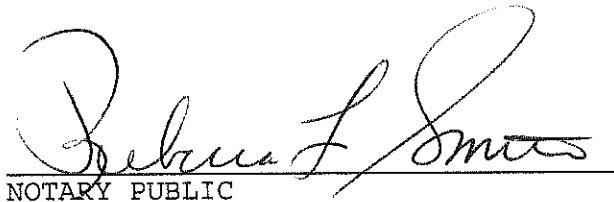
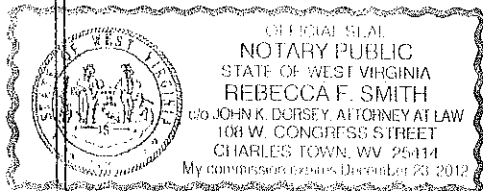
COUNTY OF JEFFERSON, to-wit:

Charles B. Howard, Petitioner in the foregoing Petition, being first duly sworn, says that the facts and allegations therein contained are true, except insofar as they are therein stated to be upon information and belief, and insofar as they are therein stated to be upon information and belief, he believes them to be true.



CHARLES B. HOWARD, EXECUTOR  
ESTATE OF MILDRED OLGA VALENTINE

Taken, sworn to and subscribed before me this 12<sup>th</sup> day of November, 2010, by Charles B. Howard.



NOTARY PUBLIC

My commission expires: December 23, 2012

# EXHIBIT 1

## Last Will and Testament

OF

MILDRED OLGA VALENTINE

I, Mildred Olga Valentine, a resident of Jefferson County, West Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this instrument as and for my Last Will and Testament, hereby revoking any and all Wills and dispositions by me at any time heretofore made.

### ARTICLE I DECLARATIONS

1.1 I am a widow and have no living issue.

1.2 It is my wish to be cremated. My cremation is to be done immediately upon my death. My ashes are to be buried on lot #135D in Buckhannon Memorial Park, Buckhannon, West Virginia. There is a marker on the grave. Eackles-Spencer Funeral Home in Harpers Ferry is responsible for my arrangements and they will forward my ashes to Poling St. Claire Funeral Home in Buckhannon.

The ashes of my dog Susy are to be buried with me. Her ashes are in an urn on the shelf in the den of the house. I have marked the urn with her name.

Any memorial service is to be done at the convenience of my family and friends.

### ARTICLE II DEBTS, ESTATE EXPENSES, AND TAXES

2.1 I direct that all my just debts, funeral expenses and expenses of administration of my estate, and all inheritance, estate, transfer and other succession taxes or death duties that may be imposed by my taxing authority, state or federal, or other, upon my estate, or any part thereof, arising directly or indirectly by reason of my death, upon any property which passes to my beneficiaries hereunder, or to any persons as beneficiaries of life insurance policies on my life, or by survivorship, or otherwise by reason of my death, be paid as soon as practicable by my Executor from my gross estate.

### ARTICLE III DISPOSITION OF MY ESTATE

3.1 I direct that my estate be liquidated by my Executor except for the bequests listed below. I give, devise and bequeath all the rest, residue and remainder of

M.V.

my property, both real and personal, of whatsoever nature and wheresoever situate, to my friend, Claudia Clatterbuck, to be hers absolutely and in fee simple, if she survives me. In the event Claudia Clatterbuck does not survive me, I give, devise and bequeath all the rest, residue and remainder of my real and personal property to my niece, Anna Nay.

3.2 I specifically give, devise and bequeath the following items to the following:

- a. I specifically give, devise and bequeath to my friend, Claudia Clatterbuck: my genuine opera length cultured pearls with matching bracelet and enhancer, cameo pin, pearl ring (one pearl), 14k gold diamond pendant necklace, 7 diamond 14k cluster ring, grand father clock, jewelry chest, and 14k pink ice pendant and chain;
- b. To my niece, Susan Smith, the opal ring with diamonds, the 14k blue pendant with chain, 17 diamond tennis bracelet, and 14k diamond earrings;
- c. To my godchild, Amanda Nay, the 14k gold diamond ring, 14k white diamond necklace with matching diamond earrings;
- d. To my cousin, Janeen Smith, the jade ring with matching earrings, 14k white gold tiffany diamond ring, 14k white gold 4 diamond pendant, 14k pineapple necklace and matching earrings, 3 pearl ring, 14k gold earrings (one large diamond and eight small diamonds);
- e. To Andrew Clark, my 14k gold 5 diamond band ring, Governor Winthrop desk;
- f. To my niece, Marcy Nesbeth, my late husband's flag, plaques, awards etc.;
- g. Louise Flarety, the Cross of Jesus, picture of Jesus and plaques;
- h. The remaining jewelry is to be sold.

My Executor is directed to make the following disbursements of money, once the estate has been liquidated. In the event that any of the following beneficiaries predeceases me, than their bequest is to be paid through paragraph #17 below:

1. To Claudia Clatterbuck, my best friend, \$100,000.00;
2. To my niece, Susan Smith, \$5,000.00;
3. To my niece, Peggy Dwyer, \$5,000.00;
4. To my niece, Mary Strickland, \$5,000.00;
5. To my niece, Annie Sheffield, \$5,000.00;
6. To my niece, Francis Harroll, \$5,000.00;
7. To my niece, Emily Bryant, \$5,000.00;
8. To my nephew, Billy Zazworsky, \$5,000.00;

*JMV*

9. To my godchild, Amanda Nay, \$5,000.00;
10. To the Holy Rosary Church in Buchannon, West Virginia, \$10,000.00 for masses for Margaret Zazworsky, Wasco Zazworsky, Emil Zazworsky, Irene Ryan, Catherine Mase and Willard Mase;
11. St. James, \$5,000.00, masses for Mildred Valentine and Raymond Valentine;
12. St. Francis of Assisi Church in Brunswick, Maryland, \$1,000.00, masses for Mildred Valentine and Raymond Valentine;
13. City of St. Jude in Montgomery, Alabama, \$3,000.00, masses for Mildred Valentine and Raymond Valentine;
14. St. Jude's Children Hospital, \$3,000.00;
15. Louise Flarety, my friend, \$2,000.00;
16. Myrna Ryan, my friend, \$2,000.00;
17. Any remaining money is to be paid to Omaha Home for Boy's to be put into the scholastic fund to be used at their discretion.

ARTICLE IV  
APPOINTMENTS AND POWERS OF EXECUTOR

4.1 I appoint Charles B. Howard, Executor of my Last Will and Testament and direct that no surety shall be required on his bond.

4.2 In addition to all powers granted by law, I authorize and empower my Executor to:

- (A) borrow money in such amounts for such purpose and upon such terms and conditions for the best interest of my estate;
- (B) sell, at public or private sale, so much or all of my real estate that is in the best interest of my estate;
- (C) sell, lease, pledge, transfer, exchange, convert or otherwise dispose of or grant options with respect to any and all property at any time forming a part of my estate, in such manner, at such time or times, for such purpose and upon such terms, credits and conditions as are advisable;
- (D) execute and deliver any and all instruments in writing which are advisable to carry out any of the foregoing powers. No party entering into any such instrument in writing signed by the Executor shall be obliged to inquire into its validity or

*ml*

be bound to see to the application of any money or other property paid or delivered to them pursuant to the terms of any such instrument. This authority includes the execution of deeds, leases, assignments or other instruments as may be necessary to carry out the provisions of this Will;

(E) make disposition of the residue of my estate to persons entitled thereto hereunder, to convey, transfer or pay over the same in kind or in money, or in part kind and part money, and for such purposes to transfer and assign undivided interest in any such property; and for the purposes thereof, the judgment of my Executor shall be conclusive;

(F) vote, in person or by proxy, or consent for any purpose, in respect of any stocks or other securities constituting assets of my estate; and to exercise or sell any rights of subscription or other rights in respect thereof;

(G) do any and every other act necessary and proper to the execution of my estate.

IN WITNESS WHEREOF, I hereunto subscribe my hand and seal to my Last Will and Testament, signed my initials on the three (3) preceding pages and acknowledge the same which is written without any interlineations on four (4) sheets of legal cap paper, in the presence of the undersigned witnesses at Charles Town, West Virginia, this 18th day of June, 2002.

Mildred Olga Valentine  
MILDRED OLGA VALENTINE

The foregoing Last Will and Testament was signed, sealed, acknowledged, published, and declared by Mildred Olga Valentine, the above Testatrix, as and for her last Will and Testament, in the presence of us, the undersigned two competent witnesses, and we, at her request, in her presence, and in the presence of each other, all present at the same time, have hereunto subscribed our names as attesting witnesses to said Last Will and Testament on this 18th day of June, 2002.

Candida L. Wills of Summit Point, WV  
Diana L. Penrod of Sheu. Jct., WV

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to-wit:

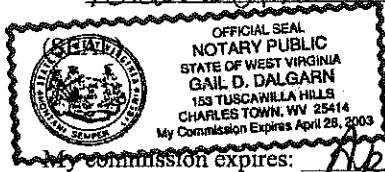
This day personally appeared before me, the undersigned authority, a Notary Public within and for the State and County aforesaid, CANDIDA L. WILLS

and Diana L. Perrod who being first duly sworn, say that they are all adults residing at the addresses set forth above, and that they are the subscribing witnesses to the last Will and Testament of Mildred Olga Valentine, a resident of Jefferson County, West Virginia, which Will is dated the 18th day of June, 2002; and that on said date the said Testatrix, in said Will, signed, sealed, acknowledged, published and declared the same as and for her Last Will and Testament, in the presence of all of these affiants and that these affiants, at the request of the said Testatrix, all present at the same time, signed their names as attesting to the said Will.

Affiants further say that the affidavit is made at the request of the said Mildred Olga Valentine, Testatrix, and in her presence, and that the said Testatrix, at the time said Last Will and Testament was executed, was, in the opinion of the affiants, of sound and disposing mind and memory, under no constraint or undue influence, and over the age of eighteen (18) years.

Candida L. Willis  
Diana L. Perrod

Subscribed, sworn to and acknowledged before me by CAUIDA L. WILLIS  
and Diana L. Perrod this 18th day of June, 2002.



Gail D. Dalgarn  
Notary Public in and for  
Jefferson County, West Virginia

My commission expires: April 28, 2003

This instrument was prepared by:  
Charles B. Howard, Esq.  
CHARLES B. HOWARD, L.C.  
114 E. Liberty Street  
P. O. Box 59  
Charles Town, West Virginia 25414-0059  
(304) 728-2220

valentinemildred.will

## EXHIBIT 2

# Last Will and Testament

OF

MILDRED OLGA VALENTINE

I, Mildred Olga Valentine, a resident of Jefferson County, West Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this instrument as and for my Last Will and Testament, hereby revoking any and all Wills and dispositions by me at any time heretofore made.

### ARTICLE I DECLARATIONS

1.1 I am a widow and have no living issue.

1.2 It is my wish to be cremated. My cremation is to be done immediately upon my death. My ashes are to be buried on lot #135D in Buckhannon Memorial Park, Buckhannon, West Virginia. There is a marker on the grave. Eackles-Spencer Funeral Home in Harpers Ferry is responsible for my arrangements and they will forward my ashes to Poling St. Claire Funeral Home in Buckhannon.

The ashes of my dog Susy are to be buried with me. Her ashes are in an urn on the shelf in the den of the house. I have marked the urn with her name.

Any memorial service is to be done at the convenience of my family and friends.

### ARTICLE II DEBTS, ESTATE EXPENSES, AND TAXES

2.1 I direct that all my just debts, funeral expenses and expenses of administration of my estate, and all inheritance, estate, transfer and other succession taxes or death duties that may be imposed by my taxing authority, state or federal, or other, upon my estate, or any part thereof, arising directly or indirectly by reason of my death, upon any property which passes to my beneficiaries hereunder, or to any persons as beneficiaries of life insurance policies on my life, or by survivorship, or otherwise by reason of my death, be paid as soon as practicable by my Executor from my gross estate.

### ARTICLE III DISPOSITION OF MY ESTATE

3.1 I direct that my estate be liquidated by my Executor except for the bequests listed below. I give, devise and bequeath all the rest, residue and remainder of

my property, both real and personal, of whatsoever nature and wheresoever situate, to my friend, Claudia Clatterbuck, to be hers absolutely and in fee simple, if she survives me. In the event Claudia Clatterbuck does not survive me, I give, devise and bequeath all the rest, residue and remainder of my real and personal property to my niece, Susan Smith.

3.2 I specifically give, devise and bequeath the following items to the following:

a. I specifically give, devise and bequeath to my friend, Claudia Clatterbuck: my genuine opera length cultured pearls with matching bracelet and enhancer, cameo pin, pearl ring (one pearl), 14k gold diamond pendant necklace, 7 diamond 14k cluster ring, jewelry chest, and 14k pink ice pendant and chain;

b. To my niece, Susan Smith, the opal ring with diamonds, the 14k blue pendant with chain, 17 diamond tennis bracelet, and 14k diamond earrings;

c. To my godchild, Amanda Nay, the 14k gold diamond ring, 14k white diamond necklace with matching diamond earrings;

d. To my cousin, Janeen Smith, the jade ring with matching earrings, 14k white gold tiffany diamond ring, 14k white gold 4 diamond pendant, 14k pineapple necklace and matching earrings, 3 pearl ring, 14k gold earrings (one large diamond and eight small diamonds);

e. To Andrew Clark, my 14k gold 5 diamond band ring, Governor Winthrop desk, and grandfather clock;

f. To my niece, Marcy Nesbeth, my late husband's flag, plaques, awards etc.;

g. Louise Flarety, the Cross of Jesus, picture of Jesus and plaques;

h. The remaining jewelry is to be sold.

My Executor is directed to make the following disbursements of money, once the estate has been liquidated. In the event that any of the following beneficiaries predeceases me, than their bequest is to be paid through paragraph #6 below:

1. To Claudia Clatterbuck, my best friend, \$125,000.00;
2. To the Holy Rosary Church in Buchannon, West Virginia, \$75,000.00 for masses for Margaret Zazworsky, Wasco Zazworsky, Emil Zazworsky, Irene Ryan, Catherine Mase and Willard Mase;
3. To the City of St. Jude \$50,000.00 for masses for Mildred Valentine and Raymond Valentine.
4. To Missionary Oblates of Mary Immaculate \$50,000.00 for masses for Mildred Valentine and Raymond Valentine.

12711  
HARRIS  
FARMER  
20 8 22

3617 AUST DR.  
MILL CREEK AVENUE, 64  
31061

703-370-5173

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5. To Salesian Mission \$20,000.00 for masses for Midred Valentine and Raymond Valentine.

6. Any remaining money is to be paid to City of St. Jude in Montgomery, Alabama and St. Jude's Children Hospital, equally.

ARTICLE IV  
APPOINTMENTS AND POWERS OF EXECUTOR

4.1 I appoint Charles B. Howard, Executor of my Last Will and Testament and direct that no surety shall be required on his bond.

4.2 In addition to all powers granted by law, I authorize and empower my Executor to:

(A) borrow money in such amounts for such purpose and upon such terms and conditions for the best interest of my estate;

(B) sell, at public or private sale, so much or all of my real estate that is in the best interest of my estate;

(C) sell, lease, pledge, transfer, exchange, convert or otherwise dispose of or grant options with respect to any and all property at any time forming a part of my estate, in such manner, at such time or times, for such purpose and upon such terms, credits and conditions as are advisable;

(D) execute and deliver any and all instruments in writing which are advisable to carry out any of the foregoing powers. No party entering into any such instrument in writing signed by the Executor shall be obliged to inquire into its validity or be bound to see to the application of any money or other property paid or delivered to them pursuant to the terms of any such instrument. This authority includes the execution of deeds, leases, assignments or other instruments as may be necessary to carry out the provisions of this Will;

(E) make disposition of the residue of my estate to persons entitled thereto hereunder, to convey, transfer or pay over the same in kind or in money, or in part kind and part money, and for such purposes to transfer and assign undivided interest in any such property; and for the purposes thereof, the judgment of my Executor shall be conclusive;

(F) vote, in person or by proxy, or consent for any purpose, in respect of any stocks or other securities constituting assets of my estate; and to exercise or sell any rights of subscription or other rights in respect thereof;

(G) do any and every other act necessary and proper to the execution of my estate.

hnd

IN WITNESS WHEREOF, I hereunto subscribe my hand and seal to my Last Will and Testament, signed my initials on the three (3) preceding pages and acknowledge the same which is written without any interlineations on four (4) sheets of legal cap paper, in the presence of the undersigned witnesses at Charles Town, West Virginia, this 18<sup>th</sup> day of August, 2004.

Mildred Olga Valentine  
MILDRED OLGA VALENTINE

The foregoing Last Will and Testament was signed, sealed, acknowledged, published, and declared by Mildred Olga Valentine, the above Testatrix, as and for her last Will and Testament, in the presence of us, the undersigned two competent witnesses, and we, at her request, in her presence, and in the presence of each other, all present at the same time, have hereunto subscribed our names as attesting witnesses to said Last Will and Testament on this 18<sup>th</sup> day of August, 2004.

Charles B Howard of Charles Town, WV  
H. D. Brantley of Harper Ferry, WV

STATE OF WEST VIRGINIA,

COUNTY OF JEFFERSON, to-wit:

This day personally appeared before me, the undersigned authority, a Notary Public within and for the State and County aforesaid, Charles B. Howard and H. D. Brantley, who being first duly sworn, say that they are all adults residing at the addresses set forth above, and that they are the subscribing witnesses to the last Will and Testament of Mildred Olga Valentine, a resident of Jefferson County, West Virginia, which Will is dated the 18<sup>th</sup> day of August, 2004; and that on said date the said Testatrix, in said Will, signed, sealed, acknowledged, published and declared the same as and for her Last Will and Testament, in the presence of all of these affiants and that these affiants, at the request of the said Testatrix, all present at the same time, signed their names as attesting to the said Will.

Affiants further say that the affidavit is made at the request of the said Mildred Olga Valentine, Testatrix, and in her presence, and that the said Testatrix, at the time said Last Will and Testament was executed, was, in the opinion of the affiants, of sound and disposing mind and memory, under no constraint or undue influence, and over the age of eighteen (18) years.

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Charles B Howard  
12

Subscribed, sworn to and acknowledged before me by Charles B. Howard  
and Hester M. Beachamp this 15<sup>th</sup> day of August, 2004.

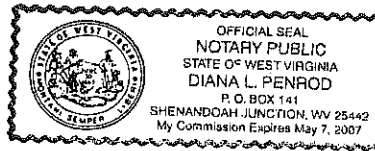
(SEAL)

Diana L Penrod

Notary Public in and for  
Jefferson County, West Virginia

My commission expires: 5/7/07

This instrument was prepared by:  
Charles B. Howard, Esq.  
114 E. Liberty Street  
P. O. Box 59  
Charles Town, West Virginia 25414-0059  
(304) 728-2220



valentinemildred.will

**Sandy McDonald**

---

**From:** "Nichelle Hosby" <nhosby@jeffersoncountywv.org>  
**To:** "Sandy McDonald" <sandy@jeffersoncountywv.org>  
**Sent:** Tuesday, December 28, 2010 4:24 PM  
**Subject:** FW: Change of agenda date

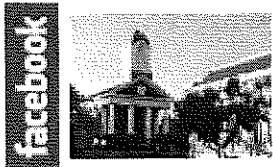
**From:** Lynn Fields [mailto:lfields@jeffersoncountywv.org]  
**Sent:** Tuesday, December 28, 2010 3:21 PM  
**To:** 'Nichelle Hosby'  
**Subject:** Change of agenda date

Nichelle,

Can you PLEASE change the date for the ~~Mildred Valentine estate~~ from 1/27/2011 to ~~2/10/2011 @ 10:15?~~ Thank you!

*Lynn Fields*  
Deputy Probate Clerk

Jefferson County Clerk  
PO Box 208  
100 E. Washington Street  
Charles Town, WV 25414  
(304) 728-3210  
www.jeffersoncountyclerkwv.com



**IN THE JEFFERSON COUNTY COMMISSION, WEST VIRGINIA**

IN RE: ESTATE OF MILDRED VALENTINE

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**MOTION TO DISQUALIFY EXECUTOR / CURATOR CHARLES B. HOWARD  
ESQ. FROM ANY FURTHER PARTICIPATION IN THIS ACTION;  
NOTICE OF HEARING**

Now comes Mary Strickland, Frances Harrell, and Ann Sheffield, sisters and nieces (hereafter Nieces) of Decedent Mildred Valentine, (hereafter Decedent) by counsel Robert Barrat, Esq., WVASB # 6550, and respectfully move this Honorable Commission for the disqualification of Charles B. Howard, Esq., from any further participation as either executor or curator in this action. In support of this Motion, the Nieces state the following:

1. The Nieces have received and reviewed the Petition to Probate a Will in Solemn Form filed in this action, which Petition was signed by Charles B. Howard Esq. as the Executor of the Will of Mildred Valentine on or about the 12<sup>th</sup> of November 2010.
2. Charles B. Howard, Esq., an attorney licensed to practice in West Virginia, WVASB # 1794, prepared a document referred to in the Petition as the Will of Decedent dated June 18, 2002.
3. Charles B. Howard Esq. was named Executor in the 2002 Will and no alternate or successor Executor was named.
4. Charles B. Howard Esq. prepared a General Durable Power of Attorney executed by Decedent on December 16, 2002. That document was recorded March 7, 2008 in the Office of the Clerk of the County Commission of Berkeley County, W.Va. in Deed Book 1047 at Page 636. Within that document Charles B. Howard Esq. was named as the agent and attorney-in-fact for Decedent.
5. Upon information and belief Charles B. Howard Esq. prepared a document

**RECEIVED**

FEB 08 2011

referred to within the Petition as the Will for Decedent dated August 18, 2004 however no original Will has been filed with the clerk of the county court (now County Commission) as required by W.Va. Code 41-5-1.

6. Upon information and belief Charles B. Howard Esq. was named the Executor within the 2004 Will and no alternate or successor Executor was named.
7. Upon information and belief Charles B. Howard Esq. was a subscribing witness to the 2004 Will.
8. That upon information and belief Charles B. Howard Esq. serves the Jefferson County Commission as a full time Assistant Prosecutor, with an office in the Judicial Center, POB 729, Charles Town, W.Va. Upon further information and belief, Charles B. Howard Esq. also serves as the Prosecuting Attorney for the City of Ranson, W.Va.
9. The Jefferson County Commission is counseled and given legal advice from the Office of the Prosecutor of Jefferson County as follows W.Va. Code 7-4-1 et seq.
10. That there has not been an accounting or inventory of the Estate of Decedent filed with the Clerk of the County Commission available for review from a recent search of the that website as of the date of this filing.  
(<http://jeffersoncountyclerkwv.com>)
11. That Charles B. Howard now has non-waivable conflict(s) in proceeding or participating any further in this matter as a result of his several roles in the Estate of Decedent, and in considering his position of employment with Jefferson County Prosecutor's Office. As a result he should be disqualified.
12. There is ample legal authority upon which to rely to disqualify Mr. Howard. In State of West Virginia ex rel. Jefferson County Board of Zoning Appeals, Petitioner, v. Honorable Christopher C. Wilkes, Judge of the Circuit Court of Jefferson County; Highland Farms, LLC; and Thorn Hill, LLC, Respondents, 655 S.E.2d 178 (2007) the W.Va. Supreme Court recently addressed conflicts another

Prosecutor in Jefferson County experienced in land use proceedings. The case went on to state in dicta:

This Court recently stated in *State ex rel. Cosenza v. Hill*, 216 W.Va. 482, 488, 607 S.E.2d 811, 817 (2004) (upholding a disqualification order even though there was no actual evidence of any impropriety): As the repository of public trust and confidence in the judicial system, courts are given broad discretion to disqualify counsel when their continued representation of a client threatens the integrity of the legal profession.

13. W.Va. Rules of Professional Conduct, Rule 1.11. Successive government and private employment addresses conflicts in successive government and private employment. That rule generally recognizes conflicts that arise between private and governmental employment and generally prohibits and sanctions such participation. Mr. Howard would have a similar conflict acting as Executor while serving as Prosecutor and appearing before this County Commission in further Solemn Form proceedings. His employment in both areas would be concurrent, and not successive as contemplated in the rule.
14. Also see State ex rel. Sowa v. Sommerville, 280 S.E.2d 85, 167 W.Va. 353 (W.Va., 1981) which discusses the following concerning prosecutorial conflicts:  

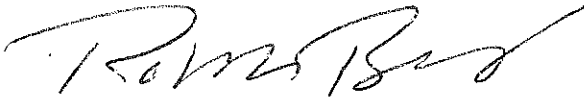
Canon 9 of the Code of Professional Responsibility states that a lawyer should **avoid even the appearance of impropriety**. For the partners or associates of a prosecuting attorney or his assistants to represent criminal defendants in other state courts or in federal courts gives the appearance of impropriety. 2 W.Va.State Bar Journal No. 4 (1976). (Bold added)

The Nieces would suggest Mr. Howard's participation as attorney for Decedent, executor in both Wills, curator, subscribing witness, Petitioner, attorney in fact and Prosecutor also gives the appearance of impropriety in these proceedings.
15. There are numerous existing conflict and potential conflict scenarios the Nieces could now raise to support the disqualification of Charles B. Howard Esq. from any further involvement in this matter. It is their Motion before this tribunal Charles B. Howard, Esq. now be disqualified and removed from any further proceedings as their remedy for this matter to proceed regularly, as follows W.Va.

Code 44-1-9.

16. The Nieces further move this Honorable Commission for the Sheriff of Jefferson County or some other neutral and responsible party to be appointed at least temporarily as administrator to receive and safeguard the property, file an inventory of all the assets of the Estate of Decedent Mildred Valentine and determine the heirs and beneficiaries of this estate, W.Va. Code 44-1-11.
17. The Nieces now give formal Notice they would intend to offer this Motion on **Thursday the 10<sup>th</sup> of February 2011 at 10:15 AM** before the Honorable County Commission of Jefferson County, W.Va., Charles Town Library Meeting Room, 200 East Washington Street, Charles Town, W.Va. 25414 or as soon thereafter as practical to be heard.

Mary Strickland, Frances Harrell, and Ann Sheffield by counsel



ROBERT E. BARRAT, ESQ.

WVASB # 6550

Counsel for Nieces Mary Strickland, Frances Harrell and Ann Sheffield

308 S. Queen St

Martinsburg, W.Va. 25401

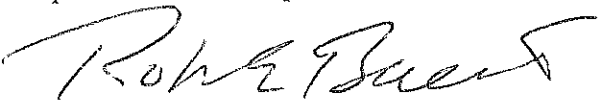
Tel 304-263-4315

RBARRAT@EARTHLINK.NET

CERTIFICATE OF SERVICE

A true and correct copy of this MOTION TO DISQUALIFY was either emailed, faxed or mailed by regular First Class U.S. Mail, postage prepaid to the following parties at their addresses as listed below on this the 7<sup>th</sup> of February 2011:

Susan Smith 3617 Hurst Drive NE, Milledgeville, GA 31061-7997  
Peggy Dwyer, 711 Ramon Drive, Pittsburgh PA 15238  
Georgia Anderson, 7262 Cold Harbor Road, Apt 101, Mechanicsville, VA 23111  
Emily Pritchett, 1130 N. Grady Ave., Lakeland, FLA 338005  
Claudia Clatterbuck, 12711 Harpers Ferry Road, Purcellville, VA 20132  
Amanda Hubert 5785 Bencrest Way, Haymarket, VA 20169  
Janeen Garpow, 241 Eagles Rest, Milledgeville, GA 31061  
Andrew Clark, 200 Stevenson Square, Alexandria, VA 22304  
Louise Hopkins, 7131 Mount Vista Road, Kingsville, MD 21087-1727  
The Holy Rosary Cath Church, 35 Franklin St., Buckhannon, VA 26201-2253  
St James Catholic Church, 49 Crosswinds Drive, Charles Town, WV 25414  
St Francis of Assisi Cath. Church, 115 1<sup>st</sup> Ave, Brunswick, MD 21716  
St Judes Childrens Hospital, 501 St Jude Place Memphis, TENN 38105  
Myrna Ryan, POB 682, Charles Town, WV 25414  
Omaha Home for Boys, 4343 N 52<sup>nd</sup> Street, Omaha, NE 68104  
The City of St. Judge, 2048 W Fairview Ave., Montgomery, ALA 36108  
Missionary Oblates of Mary Immaculate, Missionary Association of Mary Immaculate,  
9480 N. De Mazenod Drive, Belleville, TENN. 62223  
Salesian Missions, 2 Lefevre Lane, New Rochelle, NY 10801-5710  
Henry Morrow, Jr., GAL, POB 459, Charles Town, WV 25414, Fax 304-725-5056  
John Dorsey, Esq., POB 42, Charles Town, WV 25414 Fax 304-728-1130  
Hon. Jennifer S. Maghan, POB 208, Charles Town, WV 25414, Fax 304-728-1957  
Hon. Lyn Widmyer, 100 E. Wash St., Charles Town, WV 25414, Fax 304-725-7916  
Stephanie Grove, Esq., APA, POB 729, Charles Town, WV 25414, Fax 304-728-3293



---

ROBERT E. BARRAT, ESQ.

BY

ROBERT E. BARRAT  
ATTORNEY AT LAW, WWSB # 6550  
308 S. QUEEN STREET  
MARTINSBURG, W.VA. 25401-3232  
TEL 304-263-4315; FAX 304-260-0493  
RBARRAT@EARTHLINK.NET

---

Hon. Jennifer S. Maghan  
Clerk, County Commission of Jefferson County, W.Va.  
Post Office Box 208  
Charles Town, W.Va. 25414-0208  
One page fax to 304-728-1957

February 4, 2011

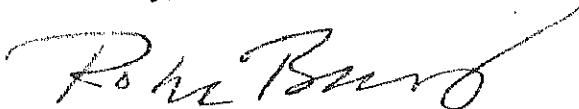
**IN RE: Estate of Mildred Olga Valentine, Notice of appearance of counsel**

Dear Madam Clerk:

Please be advised I am an attorney licensed to practice law in the State of West Virginia, W.Va. Bar # 6550, and have been recently retained to represent the interests of Mary Strickland, Frances Harrell and Ann Sheffield, nieces of Decedent Mildred Valentine in the above styled proceedings. Please consider this letter my formal notice of appearance in this matter and please send all pleadings, notices, etc. for them to my address, listed above. Could you also please place a copy of this letter in the Court file available to any heirs or beneficiaries not listed below.

Please advise at your earliest convenience if the proceedings to be held on Thursday the 10<sup>th</sup> of February 2011 are to be recorded in any manner? Thank you very much for your time and attention to this matter.

Sincerely,



Robert Barrat, Esq.

Cc: Mary Strickland  
Frances Harrell  
Ann Sheffield  
John Dorsey, Esq., counsel for Charles B. Howard, Esq.  
Hon. Lyn Widmyer, President Jefferson County Commission  
Henry William Morrow, Jr., Esq. GAL

**NOTICE OF PUBLIC HEARING  
COUNTY COMMISSION OF JEFFERSON COUNTY**

The County Commission of Jefferson County will hold a public meeting on Wednesday, March 23, 2011 at 1:30 p.m. in the Old Charles Town Library meeting room on the ground floor of the Library, 200 E. Washington Street, Charles Town, West Virginia 25414.

The purpose of the Public Hearing is to approve the Levy Estimate for Fiscal Year 2012. Also at this public hearing, the Commission will receive public comment concerning the County's budget.

The public is invited to attend.

**By Order of the County  
Commission of Jefferson County  
Patricia A. Noland, President**