

STATE OF WEST VIRGINIA
RANDOLPH COUNTY COMMISSION SS:

At a regular session of the County Commission in and for the aforesaid County and State, at the James F. Cain Court House Annex, on the 17th day of May, 2018 at 1:30 P.M.

Present: Michael Taylor, President of the Randolph County Commission and Commissioner Chris See. Commissioner Mark Scott was absent.

Meeting called to order by President Taylor

PUBLIC COMMENT:

Rhett Dusenbury from Congressman Mooney's office was there to let the Commission know the Congressman is willing to help the County in any way.

MINUTES:

Commissioner See moved to approve the minutes of the April 5, 2018 meeting, with corrections.

All yes – Motion passed unanimously

Commissioner See moved to approve the minutes from the emergency meeting that was held on April 16, 2018, as submitted.

All yes – Motion passed unanimously

Commissioner See moved to approve the minutes from the regular meeting that was held on April 19, 2018, as submitted.

All yes – Motion passed unanimously

Commissioner See moved to approve the minutes from the special meeting that was held on April 17, 2018, as submitted.

All yes – Motion passed unanimously

REPORTS:

911/OEM Director, Cindy Hart reported that she was chosen to go to Washington, D.C. to meet with Congressmen and Senators regarding the IMPG Grant. She was one of 5 chosen from the United States. She also met with FEMA Administrators and they are working on system where they would give 40 million dollars out to the States during a disaster and then FEMA wouldn't have to be called in unless it went over that amount.

North Central Community Corrections Director, Erin Golden reported to the Commission that there are currently 108 participants on the program. The program has saved the County \$1,695,070.75 in regional jail bills so far this fiscal year.

Randolph County Sheriff Mark Brady presented the Commission with a list of delinquent taxes for real estate and personal property. He also told the Commission that this week is

National Law Enforcement Week. He said for everyone to keep the law enforcement officers in their prayers and continue to support them.

Randolph County Assessor, Phyllis Yokum reported to the Commission that she spoke to Blue Mountain on April 25th and they told her that they already flew the County and it won't be much longer before she gets her new maps.

Randolph County Clerk, Brenda Wiseman gave an election update from the May 8, 2018 primary election. She said the County Commission met on May 14, 2018 and held the canvass and declared the results. She said the 48 hour period for anyone to request a recount in Randolph County has now expired. She said the next step is to wait on all the other counties to finish their canvass and wait the 48 hour period and once she is notified by the Secretary of State's Office that it is time, the Commission will have to meet again to certify the results.

CORRESPONDENCE: None

ANNOUNCEMENTS:

Commissioner Taylor announced that the next meeting will be held on June 7, 2018 at 1:30 p.m.

ITEMS FOR DISCUSSION/ACTION:

CONSIDER APPROVAL TO THE INTERIOR DESIGN PHASE OF THE 911 CENTER

Mike Moore and Susan Farley from Silling and Associates appeared before the Commission. Susan Farley said they brought three different choices of color schemes for the new 911 building. She had flooring, wall and other samples to show the Commissioners of the different colors they could choose from. Commissioner Taylor asked if they could keep the samples and look them over and decide at a later time? Mr. Moore and Ms. Farley agreed.

CONSIDER APPROVAL OF FUNDING REQUEST FROM ELKINS ROTARY FOR THE TOWN SQUARE CANOPY PROJECT

Hoy Ferguson on behalf of the Elkins Rotary appeared before the Commission. He said they are working on a project to put up an amphitheatre canopy behind the Elkins Depot. The cost of the project is \$130,000.00. Mr. Ferguson said they are asking the Commission for \$10,000.00 to help with the project. He said with the Commission's donation, if approved, they would have \$119,000.00. He said they met with the engineer last week and are getting ready to order the materials. He thanked the Randolph County Development Authority for their help. He also said next week they will be announcing some other donors who have given to the project. Commissioner Taylor commends Mr. Ferguson and the Development Authority. Commissioner See moved to donate \$10,000.00 to help the Rotary Club with the canopy project and that is to be taken out of hotel/motel tax funds.

All yes -- Motion passed unanimously

CONSIDER APPROVAL OF FUNDING REQUEST FROM TYGART VALLEY LIONS CLUB FOR AFTER GRADUATION PARTY (See letter attached)

Jonathan Kyle on behalf of the Tygart Valley Lions Club, appeared before the Commission. He said he was there filling in for Steve Currence who could not attend the meeting. He said each year they sponsor this event for the students that are graduating from Tygarts Valley High School. He said this year's graduation date is May 24, 2018. The event will take place at the YMCA and they will have food, prizes, games, music and much more. Mr. Kyle said they usually have 90 to 100% participation. He said the students do the shopping for the event and pick out prizes that they want to receive. Commissioner Taylor said he appreciates the work the Tygart Valley Lions Club does. Commissioner See moved to donate \$2,000.00 to the Tygart Valley Lions Club for the after graduation party for 2018 and that is to be taken out of courthouse contractual funds. All yes – Motion passed unanimously

CONSIDER FUNDING REQUEST FROM FRN FOR SPECIAL PROJECTS (See letter attached)

Rebecca Vance, Director of Family Resource Network, appeared before the Commission. She said the Family Resource Network has been in operation since 1998. She said they look at the needs of the community and try to fill those needs. She said in 2010 they developed a tip line for people to call in anonymously and leave tips for law enforcement. She said they are asking for funding from the Commission to keep it up and running. She also said they started the Randolph County baby pantry and it is for people who are in need to get diapers and wipes. She said WIC gives out formula but no one gives out diapers and wipes. She said once a month a family can come in and get diapers and other things they need from the pantry. She said last year they served 553 families with this program. Commissioner Taylor said they would take the request under consideration and get back with Ms. Vance at a later date.

CONSIDER APPROVAL TO RATIFY SUPPORT LETTER FOR WOODLAND'S COMMUNITY LENDERS FOR GRANT APPLICATION

Commissioner Taylor said the Woodlands Community Lenders had a grant application that was due last week. He said he went ahead and signed it for them so they could submit it. This is for a US economic development administration assistance to coal communities programs for funds that would provide specialized technical assistance to West Virginia business's and coal impacted communities with job creation potential especially in the outdoor recreational and wood forest product economies. Commissioner See moved to ratify the signature of the letter of support for the grant application for Woodlands Community Lenders.

All yes – Motion passed unanimously

CONSIDER APPROVAL OF RECOMMENDATION OF FIDUCIARY COMMISSIONER ON THE ESTATE OF RONALD C. GATEWOOD

(See copy attached)

County Clerk, Brenda Wiseman presented a copy of the fiduciary commissioner's report to the Commission regarding the estate of Ronald C. Gatewood. The Fiduciary Commissioner, John Wallace, IV held a hearing at his office on March 15, 2018 and this

is his recommendation to the Commission. Commissioner Taylor read the recommendation out loud. There was no one present that objected. Commissioner See moved to approve the recommendation of Fiduciary Commissioner, John Wallace IV regarding the estate of Ronald C. Gatewood, as submitted.
All yes -- Motion passed unanimously

FINAL SETTLEMENTS:

Commissioner See moved to approve the nineteen final settlements/annual accountings as submitted on the following estates:

Thomas Lee Arbogast
Sampson Lyle Cunningham
Joseph A. Girard
Julia Elizabeth Harvey
Jonas Johnson, Jr.
Lois Gail Kalar
Stanley Edward Koon
Juanita Hazel Mallow
Ruth G. McCauley
Renita McIntyre
Richard McIntyre
Theodore Henry Meadows
Robert E. Nefflen
Elizabeth May Reed
Sandra Ramsey Riggleman
Thelma Jean Summerfield
Barbara Jane Teter
Joshua Lee Watson
Zelma P. Yeager

All yes -- Motion passed unanimously

BUDGET REVISIONS: (See attached copy)

Commissioner See moved to approve the one state budget revision, as submitted.
Commissioner See voted yes
Commissioner Taylor voted yes
Commissioner Scott was absent
Motion passed

DIVISION OF PROPERTY /ERRONEOUS ASSESSMENTS:

Commissioner See moved to approve the Division of Property/ Erroneous Assessments, as submitted.

All yes - Motion passed unanimously

FIRE FEE EXONERATIONS:

Commissioner See moved to approve the fire fee exonerations, as submitted.
All yes -- Motion passed unanimously

PAYMENT OF BILLS:

Commissioner See moved to pay the bills, as submitted.

All yes - Motion passed unanimously

ADJOURN THE MEETING:

Commissioner See moved to adjourn the meeting.

All yes - Motion passed unanimously

ATTEST:





May 17, 2018

Randolph County Commission
4 Randolph Avenue
Elkins, WV 26241

Dear Commissioners,

The Rotary Club of Elkins has embarked on the ambitious project of completing an outdoor amphitheater to be located in the Elkins Railyard town square. The club thanks for your support in making this project a reality. The financial support the commission has provided in the amount of \$10,000 is appreciated. With the commission's generous contribution, the commission will be recognized in any media and press releases as well as being listed as a contributor on a permanent plaque located on the side of the structure. Please release the funds approved at the May 17, 2018 meeting to the Rotary Club of Elkins at the address below. Thank you for your support and please do not hesitate to contact me with any questions or concerns at hoysteacher@yahoo.com or 304.636.6520.

Rotary Club of Elkins
P.O. Box 546
Elkins, WV 26241

Sincerely,

A handwritten signature in black ink, appearing to read "Hoy A. Ferguson".

Hoy A. Ferguson
Project Coordinator
Rotary Club of Elkins



Tygart Valley Lions Club

117 Prosperity Place, Beverly, WV, 26253

#2000
COURTHOUSE COURT

December 5, 2017,

To Whom It May Concern:

Each year the Tygart Valley Lions Club provides an all-night Graduation Party for the Tygart Valley High School graduates. The YMCA is the setting for this party, with the First-United Methodist Church providing a 6:00 AM breakfast for all.

Lions team up with parents and students to raise money for this event. We do our best to provide a fun night of food, drinks, games, contests, music, and other entertainment. We also give a bunch of prizes mostly in the form of a grand auction that all the graduates get to participate in. Nobody ends the night without one or more prizes. Grand prizes are drawn at the end of the night. Each graduate has a chance on the grand prizes, but seniors who helped with the fundraisers actually can earn extra chances. It's our system of rewards of participation.

This event is a large undertaking with important implications for the community, parents and the graduating class. It's our goal to see that no Tygart Valley High School graduate has his or her biggest night of their life end in tragedy. The Graduation Lock-in party attendees will leave happy and in a sober state, although they will be tired out! We have an average of 90% attendance rate for many years because we involve the students and parents in the event planning. We make sure they enjoy it in a safe manner.

We need your participation to make this a successful party. The best way you can help us is to donate prizes, gift certificates or money. The money we collect is used to buy prizes, hire a DJ, rent the YMCA, buy food and drinks, and hire some professionally run games. Most of the money is spent on the actual prizes that the graduates will leave with. Any and all donations are welcome. If you have any questions, please contact our event chairman, Steve Currence 940-1501 or Bill Logan 636-0144. Checks can be made to the Tygart Valley Lions Club and sent to the address on the letterhead. Thank you in advance for supporting this worthwhile event.

Sincerely,

Steve Currence



May 17, 2018

Michael Taylor
Randolph County Commission
4 Randolph Ave. # 102
Elkins, WV 26241

Dear Commissioners:

The Randolph County Family Resource Network, (FRN) is a catalyst of change, an organization that understands and is responsive to needs and opportunities in the community. The FRN's mission is mobilizing people to engage in positive and meaningful change, and its vision is to make Randolph County a better place to live and work. In partnership with community members and public and private organizations, the FRN develops and implements innovative projects and provides needed resources for the community.

The FRN has a rich history of building partnerships for a better Randolph County and we recognize that we cannot tackle emerging needs and opportunities alone. As evidenced by our work in times past, we strive to collaborate with local organizations and individuals to utilize existing strengths in order to best address the needs of our community. I would like to ask the Randolph County Commission to make a \$2,500 contribution to support the FRN. This funding would help the FRN continue to advance its mission and help to support programs like our Randolph County Anonymous Tip Line and the Randolph County Baby Pantry.

Thank you for your consideration of this request and your support of the FRN. If you have any questions or need additional information, please contact me.

Yours truly,

Rebecca Vance
Director

PO Box 689

Elkins, WV 26241

304.636.4454

BEFORE THE COUNTY COMMISSION OF RANDOLPH COUNTY, WEST VIRGINIA

In re: The Estate of Ronald Clyde Gatewood

REPORT AND RECOMMENDATION

On Patricia Ann Gatewood's Petition to Remove the Administratrix

Pursuant to W.Va. Code §44-3-7 the undersigned was appointed to hear and decide an issue arising from the above referenced estate. Patricia Ann Gatewood, by counsel, filed a *Petition to Remove the Administratrix* on December 5, 2017.

A hearing was undertaken on that Petition on March 15, 2018 in the office of the undersigned at 14. S. Randolph Ave. in Elkins, West Virginia. Present at that hearing was the Petitioner Patricia Ann Gatewood, represented by her counsel, and Petitioner's son Sean Gatewood. Respondent, Patricia Deussenberry appeared in person and *pro se*. Testimony was taken from all three of the above named people. Based upon that testimony, the exhibits, the matters of public record pertaining to the estate, and West Virginia law, the undersigned hereby makes the following findings of fact and conclusions of law.

Findings of Fact

1. Ronald Clyde Gatewood (hereinafter "decedent") died testate on February 22, 2016 a resident of Randolph County, West Virginia.
2. Decedent was survived by his wife Patricia Ann Gatewood (hereinafter "Petitioner"). His Will provided that she would be his sole beneficiary.¹
3. Patricia Deussenberry was formerly in the employ of Thomas R. Ross, Esq. working on real estate and estate matters in his law office in Elkins, West Virginia. Mr. Ross retired from the practice of law in the summer of 2017, causing Ms. Deussenberry to lose that position.
4. In or around late November, 2016 Ms. Deussenberry approached Petitioner regarding a need to probate the decedent's estate. Ms. Deussenberry and Petitioner are distantly related by marriage.

¹ *Last Will and Testament of Ronald Clyde Gatewood*, "Second." Randolph County Will Book 56 at page 117.

5. Ms. Deussenberry represented that, by virtue of her employment with Mr. Ross, she was capable of, and willing to handle the administration of the decedent's estate.
6. It is undisputed that Petitioner hired Ms. Deussenberry to handle the decedent's Estate for an hourly rate of twenty five dollars (\$25.00) an hour.
7. There is a factual dispute regarding who was present for the conversation between Ms. Deussenberry and Petitioner, and the role Ms. Deussenberry would play in the administration of the Estate. Petitioner testified that she was unaware that Ms. Deussenberry would become the Administratrix, CTA. Ms. Deussenberry testified that she intended to become the personal representative of the estate. This factual dispute is of no moment since Petitioner allowed Ms. Deussenberry to become personal representative and did not object to that appointment or seek her removal for more than six months, after Ms. Deussenberry had essentially completed her work on the estate.
8. The undersigned finds that Petitioner and Ms. Deussenberry had an oral agreement whereby Ms. Deussenberry would handle the Estate of decedent for an hourly rate of twenty five dollars (\$25.00) an hour.
9. The undersigned finds that Petitioner and Ms. Deussenberry did not enter into an agreement that would allow Ms. Deussenberry to collect a percentage commission on the value of the estate.
10. The *Last Will and Testament of Ronald Clyde Gatewood* does not authorize a specific manner or amount of payment for his personal representative.
11. After her appointment as Administratrix, CTA, Ms. Deussenberry undertook many typical acts associated with administering an estate. She researched tax tickets, obtained a federal tax identification number, conferred with an accountant, conferred with stock holding companies, and researched real estate holdings, among other items all set out on the first two and one third of pages of Ex. G.
12. While Ms. Deussenberry does not have time sheets or a log of the hours she expended doing research or making phone calls, the undersigned finds that time expended on the tasks outlined on the first two and a third pages of Ex. G are reasonable and compensable. The time Ms. Deussenberry expended on those tasks totals eighteen (18) hours.
13. The remaining time Ms. Deussenberry spent on the estate was spent at the home of the decedent and Petitioner searching for pertinent documents as set out on pages three and four of Exhibit G. Ms. Deussenberry undertook 140 hours searching for documents.
14. Ms. Deussenberry testified that she searched the house in order to determine if there were any outstanding items, presumably accounts, assets, liabilities, etc., of which she was unaware.
15. The house is a two bedroom home, consisting of six or seven rooms, and it was in disarray.
16. Ms. Deussenberry's sister, Linda Haller, assisted Ms. Deussenberry in her search of the house for thirty hours. Ms. Deussenberry testified that Ms. Haller did not expect to be

paid for her time. Further there is no evidence that Petitioner agreed to pay Ms. Haller for her time.

17. The total amount of Ms. Deussenberry's first hourly invoice is four thousand two hundred dollars (\$4,200.00). Ex. E.
18. Contrary to the stated amount on the Invoice (Ex. E), 188 hours at the rate of \$25.00 an hour is \$4,700.00 not \$4,200.00.
19. The first invoice, Ex. E, also contains a percentage based commission in the amount of sixteen thousand dollars (\$16,000.00).
20. The commission claimed by Ms. Deussenberry is based on the value of the two Fidelity Investment accounts ending in 223 and 817 listed on the Appraisalment (Ex. C). (hereinafter "Fidelity accounts").
21. The Fidelity accounts were paid on death to Petitioner and did not come into the estate as an asset.
22. At certain times during the pendency of the Estate, Ms. Deussenberry asked Petitioner to deposit Petitioner's personal funds into the Estate account. Petitioner deposited the funds in the Estate account as requested. In total, seven thousand five hundred fifty five dollars and twenty eight cents (\$7,555.28) of Petitioner's personal money was deposited in estate account
23. Beginning in November of 2016, Ms. Deussenberry began paying herself for her services as Administratrix. In total, between November, 2016 and November 2017, Ms. Deussenberry paid herself seven thousand five hundred fifty four one dollars and twenty eight cents (\$7,541.28) from the estate. In essence all of the money deposited by Petitioner, save fourteen dollars (\$14.00) paid in recording and bank fees.
24. The Estate account is now closed.
25. Except as provided at the hearing on March 15, 2018 Ms. Deussenberry has not filed an accounting regarding the estate income and expenses.
26. At the hearing in this matter Ms. Deussenberry presented a second invoice in the amount of one thousand two hundred eighty three dollars and ninety one cents (\$1,283.91). That invoice includes twenty hours related to printing pictures and nine hours copying documents. A total of \$725.00 in time related to document printing and reproduction (not including an expense item for \$83.91 in ink).
27. Ms. Deussenberry introduced one picture into evidence at the hearing.
28. The undersigned finds the copying and printing expenses are not reasonable, and not compensable, except as set out below.
29. The undersigned counts approximately 60 pages presented which are attributable to Ms. Deussenberry, though not all of those pages were put into evidence. Ms. Deussenberry also provided copies to Petitioner at the hearing.
30. The undersigned finds that this estate was not complicated. Decedent's real property and vehicles passed by survivorship. His primary stock account had a designated beneficiary. While there were tasks to complete in furtherance of settling the estate, no extraordinary

services were required or rendered by Ms. Deussenberry in her role as Administratrix, CTA.

Conclusions of Law

W.Va. Code §44-4-12 is unambiguous. "The fiduciary commissioner in stating and settling the account shall allow the fiduciary any reasonable expenses incurred by him as such; and also, *except in cases in which it is otherwise provided*, a reasonable compensation in the form of a commission on receipts or otherwise." (emphasis supplied). In this case, the compensation of Ms. Deussenberry was "otherwise provided" in her agreement with Petitioner to handle the estate for \$25.00 an hour. There was no agreement to pay Ms. Deussenberry a commission.

As set out above, Ms. Deussenberry expended eighteen hours which were wholly reasonable and compensable.² Additionally Ms. Deussenberry expended one hundred and forty hours examining the contents of the house.³ While these hours are likely hours the average personal representative may not have spent, they were spent in fulfillment of Ms. Deussenberry's role as Administratrix, CTA. However, the undersigned concludes that, given the size of the home, one hundred and forty hours is an unreasonable amount of time to spend examining its contents. The house has seven rooms, ten hours per room is, in this instance, the maximum reasonable amount of time to spend examining the contents. Accordingly, Ms. Deussenberry shall be permitted to charge the agreed upon hourly rate for seventy hours of time related to examination of the items in the house: a total from the "first" invoice of 88 hours.

Regarding the "second" invoice provided by Ms. Deussenberry totally one thousand two hundred eighty three dollars and ninety one cents (\$1,283.91), it is compensable in part, and uncompensable in part. The four hours spent preparing the estate account receipts and

² ¶ 12, supra.

³ ¶ 13-14, supra.

disbursements are compensable. Additionally, the printer ink (\$83.91) is a reasonable and necessary expense. The document review, 3 hours, was likewise reasonable and necessary to Ms. Deussenberry's role as personal representative. The remaining hours listed on the invoice are 29 hours related to copying documents and pictures. While there is no question Ms. Deussenberry expended time making copies, twenty nine hours strains credulity. Moreover, the undersigned takes notice of the fact that there are at least two locations in Elkins which will make copies for less than a dollar per page. Ms. Deussenberry has a duty, as personal representative to minimize costs to the estate, to the extent that she can. She certainly could have obtained copies of all of the documents submitted for less than the \$725.00 she claims she is owed. The undersigned concludes based upon the documents submitted⁴ that \$120.00 represents a reasonable amount of reimbursement for the copies provided by Ms. Deussenberry. Reimbursement, to Ms. Deussenberry, from the Estate for the cost of the fiduciary commissioner hearing is not reasonable and therefore disallowed; a total from the "second" invoice of 7 hours and \$203.91⁵ in expenses

Ms. Deussenberry argues that she is entitled to a commission pursuant to W.Va. Code 44-4-12a. As addressed above, her compensation was otherwise provided for by her arrangement with the Petitioner. Part of the dispute over the commission is whether the Fidelity Accounts are properly considered part of the probate estate. Petitioner argues that the language of W.Va. Code 44-4-12a(b) that "no commission shall be allowed on joint and survivorship property, whether real or personal" controls. Petitioner contends that the fact the Fidelity accounts were to be paid on death to her renders them "joint and survivorship" property. This issue is moot. There is no need for the undersigned to make a determination as to whether the Fidelity accounts could be

⁴ ¶ 29, supra.

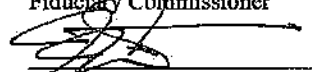
⁵ \$83.91 + \$120.00 = \$203.91

properly considered in calculating a commission. Ms. Deussenberry is not entitled to a commission.

Accordingly, the undersigned makes the following recommendation. The total reasonable compensable hours to be paid by the Estate is 95 hours and \$25.00 per hour or Two Thousand Three Hundred Seventy Five Dollars and no cents (\$2,375.00) and reasonable expenses of two hundred three dollars and ninety one cents (\$203.91), for a total payment of Two Thousand Five Hundred Seventy Eight Dollars and ninety one cents (\$2,578.91). As Ms. Deussenberry has already collected seven thousand five hundred fifty four one dollars and twenty eight cents (\$7,541.28)⁶ no money is owed to her, and the Estate is entitled to a refund in the amount of \$4,962.37. Further, the undersigned recommends Ms. Deussenberry be removed as personal representative of the Estate, and Petitioner, or her designee, be appointed to conclude the estate, by waiver or otherwise.

Any finding of fact which is later deemed a conclusion, or conclusion of law which is later deemed a finding shall be so taken without effect to the ruling herein.

Respectfully submitted this
2nd day of May, 2018
by: John J. Wallace, IV
Fiduciary Commissioner



John J. Wallace, IV
WV Bar #9730
P.O. Box 7
Elkins, WV 26241
(304)637-3800

RIGHT TO APPEAL: Please be advised that any party adversely affected by the rulings herein may have the right to appeal to either the Randolph County Commission and/or Randolph County Circuit Court, subject to time, and other constraints.


⁶ ¶ 12, supra.

CERTIFICATE OF SERVICE

I, John J. Wallace, IV, Fiduciary Commissioner, hereby certify that the foregoing *Report and Recommendation* was served upon parties of record on this 2nd day of May, 2018 by depositing a true and correct copy in the United States Mail, postage prepaid, in an envelope addressed as follows:

Frank P. Bush, Esq.
P.O. Box 1008
Elkins, WV 26241
Counsel for Petitioner

Ms. Patricia Deusenberry
286 N Skyview Dr.
Elkins, WV 26241
Pro Se Respondent



John J. Wallace, IV
WV Bar #9730
P.O. Box 7
Elkins, WV 26241
(304)637-3800

