

[illegible]

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELANT

VESUS

NO. 2008-IA-01557-SCT

JIMMY GRIFFITH

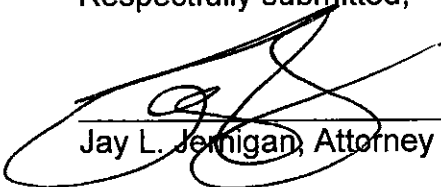
APPELEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Garland Griffith-Appellant
2. Jimmy Griffith-Appellee
3. Jay L. Jernigan-attorney for Appellant
4. Kirk Nelson-attorney for Appellee
5. Judge Larry Buffington, Jr.,-Chancery Court Judge

Respectfully submitted,



Jay L. Jernigan, Attorney for Appellant

TABLE OF CONTENTS

	Page
Certificate of Interested Persons.....	i
Table of Contents.....	ii
Table of Authorities.....	iii
I. Statement of Issues.....	1
II. Statement of the Case.....	2
III. Summary of the Argument.....	5
IV. Argument.....	6
V. Conclusion.....	9
VI. Certificate of Service.....	10

TABLE OF AUTHORITIES

Cases:	Page
Batchelor v. Powers' Estate, 348 So.2d 776	7
<u>Jenkins v. Dawes, 115 Mass. 599, 600</u>	7
Webster v. Kennebrew, 443 So. 2d 850.....	7
<u>Fortenberry v. Herrington, 188 Miss. 735 at 747, 196 So. 232 (1940)</u>	8
<u>Brock v. Lockett's Ex'rs., 4 How. 459</u>	8
Statutes:	
91-5-1 of the Mississippi Code of 1972.....	6
References	
Ballentine's Law Dictionary (2d ed. 1948).....	7
<u>Manufacturers' Finance Co. v. Amazon Cotton Mills Co., 29 A.L.R. 944</u>	7

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELLANT

VESUS

NO. 2008-IA-01557-SCT

JIMMY GRIFFITH

APPELEE

STATEMENT OF ISSUES FROM THE APPELLANT

COMES NOW the Appellant and files this his Statement of Issues to be reviewed by the Supreme Court of the State of Mississippi and would show the following issues:

1. That the will that was offered in Common form should have been accepted by the lower Court in that the only objection made to the will was that the will was the result of undue influence and not supported by sworn witnesses.(see Index of the Record page 17 paragraph IV) That the Lower court ruled that since the subscribing witnesses were not aware that the document that they were witnessing to was a Will in that if they had been aware it was an will that they would not have signed the document (See Index of the Record page 170). *However the issue seems to be where there is a valid will in every aspect and that where the subscribing witnesses not only signed the will, signed a certificate stating and acknowledging that it was the last will of Howard Griffith, and further sign a Affidavit of Subscribing witness that the testator was of sound and disposing mind and memory, 21 years of age and over, and said instrument was attested to by the subscribing witnesses and the publication thereof being made by Howard Griffith at his request; can now come in and state under oath in a hearing that they did not know this was the last will of Howard Griffith that they were witnessing.*

Respectfully submitted,



Jay L. Jernigan, Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELLANT

VESUS

NO. 2008-IA-01557-SCT

JIMMY GRIFFITH

APPELEE

STATEMENT OF THE CASE

COMES NOW the Appellant and files this his Statement of the Case to be reviewed by the Supreme Court of the State of Mississippi and would show the following statements of the case:

NATURE OF THE CASE

That this is a will contest where heirs at law, Jerry H. Griffith and Jimmy L. Griffith, are contesting the will of their father, Howard Griffith who left them under the will a residuary estate meaning that the remaining items of property that were not specifically devised under the will would go to the two sons Jerry H. Griffith and Jimmy L. Griffith. That they were not made devisees to any other property under the will that was offered in common form. (Index of the Record pages 8-13) That the will was offered in Common form in probate on February 17, 2006 and a Caveat against probate was filed on April 10, 2006 reciting under paragraph IV that Howard Griffith died without a valid will *in that the purported will is the result of undue influence and is not supported by sworn witnesses.* (Index of the Record page 17) The Court heard testimony on October 17, 2006 in regard to establishing the validity of the will. (see transcript of the Court hearing attached to the Index provided by the Clerk of the Chancery Court). The Court ruled on September 4, 2008 that the will was invalid due

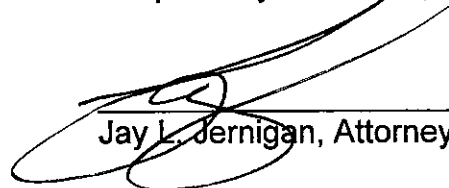
to the fact that Eric Scott and Patrick Bell (subscribing witnesses) testified that they were not aware it was a will they were witnessing and if they had been aware, they would not have signed the document. (Index of the Court Record page 170)

STATEMENT OF THE FACTS

The will offered for probate was properly signed by both the testator and subscribing witnesses and further notarized by Judy Lofton after she correctly identified the subscribing witnesses on July 6, 2005. (see transcript of hearing on October 17, 2006 pages 3-5) That further on May 23, 2006 the subscribing witnesses, Patrick O. Bell and Eric M. Scott signed affidavits stating they witnessed the signature of Howard Griffith on a document later learning it was a will and was told that at the time it was a power of attorney and never witnessed the signing of a will by Howard Griffith and that signature was a forgery on the will of Howard Griffith. (See Index of Record pages 23-24) That further in a hearing dated October 17, 2006 Eric Scott testified he did not what he was witnessing (page 11 of transcript line 29 of October 17, 2006 hearing) and further that the state of mind of Howard Griffith seemed like himself. (page 13 of the transcript line 16-17 of October 17, 2006 hearing) Eric Scott admits that the previously signed affidavit on May 23, 2006 (Index of record pages 23-24) was invalid in that his statement as to the power of attorney was wrong along with his signature being a forgery. (see transcript of hearing on October 17, 2006 page 14 lines 11-18 and page 15 lines 3-7) Patrick Bell testified that Howard Griffith asked him to witness something for him. (page 17 of transcript lines 14-17 of October 17, 2006 hearing) Further that Howard Griffith (testator), Garland Griffith (appellant), and Patrick Bell rode in the same car to the bank. That Eric Scott was to meet them there as they had talked with him on

the way over and he came in his own car. (see transcript of hearing of October 17, 2006 page 17 lines 25-29 and page 18 lines 1-12) That further he testified that the affidavit signed on May 23, 2006 (Index of Record page 23) that his signature was not a forgery contrary to the affidavit. (see transcript of hearing of October 17, 2006 page 23 lines 19-22) Patrick Bell further testified that Howard Griffith on the date of the signing of the Will was not upset, talked normal to him, and seemed to be of sound mind. (see transcript of the hearing of October 17, 2006 page 25 lines 16-29 and page 26 line 1) Please note that the affidavit of subscribing witnesses state under oath that Howard Griffith signed, ***published***, and declared the instrument to be his Last Will and Testament.(see Index of Record page 12)

Respectfully submitted,



Jay L. Jernigan, Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELANT

VESUS

NO. 2008-IA-01557-SCT

JIMMY GRIFFITH

APPELEE

SUMMARY OF THE ARGUMENT

COMES NOW the Appellant and files this his Summary of the Argument:

The subscribing witnesses "at the hearing testified that they were unaware that the document that they were witnessing was in fact a will" and "would not of signed the document" if they had known it was a will and if the lower court ruling is allowed to stand as the law then all wills shall be subject to invalidation not due to undue influence or because of non-compliance with statutory requirements but do to a subscribing witness being allowed to perpetrate a fraud upon the court either at the time of subscription or at the time of testimony in a hearing and in this case additionally by the subscribing witnesses filing affidavits stating that their signatures were forged or alternatively they were witnessing a power of attorney but not a will.

Respectfully submitted,



Jay L. Jernigan, Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELLANT

VESUS

NO. 2008-IA-01557-SCT

JIMMY GRIFFITH

APPELEE

THE ARGUMENT

COMES NOW the Appellant and files this his Argument with respect to the issues presented and the reason for Appellants position with authorities:

The Appellant would show unto the Court that the will fully complied with all statutory requirements pursuant Section 91-5-1 of the Mississippi Code of 1972.

Every person eighteen (18) years of age or older, being of sound and disposing mind, shall have power, by last will and testament, or codicil in writing, to devise all the estate, right, title and interest in possession, reversion, or remainder, which he or she hath, or at the time of his or her death shall have, of, in, or to lands, tenements, hereditaments, or annuities, or rents charged upon or issuing out of them, or goods and chattels, and personal estate of any description whatever, provided such last will and testament, or codicil, be signed by the testator or testatrix, or by some other person in his or her presence and by his or her express direction. Moreover, if not wholly written and subscribed by himself or herself, ***it shall be attested by two (2) or more credible witnesses in the presence of the testator or testatrix.***

Testimony at the hearing of October 17, 2006 revealed that the Testator along with Garland Griffith, Patrick Bell, Eric Scott, and the Notary Public all were present at the time of the signing of the will and further that Eric Scott and Patrick Bell signed the will as subscribing witnesses stating that it was ***published and executed*** by Howard Griffith. Also it is undisputed that Howard Griffith the Testator, Garland Griffith and Patrick Bell all rode together in the same car to go to the bank to have the will notarized. It is incredulous testimony once the subscribing witnesses have acknowledged that they both signed a false affidavit and that it was filed with the Court to now come before the Court and deny that they knew it was a will when they were

subscribing their signatures or affixing their signatures to the will. Note that in the transcript one of the subscribing witnesses was a first cousin to the sons of Howard Griffith (testator) and the other worked at the barber shop where the sons of Howard Griffith worked and that Jimmy Griffith procured their signing the false affidavit. It is quiet obvious if they would sign a false affidavit that they would also falsely testify in court when circumstantial and direct evidence indicates otherwise. Circumstantial evidence would be that Howard Griffith had no reason to tell them it was not a will and that three of them rode together in the same car and direct evidence that they signed the will on three separate and distinct places. That one of these places acknowledged that Howard Griffith was ***publishing*** this to be his last will and testament. For the appellee now to say the will was not published contradicts his own witnesses who have admitted to signing a false affidavit and further that their signatures appear on the will showing it was published.

Found in Batchelor v. Powers' Estate, **348 So.2d 776**, the definition of attestation:

Ballentine's Law Dictionary (2d ed. 1948) gives the following definitions of the term "attest":

Attestation. The act of witnessing the actual execution of a paper and signing one's name as a witness to that fact. See note to Manufacturers' Finance Co. v. Amazon Cotton Mills Co., **29 A.L.R. 944**.

Attesting witness. A person who signs his name on a document as a witness to the act of another in affixing his signature to the document. See Jenkins v. Dawes, **115 Mass. 599, 600**. Moreover, it appears to be the general rule although there is some authority to the contrary, that the word "attestation" includes not only the mental act of observation, but also the manual one of subscription

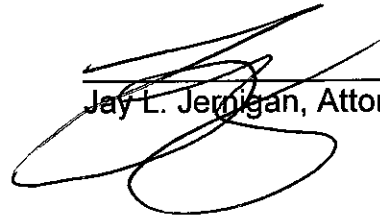
Thus the will in the Howard Estate was properly attested and subscribed according to the witnesses who signed the will on three separate occasions. The Court in Webster v. Kennebrew, **443 So. 2d 850**, cited the case along with commentatry of

Fortenberry v. Herrington, 188 Miss. 735 at 747, 196 So. 232 (1940), we stated:

The attesting witnesses must not only witness the signing and publishing of the will by the testator, but it is also their duty to satisfy themselves that he is of sound and disposing mind and memory, and capable of executing a will... For this reason, in the case of Brock v. Lockett's Ex'rs., 4 How. 459, this court said that the testimony of these subscribing witnesses is entitled to greater weight than the testimony of witnesses who had no such duty to perform, and especially is entitled to greater weight than the testimony of who were not present at the time of executing the will, and especially is this true of those who did not see the testator the day of its execution....

Thus from the testimony at the hearing of October 17, 2006 both subscribing witnesses testified that the testator (Howard Griffith) appeared to be in sound mind which would satisfy the requirements of the subscribing witnesses.

Respectfully submitted,


Jay L. Jernigan, Attorney for Appellant

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

GARLAND GRIFFITH

APPELANT

VESUS

NO. 2008-IA-01557-SCT

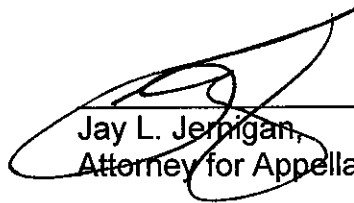
JIMMY GRIFFITH

APPELEE

CONCLUSION

The Appellant would ask that this Court reverse the finding of the lower court and allow the will to be probated.

Respectfully submitted,



Jay L. Jernigan,
Attorney for Appellant

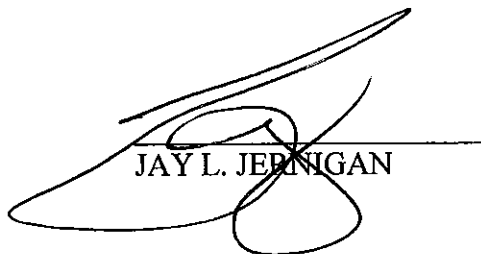
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the Appellant's brief was mailed, postage prepaid, to the following:

Judge Larry Buffington
Post Office Box 924
Collins, MS 39428

Kirk Nelson
1675 Lakeland Dr.
Suite 301
Jackson, MS 39216

SO CERTIFIED, on this the 3 day of June, A.D., 2009.



JAY L. JERNIGAN

JAY L. JERNIGAN
MS BAR NO. [REDACTED]
POST OFFICE BOX 427
HATTIESBURG, MISSISSIPPI 39403
(601) 544-1422
(601) 544-1428 FACSIMILE