

Mark Erwin was elected in November 2024 as the 29th Judge of Probate for Mobile County and took office on January 20, 2025 upon the retirement of Judge Don Davis. This new role as Probate Judge follows thirteen years with the Mobile County Probate Court including seven as Chief Clerk succeeding long-time Chief Clerk Joe McEarchern upon his retirement in 2017.

Mark grew up in Saraland, Alabama and graduated from Mobile Christian High School in 1986. He earned an Associate of Applied Science from Faulkner University in Montgomery and a Certificate in Biomedical Equipment Technology from the School of Health Related Professions at UAB. He completed his Bachelor of Arts undergraduate degree in Biblical Studies at Freed-Hardeman University in Henderson, TN. He earned his Juris Doctor degree from the University Of Alabama School Of Law in 1998.

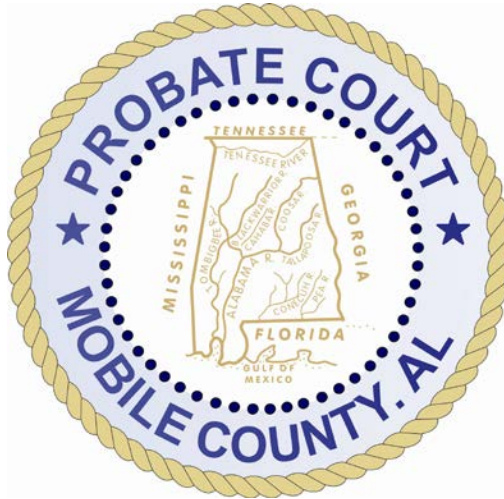
Mark began his legal career as law clerk in the Circuit Court of Mobile County. After two years as an associate with the Janecky Newell firm he practiced nine years as a founding member and partner of the Satterwhite & Erwin firm. He joined the Probate Court staff fulltime in May 2012. In private practice Mark had represented the Mobile County Commission as retained outside counsel, the City of Creola as City Attorney/Prosecutor, the Mobile County Racing Commission and the Strickland Youth Center. He had also served as a Temporary Judge of Probate for six years and fifteen years as the Municipal Judge of the City of Saraland.

Mark has been active in the Mobile Bar Association having served on the memorial resolution committee, legislation committee (chair), the CLE committee, three years on the officer nomination committee, and the executive committee. He has been a member of the Alabama Association of Municipal Judges as well as the Alabama Probate Chief Clerks Association. He is now a member of the Alabama Probate Judges Association and the National College of Probate Judges. Mark serves on several standing committees of the Alabama Law Institute working on major rewrites of the Alabama Adoption Code and the Guardianship/Conservatorship Code and he is frequently a speaker at legal conferences and continuing legal education seminars.

Mark is a member of the 2015 class of Leadership Mobile. He served over ten years on the Board of Trustees of Mobile Christian School and has served on various other civic boards and committees. Mark and his wife Silvia have been married 31 years and are the parents of three children, Emma Dixon Erwin Stetzinger (27), Sargent (25) and Barton (22). They are members of the Regency Church of Christ in Mobile where Mark serves as an elder.

Melissa Lindquist King serves as Chief Deputy Clerk of the Probate Court of Mobile County. She has been practicing law in the Mobile community for over twenty years. After graduating from the University of Alabama School of Law, she was admitted to the Alabama State Bar in 2000. Melissa began her legal career as a law clerk to the Honorable John Lockett after which she joined the law firm of Sirote & Permutt and eventually became a sole practitioner. In 2021, she left the private practice of law to serve as the Judicial Division Chief of the Probate Court of Mobile County. Melissa and her husband, John, reside in the Midtown Mobile area with their three children, Matthew (21), William (16), and Gwendolyn (15).

Priority Handling Cover Sheet



Please Include This Cover Sheet Along with Any Pleading Filed within 72 Hours Prior To a Hearing or Trial in Which the Pleading is to be considered by The Court

Hearing

Date: _____

Time: _____

Judge: _____

Attorney: _____

For: _____

Please staple, or otherwise attach this sheet to the pleading filed. This form may be reproduced by attorneys, but must be on bright colored paper stock. Thank you, MCPC.

EMPLOYEES PHONE NUMBERS & EMAIL ADDRESSES			
Probate Court Main Line	574-6000		
Renee Jerkins	574-6101	Accounting	rjerkins@probate.mobilecountyal.gov
Heather Dees	574-6104	Accounting	hdees@probate.mobilecountyal.gov
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Sheilah Casper	574-6002	Accounting	scasper@probate.mobilecountyal.gov
Switchboard	574-6001	Accounting	
Accounting Fax	574-6100	Accounting	
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Jennifer Fulton	574-6082	Elections	jfulton@probate.mobilecountyal.gov
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Imaging/Archives	574-6060, 574-6061	Imaging	
Imaging/Archives Fax	574-6062	Imaging	
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Judicial Commitment Fax	574-6004	Judicial	
Executive Suite Fax	574-6003	Judicial	
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Recording Fax	574-6042	Recording	
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Cheryl Williams	574-6070, 574-6071	Records	cwilliams@probate.mobilecountyal.gov
Teresa Donaldson	574-6070, 574-6071	Records	tdonaldson@probate.mobilecountyal.gov
Records Fax	574-6072	Records	
Court Website: www.probate.mobilecountyal.gov Court Email Address: probatecourt@probate.mobilecountyal.gov			

JUDICIAL FORMS

v2.0.2.5

Name	Description	Download
Attorney/Vendor Form	Attorney Requested Changes to Vendor Information	PDF
# Expedited Handling Cover Sheet.pdf	Expedited Handling Cover Sheet	PDF
# Election to receive Court Notices by E-mail in lieu of First Class Mail	Election to receive Court Notices by E-mail in lieu of First Class Mail	PDF
ADP - Alabama Minor Adoption Code Forms	Alabama Minor Adoption Code Forms	Directory
ADP - Alabama Adult Adoption Code Forms	Alabama Adult Adoption Code Forms	Directory
Adult APS Form.pdf	Alabama Elder And Adult In Need Of Protective Services	PDF
Appeal Forms	Forms for appeal to AL Court of Civil Appeals & AL Supreme Court	AOC E-Forms
COMMIT - Expense Voucher	Expense Voucher for GAL or Attorney for Petitioner	PDF
COMMIT - Petition for Involuntary Commitment.pdf	Petition for Involuntary Commitment	PDF
Confidential Proceedings - Requirements	Confidential Proceedings - Requirements for same	PDF
CONSERV - Motion to Restore Ward to Competency.pdf	Motion to Restore Ward to Competency	PDF
CONSERV - Petition for Appointment of Guardian.pdf	Petition for Appointment of Guardian	PDF
CONSERV - Petition for Letters of Conservatorship.pdf	Petition for Letters of Conservatorship	PDF
CONSERV - Petition for Partial Settlement.pdf	Petition for Partial Settlement	PDF
CONSERV - Petition for Single Transaction & Blocked Acct	Petition for Single Transaction and Blocked Account	PDF
CONSERV - Petition for Single Transaction Minor - Protective	Petition for Single Transaction Minor - Protective	PDF
CONSERV - Report Death of Ward & Petition for Final Settlement	Report of Death of Ward & Petition for Final Settlement	PDF
CONSERV - Report of Exhaustion of Assets & Petition	Report of Exhaustion of Assets & Petition for Final Settlement	PDF
CONSERV - Report of Restoration of Capacity & Petition	Report of Restoration of Capacity & Petition for Final Settlement	PDF
CONSERV - Waiver of Notice.pdf	Waiver of Notice	PDF
ESTATES - Allowances Prior to Adm.pdf	Allowances Prior to Adm	PDF
ESTATES - Annual Accounting & Petition for Partial Settlement.pdf	Annual Accounting & Petition for Partial Settlement	PDF
ESTATES - Authority to Open Safe Deposit Box.pdf	Petition for Authority to Open Safe Deposit Box	PDF
ESTATES - Exemptions - Allowances Prior to Adm.pdf	Exemptions - Allowances Prior to Administration	PDF
ESTATES - Inventory of Estate.pdf	Inventory of Estate	PDF
ESTATES - Motion to Appoint Commissioner.pdf	Motion to Appoint Commissioner	PDF
ESTATES - Motion to Construe Will & for Instruction.pdf	Motion to Construe Will and for Instruction	PDF
ESTATES - Motion to Produce Will.pdf	Motion to Produce Will	PDF
ESTATES - Motion to Sell Personal Property.pdf	Motion to Sell Personal Property	PDF
ESTATES - Objection to Estate Claim.pdf	Objection to Estate Claim	PDF
ESTATES - Petition for Discovery Prior to Adm.pdf	Petition for Discovery Prior to Administration	PDF
ESTATES - Petition for Exemptions & Allowances.pdf	Petition for Exemptions & Allowances	PDF
ESTATES - Petition for Final Settlement.pdf	Petition for Final Settlement	PDF
ESTATES - Petition for Final Consent Settlement & Order	Petition for Final Consent Settlement & Order Directing Distribution	PDF
ESTATES - Petition for Instructions.pdf	Petition for Instructions	PDF
ESTATES - Petition for Letters of Administration.pdf	Petition for Letters of Administration	PDF
ESTATES - Petition for Partial Settlement	Petition for Partial Settlement	PDF
ESTATES - Petition for Sale of Personal Property.pdf	Petition for Sale of Personal Property	PDF

ESTATES - Petition for Sale of Real Property.pdf	Petition for Sale of Real Property	PDF
ESTATES - Petition for Summary Distribution.pdf	Petition for Summary Distribution	PDF
ESTATES - Petition to Determine Heirs.pdf	Petition to Determine Heirs	PDF
ESTATES - Petition to Probate.pdf	Petition to Probate	PDF
ESTATES - Petition to Probate - CTA.pdf	Petition to Probate - CTA	PDF
ESTATES - Petition to Probate Foreign Will.pdf	Petition to Probate Foreign Will	PDF
ESTATES - Petition to Probate Lost Will.pdf	Petition to Probate Lost Will	PDF
ESTATES - Petition to Remove Personal Representative.pdf	Petition to Remove Personal Representative	PDF
ESTATES - Petition to Reopen Estate to Administer	Petition to Reopen Estate to Administer Unadministered Asset	PDF
ESTATES - Petition to Sell Real Property.pdf	Petition to Sell Real Property	PDF
ESTATES - Renunciation of Appt as Executor.pdf	Renunciation of Appt as Executor	PDF
ESTATES - Report of Compliance.pdf	Report of Compliance	PDF
ESTATES - Report of Sale of Personal Property.pdf	Report of Sale of Personal Property	PDF
ESTATES - Will Contest.pdf	Will Contest	PDF
Fee Voucher for GAL, AAL, Court Representative, & Special Atty	GAL, AAL, Court Representative, & Special Attorney Expense Voucher	PDF
GIAS - General Info & Asset Summary	General Info and Asset Summary Sheet	PDF
Guardian Care Plan	Guardian Care Plan	PDF
Guardian Status Report / Annual Report	Guardian Status Report / Annual Report	PDF
GUARDIANSHIP - General Info and Asset Summary Sheet	General Information and Asset Summary Sheet	PDF
GUARDIANSHIP - Informational Affidavit	Informational Affidavit in Guardianships	PDF
GUARDIANSHIP - Notice Requirements & Petitioner's Notice of Hearing	Notice Requirements & Petitioner's Notice of Hearing	PDF
HANDBOOK - Conservator Handbook	Conservator Handbook	PDF
HANDBOOK - Intestate Estate Administrator Handbook	Intestate Estate Administrator Handbook	PDF
Land Condemnation Commissioners	Land Condemnation Commissioners	PDF
Lawsuit Settlement Approval Procedure Conservators	Lawsuit Settlement Approval Procedure Conservatorship Cases	PDF
Lawsuit Settlement Approval Procedure Decedents	Lawsuit Settlement Approval Procedure Decedents Estate	PDF
Legitimation Declaration.pdf	Declaration of Legitimation	PDF
Legitimation Form Package.pdf	Atty Legitimation Form Package	PDF
Lost Will Information Sheet	Lost Will Information Sheet	PDF
Minors - Vehicle Purchase	Minors - Vehicle Purchase	PDF
Name Change - Instructions relating to Minor Petitions	Name Change - Instructions relating to Minor Petitions	PDF
Name Change Petition [Adult].pdf	Adult Name Change Petition	PDF
Name Change - Petition for Minor Name Change	Name Change - Petition for Minor Name Change	PDF
Notices - Affidavit for Service by Publication.pdf	Affidavit for Service by Publication	PDF
Notice of Appearance.pdf	Notice of Appearance	PDF
Order to Appear - Subpoena	Order to Appear - Subpoena	PDF
Petition for Disclosure of Adoption Info.pdf	Petition for Disclosure of Adoption Info	PDF
Petition to Designate Person to Direct Disposition of Remains	Petition to Designate Person to Direct Disposition of Remains	PDF
Petitioner Financial Information Sheet	Petitioner Financial Information Sheet	PDF
Schedule "A".pdf	Schedule "A"	PDF
Summons - Probate	Summons - Probate	PDF
Why Has A Lawyer Been Appointed In This Case.pdf	Why Has A Lawyer Been Appointed In This Case	PDF

Nonparty Subpoena Handout.pdf	Nonparty Subpoena Handout	PDF
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WHY HAS A LAWYER BEEN APPOINTED IN THIS CASE

In order to insure that the Constitutional, legal and property rights of minor children and incapacitated adults are protected, the Alabama Legislature requires [through the *Code of Alabama (1975)*] that Alabama probate courts appoint a lawyer to represent and act in the best interest of said minor child or incapacitated adult. If the appointed lawyer's client is living, the appointed lawyer is referred to as the "guardian ad litem" which is typically referred to as the "GAL". If the appointed lawyer's client is deceased, the appointed lawyer is referred to as the "administrator ad litem", which is typically referred to as the "AAL".

When a GAL or AAL is appointed they must undertake certain activities in order to fulfill the terms of their appointment by the probate court. Generally, this includes interviewing (either in person or by telephone) the other interested person(s) in the proceeding, inspecting a residence or real property, reviewing bank records, and the like. After they have conducted their investigation, the GAL or AAL must report their findings and determinations to the probate court and advise the court if they concur or approve of the proposed legal action. Written reports are furnished.

GALs and AALs are compensated for the work they perform. The GALs and AALs are required to report to the probate court, in writing, the amount of time they have expended in the assigned matter. The amount of compensation is set by the probate court. The compensation for GALs and AALs is taxed by the probate court to the appropriate party as "court costs". A court cost bill is issued by the probate court at the conclusion of a matter and sent to the lawyer of the responsible party (or, if there is no lawyer, to the responsible party).

The probate court encourages GALs and AALs to complete their assignments as expeditiously as possible and to submit their written reports to the probate court in like manner. The Court requires GALs and AALs to attend the hearing in the case, but timely filing of their reports before the hearing helps minimize expense and effort on the part of the interested parties and expedites the needed court ruling being issued.

If you have any questions concerning the GAL or AAL appointed in the matter you are interested in, you are encouraged to pose your questions to your legal counsel.

PREPARED BY

MOBILE COUNTY PROBATE COURT
P.O. Box 7
Mobile, Alabama 36601
(251) 574-6000 or www.probate.mobilecountyal.gov

This statement should not be considered legal advice. If you have questions concerning the information contained in this notice, please consult with your lawyer.

GUARDIAN AD LITEM [GAL]

I. A Guardian ad Litem:

- A. Is an attorney appointed by this Court to protect someone else's interest.
- B. Is an Officer of this Court.
- C. Is appointed for the limited duty of protecting the legal rights of a Minor ward or Incapacitated person in a proceeding.
- D. Gives no bond.
- E. Does not have charge or take possession of the ward's person or property.
- F. Has no powers either prior to the institution or after termination of the proceedings.

II. Before the hearing the Guardian ad Litem should:

- A. Examine and read the court file and all pleadings therein. Find out who is involved and what the case is all about.
- B. Contact and discuss the matter with his/her ward, if practicable.
- C. Contact the other attorney(s) and find out the facts.
- D. Where appropriate, research the law.
- E. Inspect and examine any accountings that may affect the ward's interest.
- F. Protect the ward's interest and assist the Court in solving any problems.
- G. Be prepared for the hearing and know how the ward will be affected by any action taken or decision made.
- H. Keep records, especially of his/her time expended.

III. In conservatorship and guardianship proceedings, the GAL should pay special attention to the following and respond accordingly, viz:

- A. The GAL should determine if it is in the best interest of his/her client that the petitioner, or person nominated, is the proper person to be appointed as conservator and/or guardian if the petition is granted. In so doing, the GAL should contact the attorney for the petitioner in advance of the hearing, or speak with the nominee directly, after first consulting with the attorney for the petitioner, as to any convictions of a crime of moral turpitude, any outstanding judgements, or the like, in which the nominee is or has been involved. If there are such, then the GAL should take appropriate action as he/she determines to further investigate the circumstances and file an appropriate pleading or inform the Court at the hearing as determined to be proper by the GAL.
- B. **NOTE:** If the evidence supports a finding for the person being incapacitated, the Court will need to address whether said party is also mentally incompetent and should be removed from the voter records. You are to consider this additional issue and offer comments or recommendations as to same in your report. Please note the following, definition for mental incompetency being used by the Court:

A mentally incompetent person is one whose mental facilities have become so impaired as to make him/her incapable of protecting him/herself or properly managing his/her property.

- C. The Guardian ad Litem should investigate and determine if the adult alleged/ward is capable of travel, especially outside of the State of Alabama, and if he/she possess the mental ability to determine for or against same. If no general travel restrictions are recommended by the Guardian ad Litem, but certain conditions should be in place, the GAL should inform the Court accordingly and provide details. However, if the GAL determines that travel would not be in the best interest of the ward, the said GAL should inform the Court and provide the basis for such determination.

IV. At the hearing the Guardian ad Litem should:

- A. Know the location, condition and situation of the ward.
- B. Protect the ward's interest. Ask questions that are pertinent to protecting the interest of the ward.
- C. Define the interests of the ward. Do not admit or waive any position that may sustain an adverse party's claim.
- D. Ascertain and assess from the ward and from other sources what are the legal and equitable rights of the ward. Bring these rights to the attention of the Court.
- E. Speak up; let the Court know if there are pertinent facts or law in the case that it may be unaware of.
- F. Address possible issue of mental incompetency noted above.
- G. Be prepared to tell the Court what he/she has done, how he/she has helped the ward and/or Court, and time expended.

V. After the hearing, the Guardian ad Litem should:

- A. Make sure the necessary orders and decrees are issued to carry out all Court decisions.
- B. If practical and appropriate, notify ward of the results.

PROBATE COURT OF MOBILE COUNTY, ALABAMA

Style: ***** , Deceased
Case No. 2025-****
Matter: PROBATE OF WILL
Hearing: NOVEMBER 10, 2025
Time: 9:30 AM COURTROOM 1, THIRD FLOOR

ORDER APPOINTING GUARDIAN AD LITEM

To: *****, Esq.
PO BOX ***
Mobile, AL 36601

Please take notice that you are hereby appointed GUARDIAN AD LITEM for *****, INCAPACITATED HEIR, who is interested in the matter referenced and which comes up for a hearing on the date set above. Done this 21st day of October, 2025.

C. MARK ERWIN, Judge of Probate

Acceptance of Appointment:



C. Mark Erwin, Judge of Probate

GUARDIAN AD LITEM

INFORMATION AND INSTRUCTIONS:

- Note 1:** **Counsel of Record is:** *****, Esq..
Unless attached hereto, Counsel has been directed to furnish you with the pleading and other information necessary for you to prepare for this matter. Please contact said attorney directly and make arrangements accordingly.
- Note 2:** The Acceptance of Appointment must be filed with the Court no more than five (5) business days from the date of appointment.
- Note 3:** Any objection/response which you may have to the subject matter should be filed in writing with the Court and other counsel no later than three (3) business days from the scheduled hearing.
- Note 4:** Should you interpose no objections to the granting of the relief sought, you may inform the Court by filing a written statement to that effect. Written report must be filed at least three (3) business days before hearing. You must state in your report that you have complied with the GUARDIAN AD LITEM list of duties and responsibilities as issued by this Court previously and have consulted with counsel and the necessary parties. You may fax the report to the Court and counsel provided that it is placed in the mail the same day. Further, please forward with said report your time sheet form or other time records so that a fee may be set for your services. Please advise if you have any questions regarding this procedure.

Please see the Judicial Forms section in Benchmark WEB on the Court's Website at www.probate.mobilecountyal.gov for the Expense Voucher and the "Why Has A Lawyer Been Appointed In This Case" documentation.

Please sign and return this form to the Court at P.O. BOX 7, MOBILE, ALABAMA 36601 within five (5) business days. If you will be unable to serve, return form with a proper notation.

Please be advised that if your time exceeds 5.0 hours as GAL, you must file an itemization. If we do not receive your expense voucher within 72 hours of the final hearing, we will bill at the Court's standard minimum of \$200.00 for 1 hour of service.

PROBATE COURT OF MOBILE COUNTY, ALABAMA

Style: ***** , Incapacitated Person
Case No. 2024-*****
Matter: FINAL SETTLEMENT
Hearing: DECEMBER 8, 2025
Time: 2:00 PM COURTROOM 1, THIRD FLOOR

ORDER APPOINTING ADMINISTRATOR AD LITEM

To: ***** , Esq.
PO BOX *****
MOBILE, AL 36660

Please take notice that you are hereby appointed ADMINISTRATOR AD LITEM for ***** , INCAP. PERSON NOW DECEASED, who is interested in the matter referenced and which comes up for a hearing on the date set above. Done this 30th day of October, 2025.

C. MARK ERWIN, Judge of Probate

Acceptance of Appointment:



C. Mark Erwin, Judge of Probate

ADMINISTRATOR AD LITEM

INFORMATION AND INSTRUCTIONS:

- Note 1:** **Counsel of Record is:** ***** , Esq.
Unless attached hereto, Counsel has been directed to furnish you with the pleading and other information necessary for you to prepare for this matter. Please contact said attorney directly and make arrangements accordingly.
- Note 2:** The Acceptance of Appointment must be filed with the Court no more than five (5) business days from the date of appointment.
- Note 3:** Any objection/response which you may have to the subject matter should be filed in writing with the Court and other counsel no later than three (3) business days from the scheduled hearing.
- Note 4:** Should you interpose no objections to the granting of the relief sought, you may inform the Court by filing a written statement to that effect. Written report must be filed at least three (3) business days before hearing. You must state in your report that you have complied with the ADMINISTRATOR AD LITEM list of duties and responsibilities as issued by this Court previously and have consulted with counsel and the necessary parties. You may fax the report to the Court and counsel provided that it is placed in the mail the same day. Further, please forward with said report your time sheet form or other time records so that a fee may be set for your services. Please advise if you have any questions regarding this procedure.

Please see the Judicial Forms section in Benchmark WEB on the Court's Website at www.probate.mobilecountyal.gov for the Expense Voucher and the "Why Has A Lawyer Been Appointed In This Case" documentation.

Please sign and return this form to the Court at P.O. BOX 7, MOBILE, ALABAMA 36601 within five (5) business days. If you will be unable to serve, return form with a proper notation.

Please be advised that if your time exceeds 5.0 hours as GAL, you must file an itemization. If we do not receive your expense voucher within 72 hours of the final hearing, we will bill at the Court's standard minimum of \$200.00 for 1 hour of service.

IN THE PROBATE COURT FOR MOBILE COUNTY, ALABAMA

In the matter of : Case No. 2025-

(Alleged) Incapacitated person

NOTICE OF EMERGENCY APPOINTMENT OF COURT REPRESENTATIVE

TO: , Esq.

HEARING DATE: December 2025 at 9:00 a.m.

PLEASE TAKE NOTICE that on this date you were appointed Court Representative in the above cause. Pursuant to §26-2A-102(b) *Code of Alabama*, (1975), you have the following duties and responsibilities, to-wit:

1. Interview the said alleged incapacitated person.
2. Interview petitioner(s) in this cause.
3. Interview the person nominated to serve as Guardian and Conservator.
4. Visit the present place of abode of said alleged and the place at which it is proposed that said alleged will be detained or residing.
5. **A written report of your findings must be filed prior to the emergency hearing date.** Court Representatives **ARE REQUIRED** to attend hearings in emergency matters
6. **NOTE:** If the evidence supports a finding FOR the person being incapacitated, the Court will need to address whether said party is also mentally incompetent and should be removed from the voter records. You are to consider this additional issue and offer comments or recommendations as to same in your report. Please note the following, definition for mental incompetency being used by the Court:

A mentally incompetent person is one whose mental faculties have become so impaired as to make him/her incapable of protecting him/herself or properly managing his/her property.

7. Submit to the Court with the report a statement indicating the time spent in performing this service (not to exceed four (4) hours). If more than four (4) hours is anticipated to perform your duties, you are to advise the Court in writing and request approval. If a person you should interview resides outside the Mobile area, please consult with the Court in terms of the scope and extent of your assignment. If excessive travel is involved, mileage may also be submitted.

For information regarding names and places, etc., please refer to the attached petition or contact counsel for the petitioner(s).

It is **ORDERED** that all individuals, medical care providers, and others having custody of information[including, but not limited to, health history, any diagnosis, past or current treatment for any condition, prognosis relating to any past or current condition, behavioral or mental health services rendered in the past or currently being rendered concerning the alleged incapacitated person shall promptly provide to the Court Representative any and all such information in their custody that may be requested.

It is further **ORDERED** that any medical information regarding the alleged incapacitated person or minor furnished to the Court Representative pursuant to this Order shall: (1) remain in the custody of the Court Representative; (2) not be copied or distributed by the Court Representative, except for use in a court proceeding concerning the alleged incapacitated person; and (3) be destroyed after conclusion of this proceeding unless ordered otherwise by the Court.

Done and **ORDERED** this 4th day of December, 2025.

C. Mark Erwin, Judge of Probate

Acceptance of Appointment:

By

Judge of Probate

By

Court Representative (Sign and Return)

Please sign and return this form to the Court at P.O. Box 7, Mobile, AL 36601 at your earliest convenience. If you will be unable to serve, return form with a proper notation.

Please be advised that if your time exceeds 5.0 hours as Court Representative, you must file an itemization. If we do not receive your expense voucher within 48 hours of the final hearing, we will bill at the Court's standard minimum of \$200.00 for 1 hour of service.

IN THE PROBATE COURT OF MOBILE COUNTY, ALABAMA

In the Matter of _____ :
_____ : Case No.: _____
_____ : Date: _____

EXPENSE VOUCHER FOR GUARDIAN AD LITEM, ADMINISTRATOR AD LITEM, COURT REPRESENTATIVE OR SPECIAL ATTORNEY

Number of hours spent in Court (utilize one-tenth of hour time increment) _____

Number of hours spent in interviews, telephone calls, preparation of case, _____
review of pleadings and documents (utilize one-tenth of hour time
increments)

Hourly Rate \$200.00 **Total Number of Hours** _____

Total Due _____

Miscellaneous Expenses: \$ _____

(Mileage: \$0.70 as of 1/1/2025)

Reason:

I do hereby state that the above is true and correct and that I served in the capacity as
(mark appropriate box) ☐ Guardian ad Litem, ☐ Administrator ad Litem, ☐ Court Representative,
or ☐ Special Attorney to appointment made by the Probate Court of Mobile County, Alabama.

Date: _____

(Signature)

(Print Name)

NOTE: (1) If your time exceeds 5.0 hours or if you anticipate an objection to your fee request, attach an itemization for the time expended with a description of the service rendered. You should not "lump" your time or description of services rendered. Time should be recorded in one-tenth increments. (2) You should turn your expense voucher in at the time a written report is submitted and/or hearing if at all possible. (3) The "Grace Period" is 72 hours thereafter. If a voucher is not filed within 72 hours, you will be awarded a flat hourly rate for one hour's time.

Practice Tips Regarding Compensation for Appointed Lawyers in Non-Mental Health Cases

- These matters are generally set on the Monday docket or specially set
- Fill out a vendor form
- Acceptance of Appointments need to be returned within 5 business days, if not we will need to appoint someone else
- If you were appointed on an emergency guardianship/conservatorship, you will also need to file the acceptance of the appointment on the merit petition
- Hourly rate is \$200 with no need to itemize unless you are over 5 hours
- Vouchers need to be filed within 72 hours of final hearing or if no hearing, when the report is due unless you are objecting
- Please do not file interim vouchers unless instructed by the Court. (If you are appointed in an emergency, please do not submit your voucher until after the merit.)
- The Court staff bills the matter within 72 hours of the hearing. Your attorney's fees become court costs and are included on that invoice.
- Please provide your cell phone # to the Court, on the sign-in sheet on the registration table outside, or text myself or Susan Powers your contact information. Melissa King: 251-222-4705 Susan Powers: 251-305-5628

Appointed Lawyer Training

12/2/2025

We are going to discuss how to get paid in a mental health commitment case. For you, this is done through a voucher and an attached supplemental timesheet to detail specifics on out of court time. Once this is received it is checked for required items and for mathematical accuracy, we then use that voucher along with invoices from the Mobile County Sheriff, court reporter, medical expert, etc... adding any court costs due and create a cost bill. Once the cost bill is complete, we create the reimbursement form required by the State of Alabama Comptroller's office for Judge's signature. It is sent to the State Comptroller's office for review and processing. If no errors are found, a warrant is issued and a check is produced. Once the check is received and receipted by Probate Court, payment is made to attorneys and vendors at the end of the month. If you have not given us an attorney form including your tax identification number and your e-mail address, you will need to do that before we can process a payment to you. A copy of this form is available on the attorney page of the Probate Court website and one is included in the handout available today.

Some notes on vouchers and itemized timesheets. In the past, vouchers were required to be originals with original signatures but the State Comptroller's office is now accepting them from us electronically and no longer requiring originals to be mailed in. Vouchers should still be turned in within 72 hours of the final hearing. If there is a special circumstance that prevents you from turning in your voucher in the 72 hours, please let us know. We are holding you to 72 hours and reserve the right to bill without your voucher if your voucher is not submitted to us in a timely fashion. We do not want to hold up payments for vendors and other attorneys if at all possible. You should bill in tenths of an hour or 6 minute increments. The hourly rate is currently \$70.00 an hour. You should make sure you include on the voucher and the timesheet the respondents full name, the corresponding correct case number, and date you are submitting/completing the document along with your appointment date. On the itemized timesheet as back up for your out of court time, please make sure you include your name also. The time sheet is for itemization of **out of court time** only. You do not need to include in court waiting or hearing time in this itemization. Please make sure you note the hearing dates involved on the voucher and you track your time for each case. The State will reject it if the dates are not filled in and if names and case numbers do not match. If you do not need the second or third merit hearing lines, please leave them blank. In- Court Hearing time must match the other attorney in the case. Please make sure you discuss with them after court to come to a consensus on the time you are both putting on your vouchers. For in court waiting time, please do not include the time spent interviewing a client at the court house, reviewing a medical file at the courthouse, etc....Those should be included in out of court time and itemized on your timesheet. You can also bill for non- overhead reimbursable expenses. This includes mileage at the current IRS published rate, postage, and reasonable photocopying expenses. If you do include mileage, it has to be itemized showing dates with to and from information. Please make sure your total out of court time on the voucher matches the total of your out of court time on your timesheet. Please make sure the out of court time hourly itemization and dollar itemization matches and totals correctly. Please make sure you mileage is calculated and totaled correctly. The current rate

is .70 cents per mile. Please make sure the total number of miles matches the breakdown included in the itemization and is totaled correctly.

Some of your times to be included on your voucher have a maximum limit. For example, opening and closing the file is limited to a total of .5 an hour. Please refer to the guidelines established by the Office of Indigent Defense Services for reasonable maximum times. This information is available on the State Comptroller's website. Please be aware that you cannot bill for time prior to your appointment date. This is the date on the appointment letter you sign. It is not the date you receive an e-mail from Judicial. You should also not bill for time after the final hearing date unless there is a special circumstance. Even with a special circumstance, it would be up to the State Comptroller's office to determine if the special circumstance is reasonable. The general rule is they do not allow billing after the final hearing date. This includes closing the file.

On revocations and recommitments, a separate voucher and timesheet will be required. You will be able to tell because the case number will be followed by a -1. You will use this same procedure when billing on/for an appeal. Please note that on an appeal or not, the maximum amount that can be billed in total for time spent on a particular case is \$1,500.00. You can add non – overhead reimbursable expenses to the \$1,500 cap.

Please type your voucher and associated time sheets or write legibly.

Please respond to our e-mails, phone calls, or requests for corrections to your vouchers/timesheets as quickly as possible. Since vouchers are still submitted to the State electronically, you will have to correct any errors by creating a new document or changing the existing document and initialing the changes. The sooner we get everything ready for submission and we get the request sent to the State. The sooner you can get paid.

There is also a yearly State deadline for mental health commitment payments about 40 days after the end of each fiscal year. After this deadline, the State Comptroller's office will not process any more payments for the previous fiscal year.

IN THE MATTER OF
THE INVOLUNTARY COMMITMENT OF

IN THE PROBATE COURT OF
MOBILE COUNTY, ALABAMA

_____, Respondent

Case No.: _____ - _____

Date: _____

Appointment Date: _____

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM
OR ATTORNEY FOR RESPONDENT OR PETITIONER'S ATTORNEY**

IN COURT TIME

Probable Cause hearing Date: _____

Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____

Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____

Merit hearing Date: _____

Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____

Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____

If needed: 2nd-Merit hearing Date: _____

Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____

Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____

If needed: 3rd Merit hearing Date: _____

Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____

Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____

OUT OF COURT TIME

Total Number of hours spent in Out of Court legal services: _____ @ \$70.00/hr \$ _____

(A complete itemization of out of court legal services is attached:
Open file, review medical records, interview parties, close filed, etc.)

Mileage Expenses: _____ miles @ \$.70 per/mile \$ _____

Reason: _____

TOTAL REQUEST \$ _____

CERTIFICATE UNDER PENALTY OF PERJURY

I do hereby certify that the aforesaid voucher is true and correct to the best of my information, knowledge and belief and under the penalty of perjury. I served as: _____ Guardian Ad Litem; _____ Attorney for the Respondent; or _____ Attorney for the Petitioner, pursuant to appointment made by the Probate Court of Mobile County, Alabama.

(Signature)

(Printed Name)

(Address)

(Address)

(Telephone)

Authority for rates of pay:

IN THE MATTER OF
THE INVOLUNTARY COMMITMENT OF

IN THE PROBATE COURT OF
MOBILE COUNTY, ALABAMA

_____, Respondent ← Complete Name of Respondent
Case No.: _____ ← Correct Case Number XXXX-XXXX
Date: _____ ← Date voucher completed
Appointment Date: _____ ← Appointment Date

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM
OR ATTORNEY FOR RESPONDENT OR PETITIONER'S ATTORNEY**

IN COURT TIME

Probable Cause hearing Date: Date of PC hearing

Number of hours spent in Court hearing Time spent in hearing-must match opposing counsel @ \$70.00/hr \$ _____
Number of hours spent in Court waiting Time spent in Court awaiting hearing @ \$70.00/hr \$ _____

Merit hearing Date: Date of Merit hearing

Number of hours spent in Court hearing Time spent in hearing-must match opposing counsel @ \$70.00/hr \$ _____
Number of hours spent in Court waiting Time spent in Court awaiting hearing @ \$70.00/hr \$ _____

If needed: 2nd-Merit hearing Date: Date of Merit hearing

Number of hours spent in Court hearing Time spent in hearing-must match opposing counsel @ \$70.00/hr \$ _____
Number of hours spent in Court waiting Time spent in Court awaiting hearing @ \$70.00/hr \$ _____

- Out of Court Time should reflect hours spent from the "Ordered and Decreed" date in the appointment letter through the date of final disposition (Final Hearing Date). All time should be billed in 6 minute increments (.1) and should adhere to Uniform Guidelines for Attorney Fee Declarations Recommended by the Indigent Defense Committee of the Alabama State Bar.
- Travel time can be billed along with mileage. Both mileage and travel time should be divided by the number of cases involved in same.
- **Original expense vouchers with original signatures are due within 72 hours of the final hearing.**
- Maximum amount billed, excluding reimbursable expenses, cannot exceed \$1,500.00.
- For questions concerning expense vouchers, please contact Renee Jerkins at 251-574-6101.

OUT OF COURT TIME

Total Number of hours spent in Out of Court legal services: _____ @ \$70.00/hr \$ _____
(Complete itemization of out of court legal services is attached: Open/close file, review medical records, interviews, etc.)

Mileage Expenses: _____ miles @ \$.70/mile \$ _____

Reason: A detail of dates, points traversed and purpose of travel must be included. Please confirm mileage rates periodically at <http://comptroller.alabama.gov/mileage-rates> for current IRS rate.

TOTAL REQUEST \$ _____

CERTIFICATE UNDER PENALTY OF PERJURY

I do hereby certify that the aforesaid voucher is true and correct to the best of my information, knowledge and belief and under the penalty of perjury. I served as: _____ Guardian Ad Litem: _____ Attorney for the Respondent; or _____ Attorney for the Petitioner, pursuant to appointment made by the Probate Court of Mobile County, Alabama.

(Signature) _____

(Printed Name) _____

(Address) _____

(Telephone) _____

Attorney/Vendor Requested Changes to Attorney/Vendor Information

Please return to two of the following:

Sheilah Casper: scasper@probate.mobilecountyal.gov

Renee Jerkins: rjerkins@probate.mobilecountyal.gov

Heather Dees: hdees@probate.mobilecountyal.gov

Fax: 251-574-6100

For questions, please call Sheilah Casper 251-574-6001, Heather Dees 251-574-6104 or Renee Jerkins 251-574-6101.

Attorney or Vendor Name: _____

Firm/Business Name (required if using EIN number issued by the IRS):

Mailing address: _____

Remittance Address (if different from mailing address):

Telephone number: _____

Fax number: _____

One of the following is required (Social Security number or Tax ID):

Certification: Under penalties of perjury, I certify that the number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me). I am not subject to backup withholding because I am exempt from backup withholding, I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding. I am a U.S. citizen or other U.S. person as defined by the IRS general instructions for Form W-9.

Signature: _____

Note: Attorney/Vendor name and Social Security number must match exactly to social security card.

SSN: _____

Note: Firm name and Tax ID must match exactly as issued from the Internal Revenue Service

Tax ID: _____

Email address: _____



STATE OF ALABAMA
Department of Finance
Office of Indigent Defense Services

100 N. Union Street, Suite 680
 Montgomery, Alabama 36130
 (334) 242-7059
www.OIDS.alabama.gov



Robert Bentley
 Governor

Chris E. Roberts
 Director

Bill Newton
 Acting Director of Finance

MEMORANDUM

To: All Indigent Defense Attorneys

From: Chris E. Roberts *CL*
 Director of Indigent Defense Services

Date: July 14, 2015

Re: To establish reasonable times allowances for certain standard billing entries

Pursuant to Act No. 2011-678, appointed counsel shall be entitled to receive for their services a fee to be certified by the trial court. The amount of the fee shall be based on the number of hours spent by the attorney in working on the case and shall be computed at the rate of seventy dollars (\$70) per hour for the time reasonably expended on the case. It has been determined by OIDS that reasonable maximum times should be established for certain standard procedures routinely occurring in cases. The maximum times are set out below and are derived from average billing practices of attorneys in regard to these specific activities.

Letter	.3 hour
Discovery Motion	.5 hour
Email to	.1 hour
Email from	.1 hour
Notice of Appearance	.5 hour
Motion to Continue	.5 hour
404(b) Request	.5 hour
Notice of Appointment	.1 hour
Motion to Withdraw	.5 hour
Preliminary Hearing Request	.5 hour
Calendar	.1 hour
Review Order	.3 hour
Open/Close/Bill File	.5 hour

Counsel may deviate above the listed maximum amounts when billing for these activities but such deviation should be accompanied by an explanation for the extra time. Said explanation shall be included in the electronic billing section related to the time entry.

COMPTROLLER'S GUIDELINES

FOR PAYMENT OF EXPENSES FOR COMMITMENT, DISCHARGE AND TRANSFER OF PERSONS IN STATE INSTITUTIONS UNDER SECTIONS 22-52.1.1 through 22-52-17, CODE OF ALABAMA.

SOURCES OF AUTHORITY FOR PAYMENT OF EXPENSES OF INVOLUNTARY COMMITMENT PROCEEDINGS

Judges of Probate – (Cites are to Code of Alabama, 1975, as amended)

- 22-52-12 All necessary expenses incurred in transporting a respondent for inpatient treatment are taxed as costs of the proceeding.
- 22-52-14 In any commitment proceeding, (1) the fees paid for representation of petitioner or respondent, as GAL and/or attorney, are to be paid at the rates set out in 15-12-21; (2) any expert employed to offer expert testimony shall be paid "such amounts as found to be reasonable by the probate judge; (3) all other costs allowable by law shall be paid by the state general fund upon order of the probate judge."
- 22-52-17 When transporting a respondent for mental evaluation, the sheriff shall receive reimbursement for expenses in transporting the respondent to and from the facility at the rate allowed in 36-7-20. Further, the cost of conveying [respondent] shall be taxed as costs of the proceeding. Please note – 36-7-20 is entitled as "allowances for expenses other than transportation of persons traveling within state." This statute covers per diem and meal allowances.

Comptroller – (Cites are to Code of Alabama, 1975, as amended)

- 41-4-50 Functions and duties include:
(4) To preaudit and *determine the correctness and legality* of every claim and account submitted for issuance of a warrant"
- 41-4-54 Accounts against state must be accurately and *fully itemized*.
- 41-4-61 Comptroller has authority to require information ... touching any claim or account he is required to audit.

GENERAL RULES ON EXPENSES SUBJECT TO PAYMENT FROM STATE TREASURY

~~Only expenses incurred after the filing of a petition are eligible for payment. Expenses incurred prior to a petition cannot be paid.~~

~~Expenses must be reasonable and necessary. All charges against the Treasury of the State must be necessary to the action in which they were incurred and must be reasonable in amount.~~

As recognized in Attorney General's Opinion 2012-055 : "There are no laws or statutes that determine or define a reasonable and necessary expense in any given situation." That Opinion does provide the following guidance:

"According to Black's Law Dictionary, the term "reasonable" is defined as "[f] air, proper, or moderate under the circumstances According to reason [[H]aving the faculty of reason (a reasonable person would have looked both ways)]" BLACK'S LAW DICTIONARY 1379 (9th ed. 2009). Webster's Third New International Dictionary defines the term "necessary" as "items ... that cannot be done without; things that must be had; essentials." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1510 (3rd ed. 2002). Accordingly, a reasonable and necessary expense is an expense that is essential and fair

under the circumstances. This particular definition provides an enigmatic explanation. Consequently, this Office has occasionally stated that whether an expense is reasonable and necessary is a factual determination to be made by an agency.

PROCEDURES

Probate Judge Fee Declaration Form- The original form bearing the Probate Judge's original signature must be submitted with the required supporting documentation attached in the order as listed on the form.

Case Numbers- Case numbers/names are required to prevent duplicate payments.

Final Disposition and Date- Specify the type of final disposition (commitment, recommitment or dismissal) and must have the date of final disposition.

Appointment Date- The appointment date is the date the attorney is appointed by the Probate Judge (Attorney's cannot be paid for work done prior to their appointment).

Itemize Attorneys Fees- All attorney fees must be itemized and separated (in court/ out court) by date. Attorney Fee Declaration Forms (FRMS-MC1) can be found at www.comptroller.alabama.gov or www.alacourt.gov. Attorney Fees are paid pursuant to Code of Alabama, Section 15-12-21. Attorneys should follow the Uniform Guidelines established by the Alabama State Bar for itemizing their claims. These guidelines are available at www.comptroller.alabama.gov under the Indigent Defense section.

Evaluation/Expert Testimony –Invoices must list the respondent's name, the case number, the date of service and describe the services rendered by the expert. The invoice must be accompanied by a judge's order setting out the amount due the expert as well as a finding that the amount due is reasonable. The State will only pay for an evaluation after a petition is filed and for expert testimony during the hearing(s). A mental evaluation performed prior to a petition being filed is not payable by the State.

Itemize probate costs- All probate costs must be itemized in accordance with Code of Alabama, Sections 12-19-42 and 12-19-90. Flat rates are not acceptable.

Itemize transportation costs- Transportation costs must be itemized. (Specify number of miles multiplied by the mileage rate. Code of Alabama, Sections 22-52-12 for court ordered inpatient treatment; Section 22-52-17 for transport costs for mental evaluation. Flat rates are not acceptable.

Mileage rate is the current rate posted on the Comptroller's web site per IRS guidelines.
www.comptroller.alabama.gov

Copies- The State Comptroller's Office will accept copies of required invoices.

Original Documents Required. The Probate Judges Fee Declaration form bearing the original signature of Probate Judge is required. On the Attorney Fee Declaration Form, the original signature of the Attorney is required.

Appeals – Are paid pursuant to Code of Alabama, Section 22-52-15. If the Probate Judge is learned in the law, please indicate this on the Probate Judge Declaration Form when submitting it to the Comptroller's Office for



STATE OF ALABAMA
Department of Finance
Office of the State Comptroller

100 North Union Street, Suite 220
Montgomery, Alabama 36130-2620
Telephone (334) 242-7050 Fax (334) 242-7466
www.comptroller.alabama.gov

Robert Bentley
Governor

David A. Perry
Director of Finance

Thomas L. White, Jr.
State Comptroller

Janice A. Hamm
Deputy State Comptroller

MEMORANDUM

TO: All Probate Judges and Chief Clerks

FROM: Thomas L. White, Jr.
State Comptroller

DATE: July 20, 2011

RE: Act 2011-678 – Provisions relating to Appointed Counsel for
Mental Commitments

On June 14, 2011, Governor Robert Bentley signed Act 2011-678 into law. This act represents a major change to the administration of the program that reimburses attorneys who provide indigent defense services. The act amends Code of Alabama, 1975; Title 12, Chapter 19 – Court Finances and Title 15, Chapter 12 – Criminal Procedure Defense of Indigents and creates the Office of Indigent Defense Services. A copy of the act is available for review through the website of the Office of the State Comptroller at http://comptroller.alabama.gov/pages/indigent_defense.aspx. Code of Alabama, Section 22-52-14 establishes the payment of costs for attorneys appointed to mental commitment cases. This memorandum addresses those provisions, which relate to "Appointed Counsel" in mental commitment cases through the Probate Court and are effective immediately.

- Rate changes are effective for all appointments made on or after June 14, 2011. The new billing rate for appointed counsel is \$70 per hour for time reasonably expended in-court and out-of-court on mental commitments through the Probate Court.
 - Previous billing rates were \$60 per hour for in-court and \$40 per hour for out-of-court time.
- Attorneys must use the prescribed form C-62D for their fees. The form can be found at <http://eforms.alacourt.gov>.
- Overhead will no longer be reimbursed.
 - Previously reimbursed office overhead expenses included professional license fees; malpractice, casualty, health, general disability, and workers' compensation insurance; office salaries; ad valorem taxes; supplies; rent; depreciation of equipment and furniture; continuing legal education expenses, including travel and lodging; utilities; bank fees and interest on loans; other professional fees.

- Non-overhead reasonably incurred expenses will be reimbursed, provided they are within the program standards, including being substantiated by original invoice/receipt.
 - ~~Examples of reimbursable non-overhead expenses include mileage, postage, and reasonable costs of photocopying.~~
- The Probate Judge will reimburse expert fees in such amounts as found to be reasonable.
- Statutory per case fee limits increased by \$500.00 for each case type.
 - ~~Mental commitment cases fall under the "other cases" category and are capped at \$1,500.~~
- Fees and expenses on an appeal case are covered under Code of Alabama, Section 22-52-15, "the costs of the proceedings in the reviewing court shall be taxed in the same manner as in the probate court."
- ~~Claims must be submitted to the Comptroller's Office for payment within a reasonable time, not to exceed 90 days of final disposition of the case.~~
 - ~~Any bills received after 90 days will not be paid.~~
- The attached prescribed Probate Judge Fee Declaration form must be used to submit your claims.
 - It is pertinent to include all required information on the form.

The court should make these new legal requirements and policies available to all parties involved in submitting claims for payment. Additional policies and procedures are currently under review and will be sent to you once finalized. In order for this office to expedite the relay of information to you, please furnish us with a contact name and e-mail address. You may send this to Ms. Margaret McGowan at margaret.mcgowan@comptroller.alabama.gov or Ms. Pam Harris at pam.harris@comptroller.alabama.gov. If you have any questions, please feel free to contact the Fiscal Management section at 334-242-2224.

TLWjr/PH/dt

CC: Mr. David Perry, Director, Alabama Department of Finance
Mr. Clinton Carter, Deputy Finance Director
Mr. Bill Newton, Assistant Finance Director
Mr. Mose Stuart, Finance Legal Division
Ms. Janice A. Hamm, Deputy State Comptroller
Ms. Pam Harris, Accounting Manager
File

Payment of Costs- All costs associated with mental commitment claims are reimbursed to the Probate Judge. No payments for the costs of a mental commitment will be paid directly to any vendor providing services through the Probate Court for these cases.

Department of Finance
State Comptroller's Office
100 N Union St, Suite 216

If you have any questions, please contact:

Pam Harris
of Finance Comptroller's Office
334-242-4225 or pam.harris@comptroller.alabama.gov

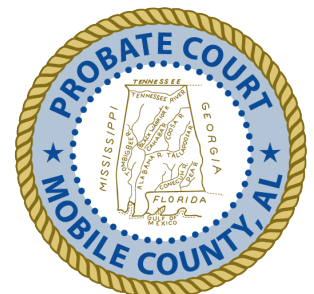
Amanda Leger
Department of Finance Comptroller's Office
334-242-7064 or Amanda.leger@comptroller.alabama.gov

PRACTICE TIPS FOR ATTORNEYS APPOINTED AS ADMINISTRATOR AD LITEM/GUARDIAN AD LITEM IN CONSERVATORSHIP CASES

Greg Carwie, Esq.

General Conservator of Mobile County

- Per *Ala. Code* §26-5-2, a conservator must file a partial settlement at least once every three years and upon filing a guardian ad litem “must be appointed.”
- *Alabama Code* §26-5-7 requires a final settlement upon the death, resignation, or removal of the conservator.
- Per *Alabama Code*, a settlement is an account of his or her conservatorship, accompanied with the “vouchers showing his or her receipts and disbursements, which must be verified by affidavit.” A voucher was recently defined by the Alabama Supreme Court “a receipt or release verifying payment of a bill or debt either by the ward's estate or to the ward's estate.”
- It is the guardian ad litem or administrator ad litem’s duty to review this accounting.
- The accounting is not located in the file but will be in the Accounting Division of the Probate Court. The appointed attorney can contact the Account Division to set up a time to review the accounting.
- There is an Audit Return Form located on the left side of the Court’s file that will aid you in your review. If you have any questions about a transaction, contact the conservator or the conservator’s attorney regarding it. The issue can frequently be resolved by further explanation or additional documentation.
- An objection should not be filed until the issue has been discussed with the conservator or the conservator’s attorney. If additional time is needed to investigate, a motion to continue, not an objection, should be filed.
- The Court can approve a conservator’s request for a certain amount to be an “allowance” for food or other needs of the ward. If this has been done, the conservator need not show individual receipts for those transactions.



Judicial Division

Contact Information

Address	151 Government Street
	Mobile, AL 36602

Phone	251-574-6018
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Website	www.probate.mobilecountyal.gov
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Settlements - Deceased Estates

Settlement Requirements and Audit Triggers

- I. Introduction
- II. Settlement Requirements
 - a. Consent Settlements in Administrations
 - i. Verified Petition including Schedule A
 - ii. Consent from ALL heirs AND any surety that include language agreeing to any requested commissions, attorney's fees, or reimbursements
 - iii. All existing claims paid or cancelled (Final Settlements)
 - iv. All court costs paid
 - b. Testate Estate Settlements Requesting Commissions, Fees, or Reimbursements - Will Exempts Accounting and Inventory
 - i. Verified Petition including Schedule A
 - ii. All existing claims paid or cancelled (Final Settlements)
 - iii. All court costs paid
 - iv. Consent from ALL heirs AND any surety that include language agreeing to any requested commissions, attorney's fees, or reimbursements
 - c. Testate Estate Settlements with Will Exempting Accounting and Inventory
 - i. Verified Petition including Schedule A
 - ii. All existing claims paid or cancelled (Final Settlements)
 - iii. All court costs paid
- III. Situations Where An Audit is Required
 - a. Cash and Cash Equivalents (Checking, Savings, Money Market, Marketable Securities)
 - b. Missing consents
 - c. Objections filed by heirs, GALs, AALs, or surety

IV. Helpful Tips for Settlement Petitions/Accountings

Helpful Tips for Settlement Petitions/ Accountings

At the Issuance of Letters –

- A bank account, properly titled/owned, should be established to conduct business of the estate including depositing estate cash assets, potential proceeds of assets, and paying estate debts/expenses. Please note, comingling of funds is prohibited. An estate account must be opened if there are any cash assets to be deposited. Some estates may not include cash assets. Although an opening deposit may require personal funds be deposited, please keep proper documentation of any personal monies deposited into the account.
- The date letters are issued is the beginning date of the first accounting period. Please ensure that copies of receipts, checks, deposits, explanatory documentation for deposits, etc. are being kept for accounting purposes.
- Should reimbursable expenses be incurred prior to the estate account opening or letters being issued, documentation of said expenses will be required for possible reimbursement.
- Details of assets held prior to letters issued should be included in an inventory. Please note, although an inventory filing may not be required, changes in circumstances of the case may create a need to fully document assets including but not limited to the discovery, change in value, and disposition of assets.

Consent Settlements

- Consent settlements require a verified petition, properly filed with the Court, that includes a complete Schedule A **AND** consents/waivers executed by all heirs.
- All outstanding court costs should be paid.
- **IF** a prayer for approval of commissions, attorney's fees, or reimbursement of expenses is included in the petition, the consents must include language agreeing to the requested commissions, attorney's fees, or reimbursements.
- **IF** the consent settlement filed is a final settlement, all claims must be addressed.

Settlements Requiring an Accounting – Partial or Final

- ALL settlement petitions requiring an accounting should be properly filed with the Court and should include a recapitulation or activity summary. All accountings and responses to audit return letters or deficiency notices must be properly filed with the Court. Please note, accountings will not be accepted without a proper petition. **E-filing of accounting will result in a substantial increase in court costs due to final record fees.**
- A Schedule A is required for all settlement filings.

Accounting Requirements – Partial or Final

- A listing of receipts and disbursements, in chronological order (as appearing on bank statements), along with a brief description of each, is required. Please provide a separate listing for each estate bank account.
- A listing of Other Assets Held is required with each settlement petition.
- If claims exist, please list those in the settlement petition.
- Ensure all court costs have been paid to date.
- Should a request for approval of attorney's fees (paid or unpaid) be included in the petition, please provide an invoice and supporting affidavit.
- If reimbursement of expenses is requested, please include a listing of said expenses and a copy of receipts and/or backup documentation for same.
- If disbursements include checks made payable to cash or individuals, debit card transactions, credit card transactions, money order purchases or cashier check purchases, please include receipts and/or backup documentation for each. For money order/cashier check purchases, the documentation must include not only the receipt for said money order/cashier check but also the receipt for expense paid with said instrument.
- Copies of all checks, including voided checks, must be provided. It is suggested that as bank accounts are opened, account holders request thumbnail images be included with statements.
- Bank statements for all accounts **AND** for each month in the settlement period are required.
- Outstanding checks should be noted. Copies may be requested.
- Commissions should be calculated on receipts and disbursements and can be requested at a partial settlement(s) or at final settlement. Do NOT include the following items in the commission calculation/request:
 - Transfer between bank accounts.

- Gains or Losses on investment accounts. (Said gains or losses are realized at the sale of the investment.)
- Proceeds from sale of real/personal property for distribution to heirs.
Proceeds from such sales are only eligible for commissions if sold to pay debts/expenses of the estate.
- Overdraft or NSF fees on bank accounts.
- Payment of commissions.
- Payments made directly into or out of the Court's Fiduciary.

Accounting - The First Settlement – Partial or Final

- A first settlement (partial or final) should begin with the date letters were issued and reflect a zero (\$0) opening balance.
- If a bank account(s) is opened to marshal assets of the estate, you must include the first bank statement for each account, which will reflect an opening balance of zero (\$0), along with **ALL** subsequent bank statements for each account for the accounting period. Please note, bank statements for each month are required whether any transactions occurred during the month or not. For example, if the settlement period is Jan 15, 2024 through Jan 15, 2025, twelve (12) bank statements are required.
- The petition's recapitulation should reflect a zero (\$0) opening balance, all deposits, all disbursements, and an ending balance that matches the closing balance on the final bank statement for the period.

Opening Balance	\$0.00
Receipts	\$500.00
Disbursements	\$250.00
Ending Balance*	\$250.00

*Ending Balance on final bank statement for the period.

Accounting - Subsequent Settlements – Partial or Final

- A subsequent settlement (partial or final) should begin with the date following the ending balance date of the previous settlement and should reflect an opening balance equal to the closing balance of the previous settlement.
- You must include **ALL** bank statements for each account for the accounting period. Please note, bank statements for each month are required whether any transactions occurred during the month or not. For example, if the settlement period is Jan 16, 2025 through Jan 16, 2026, twelve (12) bank statements are required.
- The petition's recapitulation should reflect opening balance equal to the ending balance of the previous settlement, all deposits, all disbursements, and an ending balance that matches the closing balance on the final bank statement for the period.

Opening Balance*	\$250.00
Receipts	\$1500.00
Disbursements	\$750.00
Ending Balance**	\$1000.00

* Ending balance from previous settlement.

** Ending Balance on final bank statement for the period.

- If a subsequent petition is filed or if a petition is converted from partial to final, ensure all numbers and dates reflect that the partial or previous petition was NOT granted. Accounting documentation is required as outlined above.

Accounting – Amended Settlements

- An amended settlement petition must include all accounting from the ending date of the previously granted petition and should follow the accounting requirements outlined above. If amending a settlement petition that has **NOT** been granted by the Court, the beginning recapitulation balance should reflect the opening balance of the previously granted settlement petition's closing balance.

	Granted Petition	Subsequent Petition	Amended Petition
Opening Balance	\$250.00*	\$1000.00	\$1000.00
Receipts	\$1500.00	\$500.00	\$750.00
Disbursements	\$750.00	\$250.00	\$250.00
Ending Balance**	\$1000.00	\$1250.00	\$1500.00

* Ending balance from previous settlement. Note, the amended petition's opening balance did not change. The only amendment was the addition of \$250.00 in receipts and a revised ending balance.

** Ending Balance on final bank statement for the period.

Audit Returns

- Requested documentation must be properly filed. **Again, it is strongly suggested that these be paper filed to avoid additional final record fees. Email responses will not be accepted.**
- Documentation should completely address requests in the audit return letter and be timely filed with the Court.

Guardian ad Litem, Administrator ad Litem & Court Representative

Source materials

Probate Judges Handbook -

<https://alison.legislature.state.al.us/files/pdf/lisa/ALI/Publications/ProbateJudgesVolume2.pdf>

Rules of Civil Procedure IV Parties Rule 17

Code of Alabama Title 26-2A-52 Guardian ad Litem under Uniform Guardianship and Protective Proceedings Act

Code of Alabama Title 43-2-250 Administrators ad Litem

Code of Alabama Title 43-2-445 Guardian ad litem sale of lands in estate

See Index to Code under Guardian ad litem generally

Serving as a GAL in Family, Circuit and Probate Courts -Birmingham Bar Association 2021

https://cdn.ymaws.com/birminghambar.org/resource/resmgr/cle/2021_cle/6.4.21_cle_materials_-_servi.pdf

Discussion:

The opportunities for the Probate or Circuit Courts to appoint a Guardian ad litem, Administrator ad litem, or Court Representative are wide ranging and varied. The full discussion of the matter exceeds the time allotted today.

The Discussion today will focus on the practical aspects of the duties and responsibilities of the Guardian ad litem, Administrator ad litem and Court Representative.

Thoughts:

1. Receipt of appointment and review for conflict.
2. Time needed for appointment – do you have it.
3. Respond to the court promptly to accept or decline.
4. Obtain pleadings.
5. If a settlement, review the financial statements and bank records.

- a. Obtain copies or review at court
 - b. Review the audit report and as necessary talk with the auditor.
 - c. Do not rely on the audit report to find issues, look at the list of expenses
 - d. If there are problems, let Petitioner's counsel know as soon as possible.
 - e. Include any unanswered questions in your report.
6. Obtain all needed contact information from Petitioner's counsel.
7. Determine if a visit to the Ward/alleged is possible, generally GAL and Court Representatives will need to visit; an Administrator ad litem may not have anyone to visit but may have beneficiaries to contact and advise.
8. Go visit the alleged to determine whether the petition is correct in its allegations
9. Possible joint visit.
10. Special concerns for visit.
11. In a hospital, nursing home, or medical setting, review charts, patient histories and talk with either the doctor or nurses as to condition and changes of alleged/ward.
12. Let petitioner's counsel know of any issues and attempt to resolve them before the hearing.
13. File your report PROMPTLY.
14. Prior to hearing check to see if anything has changed.
 - a. You may need to revisit the alleged/ward.
 - b. You may need to amend the report.
 - c. You may need to acknowledge that your issues have been cleared.
 - d. Cross check with the guardian ad litem or Court Representative to confirm the status.
15. Best interest of ward/alleged
16. Court Representative will also report on the status and suitability of the place where the ward or alleged is to be placed.
17. Determine opinion as to mental ability to vote.
18. File time report as soon after the hearing as possible.

J. LUKE ENGERISER,
MD

Key points concerning mental illness for attorneys



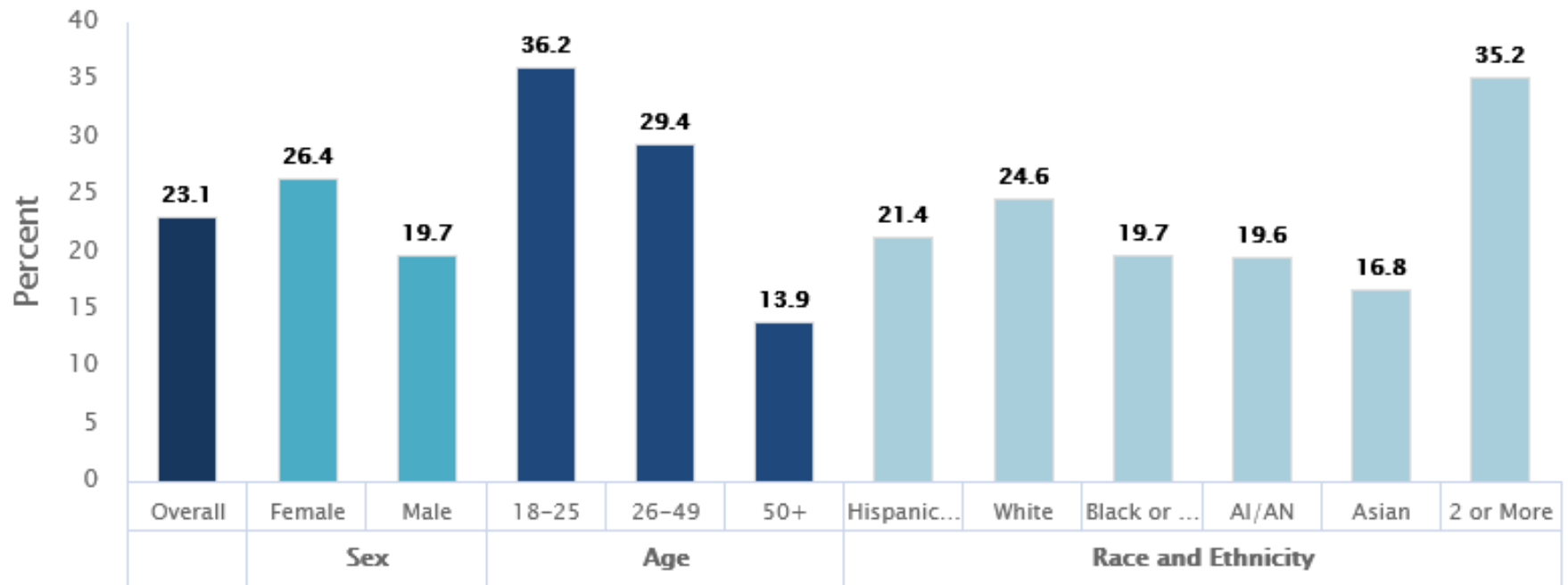
Mental illness in the US

- ▶ 1 in 5 adults in America experience a mental illness
- ▶ Nearly 1 in 25 live with a serious mental illness

Past Year Prevalence of Any Mental Illness Among U.S. Adults (2022)



Data Courtesy of SAMHSA



*Persons of Hispanic origin may be of any race; all other racial/ethnic groups are non-Hispanic. AI/AN = American Indian / Alaskan Native

Serious mental illnesses (SMI)

- ▶ Defined by Alabama Department of Mental Health
- ▶ Any Diagnosis listed on the next slides
- ▶ At least (2) disability criteria:
 1. Is unemployed, is employed with specialized employment services, or has markedly limited skills and a poor work history.
 2. Shows severe inability to establish or maintain personal social support systems.
 3. Shows deficits in basic living skills.
 4. Exhibits inappropriate social behavior

Serious mental illnesses

- ▶ Schizophrenia and other psychotic disorders
 - ▶ Schizophrenia (paranoid, disorganized, catatonic, undifferentiated, and residual types)
 - ▶ Schizoaffective Disorder (bipolar type, depressive type)
 - ▶ Delusional Disorder
 - ▶ Other Specified/Unspecified Psychotic Disorder

Serious mental illnesses

- ▶ Mood Disorders
 - ▶ Major Depressive Disorder (single episode, recurrent)
 - ▶ Bipolar I Disorder (manic, hypomanic, mixed, depressed, unspecified)
 - ▶ Bipolar II Disorder
 - ▶ Other Specified/Unspecified Bipolar Disorder

Serious mental illnesses

- ▶ Anxiety disorders (severe)
 - ▶ Agoraphobia
 - ▶ Panic Disorder (with and without Agoraphobia)
 - ▶ Obsessive-Compulsive Disorder
 - ▶ Hoarding Disorder

Common Symptoms of Psychosis

- ▶ Delusions—strong beliefs that are unlikely to be true, and that may seem irrational to others
- ▶ Hallucinations—seeing, hearing, or physically feeling things that are not actually present
- ▶ Disorganized speech
- ▶ Disorganized behavior
- ▶ Thought blocking—being unable to complete thoughts, or losing track of thoughts

Psychotic Disorders

- ▶ Schizophrenia (paranoid, disorganized, catatonic, undifferentiated, and residual types)
- ▶ Schizoaffective Disorder (bipolar type, depressive type)
- ▶ Delusional Disorder
- ▶ Schizophreniform Disorder
- ▶ Brief Psychotic Disorder
- ▶ Shared Psychotic Disorder
- ▶ Other Specified/ unspecified Psychotic Disorder

Other Illnesses that can present with psychosis:

- ▶ Major Depressive Disorder with psychotic features
- ▶ Bipolar Disorder (depressed or manic) with psychotic features
- ▶ Dementia (Major Neurocognitive Disorder)
- ▶ Delirium
- ▶ Substance use or withdrawal

Duration of symptoms with psychosis

- ▶ Can vary depending on the cause, and the patient
- ▶ Psychotic symptoms can last only a few days, and completely resolve, or persist
- ▶ Brief psychotic disorder by definition lasts less than 30 days
- ▶ Schizophreniform disorder lasts between 30 days and 6 months
- ▶ Schizophrenia lasts longer than 6 months
- ▶ Even with medication, some psychotic symptoms can persist. The goal is to make the symptoms manageable.
- ▶ Psychotic disorders can be chronic, lifelong illnesses

Treatment of psychosis

- ▶ Antipsychotic medications
- ▶ May use other medications along with antipsychotics to make them:
 - ▶ more effective (antidepressants, mood stabilizers)
 - ▶ decrease side effects {Cogentin (benztropine), Benadryl (diphenhydramine), Artane(trihexyphenidyl)}
- ▶ Psychotic symptoms caused by drugs or medical problems may subside on their own, but medication may be used to help speed recovery

Other treatments for psychosis

- ▶ Individual Therapy
- ▶ Family therapy
- ▶ Social skills training
- ▶ Cognitive skills training
- ▶ Vocational rehabilitation
- ▶ Supported housing (boarding homes, group homes, independent supported apartments)

```
graph TD; A[Mood Disorders] --> B[Depressive Disorders]; A --> C[Bipolar Disorders];
```

Mood Disorders

Depressive Disorders

Bipolar Disorders

Mood disorders

- ▶ Major Depressive Disorder (single episode, recurrent)
- ▶ Bipolar I Disorder (manic, hypomanic, mixed, depressed, unspecified)
- ▶ Bipolar II Disorder
- ▶ Bipolar Disorder NOS

Depression symptoms

- ▶ Depressed or sad mood
- ▶ Lack of energy
- ▶ Decreased or increased sleep
- ▶ Decreased or increased appetite
- ▶ Poor concentration
- ▶ Lack of interest in things
- ▶ Hopelessness
- ▶ Low self esteem
- ▶ Suicidal thoughts
- ▶ Psychotic symptoms can be present

Mania symptoms

- ▶ Increased energy
- ▶ Reduced sleep (and feels rested on little sleep)
- ▶ Elevated ("too good") or irritable mood
- ▶ Grandiose delusions
- ▶ Impulsive and unpredictable behavior
- ▶ Increased activity
- ▶ Psychotic symptoms
- ▶ Hypomania is similar, but less severe, and patients are often able to function more normally

Major Depressive Disorders

- ▶ Can have only one episode, or many episodes
- ▶ Can have psychosis associated with it, which improves when the depressive symptoms improve
- ▶ Can become completely symptom free over time (“in remission”) or continue to have residual symptoms for years
- ▶ Can have associated symptoms or diagnoses (anxiety, PTSD, substance use, personality disorders) which can affect the outcome and prognosis

Treatment of Major Depressive Disorders

- ▶ Antidepressants
- ▶ Treatment for associated psychosis, anxiety, sleep disturbances
- ▶ Psychotherapy
- ▶ Family therapy

Bipolar I vs Bipolar II

- ▶ Bipolar I – At least one manic episode
- ▶ Bipolar II--major depressive episodes and hypomanic episodes.
- ▶ Most people with bipolar disorder spend more time depressed than hypomanic or manic

Unspecified/ Other Specified Bipolar Disorder

- ▶ Symptoms of both mania/hypomania and depression are present, but don't meet full diagnostic criteria for Bipolar I or Bipolar II
- ▶ Treatment is the same
- ▶ Over a longer period of time (months to years), Unspecified Bipolar Disorder diagnosis may become more specific

Treatment of Bipolar Disorders

- ▶ Mood stabilizers (lithium, antiepileptic medications)
- ▶ Antipsychotics—used to treat associated psychosis, can also be used alone as mood stabilizers
- ▶ Medications for associated anxiety, sleep disturbances, side effects
- ▶ Psychotherapy
- ▶ Family therapy

Duration of illness for mood disorders

- ▶ These can be EPISODIC disorders, so it is not unreasonable for patients to come off medication under advisement from their physicians after a period of time (6 months to a year)
- ▶ Patients may need indefinite treatment if they have many episodes (or a longer duration of treatment before trying to come off medication).

Anxiety Disorders

- ▶ Panic Disorder—with and without agoraphobia
- ▶ Agoraphobia without panic disorder
- ▶ Obsessive-Compulsive Disorder
- ▶ Hoarding Disorder

Obsessive-Compulsive Disorder

- ▶ Obsessions—repetitive, unwanted, intrusive thoughts
 - ▶ Ex: thoughts about harming or having harmed someone, doubt that one has performed an important action (locking door, turning off stove), fears of saying inappropriate things in public
- ▶ Compulsions—irrational, excessive urges to perform certain actions, temporarily relieve the stress brought on by obsessions
 - ▶ Ex: handwashing, counting, checking
- ▶ Symptoms last more than an hour a day

Treatment of anxiety disorders

- ▶ Antidepressants - first line medications for anxiety disorders
- ▶ Anti-anxiety medications—benzodiazepines {Klonopin (clonazepam), Ativan (lorazepam), Valium (diazepam), Xanax (alprazolam)}; generally used sparingly due to abuse potential and side effects), Vistaril (hydroxyzine), Buspar (buspirone)
- ▶ Psychotherapy



Other Impairing Illnesses

.....BUT NOT CLASSIFIED AS "SERIOUS MENTAL
ILLNESS"

Dementia (Major Neurocognitive Disorder)

- ▶ One diagnosis that we commonly encounter is dementia, but it is not designated a serious mental illness
- ▶ “no treatment is presently available for the respondent’s mental illness, but confinement is necessary to prevent the respondent from causing harm to himself and others.”

Posttraumatic Stress Disorder (and other trauma-related disorders)

- ▶ Symptoms of PTSD can resemble mood, anxiety, and psychotic disorders
- ▶ Not designated as serious mental illnesses by the state
- ▶ Can be quite disabling and require treatment, both inpatient and outpatient
- ▶ Patients with PTSD often have comorbid depressive disorders, anxiety disorders, and substance use disorders

Intellectual Disability

- ▶ No treatment available for intellectual disabilities
- ▶ Medications used to treat serious mental illnesses (antipsychotics, mood stabilizers, antidepressants, anxiety medications) are often used to reduce the **behaviors** associated with intellectual disabilities, but do not constitute an effective treatment that can alter the course or prognosis

Personality Disorders

- ▶ Related to inherent personality structure and tend to be consistent over time
- ▶ Can be improved with intensive long-term psychotherapy, but often are made worse by inpatient hospitalization
- ▶ Medications used to treat serious mental illnesses (antipsychotics, mood stabilizers, antidepressants, anxiety medications) are often used to reduce the behaviors associated with personality disorders, but do not constitute an effective treatment that can alter the course or prognosis

Borderline Personality Disorder

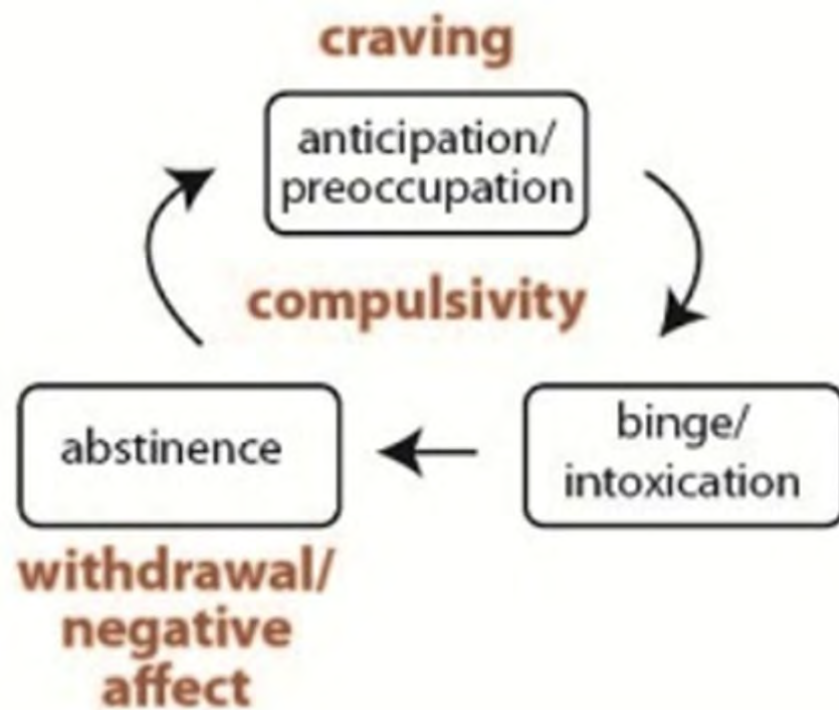
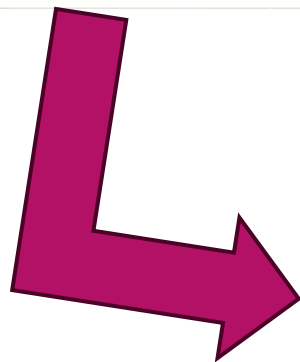
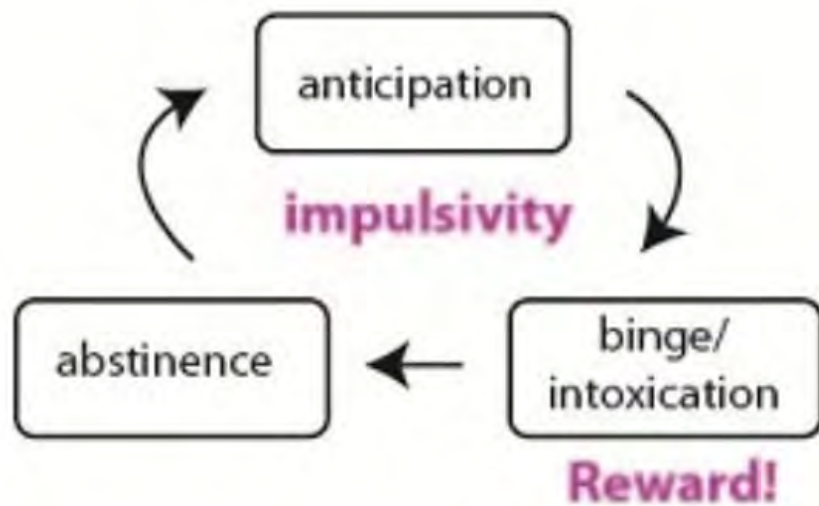
- ▶ Pervasive pattern of unstable interpersonal relationships and self-image
- ▶ Typically experience severe mood lability and impulsivity with episodes of intense rage
- ▶ Can have recurrent self-destructive, self-harming, and suicidal behaviors
- ▶ The intensity of inpatient hospitalization can be destabilizing and typically makes symptoms worse, not better

Antisocial Personality Disorder

- ▶ Pervasive pattern of disregard for and violation of the rights of others
- ▶ Prototypic character trait is a lack of empathy for others and lack of remorse for actions
- ▶ Can have recurrent violent and criminal behaviors
- ▶ Can be very manipulative- either aggressive/annoying or charming
- ▶ Incarcerated individuals with disorder may prefer to be at a hospital rather than in jail

Alcohol and Drug Addiction

- ▶ Drugs of abuse have different effects, but all have the final pathway of giving us an artificial sensation of pleasure

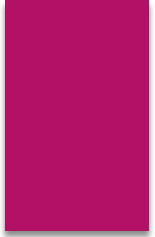


Alcohol and Drug Addiction

- ▶ Loss of relationships, occupation, financial security, housing, and even life are often outcomes of untreated addiction

Alcohol and Drug Addiction

- ▶ Effective treatment programs and even medications for some types of addiction are available
- ▶ Can be impairing and even life threatening, but we are unable to legally force treatment in Alabama (unless a co-occurring disorder with a mental illness)





MARK MOODY is employed as Assistant General Counsel with the Office of General Counsel of the Alabama State Bar. Mark represents the Bar in all types of disciplinary matters ranging from initial complaint reviews to matters appealed to the Supreme Court of Alabama as well as related civil litigation. In this capacity, Mark has represented the Bar in formal disciplinary hearings and handles various administrative matters such as contracts and Character and Fitness hearings and he is the liaison prosecutor for the Unauthorized Practice of Law Committee.

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OFFICE OF GENERAL COUNSEL
POST OFFICE BOX 671
MONTGOMERY, AL 36101
334.269-1515



2025 Alabama Ethics Update: *OGC, Advertising and Artificial Intelligence*

Mark B. Moody
Assistant General Counsel
Alabama State Bar

1

What do we do?

Disciplinary Counsel

- Investigate & Prosecute
- Disability & Reinstatement
- Character & Fitness Appeals
- CLE Compliance
- CLE Presentations
- “Any other duty or responsibility conferred ... by the Executive Committee of the Board of Bar Commissioners of the Alabama State Bar.”

2

What do we do?

Ethics Counsel

- Informal Ethics Opinion
- Represent the Bar in Litigation
- Support the Executive Director & Bar Departments
- CLE Presentations
- “Any other duty or responsibility conferred ... by the Executive Committee of the Board of Bar Commissioners of the Alabama State Bar.”

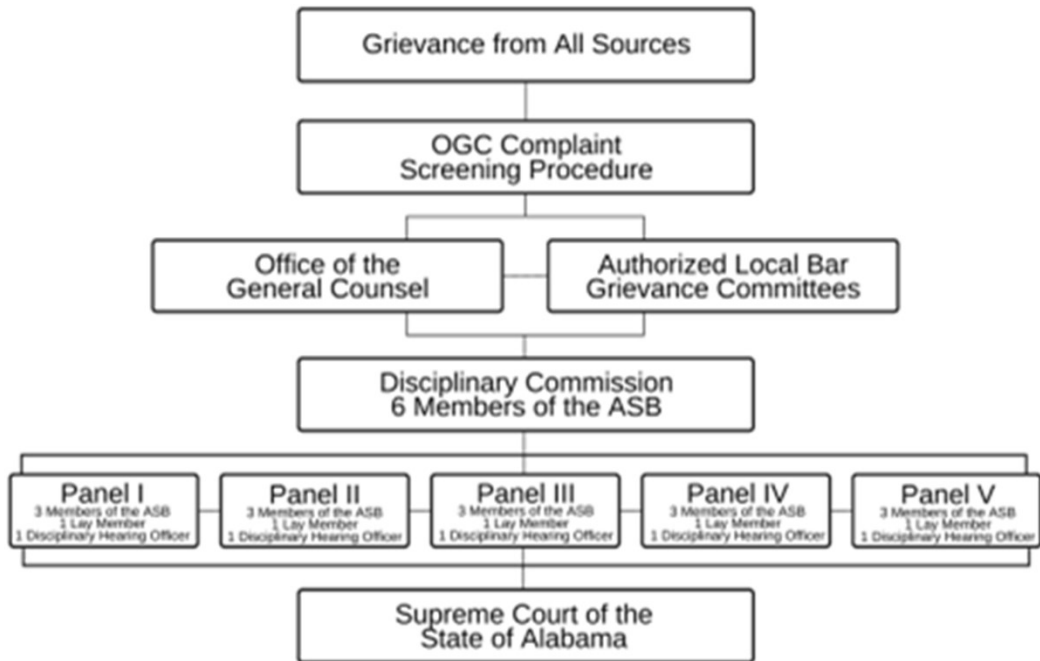
3

2024 OGC Statistics

• Complaints Received	1118
• Complaints Screened Out	881
• Private Reprimands	22
• Public Reprimands	13
• Transfer (Rule 27)	1
• Suspensions	21
• Disbarments	10
• Informal Opinions Issued	2250
• Disciplinary Commission Cases	160
• Disciplinary Board Hearings	25
• Number of CLE/Programs	94

4

Grievance Flowchart



5

whitelist noreply@alabar.org in your email system



6



7

What to Do if You Get That Letter?



8

Top Tips for Responding to a Complaint

- Please respond timely - 14 days or confirmed written extension
- Please do not lie or mislead in your response
- Please provide a brief summary of background information underlying the representation or complaint
- If documents refute the complainant's allegations, include copies and reference them as exhibits in your response

9

Types of Discipline

- Probation (public or private)
- Private Reprimand
- Public Reprimand with or without General Publication
- Suspension (from 45 days to five years)
- Disbarment (an attorney may petition for reinstatement after five years)

10

Ethics HOTLINE

11

Ethics Opinions

Rule 18, Alabama Rules of Disciplinary Procedure. Conduct not subject to disciplinary action:

If, before engaging in a particular course of conduct, a lawyer makes a full and fair disclosure, to the Office of General Counsel, said inquiry shall be considered confidential. Additionally, if said lawyer receives a formal or informal opinion from the Office of General Counsel that the proposed conduct is permissible, such conduct shall not be subject to disciplinary action.

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RULE 18 OPINIONS

- Email: ethics@alabar.org
- Call: 334.235.2718 for Tripp Vickers
- Call: 334.782.0504 for Mark Moody

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14

EFFECTIVE DATE
January 1, 2026

15

Why Now?

Office of General Counsel



16

1991 was a long time ago.

1990s Timeline



1990
Hubble Telescope
launched into
space



1991
Operation
Desert Storm



1992
Rodney King
trial and
aftermath



1993
Raid on the
Branch Davidian
compound in Waco



1994
Nelson Mandela
elected
president



1995
OJ Simpson



1996
Dolly the Sheep



1997
Death of
Princess Diana



1998
Impeachment of
Bill Clinton



1999
Debut of Euro

17

culture / SHIFT

18

How People Find Lawyers



19



20

LAWYERS' ADVERTISING

Bates v. Arizona State Bar (1977)

- **Conclusion:** Decision for Bates. The Court found that Arizona law violated the First and Fourteenth Amendments.
- Commercial speech does merit First Amendment protection given the important functions it serves in society.
- Allowing attorneys to advertise would not harm the legal profession or the administration of justice, and, in fact, would supply consumers with valuable information about the availability and cost of legal services.
- Disclaimers may be required to keep ads from being deceptive.

21

Why Did the ABA Change the Model Rules?

"In August 2018, the ABA House of Delegates approved (via Resolution 101) significant restructuring and simplification of the Model Rules in the Rule 7 series. These amendments aimed to modernize the rules, encourage national uniformity, adapt to digital communication, and adhere to constitutional limits on regulation of truthful speech."

Source:

https://www.americanbar.org/groups/professional_responsibility/committees_commissions/ethicsandprofessionalresponsibility/mrpc_rule71_72_73_74_75

22

How Did the ABA Change the Model Rules?

Pre-2018 American Bar Association Model Rule 7 Series

Rule 7.1: Communications Concerning a Lawyer's Services

Rule 7.2: Advertising

Rule 7.3: Solicitation of Clients

Rule 7.4: Communication of Fields of Practice and Specialization

Rule 7.5: Firm Names and Letterheads

23

How Did the ABA Change the Model Rules?

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Rule 7.5: Firm Names and Letterheads



24

EFFECTIVE DATE

January 1, 2026

25

How Were the New Alabama Rules Developed?



26

Rule 7 Subcommittee

Co-Chairs: Michael E. Upchurch, *Mobile*
Harlan I. Prater, *Birmingham*

Alabama Supreme
Court Liaison: Justice James "Jay" L. Mitchell

State Bar Liaison: Roman A. Shaul

27



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MICHAEL E. UPCHURCH
D. BRENT BAKER
W. AUSTIN MULHERIN III
MARY MARGARET BAILEY *
ROSS A. FRAZER
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DOROTHY "DOTTIE" A. BARKER *
BLAIR G. MATTHEI
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November 27, 2018

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Re: **Rule 7 Subcommittee – Lawyer Advertising**

28

How Were the New AL Rules Developed?

1. The committee developed a working draft.
2. Two comment periods submitted to the membership of the Alabama State Bar.
3. Supreme Court requires additional information.
4. Meeting with various advertising lawyers.
5. Survey conducted on the citizens of Alabama.
6. New group of lawyers reviewed proposed rules.
7. Follow-up with the Supreme Court.
8. Final version submitted to the Board of Bar Commissioners.
9. Final version submitted to the Supreme Court of Alabama.

29

What Do Alabamians Say ?



30

What Do Alabamians Say ?

"If a lawyer advertises a jury verdict won or a settlement that was paid, how helpful would it be for the advertisement to explain what the case was about and what the injuries were?"

Helpful: 83.2%
Not helpful: 8.5%
Not sure: 8.3%

31

What Do Alabamians Say ?

"If a lawyer advertises in your community, would you want to know whether the lawyer lives in your community?"

Yes: 70.6%
No: 21.2%
Not sure: 8.2%

32

What Do Alabamians Say ?

"How important is it to you that a lawyer who appears in an advertisement in Alabama is licensed to practice law in Alabama?"

Important:	90.3%
Not important:	5.3%
Not sure:	4.4%

33

What Do Alabamians Say ?

"Would you want to know if a lawyer who advertises in Alabama actually lives in another state, not Alabama?"

Yes:	80.9%
No:	12.0%
Not sure:	7.0%

34

What Do Alabamians Say ?

"How important is it to you that a lawyer who advertises in your community has a law office in your community?"

Important: 75.7%
Not important: 17.0%
Not sure: 7.4%

35

What Do Alabamians Say ?

"Do you assume that lawyers who appear in advertisements regularly go to court and try cases?"

Yes: 58.2%
No: 27.2%
Not sure: 14.6%

36

What Do Alabamians Say ?

"Do you want to know if a lawyer in an advertisement does not personally handle trials and lawsuits for clients?"

Yes: 80.9%
No: 9.1%
Not sure: 10.0%

37

What Do Alabamians Say ?

"How important is it to you that all the words in attorney advertisements are easy to read/hear and understand?"

Important: 87.4%
Not important: 6.8%
Not sure: 5.9%

38

EFFECTIVE DATE
January 1, 2026

39



time to
UPDATE

40

Rule 7 Series Advertising Changes Summary

- Follows some of the ABA updated model rules from August 2018.
- Limited the use of the word "Advertisement." Refer more to promoted content as a "communication."
- Part of the proposed changes are designed to capture social media content. Part are to update and recognize existing trends and practices.
- Codifies that our rules apply to "out-of-state" lawyers and holds them to the same standards.
- Codifies the "Business Card Rule."
- Lawyers should retain relevant communications for six years. Six years is the SOL for a disciplinary violation. Communications are no longer required to be submitted to the OGC. (Educational material exempted)

41

Codified Existing Jurisdictional Practice

EXHIBIT 8.5 B

Alabama Rules of Professional Conduct Maintaining the Integrity of the Profession

Rule 8.5. Jurisdiction.

A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, although engaged in practice elsewhere. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

Comment

(As Amended Effective _____, 2025.)

It is long standing law that the conduct of a lawyer admitted to practice in in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of in this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule. As lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5 must appoint an official to be designated by this court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters. In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to

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Codified Existing Jurisdictional Practice

EXHIBIT 1-B

Alabama Rules of Disciplinary Procedure

Rule 1.

Jurisdiction.

(a) *Jurisdiction.*

(1) **LAWYERS.** Lawyers admitted to practice law in this state, including district attorneys; assistant district attorneys; United States attorneys; assistant United States attorneys; the attorney general; assistant attorneys general; and lawyers specially admitted by any court in this state for a particular proceeding, are subject to the exclusive disciplinary jurisdiction of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar, with review by the Supreme Court of Alabama. A lawyer not admitted in this jurisdiction is also subject to the disciplinary jurisdiction of the Disciplinary Commission and the Disciplinary Board of the Alabama State Bar, with review by the Supreme Court of Alabama, if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct. Lawyers are subject to jurisdiction under this rule even though the misconduct occurred outside the lawyer-client relationship.

43

Rule 7 Series Advertising Changes Summary

- Follows some of the ABA updated model rules from August 2018.
- Limited the use of the word "Advertisement." Refer more to promoted content as a "communication."
- Part of the proposed changes are designed to capture social media content. Part are to update and recognize existing trends and practices.
- Codifies that our rules apply to "out-of-state" lawyers and holds them to the same standards.
- Codifies the "Business Card Rule" for promotional material.
- Lawyers should retain relevant communications for six years. Six years is the SOL for a disciplinary violation. Communications are no longer required to be submitted to the OGC. (Educational material exempted)

44

Rule 7 Series Advertising Changes Summary

- Lawyers who advertise for certain cases must disclose that they intend to “refer” them out if they will not handle the majority of the representation.
- Lawyers will need to print disclaimers in a readable font and read them at a reasonable cadence.
- Advertised results must be objectively verifiable and not the result of defaults, or against defunct parties.
- No actors portraying clients/lawyers allowed in commercials unless as a background participant.
- No “medical alert,” “health alert” or “public service announcement” advertisements.

45

Rule 7 Series Advertising Changes Summary

- A lawyer who personally appears, or is identified, in a communication must include the city, county or town where a bona fide office is located.
- Any lawyer appearing in a communication must disclose if they are not licensed in Alabama.
- Law firms must disclose if they DO NOT have a bona fide office in Alabama.
- Creates the “one-click” rule for some social media communications, i.e., banner ads.
- Testimonials must come from people with actual knowledge.
- Limits ability of competing lawyers to purchase search terms that are trade names of other law firms or in some instances, associated with other law firms.

46

Rule 7 Series Advertising Changes Summary

Definition "bona fide office":

For the purposes of this Rule, a bona fide office is defined as a physical location, including a personal residence, maintained by the lawyer or law firm where the lawyer or law firm reasonably expects to furnish legal services in a substantial way on a regular and continuing basis.

An office is not a bona fide office if no lawyer is present on a regular and continuing basis, there is little or no full-time staff, or actual, substantial legal services are not performed there.

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Rule 7 Series Advertising Changes Summary

- A lawyer who personally appears, or is identified, in a communication must include the city, county or town where a bona fide office is located.
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- Law firms must disclose if they DO NOT have a bona fide office in Alabama.
- Creates the "one-click" rule for some social media communications, i.e., banner ads.
- Testimonials must come from people with actual knowledge.
- Limits ability of competing lawyers to purchase search terms that are trade names of other law firms or in some instances, associated with other law firms.

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50

LEGAL TROUBLE?

Better Call Saul!

SAUL GOODMAN
ATTORNEY AT LAW

(05) 503-4455
CALL SAUL NOW!

Not Licensed in Alabama

51

Rule 7 Series Advertising Changes Summary

- A lawyer who personally appears, or is identified, in a communication must include the city, county or town where a bona fide office is located.
- Any lawyer appearing in a communication must disclose if they are not licensed in Alabama.
- Law firms must disclose if they DO NOT have a bona fide office in Alabama.
- Creates the "one-click" rule for some social media communications, i.e., banner ads.
- Testimonials must come from people with actual knowledge.
- Limits ability of competing lawyers to purchase search terms that are trade names of other law firms or in some instances, associated with other law firms.

52

IN LEGAL TROUBLE?

"Better Call Saul!"

PAUL GOODMAN

ATTORNEY AT LAW

(505) 503-4455
CALL PAUL NOW!

**No Offices
in Alabama**



53

IN LEGAL TROUBLE?

"Better Call Saul!"

PAUL GOODMAN

ATTORNEY AT LAW

(505) 503-4455
Offices only in Florida and Georgia

**Offices only
in Florida and
Georgia**



54

EFFECTIVE DATE

January 1, 2026

55


Rule 7 Series Advertising Changes Summary

- A lawyer who personally appears, or is identified, in a communication must include the city, county or town where a bona fide office is located.
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- Law firms must disclose if they DO NOT have a bona fide office in Alabama.
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- Testimonials must come from people with actual knowledge.
- Limits ability of competing lawyers to purchase search terms that are trade names of other law firms or in some instances, associated with other law firms.

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Banner Ads

Impactful picture



Title highlighting an offer

Big button with a call-to-action

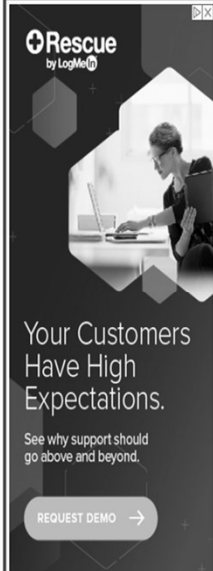
ZoomInfo's services has continued to soar, with April the company's strongest-ever first month to a sales quarter. "The business proved pretty resilient through the pandemic," says Schuck. "Coming out of that, investors said, 'we're ready.'"

Those metrics — high profitability and high growth rate — could position ZoomInfo's public offering to be one of the most hyped IPOs in recent memory, says Kathleen Smith, principal at Renaissance. "This will be one of the best first-day IPOs we've seen," Smith predicted. As of 12 pm ET, shares had not yet listed as Nasdaq worked to balance demand from buyers and set a debut live price.

PROMOTED

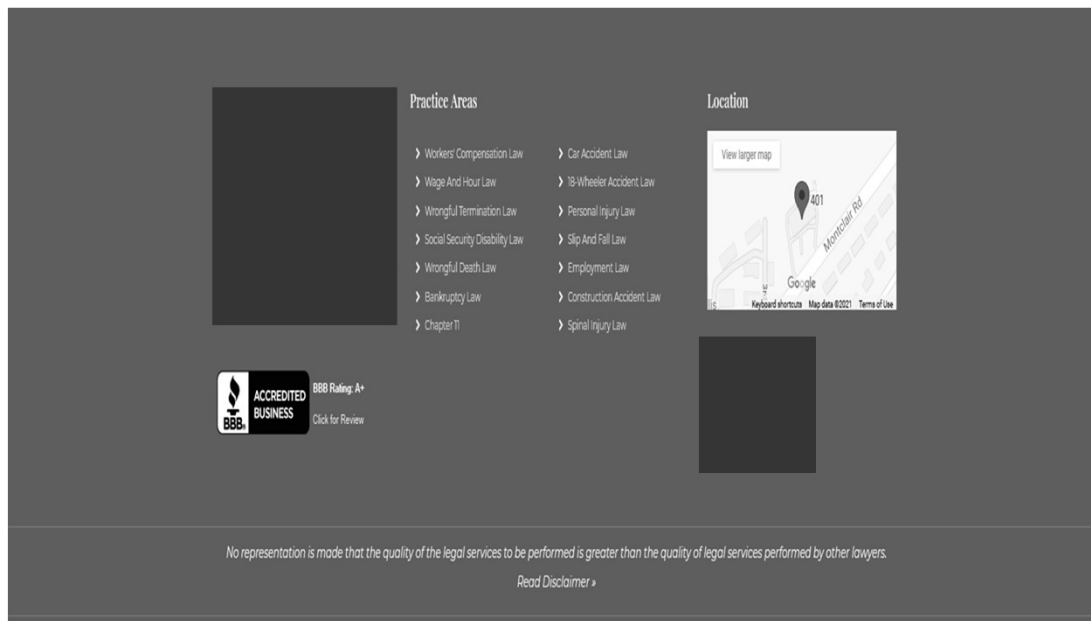
UNICEF USA BRANDVOICE Paid Program	Grads of Life BRANDVOICE Paid Program	Civic Nation BRANDVOICE Paid Program
How To Donate Money To Coronavirus Relief Funds	The Shared Value Of Inclusive Economic Recovery	How Collegiate Democratic Engagement Should Adjust For A Fall Semester Like No Other

Based in Vancouver, Washington, the software-as-a-service company uses artificial intelligence and data processing to assist corporate sales and marketing teams with customer outreach. Unlike most venture-backed startups, ZoomInfo has tracked a different path of investment growth since it was founded in 2007. Private equity firm Great Hill Partners acquired ZoomInfo in 2017 for \$240 million, then sold it in 2019 to marketing and sales company DiscoverOrg for a reported \$500 million.



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Keep Your "Home Page" Current



Practice Areas

- Workers Compensation Law
- Wage And Hour Law
- Wrongful Termination Law
- Social Security Disability Law
- Wrongful Death Law
- Bankruptcy Law
- Chapter 11
- Car Accident Law
- 18 Wheeler Accident Law
- Personal Injury Law
- Slip And Fall Law
- Employment Law
- Construction Accident Law
- Spinal Injury Law

Location

View larger map

401

Montebello Ave

Google

Keyboard shortcuts Map data ©2021 Terms of Use

BBB ACCREDITED BUSINESS BBB Rating: A+ Click for Review

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers.

[Read Disclaimer](#)

58

Rule 7 Series Advertising Changes Summary

- A lawyer who personally appears, or is identified, in a communication must include the city, county or town where a bona fide office is located.
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- Testimonials must come from people with actual knowledge.
- Limits ability of competing lawyers to purchase search terms that are trade names of other law firms or in some instances, associated with other law firms.

59

Rule 7 Series Advertising Changes Summary

Removes the General Disclaimer. Requires NEW disclaimers for:

1. Paid participants;
2. Call-in shows;
3. Cases a lawyer does not personally intend to handle.

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EFFECTIVE DATE
January 1, 2026

Email Addresses:

Ethics@Alabar.org or

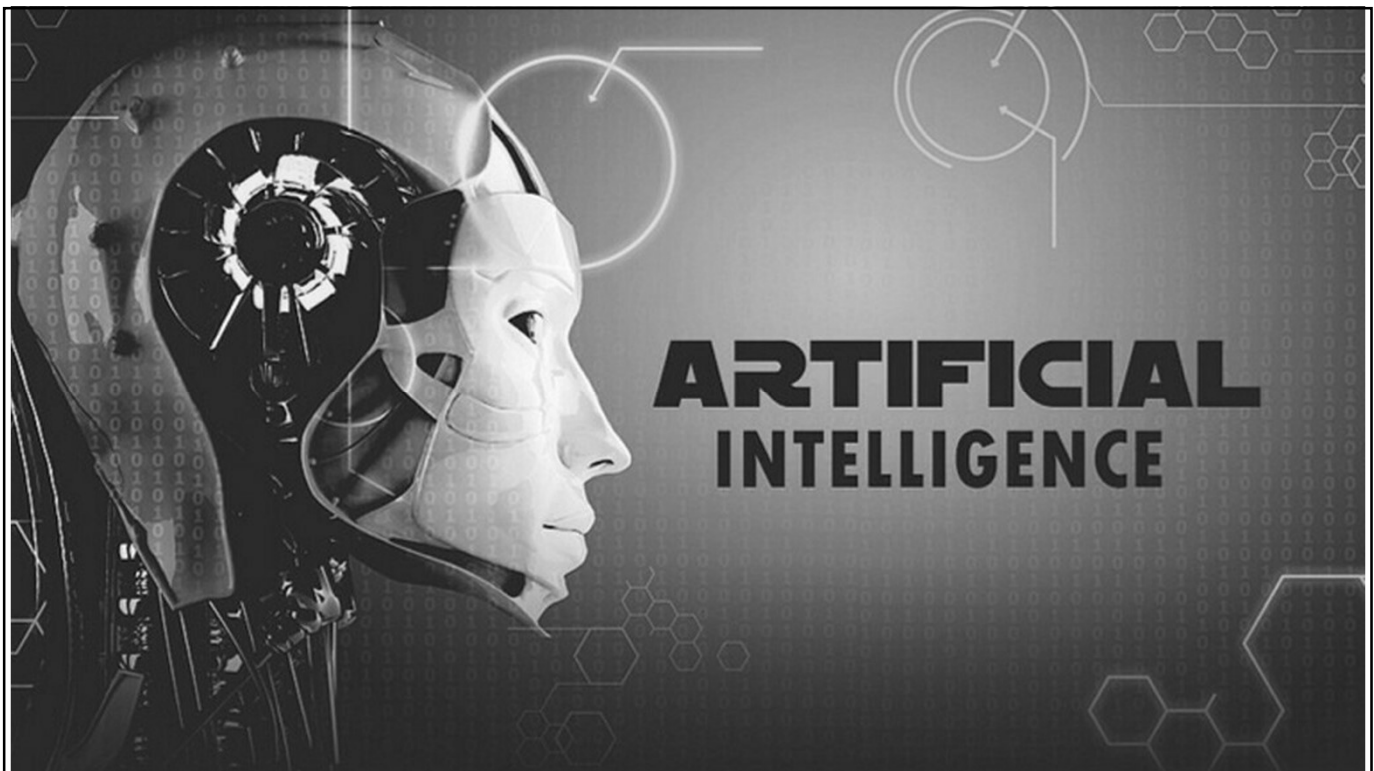
Tripp.Vickers@Alabar.org

Mark.Moody@Alabar.org

Roman.Shaul@Alabar.org

Telephone: 334-269-1515

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62

What is Generative AI ?

Generative AI is a type of artificial intelligence technology that can produce various types of content, including text, imagery, audio and synthetic data.

Generative AI can create convincingly authentic images, videos and audio of real people.

63

Why are Lawyers Using Generative AI ?

“People have quickly discovered the platform can churn out persuasive and eloquent copy that would take a human hours, days, months or even years to write, including drafts of emails, legal briefs, essays and books.”

ABA Journal. *Words with Bots*. June/July 2023.

64

How are Legal Departments Using AI ?

“In particular, areas of significant utility for legal departments include contract analysis, due diligence, electronic discovery, monitoring patent portfolios and legal budgeting.”

Law 360. *The Future of Legal Ops: AI Has Important Role to Play.* December 20, 2022.

65

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

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Rule 1.1 Competence

Competence = Knowledge (including technology)

Competence = Skill (admit exhibits remotely)

Competence = Thoroughness

Competence = Preparation

That is reasonably necessary for the representation.

67

Law Schools are Modifying the Curriculum

Wednesday, May 31, 2023

Some Law Schools Already Are Using ChatGPT To Teach Legal Research And Writing

By Paul Caron

1.3k
Shares



27



17



4



68

Judges' Ethical Duties Concerning Technology.

CONCLUSION

Judicial officers have an ethical obligation to understand technology, including artificial intelligence, and take reasonable steps to ensure that AI tools on which their judgment will be based are used properly and that the AI tools are utilized within the confines of the law and court rules. Further, as AI rapidly advances, judicial officers have an ethical duty to maintain technological competence and understand AI's ethical implications to ensure efficiency and quality of justice.

State Bar of Michigan, JI-155, October 27, 2023.

69

Judges' Ethical Use of AI.

Based upon the foregoing, the Commission is of the opinion that a judge may use AI for research purposes but may not use it to decide the outcome of a case. The use of AI in drafting opinions or orders should be done with extreme caution. The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.



JUDICIAL INVESTIGATION COMMISSION
City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

JIC Advisory Opinion, 2023-22, October 13, 2023.

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71

What are Some Concerns with Generative AI ?

1. False information.
2. Misleading Information.
3. Discriminatory Information.
4. Plagiarism.
5. Disclosure of Confidential Information.

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What are Some Concerns with Generative AI ?



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What is Real?

gencraft.ai @gencraft.ai Ad ...

"Girl with blonde hair wearing a backpack in a train"

By Gencraft: the world's fastest (and free!) AI image and video generator

Gencraft - AI Art Generator
★★★★★ 1.5K reviews
Free · Graphics & Design

Install

269 210 1.6K 23M

74

Mata v. Avianca, Inc., SDNY (May 2023)

“In an affidavit filed Thursday, attorney Steven Schwartz of Levidow Levidow & Oberman PC acknowledged that it ‘was in consultation with generative artificial intelligence website ChatGPT’ that he located and cited six cases that ‘this court has found to be nonexistent.’”

Law360. Attorney Citing ‘Bogus’ Cases From ChatGPT is ‘Unprecedented.’ May 30, 2023.

75

Judge Stephen A. Vaden U.S. Court of International Trade

“Generative artificial intelligence programs that supply natural language answers to user prompts, such as ChatGPT or Google Bard, create novel risks to the security of confidential information. **Users having “conversations” with these programs may include confidential information in their prompts, which in turn may result in the corporate owner of the program retaining access to the confidential information.”**

Standing Order on Artificial Intelligence. June 8, 2023.

76

Judge Donald W. Molloy
District of Montana

"Pro hac counsel must do his or her own writing; sign his or her own pleadings, motions and briefs; and appear and participate personally. **Use of artificial intelligence automated drafting programs, such as ChatGPT, is prohibited.**"

Order, June 6, 2023.

77

5th Circuit Court of Appeals

Fifth Circuit Rule 32.3

32.3. Certificate of Compliance. See Form 6 in the Appendix of Forms to the FED. R. APP. P. Additionally, counsel and unrepresented filers must further certify that no generative artificial intelligence program was used in drafting the document presented for filing, or to the extent such a program was used, all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human. A material misrepresentation in the certificate of compliance may result in striking the document and sanctions against the person signing the document.

78

5th Circuit Court of Appeals

3. This document complies with the AI usage reporting requirement of 5TH CIR. R. 32.3 because:

- ☐ **no generative artificial intelligence program was used in the drafting of this document, or**
- ☐ **a generative artificial intelligence program was used in the drafting of this document and all generated text, including all citations and legal analysis, has been reviewed for accuracy and approved by a human.**

79

Some Ethical Rules that are Implicated by AI.

1. Rule 1.1 Competence
2. Rule 1.6 Confidentiality
3. Rule 3.3 Candor Toward the Tribunal
4. Rule 1.4 Communication
5. Rule 1.5 Fees
6. Rules 5.1 & 5.3 Supervision
7. Rule 5.5 Unauthorized Practice of Law

80

ASB Member Benefits

Practice Resources

Career Assistance & Marketing

Shipping

Wellness

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Law Practice Management



- Jillian Evans – Practice Management Advisor
- 334-517-2130
- Jillian.evans@alabar.org

82

Lawyer Assistance Program

- Shannon Knight –
ALAP Director
- 334-517-2216
- Shannon.knight@alabar.org
- 24 Hour Helpline:
334-224-6920



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Last but *NOT* least....

Please make sure the email address of noreply@alabar.org is a safe sender in your email system. ASB is now paperless, so anything and everything is emailed out, ***including notice of disciplinary matters***. All emails regarding disciplinary matters will have a subject line that includes ***ASB-OGC Notice***...

Please calendar **October 1 annually** for so long as you hold your law license to:

1. Pay your annual dues (email membership@alabar.org if you need assistance with making payment online); and,
2. Review your CLE credits to make sure all credits earned for the year have been posted correctly, and that you have met your annual requirements *or* have a plan in place to do so by December 31 annually (email cle@alabar.org if you need assistance with CLE credits).

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PROBATE COURT OF MOBILE COUNTY
APPOINTED LAWYERS SEMINAR
December 11, 2025

David D. Anthony
ARMBRECHT JACKSON LLP
Post Office Box 290
Mobile, AL 36601
251-405-1300

1. SERVICE OF NOTICE ON PARTIES OF INTEREST

A. Basic Rule is Rule 4, A.R.C.P.

Under Act No. 91-131, which grants the Probate Court of Mobile County statutory equity jurisdiction in cases involving estates and conservatorships, the Rules of Civil Procedure apply, although this does not foreclose application of other statutory probate procedures. Under the 2013 amendment to Rule 1 of the Rules of Civil Procedure, the rules apply in probate courts “so far as the application is appropriate and except as otherwise provided by statutes.” Consequently, Rule 4, and its collateral Rules 4.1 – 4.4, are the principal guides for determining how to serve notice. The fundamental concept of constitutional due process is the driving force behind the notice requirement. Even though probate courts frequently function as quasi in rem courts, constitutional requirements dictate that all parties having a legitimate interest in the proceedings should be notified thereof, at least if possible. Due process does not require that each interested party in fact receive notice, but it does require that reasonable efforts be made to provide such notice. It should always be borne in mind that even if the court is effectuating the service of notice, it is ultimately the petitioner or movant, just as it is the plaintiff in circuit court, who bears the burden of making sure interested parties are served.

B. Service by Sheriff

Under Rule 4(i), service by the sheriff’s office on persons who reside in Alabama is the default means of service, and the probate court frequently uses this means, at least initially. Notices are forwarded to the sheriff’s office, and a deputy is dispatched to attempt service. For parties in other counties, notices can be forwarded to the sheriff’s office in the relevant county. Typically, a deputy attempts service at the stated address for perhaps three times. If unsuccessful, the notice is returned “not found” or with some other message such as “wrong address” and the service had not been completed.

C. Service by Private Process Server

Under Rule 4(i), service can also be effectuated by a designated person outside the sheriff’s office who is at least 19 years of age and not a party or a relative of a party. Typically, this means of service is used when a party has either been difficult to serve or is expected to

refuse service by other means. The petitioner has to pay the private process server for his or her efforts, although charges for this in the Mobile area tend to be quite reasonable.

D. Service by Certified Mail

Under Rule 4(i), service can also be attempted by certified mail, which has the advantage of being sent nationwide. The receipt of the “green card” (or other modern verification) showing delivery is required before notice is deemed complete. For individuals, the “green card” should be signed by the individual being served.

Rule 4(e) provides a specific remedy in the case of refused service of process by certified mail, providing that after such refusal, the court clerk may serve by ordinary mail the summons and complaint. Service perfected upon when fact of mailing entered of record.

E. Service by Publication

If all else fails, service can be made by publication in a newspaper under Rule 4.3. An affidavit must be filed with the court attesting to the efforts made to serve the party by other means that have been unsuccessful. Thus, service by publication is never the first type of service attempted. Moreover, in *Lovell v. Costigan*, No. 2140522 (Ala. Civ. App., July 10, 2015), the Court of Civil Appeals held that it was improper to serve a defendant by publication unless the affidavit submitted by the plaintiff alleged specific facts to the effect that the defendant was avoiding service. Specifically, the Court held that it was insufficient to allege merely that the defendant was not found at his last known address and that various internet and telephone efforts to locate defendant’s new address had been unsuccessful. The Probate Court upholds the requirements of this case.

Note that some probate proceedings (e.g., petitions for final settlement, petitions to sell real property for payment of debts) require a general publication notice in addition to service on interested parties. These general publications are intended to provide notice to persons who are unknown to the petitioner or to creditors and this does not substitute for notice on interested parties. If an interested party cannot be served by any method but publication, this general publication will not suffice and a separate publication will be required for the specific interest party.

2. IMPORTANT RULES OF CIVIL PROCEDURE IN PROBATE PRACTICE

A. Rule 4 – for purposes of notifying interested parties

The application of Rule 4 in Probate Court has been discussed above.

B. Rule 17(d) – GAL cannot be suggested or nominated by petitioner

Probate Court proceedings are often unique in the frequency with which they involve matters where minors or mentally incapacitated persons have an interest. These persons have to

be notified as well as represented in the proceedings. This representation is accomplished by appointment of a guardian ad litem (“GAL”) to represent the minor or incapacitated person. Rule 17 addresses the appointment of GAL’s. It should be noted that Rule 17(d) specifically says that a person cannot be appointed as GAL if that person has been suggested or nominated by the petitioner. On the other hand, a minor of 14 years of age or older can nominate his or her own GAL within 30 days of service.

C. Rule 45 – Subpoenas

The methods for obtaining documents from non-parties and for compelling the attendance of witnesses at a hearing is accomplished through subpoenas. Probate Court follows the general rules outlined in Rule 45.

D. Rule 56 – Summary Judgment

In contested matters, motions for summary judgment are often a good vehicle for testing the sufficiency of a claim and perhaps avoiding a trial. Probate Court applies the same rules as circuit courts – specifically the requirements of Rule 56 – in ruling on such motions.

3. HOW TO ADMIT DOCUMENTS INTO EVIDENCE

A. Authentication

To be admitted into evidence, documents must be authenticated. Rule 44 and Rules 901 through 903 of the Rules of Evidence generally govern the requirements for how to authenticate a document. Fundamentally, the concept of authentication requires a showing that the document is in fact what it purports to be. The rules dictate numerous ways in which this showing can be made, such as a certification of a governmental or court document, an attestation of a business record custodian for a business, or simply testimony that the document is what it appears to be. Probate Court often has a pretrial order in particular cases that essentially treats all documents submitted as exhibits as being authenticated automatically unless timely objection is made.

B. Avoidance of Hearsay Rule

Documents constitute potential hearsay almost by definition – they are in fact “out of court” happenings. Fortunately, many exceptions and exemptions to the hearsay rule exist under which many documents can easily be admitted into evidence notwithstanding their hearsay tendencies. Rules 801 through 806 of the Rules of Evidence specify what is either not considered hearsay to begin with or what constitutes an exception to the hearsay rule. Rules that often can be employed to overcome the hearsay rule for documents include the following:

-admissions by an opponent, which are declared not to constitute hearsay under Rule 801(d), so a relevant document containing “admission” by an opponent is likely to be admissible.

-business records and public records exceptions provided by Rule 803. Rule 803 of the Rules of Evidence contains numerous exceptions to the hearsay rule, many of which apply to documents. The “business record” exception is found in Rule 803(6) and requires a showing that the document was maintained by a business “in the course of a regularly conducted business activity” and that “it was the regular practice of that business entity to make such record.” Public records, such as deeds, court orders, and the like are clear exceptions to the hearsay rule.

4. IMPORTANT RULES OF EVIDENCE IN PROBATE PRACTICE

A. Rule 502 – Attorney-Client Privilege

While the attorney-client privilege is important for all legal proceedings, it has some special applications in Probate Court, namely in the exceptions to the rule noted in Rule 502(d). The most significant of these is subsection (2), which provides that an exception to the privilege exists as to the following:

Claimants Through the Same Deceased Client. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction.”

Ala. R. Evid. 502(d)(2). This has particular application in a will contest proceeding or a proceeding in which the meaning of a particular clause of a will or trust agreement is under scrutiny. Rule 502(d)(4) also creates an exception to the privilege as to communications relevant to the intention or competence of a client who executes a document that the attorney attests as a witness.

B. Rule 601 – Killing the Dead Man’s Rule

While Rule 601 of the Rules of Evidence is relatively obscure – providing only that every person is competent to be a witness except as otherwise provided, the comments to the rule make clear that this rule was intended, among other things, to abolish the so-called “dead man’s statute” or “dead man’s rule.” Under that rule, a person was deemed “incompetent” to testify as to certain communications or transactions of a dead person (although there were certain exceptions) on the theory that the dead person was unavailable to contradict such testimony. The thrust of Rule 601 is thus that evidence concerning the statements or actions of a deceased person are, if otherwise relevant, admissible in a Probate Court proceeding notwithstanding the death of the person.

5. PROVING A WILL

A. ELEMENTS

The elements required to constitute a valid will go back to the days of Henry VIII, the most significant of which is that there must be two witnesses. Any person named as executor or

beneficiary in the will, any other person interested in the estate, or any person having custody of the will may seek the probate thereof. Ala. Code § 43-8-160. There is a five-year statute of limitations on probating a will that has not otherwise been probated in another state, territory, or country where the decedent resided. Ala. Code § 43-8-161. Notice of the hearing to probate the will must be given to those persons who would constitute the decedent's heirs at law at least 10 days before the hearing, the logic being that these are the persons who may be adversely affected by the dispositive provisions in the will. Ala. Code § 43-8-164. These are also the persons entitled to contest a will. Ala. Code § 43-8-190. A guardian ad litem must be appointed to represent any minor or incompetent heir. Ala. Code § 43-8-165. An adult heir may waive the notice requirement, and this is often done in cases where the interested parties all support the probate of the will.

Once the hearing date has arrived, it must be determined whether the will is self-proving under Ala. Code § 43-8-132. If so, no evidence is required. If not, the testimony of at least one of the witnesses to the will must be procured. Ala. Code § 43-8-167. If the witnesses are dead or reside out-of-state, testimony verifying the handwriting of the testator's signature and that of at least one witness can be provided in substitution of witness' testimony. *Id.* For out-of-state witnesses or those unable to come to court, the court may also issue a "commission" to take the "deposition" of the witness. Ala. Code § 43-8-168. The "commission" is an order appointing some person as a type of notary public who is authorized to place the particular named witness under oath. The "deposition" is a written set of questions that the witness must answer and sign under oath.

When the original will is not available, the will can still be admitted to probate under certain circumstances. Essentially, the proponent of a lost will must (1) prove that a valid will was executed, (2) establish the contents of that will, (3) account for the original, and (4) establish nonrevocation by the testator. *See, e.g., Tyson v. Tyson*, 521 So. 2d 956 (Ala. 1988). If a copy of the will is available, items (1) and (2) can easily be established. Because the absence of the original is presumed to be due to the testator's destruction thereof for purposes of revoking it, adequate evidence must be presented to account for why the original is missing but should be presumed revoked. *Id.*

B. ASSESSING WHETHER TO CONTEST

Wills can be contested for basically one of three reasons: (1) improper execution; (2) lack of testamentary capacity; and (3) undue influence. Improper execution was basically addressed above.

It is presumed that every person has the capacity to make a will, and the contestant has the burden to prove lack of testamentary capacity. *Johnston v. Johnston*, 57 So. 450, 452 (Ala. 1912). As stated by the Alabama Supreme Court:

In order to execute a valid will, one must possess mind and memory sufficient to recall and remember the property she was about to bequeath, and the objects of her bounty, and the disposition which she wished to make—to know and

understand the nature and consequences of the business to be performed, and to discern the simple and obvious relation of its elements to each other.

Bolan v. Bolan, 611 So.2d 1051, 1057 (Ala. 1993) (internal quotations omitted); *Smith v. Vice*, 641 So.2d 785, 786 (Ala. 1994). As such, testamentary capacity is a relative low standard.

The question whether there was testamentary capacity is determined by the testator's mental condition at the time he or she executed the will. *Burke v. Thomas*, 211 So.2d 903 (Ala. 1968).

A contestant bears the burden of proof with respect to her allegation of undue influence. *Kelly v. Donaldson*, 456 So.2d 30, 33 (Ala. 1984). The elements necessary to prove an undue influence claim under Alabama law are:

(1) that a confidential relationship existed between a favored beneficiary and the testator; (2) that the influence of or for the beneficiary was dominant and controlling in that relationship; and (3) that there was undue activity on the part of the dominant party in procuring the execution of the will.

Clifton v. Clifton, 529 So.2d 980, 983 (Ala. 1988). A "favored beneficiary" in this context is "[o]ne who, in the circumstances of the particular case, has been favored over others having equal claim to the testator's bounty." *Cook v. Morton*, 1 So.2d 890, 892 (1941). For purposes of this rule, "[t]he 'equal claim' of others refers not to the laws of descent and distribution but to the facts of the particular case." *Clifton*, 529 So. 2d at 983. In other words, a child does not become a "favored beneficiary" solely because he or she receives something greater than his or her intestate share of an estate.

Any would-be contestant needs to consider that attorneys' fees will likely be assessed against an unsuccessful contestant under the provisions of Ala. Code § 43-8-196.

C. PROBATING A LOST WILL

When the original will is not available, the will can still be admitted to probate under certain circumstances. Essentially, the proponent of a lost will must (1) prove that a valid will was executed, (2) establish the contents of that will, (3) account for the original, and (4) establish nonrevocation by the testator. *See, e.g., Tyson v. Tyson*, 521 So. 2d 956 (Ala. 1988). If a copy of the will is available, items (1) and (2) can easily be established. Because the absence of the original is presumed to be due to the testator's destruction thereof for purposes of revoking it, adequate evidence must be presented to account for why the original is missing but should be presumed revoked. *Id.* What evidence is sufficient for this purpose is determined on a case by case basis by the court in its discretion.

PRACTICE TIPS FOR GUARDIAN AD LITEM AND ADVOCATES IN MENTAL HEALTH COMMITMENT CASES

The probate judge shall appoint an attorney to serve as the advocate in support of the petition to commit in all matters regarding a petition to commit. Ala. Code § 22-52-5

At the time when any petition has been filed seeking the involuntary commitment of a respondent, the probate judge shall appoint a guardian ad litem to represent and to protect the rights of the respondent,... Ala. Code § 22-52-4(a)

PROBABLE CAUSE HEARING:

1. Any person may file a petition seeking the involuntary commitment of another person. Ala. Code §22- 52-1.2. The petition shall be filed in the county where the respondent is located. The petition must be in writing, signed under oath and state that the petitioner believes the respondent has a mental illness based on “specific behavior, acts, attempts or threats” which are described in detail.
2. If it appears from the face of the petition or from testimony of the petitioner that the petition is without merit, the petition shall be dismissed. Ala. Code §22-52-2.
3. No limitations shall be placed upon the respondent’s liberty nor treatment imposed upon the respondent unless such limitations are necessary to prevent the respondent from doing substantial and immediate harm to himself or to others or to prevent the respondent from leaving the jurisdiction of the court. Ala. Code §22-52-7(b).

Practice Tips:

1. Review the petition prior to Court
2. Arrive early
3. Speak with your respective client (petitioner or respondent) before the hearing:
 - Discuss the contents of the petition
 - Discuss respondent’s prior mental health treatment or diagnosis

At the hearing:

Petitioner’s advocate: ask questions and present testimony to establish probable cause.

Guardian ad Litem: determine if client will testify at hearing, offer no testimony, or stipulate to the contents of the petition and waive the hearing.

MERIT HEARING

1. The final hearing shall be held within 30 days of the date that the respondent was served with a copy of the petition seeking to commit the respondent.” Ala. Code § 22-52-8(b).
2. (a) If at the final hearing on a petition seeking to involuntarily commit a respondent, the judge of probate finds, based on clear and convincing evidence, that the respondent meets the criteria for involuntary commitment, an order shall be entered for either of the following:
 - (1) Outpatient treatment.
 - (2) Inpatient treatment.
- (b) The least restrictive alternative necessary and available for the treatment of the respondent's mental illness shall be ordered.
- (c) The petition for involuntary commitment shall be dismissed if the criteria for commitment is not proved. Ala. Code § 22-52-10.1

Practice Tips:

1. Review the recommendations prior to Court.
2. Review the medical records prior to Court.
3. Discuss the recommendation with your respective client (petitioner or respondent) before the hearing.
4. Address any questions or concerns regarding the recommendation.

At the hearing:

Petitioner’s advocate:

1. Qualify your medical expert in psychiatry and mental health.
2. Establish the doctor as the designated representative of the evaluation team at EastPointe Hospital for purposes of the merit hearing.
3. Inquire whether the expert has possession of the medical records and is familiar with those records.
4. Ask the doctor whether he or she had the opportunity to meet with the respondent personally and to describe the evaluation process.

5. Ask the doctor to state the diagnosis.
6. Ask the doctor to describe the behaviors that led to this diagnosis.
7. Ask the doctor whether any medication was prescribed. Ask the doctor whether this medication resulted in improvement of symptoms.
8. Inquire whether the respondent has any insight into their mental illness.
9. Ask the doctor whether the respondent cooperated with treatment.
10. If recommended by the treatment team, establish the necessary elements under Alabama law for the court to enter an order for commitment to inpatient treatment under Ala Code §22-52-10.4:
 - a) A respondent may be committed to inpatient treatment if the probate court, based upon clear and convincing evidence, finds that all of the following are true:
 - (1) The respondent has a mental illness.
 - (2) As a result of the mental illness, the respondent poses a real and present threat of substantial harm to self or others.
 - (3) The respondent, if not treated, will continue to suffer mental distress and continue to experience deterioration of the ability to function independently.
 - (4) The respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.
 - (b) If the probate judge finds that no treatment is presently available for the respondent's mental illness, but that confinement is necessary to prevent the respondent from causing substantial harm to himself or herself or to others, the order committing the respondent shall provide that, should treatment for the respondent's mental illness become available at any time during the period of the respondent's confinement, the treatment shall be made available to him or her immediately.
 - (c) In determining whether an individual poses a real and present threat of substantial harm to self or others, all available relevant information shall be considered, including any known relevant aspects of the individual's psychosocial, medical, and psychiatric history, in addition to the individual's current behavior.

An order for inpatient treatment may not exceed 150 days. Ala Code §22-52-10.5. A renewal of an inpatient commitment order may not exceed one year. Ala Code §22-52-10.6.

11. If recommended by the treatment team, establish the necessary elements for the court to order outpatient commitment under Ala Code §22-52-10.2.
 - (a) A respondent may be committed to outpatient treatment if the probate court, based upon clear and convincing evidence, finds all of the following:
 - (1) The respondent has a mental illness.

- (2) As a result of the mental illness, the respondent, if not treated, will suffer mental distress and experience deterioration of the ability to function independently.
- (3) The respondent is unable to maintain consistent engagement with outpatient treatment on a voluntary basis, as demonstrated by either of the following:
 - a. The respondent's actions occurring within the two-year period immediately preceding the hearing.
 - b. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness.

12. The court may renew the order for outpatient treatment if:

- (b) Upon a recommendation made by the designated mental health facility currently providing outpatient treatment that the respondent's outpatient commitment order should be renewed, a probate court may enter an order to renew the commitment order upon the expiration of time allotted for treatment by the original outpatient treatment order if the probate court finds, based upon clear and convincing evidence, all of the following:
 - (1) The respondent has a mental illness.
 - (2) As a result of the mental illness, the respondent, if treatment is not continued, will suffer mental distress and experience deterioration of the ability to function independently.
 - (3) The respondent remains unable to maintain consistent engagement with outpatient treatment on a voluntary basis. Ala Code §22-52-10.2.

An order for outpatient treatment shall not exceed 150 days unless the order pertains to a renewal of an outpatient commitment order up to one year. Ala Code §22-52-10.3

13. Inquire whether the treatment team contacted the Petitioner and whether the Petitioner consents to the treatment plan. Ask the doctor when the next appointment is scheduled, when the next injection is scheduled if applicable, and whether the respondent will have any assistance with transportation and medication upon discharge.

14. Establish who the respondent will be going to live with if outpatient commitment is the recommendation.

15. Inquire about the long term prognosis of the respondent if the recommended treatment plan is followed.

16. If the respondent is committed to inpatient treatment, the judge of probate shall immediately forward the order to the Alabama Law Enforcement Agency. The Alabama Law Enforcement Agency shall as soon as possible thereafter enter the order in the National Instant Criminal Background Check System (NICS) and the information shall be entered into the NICS Index Denied Persons File. The records maintained pursuant to this section shall only be used for purposes of determining eligibility to purchase or transfer a firearm. Ala Code §22-52-10.8.

Guardian ad Litem:

1. Listen to the direct examination.
2. Ask the doctor about questions or concerns noted from review of the medical records.
3. Inquire about respondent's cooperation with medication, such as forced medication orders or PRN's.
4. If respondent has expressed side effects from medication, ask doctor if/ how that has been addressed.
5. Inquire about any dual diagnosis or relevant secondary diagnosis.
6. Ask if recommendation was discussed with respondent and whether respondent agrees with treatment plan.

Waiving Presence of Respondent:

The respondent shall be present unless, prior to the hearing, the attorney for the respondent has filed in writing a waiver of the presence of the respondent on the ground that the presence of the respondent would be dangerous to the respondent's physical or mental health or that the respondent's conduct could reasonably be expected to prevent the hearing from being held in an orderly manner, and the probate judge has judicially found and determined from evidence presented in an adversary hearing that the respondent is so mentally or physically ill as to be incapable of attending such proceedings. Ala. Code § 22-52-9 (1)

OBTAINING AND REVIEWING MEDICAL RECORDS

By Martin Poynter

Sample weekly emails from AltaPointe:

Email #1:

Hello Martin Poynter,

The access to this week's AltaPointe's consumer chart is available now. Before you access the chart or click the link below, you will need Citrix Receiver available on your device. To install Citrix Receiver please read the attached PDF for instructions. There is a follow up email which has a new password for the week. Once the Citrix is available on your device please use the following link and use the given userid and password for the week to login.

<https://altapointecx.netsmartcloud.com>

You will receive another email shortly with the password for your login.

If you have any issues or need any assistance please contact AltaPointe IT Help Desk @251-450-5906. This is an auto generated email. Please do not respond to this email.

Email #2:

Hello Martin Poynter,

Your login password to access AltaPointe Health System's site is
Alta@Ks3=z

Please note that this password is valid only for this week.

If you have any issues or need any assistance please contact AltaPointe IT Help Desk @251-450-5906. This is an auto generated email. Please do not respond to this email.

Example portion of Initial Psychiatric Evaluation:

Today on admission patient was observed to exhibit disorganized/circumstantial thought process during interview questioning. Patient denied experiencing AVH but expressed that "God has more power than the voices" suggestive of perceptual disturbance.

Examples of Hospital Progress Notes:

1. He initially presents irritable and guarded and as the interview goes on he becomes more disorganized/tangential with delusional thought content. He adamantly reports that everything is going well and that staff is telling him that he is doing great and should be able to leave. He also says that he has been writing a book about Spider-Man because "I'm the real Spider-Man".
2. On interview the patient reports his overall mood is anxious and describes feeling like the walls are closing in on him and feeling like something is holding him down, preventing him from getting out of bed at times. He says it feels like it is "something physical", but unsure what it is. He does endorse a previous trauma where he was shot and had to crawl through a tight space. Reports frequent nightmares, flashbacks, hypervigilance, and anxiety related to this trauma since that time. He denies any akathisia like symptoms or stiffness/rigidity. He reports Ativan was not helpful for symptoms yesterday. He otherwise continues to endorse having auditory hallucinations of ghosts, and says he last heard them yesterday. Continues to have vague paranoia about people trying to hurt him. He also endorses vague homicidal thoughts of wanting to hurt people outside the hospital, but does not know who.
- 3 He says he was kicking down the doors of every door on the unit yesterday because "I do not want a roommate". He further explains that nothing is wrong with his current roommate, but he says that he gets paranoid and does better without a roommate. Patient endorses having recent visual hallucinations of seeing black shadows passing through the vents of his room. He believes the shadows are from the spirits and believes it is a message to complete a mission or the spirits will come after him. He does not disclose what the mission is.
- 4 He has been reporting to nursing staff that the voices are harassing him. Denied auditory or visual hallucinations at time of interview, but suspect he may be **minimizing** when he speaks to me, as he is **discharged focused** and hopes to see his family soon. He does not appear internally stimulated. No overt delusions or paranoia were elicited on exam today. However, staff reports he has been accusing others about his reasons for admission. He denies having any thoughts of hurting self or others. Plan: further increase Abilify to 15 mg QHS to target hallucinations.

Examples of Prescription records:

Seclusion - Adult

STAT - ☒ imminent threat to self
☐ self-injurious behavior
☒ imminent threat to others
☐ Suicidal behavior
☐ assault on peer
☐ assault on staff
☒ extreme property destruction

THORAZINE (CHLORPROMAZINE HYDROCHLORIDE)

25 MG/1ML INJECTION SOLUTION

50 mg Every 6 Hours As Needed

Reason: Aggression / Agitation

Administration Date / Time / By: 12/10/2024 08:53 AM HEATHER BAILEY, LPN

Filed Date / Time / By: 12/10/2024 08:54 AM HEATHER BAILEY, LPN

Administration Event: Nurse Administered

Comment / Reason: AGITATION WALKING DOWN THE HALL KICKING EVERY CONSUMERS DOOR UNABLE TO REDIRECT

Example of Nursing note:

12/108:49am CONSUMER EXITED HIS ROOM AND STARTED KICKING IN EVERY DOOR ON THE UNIT. UNREDIRECTABLE. WOULD NOT EXPLAIN WHY HE WAS KICKING IN DOORS. WHEN SPEAKING TO NURSE CONSUMER SPEAKS WITH SLURRED SPEECH AND STATES "IT'S THE TARDIVE DYSKINESIA". REFUSED TO STOP. CONSUMER STATED "I HAVE A PROBLEM WITH MY ROOMMATE AND I DON'T WANT TO DEAL WITH IT." ROOM MATE WAS ASLEEP IN HIS BED. CONSUMER UNABLE TO SELF CALM. ISSUE WITH ROOM MATE APPEARS NONEXISTANT. CONSUMER WAS ESCORTED TO SECLUSION VIA SECURITY STAFF. MEDICATION NURSE PROVIDED PRN THORAZINE 50MG IM PER MD ORDER FOR AGITATION. RECEIVED ORDER FOR SECLUSION FROM DR. LEPAGE.

QUALIFICATION AND EXAMINATION OF A MEDICAL EXPERT WITNESS

Alabama law provides that the rules of evidence applicable in other judicial proceedings in this state shall be followed in involuntary commitment proceedings. See Ala. Code §§ 22-52-9, 22-52-37(a) 9 (1975). Therefore an expert's role in the Mental Health Hearing is the same as any other expert. As such, the key rules relevant when qualifying and examining a medical expert witness in an involuntary commitment case are Alabama Rules of Evidence **702, 703, 704, 705, and 803(6)**.

The medical expert is testifying as to their expert opinion about the facts of the case. Therefore, their testimony must include the following:

- *Their qualifications as an expert
- *The facts upon which their opinion is based
- *Their opinion
- *An explanation of that opinion

A. STEP ONE - ESTABLISHING THE QUALIFICATIONS OF THE WITNESS

Rule 702 - Testimony by experts

(a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Compliance with Rule 702(a) requires laying a foundation which establishes the expert's knowledge, skill, experience and the manner in which that expertise was acquired. Therefore the educational and professional background of the person being proffered as an expert must be in the record in each case. The questions should address the following information:

- *Educational and Professional background
- *Specialized training in the field of expertise
- *Licensed to practice in the field; Board certifications
- *Practiced in the field for a sufficient period of time
- *Previously testified in such cases and been accepted as an expert.

Case law supports the position that - whether a witness is qualified as an expert and whether, if so qualified, that witness may give expert opinion or testimony on the subject in question - is **left largely to the discretion of the trial judge**. Hagler v. Gilliland, 292 Ala. 262, 292 So.2d 647 (1974).

Following the establishment of the expert's qualifications, the witness should be offered as an expert in the field of psychiatry and mental health. Following the acceptance

of the witness as an expert, the petitioner's attorney must propound additional questions to the expert in order to meet the **Business Records Exception under Alabama Rule of Evidence 803(6)**.

B. STEP TWO - BUSINESS RULE EXCEPTION UNDER ALABAMA RULE OF EVIDENCE 803(6).

Hearsay is not admissible except as provided by the Alabama Rules of Evidence, or by other rules adopted by the Supreme Court of Alabama or by statute. Ala. R. Evid. 802. Alabama Rule of Evidence Rule 803 sets out the exceptions to the general exclusionary rule.

The physician in a commitment hearing will be providing testimony based on 1. their personal knowledge of the respondent's medical condition and 2. on their knowledge of the information contained in the respondent's medical records. The authority for allowing the physician to **testify outside of their first hand observations** is Alabama Rule of Evidence 803(6).

Rule 803(6) - RECORDS OF REGULARLY CONDUCTED ACTIVITY

A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, or by certification that complies with Rule 902(11), Rule 902(12), or a statute permitting certification, unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness. The term "business" as used in this paragraph includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

The historic basis for accepting business records as reliable lay in the belief that business records were made by "systematic checking, by regularity and continuity which produce habits of precision, by actual experience of business in relying upon them, or by a duty to make an accurate record as part of a continuing job or occupation." See Fed.R.Evid. 803(6) advisory committee's note.

Ala.R.Evid. 803(6) carries through this same principle by the requirement that the document must have been kept in the course of regularly conducted business activity, with it being the regular practice of the business to make the record. Indeed, all parties participating in making the record should be acting within the routine of the business in question. "Advisory Committee's Notes to Amendment to Rule 803(6)". * **It is important to note that there is no requirement that the authenticating witness be the custodian, entrant, or maker of the record. See Hammett v. State, 482 So.2d 1330, 1334 (Ala.Crim.App.1985).**

Rule 803(6) vests discretion in the trial court to exclude records for a lack of

trustworthiness even if the customary elements are satisfied. Such exclusion is in order when “the source of information or the method or circumstances of preparation indicate lack of trustworthiness.” See Ala. R. Evid. Rule 803(6) advisory committee’s note.

Foundational requirements:

Doctor are you acquainted with the respondent
How do you know the respondent
Are you a member of the respondent’s treatment team
Have you reviewed the respondent’s medical records
Are you familiar with the contents of those records
When was the last time you reviewed the records
Are those records kept in the ordinary course of business at the facility
Are the notations in the respondent’s medical records made contemporaneously with the treatment or event being charted or within a reasonable time thereafter
Are the respondent’s medical records available in court to refresh your recollection should you need to do so

C. STEP THREE - BASIS FOR THE OPINION, DIAGNOSIS, AND RECOMMENDATION FOR TREATMENT

Testimony should be elicited from the physician that establishes the physician’s personal knowledge of the respondent’s medical history, diagnosis, and treatment during the current hospitalization. It should be clear that the witness participated in the process of diagnosis and treatment:

1. Basis for the Opinion

What occasions did you personally interact with the respondent
Please describe your evaluation process with respect to the respondent
Does the respondent have a past history of mental illness; were those records reviewed
Have you had sufficient contact with the respondent to determine if they suffer from a mental illness
What is the diagnosis - Is the diagnosis a SMI under Alabama Law
What treatment did the respondent receive
Respondent’s behavior during hospitalization and response to treatment

2. Opinion regarding further treatment

The physician must state their recommendation for treatment. The options are dismissal, out-patient commitment, or in-patient commitment. The physician must provide testimony in support of their recommendation as set out in §§ 22-52-10.1, 10-52-10.2, 10-52-10.4.

3. Required Elements

§22-52-10.1 - Findings

a) If at the final hearing on a petition seeking to involuntarily commit a respondent, the probate judge finds, based on clear and convincing evidence, that the respondent meets the criteria for involuntary commitment, an order shall be entered for:

- (1) Outpatient treatment; or
- (2) Inpatient treatment.

The least restrictive alternative necessary and available for the treatment of the respondent's mental illness shall be ordered.

(b) The petition for involuntary commitment shall be dismissed if the criteria for commitment is not proved.

Ala. Code § 22-52-10.1 (1975)

§ 22-52-10.4 - Findings necessary for in-patient treatment

(a) A respondent may be committed to inpatient treatment if the probate court finds, based upon clear and convincing evidence that all of the following are true:

- (1) The respondent has a mental illness.
- (2) As a result of the mental illness, the respondent poses a real and present threat of substantial harm to self or others.
- (3) The respondent , if not treated, will continue to suffer mental distress and continue to experience deterioration of the ability to function independently.
- (4) The respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.

Ala. Code § 22-52-10.4 (1975)

§ 22-52-10.2 - Findings necessary for outpatient treatment

(a) A respondent may be committed to outpatient treatment if the probate court finds, based upon clear and convincing evidence, all of the following:

- (1) The respondent has a mental illness.
- (2) As a result of the mental illness, the respondent , if not treated, will suffer mental distress and experience deterioration of the ability to function independently.
- (3) The respondent is unable to maintain consistent engagement with outpatient treatment on a voluntary basis, as demonstrated by either of the following:
 - a. The respondent's actions occurring within the two-year period immediately preceding the hearing.
 - b. Specific aspects of the respondent's clinical condition that significantly impair the respondent's ability to consistently make rational and informed decisions as to whether to participate in treatment for mental illness .

Ala. Code § 22-52-10.2 (1975)

[Code of Alabama](#)

[Alabama Rules of Court](#)

[Alabama Rules of Civil Procedure](#)

[IV. Parties](#)

ARCP Rule 17

Rule 17. Parties Plaintiff and Defendant; Capacity

[Currentness](#)

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or Be Sued. The capacity of a party, including one acting in a representative capacity, to sue or be sued shall be determined by the law of this state.

(c) Minors or Incompetent Persons. Whenever a minor has a representative, such as a general guardian or like fiduciary, the representative may sue in the name of the minor. Whenever an incompetent person has a representative such as a general guardian or a like fiduciary, the representative may sue or defend in the name of the incompetent person. If a minor or an incompetent person does not have a duly appointed representative, that person may sue by that person's next friend. The court shall appoint a guardian ad litem (1) for a minor defendant, or (2) for an incompetent person not otherwise represented in an action and may make any other orders it deems proper for the protection of the minor or incompetent person. When the interest of an infant unborn or unconceived is before the court, the court may appoint a guardian ad litem for such interest. Moreover, if a case occurs not provided for in these rules in which a minor is or should be made a party defendant, or if service attempted upon any minor is incomplete under these rules, the court may direct further process to bring the minor into court or appoint a guardian ad litem for the minor without service upon the minor or upon anyone for the minor.

(d) Guardian Ad Litem; How Chosen. Whenever a guardian ad litem shall be necessary, the court in which the action is pending shall appoint to serve in that capacity some person who is qualified to represent the minor or incompetent person in the capacity of an attorney or solicitor, and must not select or appoint any person who is related, either by blood or marriage within the fourth degree, to the plaintiff or the plaintiff's attorney, or to the judge or clerk of the court, or who is in any manner connected with such plaintiff or such plaintiff's attorney, or who has been suggested, nominated, or recommended by the plaintiff or the plaintiff's attorney or any person for the plaintiff. If the guardian ad litem is to be appointed for a minor fourteen (14) years of age or over, such minor may, within thirty (30) days after perfection of service upon the minor in such cause, have the minor's choice of a guardian ad litem to represent the minor in said cause certified by an officer authorized to take acknowledgments, but if such minor fails to nominate a guardian ad litem within the thirty- (30-) day period or before any hearing set in the action, whichever is earlier, the court shall appoint a guardian ad litem as before provided. In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for

services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem.

(dc) District Court Rule. Rule 17 applies in the district courts except that the thirty- (30-) day time period in Rule 17(d) is reduced to fourteen (14) days.

Credits

[Amended effective October 1, 1995; August 1, 2004.]

Alabama Rules of Civil Procedure, Rule 17, AL R RCP Rule 17
Current with amendments received through November 1, 2025.

End of Document

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[Code of Alabama](#)

[Title 26. Infants and Incompetents. \(Refs & Annos\)](#)

[Chapter 2A. Alabama Uniform Guardianship and Protective Proceedings Act. \(Refs & Annos\)](#)

[Article 1. General Provisions, Definitions, and Jurisdiction of Court.](#)

[Division 4. Notice, Parties, and Representation in Guardianship and Protective Proceedings.](#)

Ala.Code 1975 § **26-2A-52**

§ **26-2A-52**. Guardian ad litem.

[Currentness](#)

At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor or other person if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests.

Credits

(Acts 1987, No. 87-590, p. 975, § 1-403.)

Ala. Code 1975 § **26-2A-52**, AL ST § **26-2A-52**

Current through the end of the 2025 Regular Session. Some provisions may be more current; see credits for details.

End of Document

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[Code of Alabama](#)

[Title 26. Infants and Incompetents. \(Refs & Annos\)](#)

[Chapter 2A. Alabama Uniform Guardianship and Protective Proceedings Act. \(Refs & Annos\)](#)

[Article 2. Protection of Persons Under Disability and Their Property.](#)

[Division 2. Guardians of Incapacitated Persons.](#)

Ala.Code 1975 § 26-2A-102

§ 26-2A-102. Court appointment of guardian for incapacitated person.

[Currentness](#)

(a) Except as provided by subsection (e), an incapacitated person or any person interested in the welfare of the incapacitated person may petition for appointment of a limited or general guardian.

(b) After the filing of a petition, the court shall set a date for hearing on the issue of incapacity so that notices may be given as required by [Section 26-2A-103](#), and, unless the allegedly incapacitated person is represented by counsel, appoint an attorney to represent the person in the proceeding. The person so appointed may be granted the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician or other qualified person appointed by the court who shall submit a report in writing to the court. The person alleged to be incapacitated also shall be interviewed by a court representative sent by the court. The court representative also shall interview the person who appears to have caused the petition to be filed and any person who is nominated to serve as guardian and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that the person will be detained or reside if the appointment is made and submit a report in writing to the court. The court may utilize the service of any public or charitable agency as an additional court representative to evaluate the condition of the allegedly incapacitated person and to make appropriate recommendations to the court.

(c) A person alleged to be incapacitated is entitled to be present at the hearing in person. The person is entitled to be represented by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician or other qualified person and any court representative, and upon demand to trial by jury as provided in [Section 26-2A-35](#). The issue may be determined at a closed hearing if the person alleged to be incapacitated or counsel for the person so requests.

(d) Any person may apply for permission to participate in the proceeding, and the court may grant the request, with or without hearing, upon determining that the best interest of the alleged incapacitated person will be served thereby. The court may attach appropriate conditions to the permission.

(e) The custodial parent or parents or an adult custodial sibling of an adult child who is incapacitated by reason of an intellectual disability, may file, in lieu of a petition, a written request to be appointed guardian of his or her adult child or his or her adult sibling in order to continue performing custodial and other parental responsibilities or family responsibilities, or both responsibilities, for the child after the child has passed his or her minority. The court may waive any or all procedural requirements of the Uniform Guardianship Act, including notice and service, and appointments, and interviews. The adult child alleged to be incapacitated shall have had an examination by a physician or other qualified person and furnish a written report of the findings to the court.

In lieu of a hearing, the probate court shall hold an informal hearing with the custodial parent or custodial parents or custodial adult sibling requesting the guardianship, the adult child for whom the guardianship is sought, and a guardian ad litem for the adult child chosen by the judge of probate.

Following the interview, the court may do any of the following:

- (1) Issue an order appointing the custodial parent or custodial parents or custodial sibling as guardian of the adult child as in any other proceeding pursuant to this section.
- (2) Deny the request for appointment as guardian pursuant to the special proceedings allowed only for a custodial parent or custodial parents or custodial sibling.
- (3) Delay a determination on the request to gather additional information in compliance with one or more of the usual requirements for appointments, interviews, or examinations by physicians or other qualified persons.

Credits

(Acts 1987, No. 87-590, p. 975, § 2-203; [Act 2000-711, p. 1507, § 1.](#))

Ala. Code 1975 § 26-2A-102, AL ST § 26-2A-102

Current through the end of the 2025 Regular Session. Some provisions may be more current; see credits for details.

[Code of Alabama](#)

[Title 26. Infants and Incompetents. \(Refs & Annos\)](#)

[Chapter 2A. Alabama Uniform Guardianship and Protective Proceedings Act. \(Refs & Annos\)](#)

[Article 2. Protection of Persons Under Disability and Their Property.](#)

[Division 3. Protection of Property of Persons Under Disability and Minors.](#)

Ala.Code 1975 § 26-2A-136

§ 26-2A-136. Permissible court orders.

[Currentness](#)

(a) The court shall exercise the authority conferred in this division to encourage the development of maximum self-reliance and independence of a protected person and make protective orders only to the extent necessitated by the protected person's mental and adaptive limitations and other conditions warranting the procedure.

(b) The court has the following powers that may be exercised directly or through a conservator in respect to the estate and business affairs of a protected person:

(1) While a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person.

(2) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a minor without other disability, the court has all those powers over the estate and business affairs of the minor which are or may be necessary for the best interest of the minor and members of minor's immediate family.

(3) After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and business affairs which the person could exercise if present and not under disability, except the power to make a will. Subject to subsection (c), those powers include, but are not limited to, power to make gifts; to convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety; to exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment; to enter into contracts; to create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the protected person; to exercise options of the protected person to purchase securities or other property; to exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value; to exercise any right to an elective share in the state of the person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

(c) The court may exercise or direct the exercise of the following powers only if satisfied, after notice and hearing, that it is in the best interest of the protected person, and that the person either is incapable of consenting or has consented to the proposed exercise of power:

- (1) To exercise or release powers of appointments of which the protected person is done;
 - (2) To renounce or disclaim interests;
 - (3) To make gifts in trust or otherwise exceeding in the aggregate 20 percent of the year's income of the estate; and
 - (4) To change beneficiaries under insurance and annuity policies.
- (d) Except for the disability necessitating the appointment, a determination that a basis for appointment of a conservator or other protective order exists has no effect otherwise on the capacity of the protected person. A conservator has all the powers granted by this section, unless specifically limited by the court. A protected person does not have or possess powers granted to the conservator.

Credits

(Acts 1987, No. 87-590, p. 975, § 2-307.)

Ala. Code 1975 § 26-2A-136, AL ST § 26-2A-136

Current through the end of the 2025 Regular Session. Some provisions may be more current; see credits for details.

End of Document

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TIPS FROM THE CLERK'S OFFICE

- File any pleadings for matters you have set that day in open court (hand them to the clerk sitting at the floor level (generally Rachel)).
- If you have a question or need to inform of the Court about a matter during a docket, please ask the clerk sitting at floor level or against the wall not the court reporter or the clerk calling the docket.
- E-file petitions/consents/Schedule A/ an expedited cover sheets as one document, every petition should have a Schedule A attached or set forth within the petition.
- Include all parties in interest and their relationship to the decedent on the Schedule A even if you are unsure of the name, DOB, DOD or address (this is especially important for minors so that we know whether to appoint a GAL and which service procedure to follow).
- Remember to paper file the “accounting”. If e-filed the accounting will be included in the final record page count i.e. larger cost bill (the final record fee is \$2.50/per page).
- File continuances for the Monday docket before noon on Friday preceding, **do not forget to include the positions of all parties.** Also please remember to notify the other parties and your client once granted.
- File a continuance and ask for an extension of time if you have been unable to complete a document by the deadline rather than filing a deficient document, example inventories, settlements etc.
- Please include the updated Petitioner Information Sheet with your initial petition.