Handbook for Alabama Judges of Probate

Eleventh Edition

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PREFACE AND ACKNOWLEDGEMENTS

One of the longstanding relationships of the Alabama Law Institute is that which is enjoyed with the Alabama Probate Judges Association. It has been a great privilege to have partnered with them for more than forty years to provide meaningful educational and training resources. This edition of the Handbook for Alabama Judges of Probate is just the most recent example of this productive partnership.

The Alabama Law Institute, in conjunction with the Alabama Probate Judges Association, has published this Handbook to update *A Manual for Alabama Probate Judges* written by Coleman B. Ransone, Jr. That manual was originally published in 1960 by the Bureau of Public Affairs and Administration of the University of Alabama with a second edition, by Professor Ransone, later published in 1974. In 1982, the Alabama Law Institute published a third edition which was edited by Keith B. Norman. The fourth edition was edited by Robert L. McCurley, Jr. The fifth, sixth, seventh, eighth, and ninth editions were edited by Penny A. Davis. The tenth edition was edited by Michael S. Hill.

This eleventh edition, edited by Jackson Colburn, incorporates changes in Alabama law since the last edition and expands the scope of forms included in the book. The title has been updated to reflect the change in Alabama law from the term "probate judge" to "judge of probate."

The primary purpose of this Handbook is to serve as a quick reference for judges of probate in finding legal sources of the duties with which they are entrusted by law. For newly elected judges especially, this Handbook can be an important tool providing a general overview of the office and helping familiarize them with their many responsibilities.

The Institute also wishes to express its appreciation to the following persons for their help in reviewing, proofing, and providing valuable insight in the preparation of this draft: Honorable Harry D'Olive, Baldwin County; Honorable Susan Shorter, Barbour County; Honorable Stephanie Kemmer, Bibb County;

Honorable Alice Martin, retired Calhoun County Judge of Probate; Honorable Richard Dean, Coosa County; Honorable Arthur Crawford, former Hale County Judge of Probate; Honorable Patrick Davenport, Houston County; Honorable Jim Naftel, former Jefferson County Judge of Probate; Honorable Charles Woodroof, Limestone County; Honorable Laurie Hall, Marengo County; Honorable Andrea LeCroy, Marshall County; Honorable Greg Cain, Morgan County; Honorable George Diamond, Randolph County; Honorable Allison Boyd, Shelby County; Honorable Willie Pearl Rice, Sumter County; Lisa Whitehead, Chief Clerk of Tuscaloosa County; Honorable Lee Tucker, Walker County; Honorable Nick Williams, Washington County; and Honorable Sheila Moore, Winston County.

In addition, we would like to thank the following persons who provided assistance on the forms included in the book: Honorable Kim Kervin, Autauga County; Honorable Harry D'Olive, Baldwin County; Honorable Alice Martin, retired Calhoun County Judge of Probate; Honorable Patrick Davenport, Houston County; Honorable Jim Naftel, former Jefferson County Judge of Probate; Honorable Charles Woodroof, Limestone County; Honorable Mark Erwin, Mobile County; and Honorable Sheila Moore, Winston County.

We would like to express our gratitude to the ALI law clerks who provided research assistance on this publication while they were law students at the University of Alabama's School of Law. Finally, we thank and acknowledge the exceptional skill and tireless efforts of Jill Kjar, Coordinator of Conferences and Publications for her work on this and prior editions.

It should be emphasized that this publication is not an authoritative statement of the law, nor is it a substitute for the Code or other legal materials explanatory thereof. This publication seeks to serve only as a general guide to the specific mandates of Alabama's laws regulating probate judges. Users of this publication who have need of authoritative legal statements should seek such assistance from the appropriate legal source.

Although the Alabama Law Institute is a state agency, no conclusions concerning policies of the State of Alabama are to be drawn from this volume. This statement is also true with respect to the position of the University of Alabama for their earlier editions. The findings and conclusions of the study are those of the editor, who takes sole responsibility for the accuracy of the study and for any interpretations of the cases presented.

Honorable David Kimberley
Deputy Director
Alabama Law Institute
January 2025

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I.

THE HISTORICAL BACKGROUND OF THE OFFICE OF THE JUDGE OF PROBATE

The organization of the probate courts in Alabama would be difficult to understand without reviewing the historical development of the office. The development of these courts was greatly influenced by colonial institutions that preceded them, and these colonial institutions were, to a large extent, modeled after English practice. Thus, to understand the organization of our present-day courts, it is necessary to review their development in England and in the colonies.

A. THE ENGLISH FOUNDATION

The history of probate of wills and administration of estates in Great Britain is closely related to the history of the ecclesiastical courts in that country. Unfortunately, the exact date of origin is not known with any certainty for either the ecclesiastical courts or probate and administration. Sir Henry Spelman set 1151 as the date that civil and canon law was imported to England, while Sir William Blackstone set it around the 12th century. However, it seems rather definite that neither kind of court had been established before the Norman conquest in 1066.

In 1066, the probate of wills and administration of estates did not take the form that we know at the present time. However, such jurisdiction and procedures as did exist were exercised by the secular courts, generally the county court, which had been established in England during the pre-Norman period. Both the civil and the ecclesiastical authorities united for the administration of justice with no distinction between secular and spiritual matters.

Following the conquest, the Norman laws and customs which were instituted in England divided the jurisdiction over legal matters between spiritual and secular courts. Gradually, jurisdiction over various phases of probate and administration was

transferred from the secular to ecclesiastical courts. By 1084, some jurisdiction over the administration of estates had been transferred to the ecclesiastical courts. A century later, the spiritual courts also had acquired jurisdiction over certain cases involving wills, and it may be surmised that authority to probate testaments followed shortly thereafter. This authority was fully established by the fourteenth century.

The division of authority between secular and spiritual courts was based upon the type of property involved. The spiritual courts exercised jurisdiction over personal property, while the secular courts exercised jurisdiction over real property. During the reign of Henry 1 (1100-1135), an attempt was made to reunite the ecclesiastical and civil courts into one system. However, the clergy opposed the unification, and when Stephen ascended to the throne in 1135, separate jurisdictions were re-established. From that point on, the ecclesiastical courts, although their authority was challenged from time to time by overloads and by common law courts, remained as a separate system of courts until the nineteenth century.

Another significant legal development during this period was the rise of chancery courts. Through various means, these courts had gained and were exercising extensive jurisdiction over the administration of estates by the eighteenth century.

During the period of America's colonization, jurisdiction over the probate of wills and administration of estates in Great Britain was divided among the ecclesiastical courts, common law courts, and chancery courts. Influence from this practice in the handling of probate and administration can be seen in several colonies. In fact, the division of jurisdiction over the probate of wills and administration of estates among courts of probate or other inferior courts exercising this authority, chancery courts, and law courts in some of our states today can be traced to this early English practice. Although occurring after the colonization period, the development of courts of probate in Great Britain culminated in 1857 when they were formally established as separate courts.

B. EARLY AMERICAN PRACTICE

Early American statesmen naturally were influenced by English practice in establishing colonial governments, including the organization of the court system. However, ecclesiastical courts were never established in America. Therefore, the division that existed in Great Britain never took root in this country.

Originally, colonial governments tended to vest all jurisdiction over judicial matters in the ordinary civil courts. This practice evoked criticism from the Crown because it did not adhere to English law and custom. To meet this criticism, the jurisdiction over probate to wills and the administration of estates generally was assigned to the governor and his assistant, although it was common for the legislature itself to administer estates. However, this arrangement failed to meet the needs of a rural society, and local courts that were closer to the people to be served were established throughout each colony. These courts were known by various titles. The most common names were probate courts, orphans' court, and surrogates' court. Courts of ordinary were common. The county court in several colonies was vested with this jurisdiction.

Separate probate courts were established in some colonies at a very early date. For example, Connecticut established a probate court in Hartford, New Haven, Fairfield, and New London counties in 1716. Probate courts were established in Massachusetts in 1784. However, the practice in most colonies and in the newly organized states was to assign this jurisdiction to another court, most frequently the county court. In 1645, Virginia assigned jurisdiction over probate and administration to the county court. These courts were usually multi-headed bodies with numerous other responsibilities. Ordinarily, the county court was the chief administrative and legislative body in the county, in addition to its role as an inferior court with limited criminal and civil jurisdiction. A court of this type, although not always called the county court, exercised jurisdiction over probate and administration in all of the

southern colonies at one time or another during the period in which Alabama was being settled.

Even the county courts were required to sit as an orphans' court for exercising jurisdiction over probate and orphans' business. Separate days were set aside for these matters and different rules guided the proceedings. The practice of establishing separate courts or separate divisions resulted in the recognition of probate jurisdiction as a distinct and independent branch of law based upon its own set of principles and rules of procedure. The results are clearly evidence in current probate practice.

In summary, at an early date in American history, local courts were vested with jurisdiction over the probate of wills and administration of estates. In some colonies, separate specialized courts were established in each county to exercise this jurisdiction, while, in others, the county court or a similar body was vested with this responsibility in addition to several other functions. The most significant aspect of these early courts, however, was the recognition of probate jurisdiction as an independent branch of law in both types of courts. It was from this background that Alabama's first system of courts was established.

C. THE DEVELOPMENT OF THE OFFICE IN ALABAMA

Obviously, early Alabama statesmen were influenced by practices in surrounding states and the Mississippi Territory in the establishment of the state's first courts. Although for a short period separate courts of probate had existed in the Mississippi Territory, the practice of requiring the county or inferior court to sit as an orphans' court prevailed. This court, like its counterpart in most other southern states, was also the chief administrative and legislative body in the county and an inferior court with limited criminal and civil jurisdiction. The county court arrangement was continued during the period Alabama was organized as a territory.

The Alabama legislature, at its first session, established the same type of court system that had existed in the territory with only minor deviations. An inferior court consisting of five members was established in each county. It was required to sit at certain intervals as an orphans' court to handle probate and orphans' business. Moreover, it was the chief administrative and legislative body in the county and an inferior court with limited criminal and civil jurisdiction. In essence, it was simply a carry-over of the territorial county court.

It was not until 1821 that a significant change was made in the county court. In that year, the composition of the court was changed from five justices and a clerk to one judge and a clerk. At the time, there was established in each county a separate court of county commissioners, consisting of four commissioners and the county judge. This arrangement provided for some separation of the judicial function from the administrative and legislative function at the county level. The county court was vested mainly with the same judicial powers of its predecessor, the county judge with the same powers formerly exercised by the chief justice of the inferior court. The administrative and legislative functions, such as the control over roads, ferries, bridges, and the management of public buildings, were assigned to the new commissioners' court. No other significant changes were made in the county court until mid-century.

In 1850, a court of probate as we know it today was established in each county. The positions of clerk and judge of the county court were consolidated into an office of judge of probate. Unlike the county judge who was appointed for a six-year term, the judge of probate was to be popularly elected for a term of six years. Jurisdiction of the old county court was, for the most part, simply transferred to the court of probate, the major exception being criminal and civil jurisdiction, neither of which has vested in the new court. The judge of probate was given the authority formerly exercised by the county judge and clerk of the county court, with authority to appoint his own clerk. Like his

predecessor, the judge of probate was made a member of the court of county commissioners.

Since 1850, there have been several important changes in the legal framework of the office of the judge of probate. Most of the early changes made added new duties to those already assigned or expanded existing areas of responsibility. Additional responsibilities in election administration, licensing, and records are good examples of the expansion. The most important addition was made in 1866 when the judge of probate was designated as ex officio judge of the county court. Exceptions to this law were made in several counties between 1866 and 1915. In 1915, the judge of probate was re-established as ex officio judge of the county court in all counties with a population less than 50,000.

Another important addition to the duties of the judge of probate was the designation as judge of the juvenile court in all counties in which a separate juvenile court had not been established. He was vested also with jurisdiction over desertion and non-support cases, both in 1915.

However, not all changes have been addition or expansions to the functions of the office. For example, in 1919, the clerk of the circuit court was designated ex officio clerk of the county court, and, in 1935, duties relating to the welfare were transferred to the county welfare department. Moreover, the judge of probate is now the chairperson of the county commission in only thirteen counties: Cherokee, Choctaw, Cleburne, Dallas, Fayette, Franklin, Geneva, Hale, Henry, Lamar, Lee, Monroe, and Tuscaloosa.

Another change in responsibilities came with the adoption of the judicial article. Prior to its adoption in 1973 and the subsequent passage of implementing legislation, Alabama judges of probate performed functions as ex officio judges of other courts. The first of these groups of functions included the county court. Basically, the county court had original jurisdiction, concurrent with the circuit court, of all misdemeanors committed in the

county. Title 13, Sections 313-349 of the 1958 Code of Alabama describe the county courts as they formerly existed in Alabama.

The second set of functions involving another ex officio duty involved the juvenile court. The judges of probate, sitting as judge of the juvenile court, had original and exclusive jurisdiction over all children under sixteen years of age. That jurisdiction extended to eighteen years of age for girls, and, at the discretion of the court having jurisdiction of the offense committed, it could be extended to eighteen years of age for boys. The judge had authority to hear, determine, and adjudicate all questions and cases relating to dependency, neglect, and delinquency of children within the above age limits. All cases were tried by the judge who rendered the decision without the intervention of a jury. Moreover, the judges of probate acting as juvenile judge could issue judgments and orders for the custody, discipline, supervision, care, protection, or guardianship as determined by the court to be in the best interest of the child. These duties were set forth in Title 13, Sections 351-383 of the 1958 Code of Alabama.

A final function formally assigned to the probate court was the jurisdiction over desertion and non-support cases. This was covered in Title 34, Sections 89-104 of the 1958 Code of Alabama.

With the adoption of the judicial article, these former duties of the probate court have been placed within the jurisdiction of the district court or, in some instances, the circuit court.

II.

THE LEGAL FRAMEWORK OF THE OFFICE OF THE JUDGE OF PROBATE

A. THE CONSTITUTIONAL AND STATUTORY BASE

The new judicial article, which was ratified in December of 1973, did not alter the status of the probate court. While it is a constitutional court in the sense that the Constitution provides that there must be a probate court in each county, the Constitution does not specify the qualifications of the office. It is especially significant that the judicial article does not require that the judge of probate be licensed to practice law in the state, which is one of the qualifications of all of the other judges in the judicial system. On the other hand, if the judge of probate does happen to be a lawyer, he,[1] like all other judges, is prohibited from practicing law while holding the office of judge of probate. Following retirement as judge of probate, however, he may practice law and draw his retirement.

Also interesting is that ALA. CONST. art. VI, § 147(b), which concerns "prohibited activities" of judges, does not prohibit the judge of probate from holding another office of public trust, being in a political party organization, or campaigning for other candidates. This section reads "no judge, except a judge of the probate court, shall seek or accept any nonjudicial elective office, or hold any other office of public trust, excepting service in the military forces of the state or federal governments." Thus, the judge of probate is recognized as being in a special category. This is necessary because, although a judge of probate has significant legal functions, he also has many political and administrative roles that would be difficult to perform if he followed the same code of conduct as other judges.

[1] Words in the masculine gender include the feminine consistent with Alabama Code § 1-1-2.

The Code of Alabama, 1975, and its supplements contain the general statutory provisions affecting the office. References to the office and its duties are scattered throughout the Code, but Alabama Code §§ 12-13-1 through 12-13-70 contain most of the provisions relating to the legal framework of the office. The state legislature also has passed many local acts and general acts of local application affecting the office of judge of probate in various counties. However, the Alabama Supreme Court ruled in the case of *Peddycoart v. City of Birmingham*[2] that population classifications used to create general acts of local application are unconstitutional. In response to the *Peddycoart* decision, the Alabama Legislature passed Amendment 375, which amended ALA. CONST. Art. IV, § 110 to permit the creation of eight classifications of municipalities. *See* ALA. CODE § 11-40-12.[3] The Legislature also proposed another amendment to the Constitution to protect all general acts of local application enacted before the *Peddycoart* decision. This proposed amendment was ratified by Alabama voters as ALA. CONST. art. IV, § 106.01. As a consequence of the *Peddycoart* ruling, many acts that at one time could be enacted as general acts of local application must now be enacted as local legislation in accordance with advertisement requirements of ALA. CONST. Art. IV, § 106.

Consequently, there are literally hundreds of local acts and general acts of local application that continue to apply to specific counties. Several of these general acts of local application cover many counties, either because of the specified population range or because of court interpretation. These acts are covered in this Handbook. Local acts and most general acts of local application are not covered in this Handbook. It would, in effect, take a different manual for each of Alabama's 67 counties to completely cover such acts. Consequently, each new judge of probate is urged to acquaint himself with the local acts and the general acts of local application that apply to his county. A knowledge of these acts, in addition to the information found in this Handbook, is necessary for a basic understanding of the judge of probate's function in a specific county.

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[2] 354 So. 2d 808 (Ala. 1978).

[3] Unless otherwise stated, all citations in this Handbook are to the Code of Alabama, 1975.

B. THE LIMITED JURISDICTION OF THE PROBATE COURT

The court of probate has original and general jurisdictions over the following matters:

(1) The probate of wills;

(2) The granting of letters of testamentary and of administration and the repeal or revocation of the same;

(3) All controversies in relation to the right of executorship or of administration;

(4) The settlement of accounts or executors and administrators (personal representatives);

(5) The sale and disposition of the real and personal property belonging to and the distribution of intestate's estates;

(6) The appointment and removal of guardians for minors and persons of unsound mind;

(7) All controversies as to the right of guardianship and the settlement of guardians' accounts;

(8) The allotment of dower in land in the cases provided by law;

(9) The partition of lands within their counties;

(10) The change of the name of any adult residing in their county, upon his or her filing a declaration in writing, signed by him or her, stating the name by which he or she is known and the name to which he or she wishes it to be changed;

(11) The change of the name of any minor residing in their county, upon the filing of a declaration in writing, signed by the parent or legal guardian of the minor, stating the name by which the minor is known and the name to which it is to be changed, along with the consent from all persons who have natural parental or legal rights of the minor. Consent of the minor is required if the minor is 14 or more years of age. This subdivision does not apply to a minor who is involved in a domestic relations matter that is pending in the circuit court or to a minor whose name is ordered by a court to be changed pursuant to the Uniform Parentage Act;

(12) Other cases as jurisdiction is or may be given to probate courts by law, to be exercised in the manner prescribed by law.[4]

Likewise, the probate courts are granted jurisdiction by statute in other areas including:

(1) Proceedings related to the establishment and operation of water management districts. ALA. CODE §§ 9-9-1 through 9-9-80.

(2) Eminent domain proceedings. ALA. CODE §§ 18-1A-1 through 18-1A-311.

(3) Petitions of adoption. ALA. CODE §§ 26-10A-1 through 26-10A-38.

(4) The sale and redemption of lands sold for the payment of delinquent taxes. ALA. CODE §§ 40-10-1 through 40-10-30 and 40-10-120 through 40-10-143.

[4] ALA. CODE § 12-13-1(b). Additionally, the probate court and circuit court shall have concurrent original and general jurisdiction of any proceedings under Chapter 9 of Title 38.

Additionally, the probate courts of Jefferson, Mobile, and Shelby counties have concurrent jurisdiction with the circuit courts of those counties to hear any proceeding brought by a trustee or beneficiary concerning the administration of a trust. *Regions Bank v. Reed*, 60 So. 3d 868 (Ala. 2010); *see also* ALA. CODE § 19-3B-203(b).

Several probate courts have been granted limited equitable jurisdiction by local acts or constitutional amendments. In some counties, such as Shelby and Pickens counties, equitable jurisdiction is only granted to a judge of probate in a county if that judge is learned in the law. Some counties, such as Jefferson and Mobile counties, require a judge to be learned in the law.

C. VALIDITY ACCORDED PROBATE COURT DECISIONS

Orders, judgments, and decrees issued by probate courts are accorded the same validity and presumption accorded courts of general jurisdiction. ALA. CODE § 12-13-1(c). Probate courts may issue show cause orders and attachments for contempt of court, or its process, by any executor, administrator (personal representative), guardian, or other person, and they may punish by fine, imprisonment, or both. ALA. CODE §§ 12-1-8, 12-1-10, 12-13-1, and 12-13-9. If the judge of probate is a licensed attorney in the state of Alabama, he or she has the same power to punish for civil contempt as a circuit court judge does. ALA. CODE § 12-13-9. The court also has authority: to preserve and enforce order in its proceedings; to compel obedience to its judgments, orders, and process; to control the proceedings of the officers of the court and other persons connected with proceedings therein; to administer oaths necessary in the exercise of its powers and duties; and to amend and control its process and orders to make them conform to law and justice. ALA. CODE § 12-1-7.

Alabama law permits the removal of administration of estates and guardianships from probate courts to circuit courts at any time before final settlement by a petition of removal. ALA. CODE

§§ 12-11-41 and 26-2-2. Under this authority, concurrent jurisdiction over administration of estates and guardianships may exist among the probate courts, circuit courts, and other courts having appropriate jurisdiction.

Unless a law expressly establishes a specific procedure for probate courts, the rules of evidence, pleading and practice, judgments and orders in the probate court, so far as the same are appropriate, and the court's mode of obtaining evidence by oral examination or by deposition and of compelling attendance of witnesses and of enforcing orders and judgments must conform to the procedures applicable to circuit courts so far as the same are appropriate. ALA. CODE § 12-13-12. Effective January 1, 2013, the Alabama Rules of Civil Procedure became applicable in probate court so far as the application is appropriate and except as otherwise provided by statute.

The judge of probate is empowered: to take, certify, and administer oaths unless the affidavit is expressly restricted to some other officer; to issue process of garnishment upon decrees for money in the court of probate; to cause juries to be empaneled and sworn for cases permitting or requiring juries; and to appoint guardians and administrators ad litem when necessary. He has the authority and responsibility to employ a chief clerk and other clerks deemed necessary for performing the duties of the office and the authority to authorize persons to make abstracts of titles of lands sold at judicial sales. ALA. CODE §§ 12-13-7 and 12-13-40. In all counties, the judge of probate also has functions in the electoral process.[5] The judge of probate has licensing functions except in those counties that have provided for a licensing commissioner by local law. The judge is also designated as a conservator of the peace in his respective county. ALA. CODE § 12-13-39.

When there is no contest, the judge of probate may delegate all ministerial and judicial acts within his authority, except hearing and granting writs of habeas corpus, to the chief clerk. However, all

[5] *See Alabama Election Handbook*, 21st ed., developed by the Alabama Law Institute, for a listing of specific duties.

acts of the office staff are performed in the name of the judge unless there is a vacancy in the office. ALA. CODE § 12-13-14.

D. ETHICS ACT[6]

In 1973, the Alabama Legislature passed the Alabama Ethics Act. It has been revised many times since then, and the frequency of revisions has increased in recent years. The law defines "public official" as including, in pertinent part, "[a]ny person elected to public office, whether or not that person has taken office, by the vote of the people at state, county, or municipal level of government or their instrumentalities, including governmental corporations . . . ." ALA. CODE § 36-25-1. The law also defines a "public employee" as including, in pertinent part, "[a]ny person employed at the state, county, or municipal level of government or their instrumentalities . . . ." ALA. CODE § 36-25-1. As a result, judges of probate and county employees are required to comply with the provisions of this law.

The purpose and objective of the Alabama Ethics Act is to prevent conflicts of interest and thus instill public confidence in the elected and appointed officials covered by the law. ALA. CODE § 36-25-2. The Ethics Act is supported by ALA. CONST. art. IV, § 101, which prohibits any county official from accepting any fee, money, office, appointment, employment, reward, or thing of value in exchange for influencing legislation.

Basically, the Ethics Act contains two broad categories of provisions. The first category relates to disclosure, and the second category is a set of ethical principles of conduct with which a public official and public employee must comply. All judges of probate, and many county employees, must file an annual "Statement of Economic Interest" (SEI) with the Alabama Ethics Commission by April 30 of each year. ALA. CODE § 36-25-14. Any candidate for the office of judge of probate must file a financial disclosure statement simultaneously with the date he or she files his or her qualifying

[6] The structure for the information on the Ethics Act in this chapter was provided by Jim Sumner, former Director of the Alabama Ethics Commission.

papers with the appropriate election official. ALA. CODE § 36-25-15. **Failure to do so can result in removal from the ballot.** ALA. CODE § 36-25-15(c).

Some judges of probate and all county employees who file statements of economic interests must also attend mandatory training on the Ethics law. *See* ALA. CODE §§ 36-25-4.2(a)(4) and 36-25-4.2(e). This training can be done by accessing the Ethics Commission training video on their website at: www.ethics.alabama.gov.

The Statement of Economic Interests (SEI) package may be sent to the county soon after the first of the calendar year with a form to be copied and distributed to each filing public official and employee. The form can also be filled out on the Ethics Commission's website and printed out for mailing before April 30.

The information contained in an SEI becomes a public document once it is received in the Commission office and is therefore available to the general public and to the media via the commission's website.

A brief review of the ethical principles of conduct with which a public official such as a judge of probate (and a public employee) must comply is also important. Those key principles are below:

(1) A judge of probate may not use his/her official position to obtain personal gain for self, family, or business. ALA. CODE § 36-25-5.

(2) A judge of probate may accept, solicit, or receive contributions only for use in influencing the outcome of an election, and only if he or she follows the procedures of the Fair Campaign Practices Act.[7] ALA. CODE §§ 36-25-6 and 17-5-7(b)(1).

[7]*See* ALA. CODE §§ 17-5-1 et seq.

- A judge of probate may not accept, solicit, or receive contributions more than twelve months before an election in which he intends to be a candidate. ALA. CODE § 17-5-7(b)(2).

- A judge of probate may solicit contributions for up to 120 days after an election to pay off campaign debts, although he or she must follow all the rules of Alabama law in doing so. ALA. CODE § 17-5-7(b)(3).

- A judge of probate shall not accept, solicit, or receive contributions with the intent of corruptly influencing official actions. ALA. CODE § 17-5-7(c)(2).

- A judge of probate may not use contributions for personal use. ALA. CODE § 36-25-6.

(3) A judge of probate is prohibited from soliciting or accepting any money (other than his regular pay) for advice or assistance on matters pertaining to the Legislature, lobbying a legislative body, an executive department, or any public regulatory agency or other body of which he or she is a member. ALA. CODE § 36-25-7(d).

(4) A judge of probate may not use confidential information obtained as a result of his or her elected position to obtain financial gain for the judge of probate or any other person. ALA. CODE § 36-25-8.

(5) A judge of probate may not serve as a member of a regulatory agency that regulates any business with which he or she is associated unless specifically provided by law. ALA. CODE § 36-25-9(a).

(6) A judge of probate may not vote or participate in any

matter in which that judge of probate or a family member has any financial gain or interest. ALA. CODE § 36-25-9(c).

(7) If a judge of probate, a family member, or a business with which either is associated represents a client, for a fee, before any state, county, or municipal agency, board, or department, the Alabama Ethics Commission must be notified within 10 days after the first day of such appearance. ALA. CODE § 36-25-10.

(8) A judge of probate, member of his/her household, or a business with which either is associated may contract to do work for state, county, or municipal governments only if he or she participates in competitive bidding in which there are no outside negotiations, and only if a copy of the contract is filed with the Alabama Ethics Commission within 10 days after the contract has been entered into. ALA. CODE § 36-25-11.

(9) A judge of probate may not solicit or accept anything of value (other than in the ordinary course of business) from a person associated with a business which is regulated by the agency, board, or commission on which the judge of probate serves. ALA. CODE § 36-25-12.

(10) No judge of probate or family member of the judge of probate shall solicit or receive a thing of value from a lobbyist, subordinate of a lobbyist, or principal. ALA. CODE § 36-25-5.1.

(11) A lobbyist, or principal may offer or provide and a judge of probate may receive a "thing of value." The definition of "thing of value" includes a number of exceptions that judges of probate and public employees should review. For the list of exceptions,

see ALA. CODE § 36-25-1(34)(b).

(12) One exception to "thing of value" is for items of de minimis value. "De minimis" value is defined as "[a] value twenty-five dollars ($25) or less per occasion and an aggregate of fifty dollars ($50) or less in a calendar year from any single provider, or such other amounts as may be prescribed by the Ethics Commission from time to time by rule pursuant to the Administrative Procedure Act or adjusted each four years from August 1, 2012, to reflect any increase in the cost of living as indicated by the United States Department of Labor Consumer Price Index or any succeeding equivalent index." ALA. CODE § 36-25-1(11).

(13) A judge of probate may not solicit a thing of value from a person or business he or she has authority over (one he or she "inspects, regulates, or supervises") or who has a matter pending before him or her. ALA. CODE § 36-25-5(e).

(14) A judge of probate may not use public equipment or property for private benefit or business benefit. ALA. CODE §§ 36-25-5(c) and 36-25-5(d).

(15) A judge of probate may not solicit a lobbyist for anything even if it is not a "thing of value".

(16) A judge of probate or former judge of probate may not serve for a fee as a lobbyist or otherwise represent a client before any agency, commission, or department of which he or she has been a member within the past two years. ALA. CODE § 36-25-13.

(17) A judge of probate also may not represent a client or employer before any government body at the state or local level. ALA. CODE § 36-25-23(a).

The Ethics Act also includes a provision that requires each judge of probate and spouse of each judge of probate who is employed by, or who has a contract with the state or federal government, to notify the Ethics Commission of such employment within 30 days of beginning employment or within 30 days of the beginning of the contract. *See* ALA. CODE § 36-25-5.2(b). The filing has certain requirements which are listed in ALA. CODE § 36-25-5.2(c). Each judge of probate or the spouse of the judge of probate is responsible for promptly notifying the Ethics Commission of any changes to the terms of his or her employment. *See* ALA. CODE § 36-25-5.2(d).

Like any other citizen, judges of probate may request an advisory opinion from the Alabama Ethics Commission on any real or hypothetical situation that may pertain to the Ethics Law. Additionally, they may request that an inquiry be made into any allegations or complaints concerning actions they believe are in violation of the ethics law. ALA. CODE § 36-25-4.

Judges of probate have a duty to file a report with the Ethics Commission on any matters which come to their attention in their official capacity which constitute a violation of the Ethics Law. ALA. CODE § 36-25-17.

E. LIMITATIONS UNDER ALABAMA'S TAXPAYER AND CITIZEN PROTECTION ACT

a. Limitations on Business Transactions Conducted by Unauthorized Aliens. An alien not lawfully present in the United States shall not enter into or attempt to enter into a public records transaction with the state or a political subdivision of the state and no person shall enter into a public transaction or attempt to enter into a business transaction on behalf of an alien not lawfully present in the United States. ALA. CODE § 31-13-29(b).

Any person entering into a public records transaction or attempting to enter into a public records transaction with this state or a political subdivision of this state shall be required to

demonstrate his or her United States citizenship or, if he or she is an alien, his or her lawful presence in the United States to the person conducting the public records transaction on behalf of this state or a political subdivision of this state. ALA. CODE § 31-13-29(c). United States citizenship shall be demonstrated by presentation of one of the documents listed as follows:

(1) The applicant's driver's license or nondriver's identification card issued by the division of motor vehicles or the equivalent governmental agency of another state within the United States if the agency indicates on the applicant's driver's license or nondriver's identification card that the person has provided satisfactory proof of United States citizenship.

(2) The applicant's birth certificate that verifies United States citizenship to the satisfaction of the county election officer or Secretary of State.

(3) Pertinent pages of the applicant's United States valid or expired passport identifying the applicant and the applicant's passport number, or presentation to the county election officer of the applicant's United States passport.

(4) The applicant's United States naturalization documents or the number of the certificate of naturalization. If only the number of the certificate of naturalization is provided, the applicant shall not be included in the registration rolls until the number of the certificate of naturalization is verified with the United States Bureau of Citizenship and Immigration Services by the county election officer or the Secretary of State, pursuant to 8 U.S.C. § 1373(c).

(5) Other documents or methods of proof of United States citizenship issued by the federal government

pursuant to the Immigration and Nationality Act of 1952, and amendments thereto.

(6) The applicant's Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number.

(7) The applicant's consular report of birth abroad of a citizen of the United States of America.

(8) The applicant's certificate of citizenship issued by the United States Citizenship and Immigration Services.

(9) The applicant's certification of report of birth issued by the United States Department of State.

(10) The applicant's American Indian card, with KIC classification, issued by the United States Department of Homeland Security.

(11) The applicant's final adoption decree showing the applicant's name and United States birthplace.

(12) The applicant's official United States military record of service showing the applicant's place of birth in the United States.

(13) An extract from a United States hospital record of birth created at the time of the applicant's birth indicating the applicant's place of birth in the United States.

ALA. CODE § 31-13-28(k). For purposes of this section, "public records transaction" means applying for or renewing a motor vehicle license plate, applying for or renewing a driver's license or nondriver identification card, applying for or renewing a business license, applying for or renewing a commercial license, or applying for or

renewing a professional license. Public records transaction does not include applying for a marriage license, any transaction relating to housing under Title 24 or the ownership of real property, including the payment of property taxes, or the payment of any other tax to the state or a political subdivision thereof, or any other transaction. ALA. CODE § 31-13-29(a).

An agency of this state or a county, city, town, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States Constitution or the Constitution of Alabama of 1901. ALA. CODE § 31-13-29(e). Furthermore, an alien's immigration status shall be determined by verification of the alien's immigration status with the federal government pursuant to 8 U.S.C. § 1373(c), and an official of this state or political subdivision of this state shall not attempt to independently make a final determination of whether an alien is lawfully present in the United States. ALA. CODE § 31-13-29(f). Violation of this section by an alien not lawfully present or by a person knowingly acting on behalf of an alien not lawfully present is a Class C felony. ALA. CODE § 31-13-29(d).

b. Information Relating to Immigration Status. Officials or agencies of the state or any political subdivision thereof, including, but not limited to, an officer of a court of the state, may not be prohibited or in any way be restricted from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of an individual or exchanging that information with any other federal, state, or local governmental entity for the following:

(1) Determining the eligibility for any public benefit, service, or license provided by any state, local, or other political subdivision of this state.

(2) Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued

pursuant to a civil or criminal proceeding of this state.

(3) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644.

ALA. CODE § 31-13-6(c).

c. Enforcement of and Compliance with State Immigration Laws. All state officials, agencies, and personnel, including, but not limited to, an officer of a court of this state, shall fully comply with and, to the full extent permitted by law, support the enforcement of this chapter. ALA. CODE § 31-13-6(b).

No official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the enforcement of this chapter to less than the full extent permitted by this chapter or that in any way limits communication between its officers or officials in furtherance of the enforcement of this chapter. If, in the judgment of the Attorney General of Alabama, an official or agency of this state or any political subdivision thereof, including, but not limited to, an officer of a court of this state, is in violation of this subsection, the Attorney General shall report any violation of this subsection to the Governor and the state Comptroller and that agency or political subdivision shall not be eligible to receive any funds, grants, or appropriations from the State of Alabama until such violation has ceased and the Attorney General has so certified. ALA. CODE § 31-13-6(a).

Every person working for the State of Alabama or a political subdivision thereof, including, but not limited to, a law enforcement agency in the State of Alabama or a political subdivision thereof, shall have a duty to report violations of this section of which the person has knowledge. Any person who willfully fails to report any violation of this section when the person knows that this section is being violated shall be guilty of obstructing governmental operations as defined in ALA. CODE § 13A-10-2. ALA. CODE § 31-13-6(f).

F. EX OFFICIO DUTIES OF THE JUDGE OF PROBATE

a. Chairman of the Governing Body. Currently only in thirteen[8] of Alabama's sixty-seven counties is the judge of probate a member of the county governing body, which is now called the county commission, in all counties that do not provide otherwise by local law. ALA. CODE § 11-3-1. In these counties, the judge of probate is not only the chairman of the governing body, but he or she is also responsible for recording the official proceedings of the county commission. ALA. CODE § 11-3-18. In those counties in which the judge of probate serves as chairman of the county commission, he or she is likewise responsible for supervising the maintenance of the county fiscal records, and he or she must vote on issues before the county commission in case of a tie vote by the commissioners. ALA. CODE § 11-3-20.

***b. Miscellaneous Duties*.** Other duties have been assigned to the judge of probate in various counties by local acts. Miscellaneous functions imposed on various judges include those of purchasing agent, forest warden, custodian of county funds, county treasurer, and membership on various boards.

Additional duties have been assigned by several county governing bodies. Ex officio duties such as custodian of county funds, membership on county hospital boards, county library boards, civil defense agencies, and industrial development boards, and purchasing agent are fairly common, especially in counties in which the judge of probate is presiding officer of the county governing body.

[8] Cherokee, Choctaw, Cleburne, Dallas, Fayette, Franklin, Geneva, Hale, Henry, Lamar, Lee, Monroe, and Tuscaloosa.

G. ELECTION, TERM, QUALIFICATIONS, VACANCIES AND REMOVAL

***a. Election and Term*.**[9] The judge of probate is elected by the qualified electors in each county for a term of six years (i.e., 2024, 2030, etc.). The term of office begins on the first Monday after the second Tuesday in January following his election, and it continues until his successor is elected and qualified. ALA. CODE § 17-14-6; ALA. CONST. art. VI, § 154; ALA. CODE § 36-3-2.

***b. Qualifications*.** A judge of probate must be a citizen of the state and must have resided in the county for which he was elected or appointed for one year preceding the election or appointment. ALA. CODE § 12-13-31. Also, all counties in which "equity jurisdiction has been conferred on the judge of probate or is vested in his office by general or local law" have the requirement that the judge of probate be "learned in the law" in addition to all other qualification.[10]

***c. Vacancies*.** Vacancies in the office of the judge of probate are filled by gubernatorial appointment. Appointees hold office until the election and qualification of their successors. ALA. CODE § 17-14-6, ALA. CONST. art. VI, § 153.

***d. Removal*.** Judges of probate may be removed from the office by impeachment. The office is also vacated: when the judge of probate accepts another state, county, or municipal office; when the judge is sentenced to the penitentiary; or when the judge is declared insane. ALA. CODE §§ 36-9-2 through 36-9-4; ALA. CODE § 36-11-1. ALA. CONST. Art. VI, § 159 further provides that a judge of probate who has been indicted as a felon is disqualified from acting as a judge.

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[9] *See Alabama Election Handbook*, 21st ed., published by the Alabama Law Institute for additional details.

[10] Act of Aug. 24, 1964, No. 99, 1964 1st Special Session Ala. Acts 157.

H. SPECIAL JUDGE OF PROBATE

When a judge of probate has a personal interest in a case before the probate court or is otherwise incompetent to perform his or her duties as judge of probate, either the judge of probate or the chief clerk must certify that fact to the Chief Justice of the Alabama Supreme Court. Thereafter, the Supreme Court will appoint a person possessing the qualifications of a judge of probate to act as special judge of probate. If the special judge of probate fails or refuses to act, or, before concluding a matter or proceeding, dies or otherwise becomes incompetent, or fails or refuses to continue to act, and the disqualification of the ordinary judge of probate continues, the Alabama Supreme Court, upon these facts being certified to it, will appoint another special judge of like qualification. ALA. CODE §§ 12-1-12, 12-13-37, and 12-13-38.

Also, if there is a need for a special judge of probate, the Supreme Court may appoint a special judge for temporary service. The appointment confers on the special judge all of the powers, authority, and jurisdiction of the judgeship to which he or she is appointed. The special judge appointed under this section is entitled to compensation and expenses as provided by law. ALA. CODE § 12-1-14.

Also, the presiding circuit court judge may appoint a special judge of probate for temporary service. "Temporary service" means no more than 180 consecutive days. However, the special judge may be reappointed for more than one period of 180 consecutive days. The appointment confers on the special judge all of the powers, authority and jurisdiction of the judgeship to which he or she is appointed. However, a special judge appointed under this section does not receive any compensation for his or her services. ALA. CODE § 12-1-14.1.

Although not required by statute, the letter of appointment should be placed on file in the probate office for permanent keeping.

I. BONDS

Before persons elected to the office of judge of probate may assume the duties of the office, they must execute a surety bond. The bond is based on a percentage of the total annual collection recorded in the latest audit report for each office published at least four months prior to the date the bond is required to be filed. The table for computing the amount of bond is as follows:

TABLE FOR COMPUTING AMOUNT OF BOND

Annual Collections Over	**But Not Over**	**Amount of Bond**	**Of Excess Over**
Zero	$250,000	$25,000	_____
250,000	$1,000,000	$25,000 + 5%	$250,000
$1,000,000	_____	$62,500 + 1%	$1,000,000

ALA. CODE § 12-13-33. This bond serves as security against neglect or omission of duty. ALA. CODE § 36-5-18.

J. OATH

The judge must subscribe as well to the following oath before assuming the duties of the office:

> "I, ..., solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

ALA. CONST. art. XVI, § 279. The oath must be filed in the office of the clerk of the circuit court in the county. ALA. CODE § 36-4-3. On assuming the duties of the office, the judge must obtain a seal of office. ALA. CODE § 12-13-35.

Judges of probate are often called upon to administer oaths of office for various municipal, county, and state officials.

K. WHEN COURT DEEMED OPEN AND WHERE CASES MAY BE HEARD

The probate court is to be open, except on Saturdays, Sundays, and legal holidays, with authority to do all things in relation to granting letters testamentary or of administration or guardianship and making all other necessary orders that are grantable as a matter of course. ALA. CODE § 12-13-3.

The probate court may try cases, sign and issue orders, and hear and determine any matter, case, or proceeding at the county seat or any other place in the county provided by law. ALA. CODE § 12-13-4. Moreover, in those counties with two county seats, such as Coffee County[11] and Jefferson County,[12] two probate offices must be established, and a set of records must be maintained in each office. Judges in counties with such arrangements should review the appropriate act for office organization and terms of court.

L. JUDGE OF PROBATE FEES

a. General Fees. Although the present law sets out a schedule of fees at length, it nonetheless contains a statement expressly providing that it should not repeal, amend, nor affect any local law or general law of local application prescribing fees for judges of probate. Consequently, any local legislation prescribing fees for judges of probate remains in effect. For judges of probate, in general, the law provides that the following fees for service in the probate offices shall be charged and paid into the county treasury or to the judge of probate, as may be authorized or required by law. ALA. CODE § 12-19-90. Probate court fees must be collected at the time a pleading is filed or at the termination of the suit, whichever the court decides. ALA. CODE § 12-19-43(a). Probate courts may

[11] Act of Feb. 26, 1907, No. 140, 1907 Ala. Acts 243.
[12] Act of Sept. 16, 1915, No. 490, 1915 Ala. Acts 549.

also require security deposits to cover unanticipated costs. ALA. CODE § 12-19-43(b).

b. UCC Fees. In addition to the fees set out in ALA. CODE § 12-19-90, judges of probate are entitled to a fee for filing in their offices financing statements or other records recording a creditor's security interest in consumer goods of a debtor. The fee is $20.00 if the record is in writing and is one or two pages and $2.00 for each additional page. The fee is $15.00 if the record is communicated by another medium authorized by filing-office rule. The number of names to be indexed does not affect the filing fee. ALA. CODE § 7-9A-525.

The fee for filing and indexing an initial financing statement for a manufactured-housing transaction is $10.00 if the financing statement indicates that it is filed in connection with a manufactured-home transaction. There is no filing fee for the filing of a termination statement. The fee for responding to an information request, including for a certificate showing whether there is on file any financing statement naming a particular debtor, is $20.00 if the request is made in writing and $15.00 if the request is made by another medium authorized by the filing office. These fees apply to each debtor named in the submitted request where the request seeks information on more than one debtor. Also, an additional $100.00 fee is required when the request seeks expedited response by the Secretary of State. ALA. CODE § 7-9A-525.

No fee is required with respect to a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under ALA. CODE § 7-9A-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the mortgage apply.

An additional fee of $5.00 is applicable to all of the above fees where the filing or request is submitted on a non-standard form. The judge of probate, in addition to the fees, must collect a mortgage

tax of fifteen cents per $100.00 (or fraction thereof) of the secured debt. ALA. CODE § 40-22-2.

c. Filing Fees for All Entities. In lieu of all other charges and fees the judge of probate shall charge and collect, the judge of probate shall collect the following fees when the filing the instruments described below are delivered to him for filing:

(1) Certified copy of statements of authority, denial, and cancellation thereof, permitted to be filed with the judge of probate: One hundred dollars ($100).

(2) Certified copy of certificates, articles, or statements of merger and conversion filed pursuant to Chapter 1, Chapter 2A, Chapter 5A, Chapter 8A, Chapter 9A, Chapter 10 of Title 10A: Five dollars ($5).

(3) Any other filing instrument required or permitted to be delivered to the judge of probate for filing pursuant to this title: One hundred dollars ($100).

ALA. CODE § 10A-1-4.31(b).

Additionally, the judge of probate shall charge and collect two dollars ($2) per page for furnishing a certified copy of any filing instrument related to an entity and ten dollars ($10) for the certificate and affixing a seal to the documents. ALA. CODE § 10A-1-4.31(h).

d. Sale of Land. The judge of probate is entitled to a fee of five dollars ($5) for each notice to a delinquent property owner to show cause why a decree of sale should not be rendered and for each decree of sale. ALA. CODE § 40-10-27.

e. Posting of Fee Lists. Judges of probate must post a complete list of all fees allowed by law to them. This list must be posted in a conspicuous place in the office, and copies must be furnished on application. Judges who do not comply with this

requirement are not authorized to collect or receive fees for their services during time the list is not posted. ALA. CODE § 12-19-40.

M. COSTS OF THE PROBATE OFFICE

The funds for financing the office of the judge of probate in counties in which the judge is compensated by fees are obtained from a percentage of fees generated by the probate office and paid into the county treasury as provided by local act. Salaries for employees are generally paid from these generated fees. Expenses for office equipment and supplies are paid from county commission funds. ALA. CODE § 11-8-3. A few local acts have been passed to authorize the payment of the chief clerk's or a similar official's salary from public funds.

In counties in which the judge has been placed on a salary, all expenditures are made from monies provided by the county general fund. ALA. CODE § 12-13-20. The standard fees, commissions, and allowances continue to be collected in most counties, but they are deposited in the county or state treasury. The county commission is charged with the responsibility of providing proper utilities to all offices in the courthouse, including the probate office. ALA. CODE § 11-12-13.

N. JUDGES OF PROBATE COMPENSATION

ALA. CODE §§ 11-2A-1 et seq. make substantial alterations to the system of compensation for judges of probate. The statutes place counties into categories based on population as of the last census as follows:

Category	**Population**
1	In excess of 450,000
2	350,001 to 449,999
3	200,001 to 350,000
4	50,001 to 200,000

5	19,000 to 50,000
6	Less than 19,000

The last decennial census as of this writing was the 2020 Census. Using the 2020 census, the counties are categorized as follows:

Category	**Counties**
1	Jefferson
2	Madison, Mobile
3	Baldwin, Montgomery, Shelby, Tuscaloosa
4	Autauga, Blount, Calhoun, Coffee, Colbert, Cullman, DeKalb, Elmore, Etowah, Houston, Jackson, Lauderdale, Lee, Limestone, Marshall, Morgan, Russell, St. Clair, Talladega, Walker
5	Barbour, Bibb, Butler, Chambers, Cherokee, Chilton, Clarke, Covington, Dale, Dallas, Escambia, Franklin, Geneva, Lawrence, Macon, Marengo, Marion, Monroe, Pickens, Pike, Randolph, Tallapoosa, Winston
6	Bullock, Choctaw, Clay, Cleburne, Conecuh, Coosa, Crenshaw, Fayette, Greene, Hale, Henry, Lamar,

Lowndes, Perry, Sumter, Washington, Wilcox

Of course, subsequent censuses will alter the category into which a county will fall.

The minimum compensation for judges of probate in Categories 1 and 2 shall be provided by local law. The annual compensation for judges of probate in Category 3 counties shall be increased by 20 percent effective Oct. 1, 2001, if their compensation has not been increased by general or local law during the period from Oct. 1, 1996 to Oct. 1, 2001. Judges of probate in Category 4 shall have a minimum compensation of that proscribed by general law as of September 30, 2000 plus 20 percent. Judges of probate in Category 5 shall have a minimum compensation of that proscribed by general law as of September 30, 2000 plus 17 percent. Judges of probate in Category 6 shall have a minimum compensation of that proscribed by general law as of September 30, 2000 plus 15 percent. ALA. CODE § 11-2A-2(2).

In addition, Chapter 2A of Title 11 increases the compensation for some judges of probate according to their duties. Any judge of probate in Category 4, 5, or 6 shall receive an additional $2,500 if he or she is required to serve as chairperson of the county commission. Any judge of probate who is charged by law with the administration of a "one-stop" tag program shall receive additional compensation of at least $3,000. ALA. CODE § 11-2A-3.

After August 1, 2016, judges of probate shall be entitled to the same uniform increases in compensation, whether the uniform increases are based on a percentage of compensation or a flat dollar amount, that are granted equally to all county employees by the county commission. The increases shall be in the same amount or percentage, as the case may be, as that amount or percentage provided to county employees. ALA. CODE § 11-2A-4.

Chapter 2A of Title 11 is not applicable to Barbour, Tuscaloosa, Cullman, St. Clair, Pike, Henry, Coffee, Russell,

Geneva, Dale, or Fayette counties unless approved by a resolution of the respective county commission. ALA. CODE § 11-2A-7(b). ALA. CODE §§ 11-2A-2 and 11-2A-3 are not applicable in Pickens County unless adopted by the county commission. ALA. CODE § 11-2A-7(c). The county governing body of any county may exempt the county from the provisions of Chapter 2A of Title 11, provided the exemption encompasses all of ALA. CODE §§ 11-2A-2, 11-2A-3, and 12-19-90. ALA. CODE § 11-2A-2(7). The increases in compensation are not applicable to any judge of probate whose salary is greater than the minimum authorized by general law plus the increase authorized by the act. ALA. CODE § 11-2A-6. Chapter 2A of Title 11 is not applicable to any judge of probate whose salary is tied to a state elected official or to those judges of probate whose salaries are determined by local law and are greater than those authorized by Chapter 2A of Title 11. ALA. CODE § 11-2A-7.

The general law at the time of the creation of Chapter 2A of Title 11 provided as follows: In the event a judge of probate who is on a salary serves as chairman of the county commission, he is not to receive less than $55,000 in total compensation. Similarly, no judge of probate who is on a salary and who does not serve as chairman of the county commission is to receive total compensation of less than $52,500 in total compensation. This law in no way affects those judges of probate who in the first instance earn more than $55,000 a year or earn more than $52,500 in the second instance. Any funds needed to ensure that the judge of probate receives his total compensation shall be paid out of the county's general fund. Furthermore, these provisions in no way affect the compensation of judges of probate of counties where they are compensated on the basis of the fee system. ALA. CODE § 12-13-20. Judges compensated on a fee basis may now receive a net annual income of more than $75,000 from fees. ALA. CODE § 11-2A-8 (removing cap on fee-based salaries).

Additionally, the judge of probate of every county is entitled to receive from the county treasury payment for expenses, including but not limited to, membership dues and other expenses, incurred in attending state or national conferences, schools and other functions,

including, but not limited to, the personnel in his office, pertaining to his official position as judge of probate. This payment is in addition to all other compensation and allowances now provided by law. Such payments are paid on warrants approved by the county commissions of each county drawn on any funds in the county treasury not otherwise appropriated. ALA. CODE § 12-13-19.

Constitutional amendments have been adopted to permit the legislature to "fix, alter, and regulate" the fees, commission, percentages, allowances, or salary and to provide the method of compensation to the judge of probate in many counties.

O. STAFFING THE PROBATE OFFICE

The judge of probate is permitted to employ from fees derived by his office a chief clerk[13] and such other clerks as he deems necessary. This practice generally exists in counties in which the judge is paid from fees, although local acts have been passed to permit partial payments from public funds in a few such counties.

Judges who have been placed on a straight salary receive an allowance for clerical assistance from public funds. Some of the acts fixing the clerical allowance also include the number of clerks which may be employed. However, it is more common for the act to specify the maximum allowance for clerical assistance. A few such acts have permitted the county governing body to fix the maximum.

No general law has been enacted pertaining to the number of clerks, deputies, and assistants or the amount of the salary for persons employed in the judge of probate's office. The number of employees varies among the several counties according to the work load. Except in counties with a merit system, the number of employees and salary are usually fixed by the judge, who also has complete authority to employ and dismiss the employees in the

[13] While not specifically required, a judge of probate is advised to make the appointment of a “chief clerk” in writing to avoid any future unforeseen difficulties.

probate office.[14] Under the merit system, the number of employees and salary is determined by the county commission.

P. CHIEF CLERK

***a. Duties*.** The judge of probate has the authority and the responsibility to employ a chief clerk and other clerks deemed necessary for performing the duties of the office and to authorize person to make abstracts of titles of land sold at judicial sale. ALA. CODE § 12-13-40. The chief clerk shall have the following duties:

(1) To issue letters testamentary, of administration and of guardianship, when there is no contest.

(2) To administer oaths relating to the business of the court and to take and certify acknowledgments and poof of instruments authorized to be recorded.

(3) To solemnize matrimony, approve bonds and appoint guardians ad litem.

(4) To admit wills to probate and records and to pass and allow accounts of executors, administrators and guardians, when there is no contest.

(5) To do all other acts and things and perform all other duties, ministerial and judicial, when there is no contest, that the judge of probate may do and perform.

All these duties must be performed in the name of the judge of probate, except when there is a vacancy in that office. ALA. CODE § 12-13-14. Furthermore, the clerk or the judge of probate may take acknowledgments of a conveyance in the name of the judge. ALA.

[14] Merit systems have been established in several counties. Examples include: Geneva, Jefferson, Marion, and Tuscaloosa counties. Montgomery County has a hybrid system, with the chief clerk and executive assistant serving at the pleasure of the judge, while the judge's other employees are under the merit system.

CODE § 35-4-24; *Pioneer Sav. & Loan Co. v. Barclay*, 19 So. 308 (Ala. 1896).

The satisfaction of a mortgage must be witnessed by the judge of probate or his clerk if such entry is requested in writing. ALA. CODE § 35-10-27. Requirement of attestation by the judge or clerk is designed to prevent unauthorized or fraudulent cancellations. *Lewis v. Cannon*, 113 So. 577 (Ala. 1927).

b. Oath and Bond. Prior to assuming his or her duties, the chief clerk must take oath and give a bond with surety payable to the judge of probate for any act of misfeasance or malfeasance of the chief clerk while performing his or her duties of office. The bond must be approved by the judge of probate, filed, and recorded in the office of the clerk of the circuit court of that county. ALA. CODE § 12-13-13.

c. Restrictions of the Types of Duties Performed By Chief Clerk. No judge of probate or clerk shall prepare or assist in the preparation of any paper, document, or instrument which is to be heard or determined by the judge of probate or which might become a subject of controversy before the judge. However, the judge or clerk may prepare or assist in the preparation of acknowledgments and proof of conveyances, affidavits, oath, affirmations, or any instrument which by law is required to be prepared by such judge. ALA. CODE § 12-13-16.

d. Performance of the Duties of the Judge of Probate in the Event of Vacancy. Whenever a vacancy in the judge of probate's office occurs, the chief clerk shall, during such vacancy and until the qualification of a lawful successor, perform all the duties of that office that he is authorized to perform when there is no vacancy. Furthermore, the chief clerk may make all necessary orders for the continuance of cases and proceedings pending in the probate court.

When such duties are performed as a result of the vacancy in the office, the chief clerk shall perform such duties in his or her own name as the clerk of the probate court.

When a judge of probate has a personal interest in a case for the probate court or is otherwise incompetent to perform his or her duties as judge of probate, either the judge of probate or the chief clerk must certify that fact to the Chief justice of the Alabama Supreme Court. Thereafter, the Supreme Court will appoint a person possessing the qualifications of a judge of probate to act as a special judge of probate. ALA. CODE §§ 12-1-12, 12-13-37 and 12-13-38.

Also, if there is a need for a special judge of probate, the Supreme Court may appoint a special judge for temporary service. The appointment confers on the special judge all of the powers, authority, and jurisdiction of the judgeship to which he or she is appointed. The special judge appointed under this section is entitled to compensation and expenses as provided by law. ALA. CODE § 12-1-14.

Also, the presiding circuit court judge may appoint a special judge of probate for temporary service. "Temporary service" means no more than 180 consecutive days. However, the special judge may be reappointed for more than one period of 180 consecutive days. The appointment confers on the special judge all of the powers, authority and jurisdiction of the judgeship to which he or she is appointed. However, a special judge appointed under this section does not receive any compensation for his or her services. ALA. CODE § 12-1-14.1.

The clerk must not practice law in the probate office in which he or she works. ALA. CODE § 34-3-14.

e. Salary. The judge of probate is permitted to employ, at his own expense, a chief clerk and such other clerks the judge deems necessary to perform the functions of his office. ALA. CODE § 12-13-40. Some local acts have been passed to authorize the payment of the chief clerk or other officials' salary from public funds. In those counties in which the judge has been placed on a salary, expenses for the judge of probate's office are provided through the county general fund.

f. Fiduciary Funds. Every clerk shall prepare, in writing, a report showing the amount of all fiduciary funds in the hands of the clerk. The report should designate the name of the owner and the case or circumstance under which the funds were received. The statement shall be verified. ALA. CODE § 19-3-81. The clerk shall file that report with the judge of probate at the first session of probate court after January 1st of each year. ALA. CODE § 19-3-82.

g. Appellate Duties. Most appeals from judgment by probate court are heard by the Supreme Court or de novo by the Circuit Court. ALA. CODE § 12-22-20. This includes appeals concerning guardianship. ALA. CODE § 26-2A-36. Appeals concerning adoption are heard by the Alabama Court of Civil Appeals. ALA. CODE §§ 26-10E-25 and 26-10F-14. In addition, orders of commitment are appealed to the circuit court de novo unless the judge of probate is an attorney, in which case the appeal is to the Alabama Court of Civil Appeals. ALA. CODE § 22-52-15. Cases that are heard by the appellate courts are governed by the Alabama Rules of Appellate Procedure (ARAP). ALA. CODE § 12-22-21. The chief clerk's appellate duties are governed by the ARAP. *See* Ala. R. App. P. 17 for the duties of clerks.

Jefferson and Mobile counties retain general equity jurisdiction. ALA. CODE § 43-8-9. Therefore, all appeals from those probate courts are heard by the appellate courts, except eminent domain. ALA. CODE § 18-1A-283.

h. Liability for Delayed or Defective Record. If, by reason of negligence or delay by the clerk or judge of probate, the record on appeal is not delivered to the appellate court in time to be filed or is so defective that the appellate court cannot proceed on the appeal, the clerk or judge of probate forfeits to the aggrieved party $200 and is further liable to the party for all damages sustained by the negligence or delay of the clerk or judge of probate. ALA. CODE § 12-22-60.

Furthermore, the clerk or judge of probate is liable to the appellee for damages sustained for taking insufficient surety unless

the surety was generally reputed good for the amount. However, neither the clerk nor the judge of probate is required to receive any one as surety who refuses to answer an oath as to his sufficiency. ALA. CODE § 12-22-41.

i. Failure to Deliver Books to Successors in Office. Any clerk or other person in the judge of probate's office who obtains books, papers, money, or other property belonging to the office and, upon vacancy, thereof fails or refuses to deliver such property to the lawfully qualified successor must, upon conviction, be fined not less than $200. ALA. CODE § 12-13-18.

III.

THE ADMINISTRATIVE FUNCTIONS OF THE JUDGE OF PROBATE

A. GENERAL

The duties and responsibilities of the judge of probate are many and varied. Some duties are administrative in nature, others are judicial, and some of them are even legislative in character.

As judges of probate who have held office previously are well aware, the duties and responsibilities assigned to them are spread throughout the Code and, in some cases, are also found in individual acts. However, many newly elected judges may not be familiar with the multitude of functions for which they are responsible.

The explanations of various aspects of the office are necessarily general in nature, and judges should review the provisions of the law for a complete discussion. However, to assist the judge of probate in finding the applicable provisions, the proper Code citation has been included for each function discussed. Likewise, the procedures used in carrying out the judges' duties are so numerous that they can be discussed only briefly. Therefore, each procedural discussion sets forth the proper section of the Code or the proper act number and year.

B. CODIFICATION OF LOCAL ACTS

In researching their duties, judges should keep in mind the fact that provisions on the probate office may be found not only in the 1975 Code of Alabama but also in the local acts applicable to their respective counties. Moreover, court decisions interpreting various provisions of law are important sources of information. Newly elected judges might inquire as to whether local acts applicable to their counties have been codified recently. The Legislative Services Agency’s Legal Division has begun to compile

local acts. Also, county governing bodies are permitted to codify local acts every ten years and to publish local acts in a newspaper published and "at least, partly printed in the county" within 60 days following each session of the legislature. ALA. CODE §§ 11-13-1 through 11-13-6.

C. PENALTIES

A judge of probate is subject to a host of possible penalties for improperly handling the duties connected with the office. The following are some of the pertinent offenses:

(1) Any judge of probate or clerk who prepares or assists in the preparation of any paper, document, or instrument to be heard by the judge, violating the requirements set forth in Article 1 of Chapter 13, is guilty of a misdemeanor and must forfeit $300. One third of the money is to be paid to state and the remainder paid to the person instituting a civil action in the circuit court for this penalty. ALA. CODE § 12-13-16.

(2) A failure by any judge of probate to collect the recording registration tax after filing for record any mortgages, deeds of trust, or other instrument in the name of a mortgage, is guilty of a misdemeanor and is subject to a fine of not less than $10 nor more than $100 if convicted. ALA. CODE § 12-13-53.

(3) Mishandling of state or county deposits can result in a misdemeanor conviction and a fine of not more than $2,500 and removal of any state or county official so charged. ALA. CODE § 41-14-16.

(4) Any judge of probate who knowingly receives any other or higher fees than are allowed by law shall forfeit $50 to be recovered in the name of the person aggrieved. This penalty shall be no bar to an

> indictment for extortion. Moreover, a judge of probate who corruptly receives any fee or item of costs not authorized by law will be, on conviction, fined not less than $100 nor more than $500, and the grand jury must present an indictment, if justified by the evidence. Upon such conviction, the office shall be vacated and the fact of such certified to the governor by the presiding judge. ALA. CODE § 12-19-47.

D. MAINTAINING RECORDS

The judge of probate is required to preserve all documents, files, papers, and letters, together with all attachments required by law to be recorded and filed in his office. These records must be kept in a manner to permit convenient reference. ALA. CODE §§ 12-13-41 and 36-12-2.

Furthermore, uniformity in size and style of records and books must be maintained, and records must be in ink and on paper of quality sufficient to ensure permanence. ALA. CODE § 36-12-3.

Unless otherwise provided by law, all records are open to public inspection, and, when requested, the judge must furnish copies of them upon the payment of lawful fees. ALA. CODE § 12-13-50. However, the regular copy fee may not be assessed if individuals use personal cameras or other electronic devices to make a copy of a public record. Ala. Att'y Gen. Ops. 2009-076 and 2023-042. Nonetheless, reasonable limitations may be placed upon the public's access to records and the public's ability to use personal electronic devices to duplicate records to ensure that the operations of such actions do not unduly interfere with the operations of the office. Ala. Att'y Gen. Ops. 92-00154 and 2009-076.

Alternatively, the probate court may provide access to the general public, via a website, to the digitized images of probate documents maintained by the probate court, without charging a fee,

in addition to providing for courthouse public examination of probate documents. Ala. Att'y Gen. Op. 2001-004.

Some records, such as records in adoption proceedings, are confidential and may only be disclosed in accordance with the adoption laws. ALA. CODE §§ 26-10-28, 26-10E-30, and 26-10F-15.

Before recording any document (except federal and state tax liens) that conveys any interest in real or personal property (deeds, mortgages, etc.) or purports to encumber an interest in real or personal property (e.g., liens) as public record with the probate court, Social Security numbers and birthdates should be redacted so as to make that information illegible. ALA. CODE § 12-13-22. Any other document, including military discharge forms, that is filed as public record in the probate court should be redacted in the same manner. ALA. CODE § 12-13-22.

Unfortunately, no one title, chapter, article, or section of the Code explains the records which are maintained by the judge of probate. The listing below highlights many of the records which must be maintained by the judge. A more complete description of records discussed below are found in the applicable provisions of the Code, which are cited at the end of each section.

a. Fee Books. Judges of probate must enter in a fee book all fees received by virtue of the office, stating for what and from whom it was received. This book must always be available for public inspection in the judge of probate's office. ALA. CODE § 12-19-45.

b. Minutes of the Court of Probate. Minutes of all official acts and proceedings in the court of probate must be kept. Within three months after the act or proceedings, the minutes must be recorded in a well-bound book. ALA. CODE § 12-13-41(2).

c. Court Docket. The judge must keep a well-arranged docket recording the date of issue and return of all processes, the day set for hearing, the type of notice ordered, and other conditions

of a pending proceeding, plus all fees accruing and to whom they are due. ALA. CODE § 12-13-41(4).

***d. Sheriff's Fees*.** The judge must keep a correct account of all fees accruing to the sheriff for services rendered in relation to proceedings in the court of probate. The name of the attorney for the plaintiff must also be entered in this fee book. These fees must be paid to the sheriff on demand. No final settlement of any estate may be made until the sheriff is paid the fees due. ALA. CODE §§ 12-13-41(5) and 12-13-41(6).

***e. Acts, Reports and Digests*.** The judge of probate must maintain all acts, reports, and digests furnished by the State. When received, they should be kept available for convenient reference in either the office of the judge of probate or the county's bar library if there is one in the county. ALA. CODE § 12-13-41(8).

***f. Census Reports*.** The judge of probate is responsible for providing a suitable and convenient place in his office for keeping United States census reports. These reports must be preserved, and free access to them must be permitted. ALA. CODE § 12-13-41(10).

***g. Liens of Judgments and Decrees*.** A large and well-bound book must be kept for registering liens of judgments and decrees. In addition, both direct and indirect indexes to these books must be maintained. ALA. CODE § 12-13-41(12).

***h. Conveyances*.** A large, well-bound book must be kept for registration of deeds and deeds of conveyances, and other separate books of like character must be kept for the registration of mortgages and other instruments to secure payment of debts. ALA. CODE § 12-13-41(11).

***i. Notices of Adverse Possession*.** A well-bound book with an index must be maintained for the registration of notices of adverse possession. ALA. CODE § 12-13-41(13).

j. Indexes*.** The judge of probate must keep four well-bound books of suitable size and grade of paper in which to make a general direct and a general reverse index of each instrument filed and recorded in his office. Two of these books are to be used for conveyances of real property, the other two for conveyances of personal property and all other instruments entitled to be recorded in his office. The indexes should alphabetically list the parties, the maker for the direct index and receiver for the reverse index. Also to be included are the date and character of each instrument and the date the instrument was filed for record. An instrument conveying both personal and real property must be entered in the indexes for both types of property opposite the names in the indexes. After recording each instrument, the judge shall indicate the pages and books in which the instrument was recorded. An index for each volume of record is not required. ***Note: A failure to comply strictly with these provisions will subject the judge of probate to a $100 fine for each failure and liability for damage caused to any person instituting a suit for civil action. ALA. CODE § 12-13-43.

***k. Record of Election Results*.** The judge of probate should keep the ballot accounting certificate and the first copy of certificates of results for public inspection, election contest, or both. ALA. CODE §§ 17-12-11 and 17-12-12. Federal law requires the maintenance of election records of federal elections for 22 months. 52 U.S.C. § 20701.

E. INSTRUMENTS TO BE RECORDED

Judges of probate must keep large and well-bound books for recording, word for word, conveyances of property and all other instruments authorized to be recorded, together with acknowledgments, proofs, schedules, plats, surveys, or other necessary attachments. ALA. CODE § 35-4-58.

The following records when executed in accordance with law shall be admitted to record in the office of the judge of probate:

(1) Plats or maps as well as aerial photographs of land in respective county. ALA. CODE §§ 35-2-51 and 35-2-80.

(2) Vacation of plats or streets or alleys. ALA. CODE §§ 35-2-53 through 35-2-62.

(3) Judgment regarding vacation. ALA. CODE § 35-2-60.

(4) Deeds, mortgages, deeds of trust, bills of sale, leases or memoranda of leases, contracts or other documents purporting to convey any right, title, easement, or interest in any real estate or personal property, all assignments of mortgages, deeds of trust or other securities for debt or extension agreements (except as otherwise provided in UCC). ALA. CODE §§ 35-4-51 and 35-4-51.1.

(5) Petitions, decrees, or orders of bankruptcy. ALA. CODE § 35-4-52.

(6) Patents from this state or the United States to lands in this state. ALA. CODE § 35-4-56.

(7) Lis pendens. ALA. CODE § 35-4-130.

(8) Notice of actions affecting the title of property. ALA. CODE § 35-4-131.

(9) Notice of levy. ALA. CODE § 35-4-132.

(10) Notice of trust to be recorded. ALA. CODE § 35-4-257.

(11) Documents and instruments concerning condominiums. ALA. CODE § 35-8-11.

(12) Notice of liens. *See generally* ALA. CODE §§ 35-11-1 et seq.

(13) Living Wills. "Living will" is defined as "[a] witnessed document in writing, voluntarily executed by the declarant, that gives directions and may appoint a health care proxy, in accordance with the requirements of [ALA. CODE §] 22-8A-4." ALA. CODE § 22-8A-3. The fee for filing a living will is five dollars ($5), which shall be deposited in the county general fund, in addition to any other recording fees required by general or local law. ALA. CODE § 22-8A-14(b). While a living will shall not to be open to the general public for inspection—though it is open for inspection and copying by medical personnel, hospital personnel, treating physicians, members of the immediate family, a person with a power of attorney or other legally authorized person, or a person authorized in writing by the maker of the living will—a judge of probate is not liable for any inspection or copying of a living will. ALA. CODE § 22-8A-14(c). Also, the recording of a living will has no bearing on the validity of the will. ALA. CODE § 22-8A-14(c)(2).

A judge of probate may also charge the standard fee of two dollars ($2) a page for copies of business entity filing instruments. ALA. CODE § 10A-1-4.31(h); *see also* Chapter 2 of this Handbook.

The judge must indicate, in the margin of the instrument, the day, month, and year that the instruments are received for recording. A signed certificate must also be made on the instrument showing when it was received and recorded together with the book and page in which it was recorded. Instruments may be recorded by a fair hand, typewriter, photostat or photograph machine, or any other printing or writing apparatus which will record verbatim. ALA. CODE § 35-4-58.

F. BONDS

All county officials of all counties in Alabama must execute official bonds payable to the State of Alabama for the faithful performance of their duties and such additional official bonds as public interest and provisions of the law may require. ALA. CODE § 11-2-1. The judge of probate approves, records, and files surety bonds for most county and municipal officials in the county as well as bonds for certain other persons required by law to execute bonds. These officials and other individuals requiring bond are as follows:

(1) All county officials and employees requiring a bond except the bond of the judge of probate must be filed in the office of the judge of probate. ALA. CODE § 11-2-3. The official bond of the judge of probate is determined using the table in ALA. CODE § 12-13-33. It cannot be less than $25,000 and must be filed and recorded in the office of the clerk of the circuit court. Duplicate copies of the bonds of the judge of probate, tax collector, and tax assessor must be filed with the state comptroller. ALA. CODE § 11-2-3.

(2) Bond of circuit clerk can in no case be less than $5,000. ALA. CODE § 12-17-91.

(3) Register of the circuit court must be under at least a $5,000 bond. ALA. CODE § 12-17-111.

(4) Bond for the superintendent of public works must be at least $1,000. ALA. CODE § 14-4-12.

(5) Bonds of municipal officers or employees handling money or exercising authority over municipal property. ALA. CODE § 11-43-13.

(6) Bond for constables, provided that the county has such an office, shall be $1,000. ALA. CODE § 36-23-4.

(7) Bonds of county surveyors shall be $1,000. ALA. CODE § 11-7-2.

(8) Bond for tax assessor must not be less than $5,000. ALA. CODE § 40-4-1.

(9) Bond given by administrators and executors (personal representatives). ALA. CODE § 43-2-1.

(10) Bond for county treasurer must not be less than $15,000. In counties where population is over 150,000, such bond must not be less than $50,000. ALA. CODE § 11-4-22.

(11) An appeal bond, approved by the judge of probate, is required for contesting an election. ALA. CODE § 17-16-62.

(12) Bond given by conservator. ALA. CODE § 26-3-12.

(13) Bond for county health officers shall be in the amount of $10,000. ALA. CODE § 22-3-7.

(14) Bond for nonresidents of Alabama who do not have a place of business in Alabama and who bring used motor vehicles into the state for sale. ALA. CODE § 32-16-2.

A judge of probate, clerk, or register taking insufficient surety is liable to an appellee for damages sustained, unless the surety was generally reputed good for the amount when received. However, the judge of probate, clerk, and register are not required to accept a surety who refuses to take an oath that he or she is sufficient. ALA. CODE § 12-22-41.

G. OATHS

In addition to surety bonds, the judge of probate also files and records oaths of office by judges of inferior courts, other officials whose duties are confined to his or her county, and persons supervising prisoners sentenced to hard labor. ALA. CODE §§ 36-4-4 and 14-4-14. Upon filing the oaths, the judge must endorse thereon the day and year on which the oath was filed. ALA. CODE § 36-4-7.

H. CORPORATIONS

a. Filings. Judges of probate may receive certain corporate filings, including certified copies of statements of authority, denial, and cancellation as well as certified copies of certificates, articles, or statements of merger and conversion, under the laws of Alabama. ALA. CODE § 10A-1-4.31.

***b. Fees*.** With regard to the filing of certain business corporation documents, judges of probate are permitted to collect fees specified in the Code. ALA. CODE § 10A-1-4.31; *see also* the "Business Corporation Fees" subsection in Chapter II of this Handbook as well as Appendix A.

***c. Special Corporations*.** For special types of corporations, other laws have been adopted. The chart below lists the Code citations for these special corporation provisions:

Municipalities (Incorporation & Dissolution)	ALA. CODE §§ 11-41-1 et seq.
Water Conservation & Irrigation Corporations	ALA. CODE §§ 9-10-31 and 9-10-32
Retail Merchants' Associations	ALA. CODE § 10A-20-13.01
Wholesale Merchants' Associations	ALA. CODE § 10A-20-14.01

Banks & Banking Institutions	ALA. CODE §§ 5-7A-4 and 5-7A-23
Single Tax or Cooperative Associations	ALA. CODE §§ 10A-20-9.01 et seq.
Mutual Farming or Trucking Associations	ALA. CODE §§ 2-10-92 and 2-10-107
Marketing Associations	ALA. CODE §§ 2-10-35; 2-10-56; 2-10-57; and 2-10-72 through 2-10-74
Credit Unions	ALA. CODE § 5-17-2
Churches & Public Societies	ALA. CODE § 10A-20-2.01
Healthcare Service Plans	ALA. CODE §§ 10A-20-6.02 and 10A-20-6.06
County Public Building Authorities	ALA. CODE §§ 11-15-5 and 11-15-18
Athletic & Recreational Facilities	ALA. CODE §§ 11-59-5; 11-59-6; 11-59-14; and 11-59-15
County Hospital Boards	ALA. CODE §§ 22-21-74 and 22-21-82
Public Building Authorities	ALA. CODE §§ 11-56-5 and 11-56-20
Industrial Development Boards	ALA. CODE §§ 11-54-84; 11-54-85; and 11-54-94
Gas Districts	ALA. CODE § 11-50-392

Water Works Boards	ALA. CODE §§ 11-50-232 and 11-50-233
Airport Authorities	ALA. CODE § 4-3-4
Non-Profit Corporations	ALA. CODE §§ 10A-1-5.32; 10A-1-5.33; 10A-3-3.01 through 10A-3-3.04; 10A-1-3.11; 10A-3-4.01 through 10A-3-4.03; 10A-3-5.04; 10A-1-4.02; 10A-3-7.01; 10A-3-7.04; 10A-3-7.06; and 10A-3-7.16

I. OTHER RECORDS AND FILES

The judge of probate must also keep the records and files listed below. These records may be kept as a set of specific documents or as a book for recording certain types of papers, reports, or other types of records. These files and records are as follows:

(1) A copy of field notes on the original government surveys of land in the county when they are furnished by the county governing body. ALA. CODE § 11-3-25; *see also* ALA. CODE § 12-21-41.

(2) Copies of rules, regulations, and notices issued by the Department of Agriculture and Industries when they are furnished by the Department. ALA. CODE § 2-2-17.

(3) Alabama coordinate system maps. ALA. CODE § 35-2-6.

(4) Surveys and plat maps for town lots. ALA. CODE §§ 35-2-50 through 35-2-52.

(5) Honorable discharges from the Armed Forces of the United States. ALA. CODE § 31-1-1.

(6) Decrees for quieting title. ALA. CODE § 6-6-544.

(7) Complaints alleging nuisances. ALA. CODE § 6-5-143.

(8) Certificates of qualification to practice chiropractic, dentistry, as medical doctors, as osteopathic doctors, podiatry and veterinary medicine. ALA. CODE §§ 34-9-12; 34-24-164; 34-29-84; 34-24-273; and 34-24-342.

(9) Livestock Breeder certificates. ALA. CODE § 2-15-312.

(10) Lis pendens. ALA. CODE §§ 35-4-130; 35-4-131; and 35-4-134; *see also* ALA. CODE § 6-5-146 and § 35-4-132.

(11) Registry of all marriages filed in the office.[1] ALA. CODE § 30-1-12.

(12) Reports of persons receiving aid from the Department of Human Resources. ALA. CODE § 38-1-4.

(13) Book of land sales (Tax Delinquency Book). ALA. CODE §§ 40-10-2 through 40-10-4; 40-10-11; 40-10-15; 40-10-18; and 40-10-27.

(14) Applications on controversies as to advancements. ALA. CODE § 43-8-50.

[1] On January 1, 2017, the Alabama Legislature abolished common-law marriage. However, an otherwise valid common-law marriage entered into before January 1, 2017, shall remain as valid in the state. ALA. CODE § 30-1-20.

(15) Applications to correct marriage licenses and certificates. ALA. CODE §§ 30-1-16 and 30-1-17.

(16) Records of persons sentenced to hard labor. ALA. CODE §§ 14-4-4 and 14-4-5.

(17) Certificates of land redemption. ALA. CODE § 40-10-127.[2]

(18) Labels, stamps, marks, and brands on beverage containers. ALA. CODE § 8-12-20.

(19) Probated wills. ALA. CODE §§ 43-8-169; 43-8-170; and 43-8-200.

(20) Records of letters testamentary and of administration issued. ALA. CODE § 43-2-1.

(21) Mechanic and materialmen liens. ALA. CODE §§ 35-11-213; 35-11-215; and 35-11-216.

(22) Tax liens. ALA. CODE § 40-1-2.

(23) Hospital liens. ALA. CODE § 35-11-371.

(24) Record of fiduciary funds. ALA. CODE §§ 19-3-81 through 19-3-85.

(25) Prescriptions for medical uses of alcoholic beverages ALA. CODE §§ 28-4-156; 28-4-159; and 28-4-161.

(26) Declarations of claims of exemptions. ALA. CODE §§ 6-10-21 and 6-10-105.

[2] Judges of probate in counties with a population over 400,000 at the last or subsequent federal decennial census should also *see* Act of Sept. 30, 1947, No. 520, 1947 Ala. Act 357.

(27) License forms received and issued. ALA. CODE §§ 9-11-33; 40-12-10; 40-12-21; and 40-12-22.

(28) Notices of animals impounded as estrays. ALA. CODE § 3-2-21.

(29) Instruments requiring a mineral documentary and tax stamp. ALA. CODE §§ 40-20-33 and 40-20-34.

(30) Judgments and decrees rendered in other courts submitted for record. ALA. CODE § 6-9-210.

(31) Lists of registered and qualified electors and poll lists. ALA. CODE §§ 17-4-1; 17-4-2; 17-4-4; and 17-3-60.

(32) Records of driver's licenses issued. ALA. CODE § 32-6-5.

(33) A copy of each weekly newspaper published in the county. ALA. CODE § 6-8-40; *see also* ALA. CODE §§ 11-13-2, 11-13-3; and 11-13-5.

(34) Living wills. ALA. CODE §§ 22-8A-1 et seq.

Of course, the judge of probate also maintains petitions and records related to court proceedings and copies of all reports submitted by his office. Even some decrees granted in circuit courts, such as permission for the spouse of a person declared mentally incompetent to convey the property belonging to that person and decrees for the relief of minors over eighteen from the disabilities of non-age, are filed in the office of the judge of probate. ALA. CODE §§ 26-13-7; 26-13-8; and 30-4-35.

There are also a number of records which must be maintained in the performance of other duties. These form a substantial part of the administrative work load, but they can be best understood in relation to the duties themselves. A description of

these records is included in the discussion of these duties in subsequent subdivisions of this chapter.

J. LICENSING

As noted earlier, the functions of the judge of probate regarding the issuance of licenses is greatly reduced in those counties with a full-time license commissioner. In other counties, issuing licenses has been the most time-consuming duty of the judge of probate during the months of October, November, and December. Automobile tags were formerly issued during this period. Beginning in 1981, the issuance of automobile tags was placed on a year-round basis. The order of issuance is now determined by an alphabetical listing of the owner's last name. *See* ALA. CODE § 32-6-61. The seasonal increase in workload is most pronounced for business, occupational, and professional licenses. Hunting and fishing licenses are issued most often during game seasons, which permit a greater dispersion of the workload. The receipt of applications for driver's licenses approach consistency throughout the year. On August 29, 2019, the applications for marriage licenses ceased. Pursuant to ALA. CODE § 30-1-9.1, the judge of probate collects the fees and records the marriage document. All requirements to obtain a marriage license by the state of Alabama are abolished and repealed. The requirement of a ceremony of marriage to solemnize the marriage is abolished. ALA. CODE § 30-1-9.1

a. General Provisions. The general provisions governing licenses are set out in ALA. CODE §§ 40-12-1 through 40-12-31. The subject matter discussed in these provisions includes such information as the change of place of business, alteration of licenses, form of licenses, exemptions, collection, distribution, and required records. Procedures for the relief from mistakes in the payment of license taxes are explained in ALA. CODE §§ 40-12-23 and 40-12-24; exemptions from business and occupational license taxes for veterans are explained in ALA. CODE §§ 40-12-340 through 40-12-352 and ALA. CODE §§ 40-12-370 through 40-12-377.

As a part of the responsibility related to licenses, the judge of probate must keep an accurate account of all licenses issued to him or her by the Departments of Finance and Conservation. To ensure proper control, periodic reports and transfer of funds collected from the sale of licenses are required. These reports are explained in the next section of this chapter. At the end of the year, unused license forms and stubs, together with the license stubs for the licenses issued, must be returned to the state agency responsible for the license—for example, hunting and fishing licenses are returned to the Department of Conservation. This is described in greater detail in ALA. CODE §§ 9-11-33 and 9-11-36 and ALA. CODE §§ 40-12-21 and 40-12-22.

Under Alabama law, any person entering into a business transaction or attempting to enter into a business transaction with the state or a political subdivision thereof is required to demonstrate his or her United States citizenship or lawful presence. Business transactions include applying for or renewing motor vehicle tags, driver's licenses, and nondriver identification cards, as well as applying for or renewing a business license. Other transactions may meet the definition of "business transaction" as well. A list of documents that may be used to establish citizenship is found in ALA. CODE § 31-13-28(k).

***b. Boat Licenses*.** The judge of probate (or person authorized to issue automobile license plates) issues certificates of registration for vessels used upon the waters of the state. The judge of probate collects the registration fees and remits all money to the State Treasurer within 10 days after the first of each month except a $2.00 issuance fee. In counties in which the judge of probate is on the fee system, that issuance fee is kept by the judge of probate. In counties in which the judge of probate is paid a salary, the issuance fee is paid into the county treasury. ALA. CODE § 33-5-10.

c. Business, Vocational, and Occupational. The number of specific types of licenses issued by the judge of probate in these classes are too numerous for a listing here. They are enumerated and explained in ALA. CODE §§ 40-12-40 through 40-12-179. The

application information for these licenses shall be transmitted electronically to the department by the judge of probate or the county licensing official. ALA. CODE § 40-12-30(c).

For licenses to operate billiard rooms, *see also* ALA. CODE §§ 34-6-30 through 34-6-35. Blank license forms are furnished by the State Department of Finance.

Persons are required to demonstrate United States citizenship or lawful presence when applying for or renewing a business license. ALA. CODE §§ 31-13-29(a) and 31-13-29(c). A list of qualifying documents can be found in ALA. CODE § 31-13-28(k).

d. Certificates of Title. Judges of probate who issue license plates are designated as agents of the Department of Revenue for the purpose of processing applications and collecting fees for certificates of title. ALA. CODE § 32-8-34. The judge of probate collects, in addition to the transaction fee, a designated agent commission of $1.50 and an additional $1.50 by virtue of the judge of probate's position as a county elected official. ALA. CODE §§ 32-8-6 and 32-8-7. The transaction fees are remitted to the Department of Revenue by no later than ten (10) calendar days after receipt of the application. ALA. CODE § 32-8-35(g). Also, as of January 1, 2024, judges of probate who issue certificate for title for vessels shall serve as an agent of the office for the department of revenue for processing applications and collecting fees. The judge of probate collects, in addition to the processing fee, five dollars ($5), which shall be deposited into a separate fund maintained by the licensing official. ALA. CODE §§ 33-5B-1 et seq.

***e. Deed and Mortgage Tax*.** Before recording any deed or mortgage, the judge of probate must collect the prescribed tax on all deeds and mortgages. Failure to do so is a misdemeanor punishable by a fine in an amount not less than ten dollars ($10) nor more than one hundred dollars ($100). ALA. CODE § 12-13-53.

f. Driver's Licenses. The judge of probate receives fees for and issues/renews driver's licenses and temporary instruction

permits. The explanation of this duty is found in ALA. CODE §§ 32-6-3; 32-6-4; 32-6-4.1; 32-6-5; and 32-6-8.

Persons are required to demonstrate United States citizenship or lawful presence when applying for or renewing a driver's license. ALA. CODE §§ 31-13-29(a) and 31-13-29(c). A list of qualifying documents can be found in ALA. CODE § 31-13-28(k).

g. Hunting and Fishing. The judge of probate issues both hunting and fishing licenses. Blanks for hunting and fishing licenses are furnished to judges of probate by the State Department of Conservation. When special agents are designated to issue these licenses, they receive their blank forms through the judge of probate and are responsible to him or her. In addition to hunting and fishing licenses, the judge also issues licenses to capture and kill fur-bearing animals, with the required stamps or tags to be attached to the fur, skin, or pelt. The judge also issues licenses for fur dealerships, for spearfishing, for fishing with commercial fishing gear, and for commercial saltwater fishing. The provisions on hunting and fishing licenses are in ALA. CODE §§ 9-11-36 through 9-11-71; 9-11-141 through 9-11-147; 9-11-153; 9-11-171; 9-11-172; 9-11-191 through 9-11-193, and ALA. CODE §§ 9-12-80; 9-12-82; 9-12-87; 9-12-93; 9-12-95; and 9-12-113.

h. Marriage. As of August 29, 2019, the practice of issuing marriage licenses has been abolished. The judge of probate is responsible for recording a marriage document. Many of the criteria to be met by the parties, as well as the judge of probate's duties with respect to recording marriage documents, are set forth in ALA. CODE § 30-1-9.1. A consent is required if a person to marry is between 16 and 18 years of age and has not had a former wife or husband. ALA. CODE § 30-1-5.

For every marriage document recorded, the judge of probate will continue to collect the recording fee provided in ALA. CODE § 12-19-90 and an additional fee of $60.00, which must be forwarded to the State Treasurer. The fund created by these fees is used to maintain domestic violence shelters and programs in the

judicial circuit. ALA. CODE § 30-6-11.

i. Motor Vehicle Tags and Special Permits. The judge of probate is responsible for the issuance of motor vehicle license tags, which are issued on a year-round basis. ALA. CODE § 32-6-61. This responsibility requires close coordination with the county tax assessor and tax collector because the ad valorem tax and certificate of title fees are also collected at the time the issue of new tags is made. A full explanation of this duty can be found in ALA. CODE §§ 32-6-60 through 32-6-63; 32-8-30 through 32-8-49; 40-12-240 through 40-12-275; and 40-12-300 through 40-12-302.[3]

Persons are required to demonstrate United States citizenship or lawful presence when applying for or renewing a motor vehicle tag. ALA. CODE §§ 31-13-29(a) and 31-13-29(c). A list of qualifying documents can be found in ALA. CODE § 31-13-28(k).

j. Public Warehouses. Licenses to operate a public warehouse are issued by judges of probate but only after a permit from the Commissioner of Agriculture and Industries has been received. The license and permit are explained in ALA. CODE §§ 8-15-3 through 8-15-10.

K. REPORTS

One of the important administrative functions of the judge of probate is the submission to various state departments of a number of specialized reports. The major reports required and the statutes relating to them are discussed in the following paragraphs. Be aware that the speed of technology has surpassed the speed of the Legislature updating the Code sections. Many transactions that judges of probate handle for various agencies are "reported" to the agencies in real time via online portals, and, in many instances, the actual reporting and remittances have evolved and are handled once monthly and not on the schedule as codified.

[3] *See Handbook for Alabama Tax Administrators* published by the Alabama Law Institute.

a. Adoptions. A monthly report of orders of adoptions must be submitted to the Department of Human Resources between the first and tenth of the month following the report period. Forms for this report are furnished by the Department. Also, a copy of this report must be submitted to the Department. ALA. CODE §§ 12-13-44 and 26-10E-30(d).

b. Business, Professional and Occupational Licenses. A monthly report of all business, professional, and occupational licenses issued must be submitted to the Department of Revenue and Comptroller within twenty days following the reporting period. For the months of October, November, and December, the deadline is extended to the 30th day following the end of month. This report contains the type of license issued, the amount collected for each license, the name of the person from whom the license fee was collected, and the date of collection. Reports are required even though no licenses were issued during the reporting period.

Remittance of both state and county license fees collected for each type of license during the reporting period, minus the authorized percentage for the judge of probate, is required at the time that these reports are submitted. The provisions of the Code detailing these reports are ALA. CODE §§ 40-12-1; 40-12-2; 40-12-21; and 40-12-22.

An annual report of the disposition of all license forms must be submitted to the Department of Finance. With this report, the judge must attach all unused license forms and stubs of a proper accounting for them and the stubs of all licenses issued. This report must be submitted between the first and tenth of October. It is explained in ALA. CODE § 40-12-21.

c. Certificates of Title. Applications for certificates of title are to be forwarded to the Department of Revenue within ten (10) calendar days after receipt of the application. ALA. CODE § 32-8-35(g).

***d. Deaths and Vacancies in Public Offices*.** The judge of probate is responsible for submitting a notice to the Governor of Alabama of deaths of United States Senators and Representatives residing in the county. In the case of the death of the Governor, the judge of probate is to give notice to the Lieutenant Governor. Similarly, in the case of death of any other officer, the appropriate judge of probate gives notice to the officer who fills the vacancy. ALA. CODE § 36-9-6.

Resignations of constables must also be reported to the Governor by the judge of probate. ALA. CODE § 36-9-13.

All public officials, except constables, who move from their district, circuit, or county must be reported to the official who would receive notice of his or her death. ALA. CODE § 36-9-14.

***e. Driver's Licenses*.** At the close of business each Monday, the judge of probate must submit to the Department of Public Safety a report of applications for driver's licenses and applications for renewal of driver's licenses received and the number of temporary driver's permits issued during the previous week. The monthly report is also required. The monthly report must be submitted between the first and tenth of the month following the report period. Copies of this report are submitted to the Director of Public Safety, Comptroller, and Treasurer. Funds collected, less any percentages or amounts authorized for the judge of probate, are remitted to the state treasurer with the copy of the monthly report submitted to him. These reports are explained in ALA. CODE § 32-6-5.

f. Hunting and Fishing. Reports of hunting and fishing licenses; fur licenses, stamps, and tags; licenses to use commercial fishing gear; commercial salt water fishing licenses; and licenses for fur dealerships sold each month must be submitted to the Department of Conservation. This report is submitted the first day of the month following the reporting period. It contains the following information: the number and kind of licenses issued, the names of persons to whom the licenses were issued and their addresses, the serial number of the license issued opposite the name

of the recipient, and the amount of money collected. The money collected, minus the percentage authorized for the judge of probate, must be remitted to the Department of Conservation with the report. These reports are explained in ALA. CODE §§ 9-11-37; 9-11-60; 9-11-143; and 9-12-119.

g. Incorporation Reports. The passage of Ala. Act 2020-73 removed the requirement to file certificates of incorporation and other business entity documents with the judge of probate, which may now be filed electronically solely with the Secretary of State's office.

A certified copy of each court order incorporating a community as a municipal corporation should be submitted to the Secretary of State. ALA. CODE § 11-41-4.

h. Marriage. All marriage certificates filed in the probate office shall be transmitted by the office of the judge of probate to the Office of Vital Statistics for the preceding calendar month on or before the fifth day of the following calendar month. ALA. CODE §§ 30-1-9.1(e); 30-1-12; and 30-1-17. Any change in marriage records must be promptly reported to the Office of Vital Statistics following the procedure outlined in ALA. CODE § 30-1-16. The judge of probate must also forward to the district attorney each month all fees collected for domestic violence prevention. *See* ALA. CODE § 30-6-11.

i. Motor Vehicle. A monthly report of motor vehicle licenses sold must be submitted to the Department of Revenue and Comptroller between the first and twentieth day of the month following the report period except in October, November and December, when the deadline is extended an additional ten days. The report contains a list of licenses issued, the amount collected for each license tag, the name and address to whom each license was issued, the number of the tag, the motor number or vehicle identification number, and the date issued. Even though no licenses are issued, a report must be submitted. Monies collected from the issuance of this license, less the percentage authorized for the judge

of probate, must be remitted to the state and county treasurers or to the municipality, as provided by ALA. CODE § 40-12-270. Under local laws, monies collected may also be paid to Boards of Education, hospitals, etc. Remittance is made at the time the report is submitted. A failure to comply with these provisions could result in impeachment of the judge of probate. The requirements of this report are found in ALA. CODE § 40-12-269.

j. Notaries Public. Judges of probate shall report to the Secretary of State the name, county of residence, date of issuance, and date of expiration of the commission of each notary public appointed and commissioned. ALA. CODE § 36-20-70(a)

k. State Land Purchases. Whenever a delinquent taxpayer attempts to redeem land which has been bid in by the state, the judge of probate must obtain the Land Commissioner's approval for the redemption. ALA. CODE § 40-10-126. Within five days from the redemption of any real estate bid by the state, the judge of probate must notify the tax assessor and tax collector of the county and, on demand, pay to them the cost and fees to which they are respectively entitled. ALA. CODE § 40-10-130. At the end of any month during which no land has been redeemed, the judge of probate must report that fact to the land commissioner and to the tax collector. ALA. CODE § 40-10-129.

l. Other Reports. The judge of probate shall prepare a separate, correct alphabetical list of all the names of qualified electors for each voting place for all elections held in the state, and the judge of probate shall certify the list to the election officials appointed for each election. ALA. CODE § 17-6-5.

Any fiduciary funds under the trust of the judge of probate must be reported to his court within the first ten days of January. The report must show the amount of fiduciary funds under his trust, the name of the owner, and the circumstances under which they were received. They must be recorded in a book kept for that purpose. ALA. CODE §§ 19-3-81 and 19-3-85. The administration of fiduciary funds is described in the next section of this chapter.

L. FIDUCIARY FUNDS

The judge of probate is entrusted by law with certain special funds. These include funds for certain minors, funds received from the disposition of real and personal property when no heir can be ascertained, and funds for heirs in foreign states who are not represented at proceedings by counsel of their own choosing.

a. Auditing of Public Accounts. The Department of Examiners of Public Accounts is the legislative audit agency in Alabama which is required to audit the records and accounts of each state and county agency. The Department also has the duty to prepare the bookkeeping, accounting, and reporting system for each state and county office.

The Department strives to promote accounting and financial reporting systems which meet generally accepted accounting principles, and the Department strives to perform audits which meet generally accepted auditing standards.

A major concern in an audit is that the financial records of the audited office accurately account for all funds handled by the office and that the office has complied with the applicable laws and regulations. The laws and regulations cover competitive bidding laws, conflicts of interests, constitutional and statutory restrictions placed on the use of particular funds, budgeting, financial reporting, and bonding requirements.

By statute, a copy of each audit report is forwarded to the governor and a copy to the presiding circuit judge in the county in which the office is located. By departmental policy, a copy of each report is forwarded to the audit official(s), a copy to the county commission, and copies to those officials or agencies requesting copies.

b. Disposition of Personalty and Realty. Money and proceeds from the disposition of personal property are received and safeguarded by the judge of probate when an heir or person entitled

to it cannot be ascertained within one year. The judge also performs the same duty in relation to funds and proceeds from the disposition of real property when no heir or person entitled thereto can be ascertained within two years. These funds must be deposited in the state treasury within three months after they are received. The procedure to be followed in handling these funds is found in ALA. CODE §§ 43-6-4 through 43-6-7.

c. Heirs in Foreign Countries. Funds for heirs in foreign countries, not represented in the settlement of an estate by counsel of their own choosing, must be turned over to the consular officer of the foreign country. ALA. CODE § 6-8-20.

d. Minor. Any person who is under a duty to pay money or deliver personal property to a minor may do so by paying or delivering to it:

(1) The person having the care and custody of the minor with whom the minor resides;

(2) A guardian of a minor; or

(3) The judge of probate where the minor resides.

ALA. CODE § 26-2A-6. However, there are some limitations on the amount that may be paid out under this section. They are:

(1) $5,000 if paid in a single payment; or

(2) $3,000 a year if paid in a series of payments; and

(3) A maximum of $25,000 during minority of the ward unless it is paid through a conservator or judge.

The money paid out must be applied to the health, support, education, and maintenance of the minor. ALA. CODE § 26-2A-6(c).

Payments under this section are not allowed if payor knows that the minor has a conservator or there is a proceeding pending to appoint a conservator.

Moreover, before the person who is obligated to make the payment is discharged of that duty, notice must be given. Notice must be filed with the judge of probate in the county in which the minor resides if the minor is a resident of Alabama. If the minor is a nonresident, notice must be filed with the judge of probate or similar officer in the county in which the debtor or creditor resides. ALA. CODE § 26-2A-6.

M. CONDUCT OF ELECTIONS

The judge of probate has a number of duties relating to state and county elections, including the duty to receive petitioners, determine the sufficiency thereof, and conduct elections for the establishment and dissolution of municipalities and the duty to receive and decide petitions for the adoption of a commission form of government and for alterations of municipal boundaries. The judge of probate is an elected county official and is the chief election official in each county. ALA. CODE § 17-9-2. Please consult the current edition of the *Alabama Election Handbook*, published by the Alabama Law Institute, for a detailed summary of Alabama's election laws and the role of the judge of probate's office in the election process.

IV.

THE JUDICIAL FUNCTIONS OF THE JUDGE OF PROBATE

The judge of probate is designated by the Constitution as a member of the judicial branch of the state government. The duties of the judge of probate touch on the whole scope of government—executive, legislative, and judicial—at the county level. The focus of this chapter is on the judge's judicial duties.

A. THE SCOPE OF JUDICIAL FUNCTIONS

First, each of these duties under present law is judicial by virtue of the fact that they require a decision by a judicial officer. Second, all decisions and appeals remain within the judiciary established by the state statute or state constitution. Third, all decisions by the judge of probate are by legal process without resort to another court except on appeal. Fourth, decisions of the court are accorded the same validity and presumption accorded a general court of law.

It should be noted, however, that the judge of probate is not required personally to perform all judicial duties within the jurisdiction of court. The chief clerk may perform all acts which may be performed by the judge when there is no contest. ALA. CODE § 12-13-14.

As part of the judicial function, the judge is required to maintain petitions initiating judicial proceedings and to maintain a well-arranged docket, showing the date of the issue and return of all process, the day set for the hearing, the kind of notice ordered, the returns of the sheriff, and other entries as may be necessary to show the true condition of all proceedings pending in the court, and all fees accruing in the case and to whom due. In addition, minutes of all official acts and proceedings must be kept and recorded in well-bound books within three months of the entry.

The judge of probate must become familiar with certain remedies and procedures. They are discussed in several titles of the Code of Alabama. However, in addition to any special procedures which may be explained in sections on specific issues, the judge of probate should read the general provisions of rules and remedies which are explained in Titles 6 and 12 of the Code of Alabama, the Alabama Rules of Civil Procedure, and the Alabama Rules of Evidence. Probate courts cannot administer remedies except as provided by the statutes. *Kish Land Co., LLC v. Thomas*, 42 So.3d 1235 (Ala. Civ. App. 2010).

The judge of probate, within the jurisdiction of the probate court, may declare rights, status, and other legal relations whether further relief is or could be claimed. The declaration may be negative or affirmative in form and effect. Moreover, when a declaration is issued, it has the force and effect of a final judgment or decree. Requests for declaratory judgments or decrees may be refused if the decision would not terminate the uncertainty or controversy giving rise to the proceeding. ALA. CODE §§ 6-6-222; 6-6-229; and 6-6-230.

The judicial authority of the judge of the probate court extends to many fields. As the title suggests, the judge of probate has the authority to probate wills, to grant executorships and appoint administrators (personal representatives), and to remove executors and administrators (personal representatives). In addition, the judge of probate also has duties and powers in many areas, including the following:

(1) To appoint and remove guardians and/or conservators for minor children and mentally incompetent persons;

(2) To establish drainage districts;

(3) To hear and decide on petitions requesting condemnation of privately owned land;

(4) To hear and decide election contests in certain proceedings;

(5) To preside over adoption proceedings;

(6) To order the sale of lands for the payment of delinquent taxes;

(7) To hear and decide petitions for the redemption of lands sold for delinquent taxes;

(8) To hear and decide claims for exemptions from executions, attachments, and garnishments, including authority to hear and decide homestead exemptions; and

(9) To conduct capacity hearings and involuntarily commit persons for mental health treatment.

(10) To determine competency of persons to vote.

(11) To preside over trust administration matters (limited to certain judges with equity jurisdiction under ALA. CODE § 19-3B-203).

Each of these powers will be discussed individually.

B. JUDICIAL IMMUNITY

The immunity of a judge of probate for judicial acts has been recognized in this state since at least 1884. *Grider v. Tally*, 77 Ala. 422 (1884). Like *Grider*, subsequent decisions have generally focused on whether a judge's actions were made while acting in a judicial capacity. This factual determination, which can only be made by a court of competent jurisdiction, depends on whether (1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge's chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the

confrontation arose immediately out of a visit to the judge in his or her judicial capacity. *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (citing *Scott v. Hayes*, 719 F.2d 1562, 1565 (11th Cir. 1983)).

Even if, however, an action is judicial in nature, judicial immunity may be overcome if the act complained of is taken in the complete absence of jurisdiction. *Stegeman v. Georgia,* 290 Fed. App'x 320, 324 (11th Cir. 2008) (citing *Mireles v. Waco*, 502 U.S. 9, 9-12, 112 S.Ct. 286, 287-88, 116 L.Ed. 2d 9 (1991)). As explained by the Supreme Court of the United States, if a judge of probate with jurisdiction over only wills and estates tried a criminal case, he or she would be acting in the clear absence of jurisdiction and would not be immune from liability for his or her action. *Bradley v. Fisher*, 80 U.S. 335, 351 (1871) (cited in *Gore v. City of Hoover*, 559 So.2d 163, footnote 3 (Ala. 1990), *overruled on other grounds by Franklin v. City of Huntsville*, 670 So.2d 848 (Ala. 1995)).

Additionally, judicial immunity does not bar an action, including those brought pursuant to 42 U.S.C. § 1983, seeking prospective injunctive relief. *Bearden v. Coker*, 121 So.3d 359 (Ala. Civ. App. 2012) (citing *Pulliam v. Allen*, 466 U.S. 522, 541-42, 104 S. Ct. 1970 (1984)); Ala. Att'y Gen. Op. 85-00275.

C. SERVICE OF PROCESS

<u>NOTE</u>: This section describes the general rules of service of process under the Alabama Rules of Civil Procedure. By order of the Alabama Supreme Court the Alabama Rules of Civil Procedure, became applicable in probate court so far as the application is appropriate and except as otherwise provided by statute. (Effective January 1, 2013).

***a. Generally*.** Upon the filing of a complaint, or other document required to be served in the manner of the original complaint, the clerk shall issue the required summons or other process of service upon each defendant. Upon request of the

plaintiff, separate or additional summons shall issue at any time against any defendant. Ala. R. Civ. P. 4(a)(1).

The summons, or other process, shall be signed by the clerk, contain the name of the court and the name of the first party on each side with an appropriate indication of other parties when multiple parties are involved, state the name and the address of the plaintiff's attorney or the plaintiff's address, and the time within which the rules require the defendant to appear and defend. Furthermore, the form shall notify the defendant that, in case of the defendant's failure to appear, judgment by default will be rendered against the defendant for the relief demanded in the complaint. Ala. R. Civ. P. 4(a)(2).

A copy of the complaint, showing the case number assigned to the action, or other document to be served shall accompany each summons or other process. Ala. R. Civ. P. 4(a)(3).

b. Time Limit for Service. If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or its own initiative, after at least fourteen (14) days' notice to the plaintiff, may dismiss the action without prejudice as to the defendant upon whom service was not made or direct that service be effected within a specified time. However, if the plaintiff shows good cause for the failure to serve the defendant, the court shall extend the time for service for an appropriate period. Ala. R. Civ. P. 4(b).

In computing any period of time prescribed or allowed, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or conditions have made the office of the clerk of the court inaccessible, in which event the period runs until the end of the next day that is not one of the aforementioned days. When the period of

time prescribed is less than eleven (11) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. Ala. R. Civ. P. 6(a).

c. Upon Whom Process Served. Service of process, except service by publication as provided in Ala. R. Civ. P. 4.3, shall be made as follows:

Individual	By serving the individual or by leaving a copy of the summons and the complaint at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and the complaint to an agent authorized by appointment to receive the service of process.
Minor	By serving any of the following: the father, the mother, the guardian, the caretaker, the individual with whom the minor lives, the spouse (if the minor is married), or the minor individual (if the individual is over the age of sixteen (16) years).
Incompetent Not Confirmed	By serving the incompetent and that person's guardian. If no guardian has been appointed, by serving the incompetent and a person with whom the incompetent lives or a person who cares for the incompetent.
Incompetent Confined	By serving the superintendent of the institution or similar official or person having the responsibility for custody of the incompetent person.

Incarcerated Person	By serving the individual, except that when the individual to be served is a minor, by serving any one of the following: the father, the mother, the guardian, the individual having care of the minor, the spouse (if the minor is married), or the minor individual (if the individual is over the age of sixteen (16) years).
Corporations and Other Entities	By serving an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.
State	By serving the officer responsible for the administration of the department, agency, office, or institution, and by serving the attorney general of the state.
Local Governments and Other Governmental Entities	By serving the chief executive officer or the clerk, or other person designated by appointment or by statute to receive service of process, or upon the attorney general of the state if such service is accompanied by an affidavit that all such persons herein are unknown or cannot be located.

Ala. R. Civ. P. 4(c).

d. Service by a Process Server. Service of process may be by the sheriff or constable of the county in which the party to be served resides or may be found or by a private process server as provided in the Rules. Ala. R. Civ. P. 4(i)(1).

e. Service by Certified Mail. When the plaintiff files a written request with the clerk for service by certified mail, service of process shall be made by that method. Alternatively, the attorney or party filing the process and complaint may initiate service certified by mail as provided in Ala. R. Civ. P. 4(i)(2).

The clerk shall place a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The case number of the case in which the pleading has been filed shall be included on the return receipt. The clerk shall forthwith enter the fact of mailing on the docket sheet of the action and make a similar entry when the return receipt is received. Ala. R. Civ. P. 4(i)(2)(B)(i).

Alternatively, the attorney of party filing the process and the complaint or other document to be served may obtain a copy of the filed pleading from the clerk or, if the pleading was filed electronically, use the copy returned electronically by the clerk. The attorney or party shall then place that copy of the process and complaint or other document to be served in an envelope and address the envelope to the person to be served with instructions to forward. The attorney or party shall affix adequate postage and place the sealed envelope in the United States mail as certified mail with instructions to forward, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered. The return receipt shall be addressed to the clerk of the court issuing the process and shall identify the case number of the case in which the pleading has been filed. Upon mailing, the attorney or party shall immediately file with the court an "Affidavit of Certified Mailing of Process and Complaint." That affidavit shall verify that a filed copy of the process and complaint or other document to be served has been

mailed by certified mail in accordance with the Rules. Ala. R. Civ. P. 4(i)(2)(B)(ii).

Service by certified mail shall be deemed complete and the time for answering shall run from the date of delivery to the named addressee or the addressee's agent as evidenced by signature on the return receipt. Ala. R. Civ. P. 4(i)(2)(C).

Consequently, if the receipt shows failure of delivery to the addressee or the addressee's agent, the clerk shall follow the notification procedure set forth in Ala. R. Civ. P. 4(i)(1)(D). Failure to make service within the sixty (60) day period and failure to make proof of service do not affect the validity of service. Ala. R. Civ. P. 4(i)(2)(D).

f. Service by Commercial Carrier. When the plaintiff files a written request with the clerk for service by commercial carrier, service of process shall be made by that method. When service by commercial carrier is initiated by the clerk, the clerk's choice of commercial carrier is limited to those approved by the Administrative Director of Courts. Alternatively, the attorney or party filing the process and complaint may initiate service by commercial carrier. Ala. R. Civ. P. 4(i)(3)(A).

In the event of service by commercial carrier initiated by the clerk, the clerk shall deliver to the commercial carrier a copy of the process and complaint or other document to be served in an envelope and shall address the envelope to the person to be served. The clerk shall provide to the commercial carrier payment of the required shipping costs, with instructions to the commercial carrier to provide to the clerk a written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. The clerk shall forthwith enter the fact of delivery to the commercial carrier on the docket sheet of the action and make a similar entry when a delivery receipt is received. Ala. R. Civ. P. 4(i)(3)(B)(i).

Alternatively, the attorney or party filing the process and complaint or other document to be served may obtain a copy of the filed pleading from the clerk or, if the pleading was filed electronically, use the copy returned electronically by the clerk. The attorney or party shall then deliver to the commercial carrier that copy of the process and complaint or other document to be served in an envelope to the person to be served. The attorney or party shall provide to the commercial carrier payment of the required shipping costs, with instructions to the commercial carrier to provide to the attorney or party a written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic receipt of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. Upon delivery to the commercial carrier, the attorney or party shall immediately file with the court an "Affidavit of Delivery to a Commercial Carrier of Process and Complaint." That affidavit shall verify that a filed copy of the process and complain or other document to be served has been delivered to a commercial carrier in accordance with the Rules. Ala. R. Civ. P. 4(i)(3)(B)(ii).

Service by commercial carrier shall be deemed complete and the time for answering shall run from the date of delivery as evidenced by the commercial carrier's written or electronic receipt showing to whom the process and complaint or other document to be served was delivered, the written or electronic signature of the recipient, the date of delivery, the address where delivered, and the person or entity effecting delivery. When service is initiated by the attorney or party filing the process and complaint, the attorney or party shall, within ten (10) days after receiving the commercial carrier's written or electronic delivery receipt, file with the court a "Proof of Service by Commercial Carrier" that identifies the commercial carrier and explains the method of service, states the name of the person served, notes the date of delivery, and has attached a printed copy of the commercial carrier's written or electronic delivery receipt or other evidence of delivery. Ala. R. Civ. P. 4(i)(3)(C).

Failure to make service within sixty (60) days from issuance of the process by the clerk of the court and failure to make proof of service do not affect the validity of service perfected beyond that period. Ala. R. Civ. P. 4(i)(3)(D).

g. Service Refused. If service of process is refused, and the certified mail receipt or the return of the person serving process states that service of process has been refused, the clerk shall send by ordinary mail a copy of the summons or other process and complaint or other document to be served to the defendant to the address set forth in the complaint or other document. Service shall be deemed complete when the fact of mailing is entered or recorded. Ala. R. Civ. P. 4(e).

h. Service by Publication. Service by publication is proper for historically equitable claims involving property under the control of the court (e.g., administration of an estate, interpleader, partition) or marital status which claim has heretofore been deemed appropriate for service by publication where the identity of the residence of a defendant is unknown or where a resident defendant has been absent from his residence for more than thirty (30) days since the filing of the complaint and the method of service by publication in such instances is not specifically provided by statute. Ala. R. Civ. P. 4.3(a)(1). Additionally, service by publication is proper for claims, whether legal or equitable, against a defendant who avoids the service of process as described in Ala. R. Civ. P. 4.3(c). However, before such service of process can be made, either the party or the party's counsel must file an affidavit with the court averring the necessity of utilizing the procedure for service by publication. Ala. R. Civ. P. 4.3(d)(1). An affidavit submitted in support of a motion requesting service of process by publication must set forth facts showing that the defendant has avoided service. Service of process by publication is not proper simply because the defendant may be difficult to locate; there must be some element of culpability on the part of the defendant, and that culpability must be shown by facts set forth in an affidavit submitted in support of a motion requesting service of process by publication. *See Lovell v. Costigan*, 185 So.3d 1130 (Ala. Civ. App. 2015). Service by

publication for adoptions must also be made in compliance with the Alabama Rules of Juvenile Procedure and ALA. CODE §§ 26-10E-17 and 26-10F-9. ***Note:*** For more information on service by publication, *see* Ala. R. Civ. P. 4.3.

Note: This is only a general overview of service of process. Other statutes may provide specific procedures for service of process for other procedures (e.g., guardianships, administration of estates, conservatorships, etc.). Please see the appropriate section of the Alabama Code for any other provisions that may apply, as well as the Alabama Rules of Civil Procedure. For example, the following is a list of **some** of the provisions of the Alabama Code that have their own rules for service of process:

Guardianship	§§ 26-2A-50 and 26-2A-103
Conservatorship	§ 26-2A-134
Adoption	§§ 26-10E-17 and 26-10F-9
Will Probate	§§ 43-8-164 through 43-8-166
Settlement of Estates	§ 43-2-505
Mental Commitment	§ 22-52-3

The above list is not meant to be exhaustive, but simply representative of the other provisions in the law that deal with service of process. Determining proper notice is a crucial function of the judge of probate. Improper notice can be the grounds to set aside any rule or decision of the court, even after lengthy proceedings. Therefore, all judges of probate should familiarize themselves with Alabama Rule of Civil Procedure 4 and the other provisions of the Alabama Code dealing with service of process.

D. PRETRIAL MOTIONS

A pretrial motion is aptly described by its name. It is a motion filed before trial, usually to resolve an issue of law or the admissibility of a piece of evidence. Pretrial motions can be filed in any type of probate case but are usually filed in cases that are complex or contested. A ruling on a pretrial motion can speed up the main hearing and, in some cases, can resolve the contested issues altogether. However, in most instances, the judge of probate is not required to rule on a pretrial motion and can reserve a ruling until the main hearing or even until the end of the case.

The presiding judge of each judicial circuit may authorize pretrial motion hearings in probate courts to be conducted by telephone conferencing or other audio-video telecommunications means. The presiding judge shall develop and publish procedures for the conduct of the civil hearings in probate courts in his or her judicial circuit. The telephone or audio-video telecommunications device used in the hearing shall enable the judge and all parties to converse simultaneously with each other. ALA. CODE § 12-1-24.

E. WILLS AND ADMINISTRATION

From the title, "Judge of Probate," it is obvious that one of the major responsibilities of the judge of probate is to probate wills and grant letters testamentary and letters of administration. They involve important actions which are sometimes very technical from a legal standpoint. This jurisdiction is one of the few which is original, general, and unlimited and which is derived from the state constitution itself. *See Jordan v. Jordan*, 38 So.2d 865 (Ala. 1956). A brief explanation of the procedure involving the probate of wills and administration of estates follows.

a. Requirements for Making a Will. To make a will, the following requirements must be met:

(1) Anyone who is at least 18 years old and of sound mind may make a will. ALA. CODE § 43-8-130.

(2) A will must be written. ALA. CODE § 43-8-131.

(3) It must be signed by the testator, or in the testator's name by another person in the testator's presence and at his direction. ALA. CODE § 43-8-131.

(4) It must be signed by at least two witnesses. ALA. CODE § 43-8-131; *see also* ALA. CODE § 43-8-134.

If the document submitted for probate does not meet all of these requirements, it is not a legal will and should not be admitted to probate.

The Uniform Electronic Transactions Act (UETA) specifically excludes the act from applying to the "creation and execution of wills, codicils, or testamentary trusts." ALA. CODE § 8-1A-3(b)(1). Thus, an electronic signature on a will falls under the exclusionary provisions of the UETA and is not a valid signature.

b. Effect of Divorce; Pretermitted Children. A divorce or annulment revokes all provisions of a will relating to the former spouse. Remarriage (to the spouse named in the will) revives those provisions, unless they have also been revoked by some other means. ALA. CODE § 43-8-137. Similarly, a spouse who marries the testator after the execution of the will, and who is left out of the will, receives an intestate share of the estate. This does not apply if it appears that the testator either intended the omission or provided for the spouse outside the will in lieu of a bequest. ALA. CODE § 43-8-90.

Children who are born or adopted after the execution of the will, and who are not provided for in the will, are entitled to the share of the estate equal to what they would have received had the parent died intestate. Again, this does not apply if it appears that the omission was intentional; or if the testator meant to provide for the child outside the will; or if, when the will was executed, the testator had one or more children and left his estate to the omitted child's

other parent. ALA. CODE § 43-8-91; *Gray v. Gray*, 947 So.2d 1045 (Ala. 2006).

c. Right of Surviving Spouse to Elective Share. The surviving spouse may elect to take either what he or she is left under the will, or a statutory elective share. Ala. Code § 43-8-70 defines the elective share as the lesser of (1) all of the estate, reduced by the value of the surviving spouse's separate estate (the separate estate is defined in ALA. CODE § 43-8-70(b)) or (2) one-third of the estate. ALA. CODE § 43-8-70. An election must be exercised by filing a petition for elective share with the probate court within six months after the date of death or the probate of the will, whichever is later. The court has discretion to extend this deadline. ALA. CODE § 43-8-73.

After notice and hearing, the court may order the elective share to be paid from the assets of the estate. ALA. CODE § 43-8-73. Other rules relating to the elective share, including the formulation for apportioning the estate to satisfy the share, are found in ALA. CODE §§ 43-8-71 through 43-8-76.

d. Who May Probate a Will. Upon the death of a testator, any executor (personal representative), devisee, or legatee named in the will, or any person interested (financially) in the estate, or who has custody of the will may have the will proved before the proper probate court. ALA. CODE § 43-8-160.

e. When and Where a Will Must be Probated. To be effective, a will must be filed for probate within five years of the date of the testator's death. ALA. CODE § 43-8-161. Nonetheless, the statute providing that wills must be filed within five years from the date of death is a statute of limitations which must be pled in order to be enforced. *Hollis v. Wallace*, 481 So.2d 875 (Ala. 1985). Generally, wills must be filed for probate in the county where the deceased lived or, in the case of an out-of-state decedent, the will may be probated in a county where the decedent leaves assets. Under ALA. CODE § 43-8-162, venue is also proper in the probate court of the county designated by the testator in the testator's will, provided

the testator owns property in that county upon the testator's death. ALA. CODE § 43-8-162. Where a will could be filed in two counties, the county in which the first will was filed has exclusive right to proceed. *Taylor v. Est. of Harper*, 164 So.3d 542 (Ala. 2014).

f. Duty of Person with Custody of Will. After the testator's death, any person who is in possession of the will has a duty under ALA. CODE § 43-8-270 to deliver it to a person who is able to secure probate of the will or to an appropriate court. Failure to deliver will make the custodian liable to anyone who sustains damages because of his retention of the will. Also, the probate court may order the custodian to produce the will; failure to comply with this order may subject the possessor to a penalty for contempt of court. ALA. CODE § 43-8-270.

g. Digital Assets. The Revised Uniform Fiduciary Access to Digital Assets Act expands a fiduciary's duties to manage tangible assets to digital assets. *See* ALA. CODE §§ 19-1A-1 through 19-1A-18. However, access to electronic communications require the owner's consent. ALA. CODE § 19-1A-15.

h. Notice to Next of Kin; Proof of Will. Upon the application to prove a will, made by an interested party, at least ten days' notice must be given to the surviving spouse and next of kin, or either of them, who resides or is otherwise in Alabama, before the application can be heard. ALA. CODE § 43-8-164. Failure of a party to receive notice is considered to be a mere irregularity rendering the order of probate voidable. *Daniel v. Moye*, 224 So.3d 115 (Ala. 2016).

Generally, a will must be proved by one or more subscribing witnesses. If all of the witnesses are dead, incompetent, etc., proof must be made of the testator's handwriting and that of one witness. When no subscribing witnesses can be found, proof of their death, incapacity, etc., must be shown before the court will allow proof of handwriting. ALA. CODE § 43-8-167. If there is no contest, the testimony of one attesting witness is sufficient. However, if there is a will contest, proof of two witnesses or proof by one witness and a

proper accounting for the other witness is required. ALA. CODE § 43-8-167.

i. Self-Proving Wills. Since 1981, Alabama law has provided for wills which are considered self-proving. Any will may be simultaneously executed, attested, and made self-proved by the testator's acknowledgment and affidavits of the witnesses, each made before any notary public or other officer authorized to administer oaths in Alabama. The form for self-proving wills is provided in ALA. CODE § 43-8-132. The language of a self-proving will does not have to match exactly, but it must be in substantially that form. Such execution must be evidenced by the officer's certificate under seal. Likewise, an attested will may, at any time after its execution, be made self-proved by attaching proper acknowledgments to the existing will. Self-proving wills generally dispense with procedures described above and below for proving wills, except in the case of proof of fraud or forgery. ALA. CODE §§ 43-8-132 and 43-8-133.

j. When Subscribing Witnesses are Unavailable to Prove Will. When the subscribing witnesses reside out of state or are physically unable to testify, the judge of probate may issue a commission to take the testimony of such witnesses to prove the will.[1] ALA. CODE § 43-8-168. If it appears from the proof taken before the judge of probate that the will was properly executed and witnessed, the testimony must be reduced to writing, signed by the witness, and immediately recorded in a book kept for such purpose. ALA. CODE § 43-8-169. Every will proved and recorded must have a certificate appearing thereon, endorsed by the judge of probate specifying the date of probate, the book in and the page or pages on which it is recorded. ALA. CODE § 43-8-170. A will which is withdrawn prior to its becoming probated must also be recorded by the judge of probate. ALA. CODE § 43-8-173. Also, secondary evidence, such as a signature on another legal document, is admissible in the absence of primary proof. *Woodruff v. Hundley*, 127 Ala. 640, 29 So. 98 (1900).

[1] The procedure for probating foreign wills appears in ALA. CODE § 43-8-175.

k. Lost Will. The lost will exception, a product of the common law, has been preserved and read into the statute, so that a "lost will may be established by the testimony of a single witness, who read it, or heard it read and remembered its contents." *Lovell v. Lovell*, 121 So.2d 901 (1960). "The exception, which relaxes the requisite proof for probating a lost will, is in keeping with the public policy of this State in carrying out the last intent of the testator." *Anderson v. Griggs*, 402 So.2d 904 (Ala. 1981). While an essential element in proof of establishment of a lost will is assertion of knowledge of contents of such a will, in proving the contents of a lost instrument as a will, it is not necessary to prove words of an instrument; proof of substance of contents is all that is required. *Anderson v. Griggs*, 402 So.2d 904 (Ala. 1981). In a proceeding to probate a lost or destroyed will, the proponent must establish: (1) the existence of a will—a written instrument, signed by the testator or another person, in the testator's presence, at the testator's direction, and attested by at least two witnesses, who must subscribe their names thereto in the presence of the testator; (2) the loss or destruction of the instrument; (3) the non-revocation of the instrument by the testator; and (4) the contents of the will in substance and effect. "When the will is shown to have been in the possession of the testator, and is not found at his death, the presumption arises that he destroyed it for the purpose of revocation; but the presumption may be rebutted, and the burden of rebutting it is on the proponent." *Spencer v. Spencer*, 258 So.3d 326 (Ala. 2018) (quoting *Barksdale v. Pendergrass*, 319 So.2d 267, 271 (Ala. 1975)).

l. Will Contest. A will before the probate court may be contested by any interested person. ALA. CODE § 43-8-215. Creditors of the heirs at law of a deceased person are not "persons interested in the estate" and thus, have no right to contest the probate of a will. *Owens v. Thurmond*, 40 Ala. 289, 290 (Ala. 1866).

A will may be contested in two ways: (1) before probate thereof or at any time within 180 days after the admission of such will to probate, any interested person may file in the probate court to contest the will; or (2) after the expiration of the 180-day period

after the admission of the will to probate, only infants and persons of unsound mind, who had no legal conservator at the time the will was admitted to probate or who were not represented by a guardian ad litem, may institute an action in the probate court to contest the will. ALA. CODE § 43-8-215.

The judge of probate must, on application of either party, issue subpoenas for witnesses to appear on the day fixed for the trial before a jury drawn as provided by statute. ALA. CODE §§ 12-16-78; 43-8-191; and 43-8-192. If the probate court rules that the will is invalid, it cannot be probated. Otherwise, the will must be admitted to probate. ALA. CODE § 43-8-195.

m. Transfer of Contest to Circuit Court. Any party to the will contest may remove the will contest from the probate court to the circuit court, provided the removal occurs no later than 42 days before the first setting of the contest for trial unless leave of the probate court is obtained based on a showing of good cause. ALA. CODE § 43-8-215. To remove a proceeding from the probate court to the circuit court, the removing party shall file in the circuit court to which the proceeding is being removed, a notice of removal that contains all of the following:

(1) A description of the nature of the proceedings being removed.

(2) If the proceeding is a will contest, the name of the person who has petitioned to admit the will to probate, who will be the plaintiff in the removed proceeding, and the person contesting the validity of the will, who will be the defendant in the removed proceeding.

(3) Whether jury trial is demanded.

(4) The removing party's interest in the proceeding being removed.

(5) The name of all interested persons to the proceeding being removed to which the removing party is delivering the notice of removal.

ALA. CODE § 43-8-216.

Once the removing party has filed the notice of removal with the clerk of the circuit court, the proceeding shall be removed to the circuit court. Following the removal to the circuit court, the removing party shall file a copy of the notice of removal with the clerk of the probate court and shall send a copy of the notice of removal to all interested persons listed therein. Upon receiving a copy of the notice of removal, the probate court shall take no further action unless and until the removed proceeding is remanded, except to deliver a copy of the record in the probate court to the clerk of the circuit court. The circuit court shall have jurisdiction of a removed proceeding upon filing of the notice of removal with the circuit clerk. Neither the omission nor incorrect statement of any information required to be included in the notice of removal, nor the failure of the probate court to deliver a copy of the record of proceedings in that court, shall deprive the circuit court of jurisdiction to hear and decide the removed proceeding. ALA. CODE § 43-8-216.

In any proceeding removed from a probate court, the circuit court may issue all necessary orders and process to bring before it all proper parties whether service by process issued by the probate court or otherwise. ALA. CODE § 43-8-216.

The circuit court may remand the removed proceeding to the probate court if the circuit court finds any of the following:

(1) The removal was sought for the purpose of improper delay.

(2) The removal did not comply with applicable law.

(3) Judgment on all contested matters pending before the circuit court has become final and the time for an

appeal has expired without an appeal being filed or, if an appeal was filed, after the final adjudication of the appeal.

(4) All interested parties or their representatives have requested the removed proceeding be remanded to probate court.

ALA. CODE § 43-8-216. Following remand by the circuit court, the clerk of the circuit court shall deliver a copy of the order of remand and the record of all proceedings in the circuit court to the clerk of the probate court to be filed with the records of the proceeding in the probate court, and the probate court shall proceed with the proceeding in accordance with the circuit court's order. ALA. CODE § 43-8-216.

n. In Terrorem Clause. An *in terrorem* clause applies to "a testamentary provision that threatens to dispossess any beneficiary who challenges the terms of the will." *No-contest clause*, BLACK'S LAW DICTIONARY (21st ed. 2020). Thus, *in terrorem* clauses are sometimes used in wills to keep beneficiaries from contesting a will by either completely disinheriting the beneficiary or reducing the beneficiary's share to a nominal amount if the beneficiary challenges the will. *In terrorem* clauses are enforced in Alabama, but they are to be narrowly construed to *avoid* a forfeiture. *Harrison v. Morrow*, 977 So.2d 457 (Ala. 2007).

o. Executor's (Personal Representative's) Letters Testamentary. Whenever a will has been admitted to probate, the judge of probate may issue letters testamentary to:

(1) The person(s) named as executor(s) (personal representative(s)) in the will,

(2) Who is (are) at least 19 years old, and

(3) Who has (have) never been convicted of a serious crime, and

(4) Who is (are) otherwise capable of discharging the requisite duties of trust.

A non-resident of the state can only be appointed an administrator when he is, at the time, executor or administrator (personal representative) of the same estate in another state. ALA. CODE §§ 43-2-20 through 43-2-22. However, a non-resident can be appointed an executor. ALA. CODE § 43-2-191.

p. Co-representatives. Generally, if two or more persons are appointed co-representatives and unless the will or a statute provides otherwise, the concurrence of all is required of all acts connected with the administration and distribution of the estate. ALA. CODE § 43-2-846 enumerates a few exceptions to that general rule.

Unless the will provides otherwise, every power exercisable by personal co-representatives may be exercised by one or more remaining after the appointment of one or more is terminated. Furthermore, if one of two or more who are nominated as personal co-representatives is not appointed, those appointed may exercise all of the powers incident to the office of personal representative. ALA. CODE § 43-2-847.

q. Renunciation of Appointment as Executor (Personal Representative). Any person named as an executor (personal representative) in a will may renounce such appointment by appearing before the judge of probate and declaring the renunciation or by a certified instrument in writing, which must be filed and recorded in the judge of probate's office. ALA. CODE § 43-2-25. Letters testamentary to others named in a will are permitted upon renunciation or failure of a named executor (personal representative) to apply for such within 30 days after probate. ALA. CODE § 43-2-26.

r. Failure of Executor (Personal Representative) to Apply for Letters Testamentary. An executor should apply for letters testamentary within 30 days after probate. ALA. CODE § 43-2-26. If, for whatever reason, there is a failure of executors (personal

representatives) to apply for letters testamentary and the residuary legatee fails to apply, refuses to accept or is unfit to serve, then the principal legatee is entitled to letters of administration with the will annexed. Otherwise, such letters may be granted to the same persons and in the same order as letters of administration are granted in cases of intestacy. ALA. CODE § 43-2-27.

F. ADMINISTRATION OF ESTATES

a. Jurisdiction of Probate Court. In regard to the administration of estates, the probate court is a court of general and original jurisdiction. *See* ALA. CONST. art. VI, § 144; ALA. CODE § 12-13-1(b). Removal of the administration of a decedent's estate from the probate court to the circuit court may not be made prior to the issuance of letters testamentary, letters of administration, or letters of administration with the will annexed or after the probate court has taken steps toward a final settlement. ALA. CODE § 43-8-216.

To remove a proceeding from the probate court to the circuit court, the removing party shall file in the circuit court to which the proceeding is being removed, a notice of removal that contains all of the following:

(1) A description of the nature of the proceedings being removed.

(2) If the proceeding is a will contest, the name of the person who has petitioned to admit the will to probate, who will be the plaintiff in the removed proceeding, and the person contesting the validity of the will, who will be the defendant in the removed proceeding.

(3) Whether jury trial is demanded.

(4) The removing party's interest in the proceeding being removed.

(5) The name of all interested persons to the proceeding being removed to which the removing party is delivering the notice of removal.

ALA. CODE § 43-8-216.

Once the removing party has filed the notice of removal with the clerk of the circuit court, the proceeding shall be removed to the circuit court. Following the removal to the circuit court, the removing party shall file a copy of the notice of removal with the clerk of the probate court and shall send a copy of the notice of removal to all interested persons listed therein. Upon receiving a copy of the notice of removal, the probate court shall take no further action unless and until the removed proceeding is remanded, except to deliver a copy of the record in the probate court to the clerk of the circuit court. The circuit court shall have jurisdiction of a removed proceeding upon filing of the notice of removal with the circuit clerk. Neither the omission nor incorrect statement of any information required to be included in the notice of removal, nor the failure of the probate court to deliver a copy of the record of proceedings in that court, shall deprive the circuit court of jurisdiction to hear and decide the removed proceeding. ALA. CODE § 43-8-216.

In any proceeding removed from a probate court, the circuit court may issue all necessary orders and process to bring before it all proper parties whether service by process issued by the probate court or otherwise. ALA. CODE § 43-8-216.

The circuit court may remand the removed proceeding to the probate court if the circuit court finds any of the following:

(1) The removal was sought for the purpose of improper delay.

(2) The removal did not comply with applicable law.

(3) Judgment on all contested matters pending before the circuit court has become final and the time for an appeal has expired without an appeal being filed or, if an appeal was filed, after the final adjudication of the appeal.

(4) All interested parties or their representatives have requested the removed proceeding be remanded to probate court.

ALA. CODE § 43-8-216. Following remand by the circuit court, the clerk of the circuit court shall deliver a copy of the order of remand and the record of all proceedings in the circuit court to the clerk of the probate court to be filed with the records of the proceeding in the probate court, and the probate court shall proceed with the proceeding in accordance with the circuit court's order. ALA. CODE § 43-8-216.

***b. Granting Letters of Administration*.** A person who dies without making a valid will is deemed to have died intestate. A person who dies with a valid will is deemed to have died testate. The rules for administration of an estate are sometime different depending on whether the deceased died testate or intestate. The probate court has authority to grant letters of administration as follows:

(1) Where the intestate, at the time of his death, was an inhabitant of the county.

(2) Where the intestate, not being an inhabitant of the state, dies in the county, leaving assets therein.

(3) Where the intestate, not being an inhabitant of the state, dies out of the county, leaving assets therein.

(4) Where the intestate, not being an inhabitant of the state, dies, leaving no assets therein, and assets are afterwards brought into the county.

(5) Where the intestate, being an inhabitant of the state, dies, leaving no assets subject to administration in the county of his residence, and no administration has been granted in such county within three months after the death of the intestate, then administration may be granted in any county where the intestate leaves assets.

ALA. CODE § 43-2-40.

c. Order of Administration and Time of Administration. The administration of an intestate estate must be granted to one of the following persons, both willing and satisfactory to serve, in the stated order:

(1) The spouse.

(2) The next of kin entitled to share in the distribution of the estate.

(3) The largest in-state creditor of the estate.

(4) Such other person as the judge of probate appoints.

In those counties with a population of 400,000 or more, or any county having an elected general or county administrator, the county administrator may handle the administration of an estate. ALA. CODE § 43-2-42. The probate court has no discretion in issuing letters of administration when there is no question relating to the qualification of the person requesting the letters. *Ogle v. Gordon*, 706 So.2d 707 (Ala. 1997).

A spouse, the next of kin, or the largest in-state creditor must apply for letters of administration within forty days after intestate's death or relinquish their right to administration. Any person with a right to administration, however, may relinquish such right in the same manner as an executor (personal representative). ALA. CODE § 43-2-43.

An adverse interest in estate does not disqualify a person from being appointed an administratrix. *Carleton v. Carleton,* 84 So.3d 84 (Ala. Civ. App. 2011).

Funeral expenses are debts of the estate, even if paid after the decedent's death. Thus, the individual who paid the funeral expenses and became the largest creditor of the estate was entitled the priority to be appointed administrator as the largest creditor. *Douglas v. King,* 990 So.2d 534 (Ala. 2004).

d. Granting of Letters to Several Kindred Persons. If several persons of the same degree of kindred to the intestate are entitled to the administration, and when several people are equally entitled to such, the court may, in its discretion, grant letters of administration to one or more of equal standing. ALA. CODE § 43-2-44.

e. Priority Among Different Letters. A person to whom general letters are issued first has exclusive authority under the letters until the appointment is terminated or modified. If, through error, general letters are afterwards issued to another, the first person appointed as a personal representative is to recover the property and estates of the subsequently appointed personal representative. However, the acts of the later appointed personal representative that were done in good faith without notice of the first letters are not void for want of validity of appointment. ALA. CODE § 43-2-832.

f. When Letters May Be Granted. No letters of administration can be granted until the expiration of five days after the death of the intestate is known. ALA. CODE 43-2-45.

g. County or General Administrators. Each judge of probate must appoint a suitable person as a general administrator within the county. This person must take charge of the estates of deceased persons or act as special administrator in the appropriate instance. This office expires with the expiration of the term of the appointing judge of probate. ALA. CODE § 43-2-170. However, when there is

no general administrator, the judge may appoint the sheriff of the county. ALA. CODE § 43-2-172.

h. Non-Resident Administrators. A non-resident of Alabama may not be appointed as an administrator unless the non-resident is at the time the executor or administrator of the same estate in some other state or jurisdiction who is duly qualified under the applicable laws of that state or jurisdiction. ALA. CODE § 43-2-22(a). The application filed by a non-resident for letters testamentary or of administration must include his name and post office address. Any subsequent changes of address must be by a written statement filed in the probate court granting the letters. ALA. CODE § 43-2-190.

i. Administration of Estates of Persons Presumed Dead. Whenever letters of administration on the estate of any person presumed to be dead on account of absence for five or more years from the place of his last place of domicile in Alabama are applied for, it is the duty of the judge of probate, to whom the application is made, to accept and file the application. Testimony must be taken with respect to whether the petitioner is entitled to such letters. If the court is satisfied by the testimony that the applicant would be entitled to receive the letters were the supposed decedent in fact dead, the court must advertise in a local newspaper, for four consecutive weeks, that the application has been filed; the day of hearing must be set no sooner than two weeks following the last notice. ALA. CODE § 43-2-230.

G. PROVISIONS APPLICABLE TO BOTH EXECUTORS AND ADMINISTRATORS (PERSONAL REPRESENTATIVES)

NOTE: Under ALA. CODE § 43-8-1(24), "personal representative" is defined as follows:

Personal Representative. Includes executor, administrator, successor personal representative, special administrator, and

persons who perform substantially the same function under the law governing their status.

a. Notice of Appointment. Executors and administrators (personal representatives), within thirty (30) days from the date the Court grants letters testamentary or letters of administration, must give notice of their appointment stating:

(1) The name of the deceased;

(2) The day on which letters were granted;

(3) By what court;

(4) The county; and

(5) That all persons having claims against the estate to present them within the time limits set by law.

Notice can be given by weekly publication once a week for three (3) consecutive weeks in a local newspaper. If no local or county newspaper is published, notice must appear in a newspaper published nearest to the courthouse or in an adjoining county. In addition to publication for three (3) consecutive weeks, the personal representative must provide actual notice to known or reasonably ascertainable persons, firms, or businesses that might have claims against the estate. The Code further prescribes that, within six months from the grant of letters, "actual notice" must be sent to these claimants by first-class mail to the claimant's last known address. ALA. CODE §§ 43-2-60 and 43-2-61. The personal representative, or person filing to initiate a proceeding in accordance with the Alabama Small Estates Act or the person filing of a petition in accordance with ALA. CODE § 43-2-692, shall give notice of his or her appointment to the Medicaid Agency. ALA. CODE § 43-2-697.

It is the duty of the judge of probate to see that all required publication is duly made; and any executor or administrator failing to make the same must not be allowed any compensation as such;

and he and his sureties are liable, on proof that such notice has not been given, to any creditor for the amount which he would have been entitled to out of the assets of the estate had his claim been duly presented. ALA. CODE § 43-2-62.

b. Bonds. Every person appointed a personal representative or special administrator must give bond payable to the judge of probate. Unless otherwise directed, the bond must be in the amount of the aggregate capital value of the property of the estate in the personal representative's control, plus one year's estimated income and minus the value of securities deposited under arrangements requiring an order of the court for their removal and the value of any land which the fiduciary lacks power to sell or convey without court authorization. In lieu of securities on a bond, the court may accept other collateral for the performance of the bond, including a pledge of securities or other assets or a mortgage of land. At any time, the court may increase or decrease the bond amount as necessary to protect the estate and persons having interest in the estate. ALA. CODE § 43-2-851. If a judge of probate orders an insufficient bond or no bond when a bond should have been ordered, the judge of probate, personally as well as the judge's surety, may be liable to any injured party. ALA. CODE § 43-2-82.

A personal representative may be exempt from giving bond by an express provision in the decedent's will. However, the court may require a bond even though bond was exempted by the will, when in the court's own opinion the estate is likely to be wasted or upon affidavit of an interested person alleging that the interested person's interest is or will be endangered from lack of security. ALA. CODE § 43-2-851.

c. Special Administrator Ad Colligendum. A judge of probate may, in any contest respecting the validity of a will, appoint a special administrator ad colligendum for the purpose of collecting and preserving an estate's assets until letters testamentary or letters of administration have been properly issued. This special administrator, under the direction of the judge of probate, can sell such goods that are perishable or wasting upon notice as prescribed

by the judge of probate. Similarly, the special administrator may give receipts for moneys collected, satisfy liens and mortgages paid to him, and preserve such goods and chattels at a reasonable expense as determined by the probate court. ALA. CODE § 43-2-47. Because the special administrator ad colligendum is not a personal representative of an estate, appointment of an administrator ad colligendum alone is insufficient to initiate the general administration of an estate. *Ex parte Baker*, 183 So.3d 139, 143-144 (Ala. 2015). The authority of the special administrator ad colligendum ends upon the issuance of letters testamentary or administration. ALA. CODE § 43-2-47(d); *Ex parte Baker*, 183 So.3d 139, 144 (Ala. 2015).

d. Administrator Ad Litem. When the estate of a deceased person must be represented in any court's proceeding and there is no personal representative of such estate, or the personal representative is interested adversely thereto, it shall be the duty of the court to appoint an administrator ad litem. The administer ad litem is appointed without bond whenever the facts rendering such appointment necessary shall appear in the record of such case or shall be made known to the court by the affidavit of any person interested therein. ALA. CODE § 43-2-250. An administrator ad litem must be allowed compensation as the judge of probate or judge of the circuit court appoint him may direct, to be taxed and collected as part of the costs of the proceedings, either out of the estate or out of the general fund administered, or out of any party to the action who may be taxed therewith, as the court may direct. ALA. CODE § 43-2-256.

Of special note regarding the administrator ad litem and the bringing of wrongful death actions: only a "personal representative" may bring a wrongful-death action under ALA. CODE § 6-5-410. The damages recovered from a wrongful death action are not subject to the payment of the debts or liabilities of the testator or intestate, but must be distributed according to the statute of distributions. ALA. CODE § 6-5-410 (c).

According to *Affinity Hosp., L.L.C. v. Williford*, an administrator ad litem is a personal representative because, although the administrator ad litem is appointed for a special and limited purpose, that purpose entails the fiduciary duties of deceased's estate (including bringing a wrongful death action). 21 So.3d 712 (Ala. 2009). However, the court in *Kirksey v. Johnson* is critical of the *Affinity Hosp., L.L.C. v. Williford* ruling, and the concurrence by Justice Bolin concludes that an administrator ad litem is not a personal representative and thus cannot bring a wrongful-death action. *Kirksey v. Johnson*, 166 So.3d 633, 649 (Ala. 2014) (Bolin, J., concurring); *Golden Gate Nat'l Senior Care, LLC v. Roser*, 94 So.3d 365 (Ala. 2012); *Ex Parte Continental Motors, Inc.*, 270 So.3d 1148 (Ala. 2018).

The probate court does not have subject-matter jurisdiction to oversee the settlement of a wrongful-death action or to oversee distribution of wrongful-death-settlement proceeds. *Kirksey v. Johnson*, 166 So.3d 633, 648 (Ala. 2014). Further, a wrongful-death action cannot be brought by the estate of the decedent; accordingly, the proceeds from a wrongful-death action are not part of the decedent's estate. *Kirksey v. Johnson*, 166 So.3d 633, 645 (Ala. 2014).

e. Filing of Claims and Priorities of Debts. All claims against the estate of a deceased must be presented within six months after the grant of letters testamentary or within five months after notice first published, whichever is later. Any claims not filed within these time limits are forever barred, and payment is prohibited. However, any creditor entitled to actual notice in ALA. CODE § 43-2-61 must be allowed 30 days after notice to present the claim. ALA. CODE §§ 43-2-60; 43-2-61; and 43-2-350; *Sullivant v. Sullivan*, 976 So.2d 991 (Ala. 2007). A verified claim or statement must be filed in the judge of probate's office which granted the letters testamentary. ALA. CODE §§ 43-2-350 and 43-2-352. Minors and people of unsound mind are allowed six months after the appointment of a guardian or six months after removal of their disability to file a claim. ALA. CODE § 43-2-351. The debts against the estate of the decedent must be paid in the following order:

(1) Funeral expenses;

(2) Fees and charges of administration;[2]

(3) Expenses of the last illness;

(4) Taxes assessed on estate of decedent prior to death;

(5) Debts to employees from services rendered in the year of decedent's death; and

(6) Other debts of the decedent.

ALA. CODE § 43-2-371.

f. Allowances and Exemptions. The following allowances and exemptions have precedence over all other claims and are in addition to any share passing to the survivor by the will:

(1) Homestead Allowance: The surviving spouse, or each minor child or dependent if there is no surviving spouse, of a decedent who was domiciled in Alabama is entitled to an exemption from administration (and thus claims against the estate) for a homestead allowance in the amount of $15,000. If there is no surviving spouse, the $15,000 is ~~a~~ divided among the minor and dependent children of the decedent. ALA. CODE 43-8-110.

(2) Exempt Property: In addition to the homestead allowance, the surviving spouse (or children if there is no surviving spouse) is entitled to $7,500. This

[2] Reasonable attorney fees and costs incurred by an heir of deceased beneficiary of will, in settled actions against personal representative of testator's estate, alleging that personal representative was mishandling and misappropriating assets of testator's estate, thereby adversely affecting the value of beneficiary's estate, constituted fees and charges of administration for beneficiary's estate, for purposes of statutory priority for payment of debts of estates of decedents. *Archer ex rel. Archer v. Est. of Archer*, 45 So.3d 1259 (Ala. 2010).

exemption applies to furniture, automobiles, appliances, furnishings and personal effects. ALA. CODE § 43-8-111. The right to claim homestead allowance or exempt property does not survive death and cannot be claimed by survivors' estates. *Cater v. Coxwell*, 479 So. 2d 1181 (Ala. 1985).

(3) Family Allowance: In addition to the homestead allowance and exempt property, the surviving spouse and minor children whom the decedent was obligated to support and children the decedent was otherwise supporting are entitled to a reasonable allowance in money for their maintenance during the period of administration up to one year. This allowance does not have priority over the homestead allowance. The death of person(s) entitled to a family allowance terminates their right to allowances yet to be paid. ALA. CODE § 43-8-112. Generally, the family allowance does not exceed $15,000 per year. However, that amount can be increased or decreased by court order. ALA. CODE § 43-8-113. For more guidance in determining the amount of the family allowance, refer to the commentary following ALA. CODE § 43-8-112.

g. Inventory of Estate. Every executor or administrator (personal representative) is required to collect and take into his possession the decedent's property except that real or tangible personal property may be left with or surrendered to the person presumptively entitled thereto unless, in the judgment of the personal representative, that property may be needed to administer the estate. ALA. CODE § 43-2-837.

Generally, within two months of appointment, a personal representative must also file an inventory of all property of the decedent, including details of the debts accruing to the decedent. However, the testator can by express provisions in the will exempt the personal representative from filing an inventory. ALA. CODE

§ 43-2-835. General language in a will that grants broad discretion to a personal representative in distributing property under that will does not satisfy the requirement in ALA. CODE § 43-2-835(b) that there be an "express provision" exempting the personal representative from filing an inventory. *Green v. Est. of Nance*, 971 So.2d 38 (Ala. Civ. App. 2007).

However, the court may order an inventory if the judge determines that the estate is likely to be wasted or any interested person will be prejudiced without an inventory. ALA. CODE § 43-2-311. The court's role in respect to the filed inventory is simply to receive and file the inventory in the case file.

***h. Appraisal and Setting Apart of Exemptions*.** The probate court may, if necessary, appoint appraisers for the estate, who are to be charged with the duty of setting apart the exempt personal property for the surviving spouse and/or minor child(ren). ALA. CODE §§ 6-10-80 and 6-10-81. The appraisers must also appraise the decedent's homestead. ALA. CODE § 6-10-82. If the value of the homestead exceeds $6,000, the probate court must appoint three commissioners to set off the homestead exemption. ALA. CODE § 6-10-83. If the persons interested in the decedent's estate are not satisfied with the reports or allotments of the appraisers or commissioners, they may file exceptions in the probate court. The rules governing notices, hearings, and proceedings on such petitions, as well as miscellaneous related matters, are found in ALA. CODE §§ 6-10-85 through 6-10-107.

Upon application made and the showing of good cause, the probate court may authorize the executor or administrator (personal representative) to keep the real and personal estate together for any period the court deems advisable though not more than ten years. ALA. CODE § 43-2-330.

***i. Powers of Personal Representatives Without Prior Court Approval*.** Except as restricted or otherwise provided by the decedent's will or by an order of the court and subject to the

priorities in ALA. CODE § 43-8-76, a personal representative, acting prudently for the benefit of the interested persons, may properly:

(1) Retain assets owned by the decedent pending distribution or liquidation, including those in which the representative is personally interested or which are otherwise improper for trust investment.

(2) Receive assets from fiduciaries, or other sources.

(3) Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do either of the following:

a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.

b. Deliver a deed in escrow with directions that the proceeds when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.

(4) Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.

(5) If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.

(6) Abandon personal property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.

(7) Vote stocks or other securities in person or by general or limited proxy.

(8) Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.

(9) Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.

(10) Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.

(11) Borrow money without security or with security of personal property to be repaid from the estate assets or otherwise; and advance money for the protection of the estate.

(12) Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the

estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owners thereof in satisfaction of the indebtedness secured by the lien.

(13) Pay taxes, assessments, and other expenses incident to the administration of the estate.

(14) Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.

(15) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term not to exceed one (1) year.

(16) Allocate items of income or expense to either estate income or principal, as permitted or provided by law.

(17) Employ necessary persons, including appraisers, attorneys, auditors (who may include certified public accountants, public accountants, or internal auditors), investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon recommendations of agents or advisors; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.

(18) Prosecute or defend claims or proceedings in any jurisdiction for the protection or benefit of the estate

and of the personal representative in the performance of duties of the personal representative.

(19) Continue any unincorporated business or venture in which the decedent was engaged at the time of death as provided in any of the following:

a. In the same business form for a period of not more than one year from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will.

b. In the same business form for any additional period of time that may be approved by order of the court in a proceeding to which the persons interested in the estate are parties.

c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees, of the business who are competent adults object to its incorporation and retention in the estate.

(20) Incorporate any business or venture in which the decedent was engaged at the time of death.

(21) Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.

(22) Satisfy and settle claims and distribute the estate as provided in Title 43.

ALA. CODE § 43-2-843.

j. Powers of Personal Representative Requiring Prior Court Approval. There are certain actions, unless expressly authorized in the will, that require the personal representative to obtain court approval prior to the personal representative acting. Those actions are found in ALA. CODE § 43-2-844 and are as follows:

(1) Acquire or dispose of an asset, including land in this or another state, for cash or on credit, at public or private sale; and manage, develop, improve, exchange, partition, change the character of, or abandon an estate asset.

(2) Make ordinary or extraordinary repairs or alterations in buildings or other structures, demolish any improvements, or raze existing or erect new party walls or buildings.

(3) Subdivide, develop, or dedicate land to public use; make or obtain the vacation of plats and adjust boundaries; adjust differences in valuation on exchange or partition by giving or receiving considerations; or dedicate easements to public use without consideration.

(4) Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term of more than one (1) year.

(5) Enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement.

(6) Sell, mortgage, or lease any real or personal property of the estate or any interest therein for cash, credit, or for part cash and part credit, and with or without security for unpaid balances.

(7) Pay compensation of the personal representative.

k. When an Annual or Partial Settlement is Required. Every executor or administrator (personal representative) must make settlements annually unless waived in the will or at any other time when necessary for the interest of the estate. ALA. CODE § 43-2-500.

l. When Final Settlement May Be Made. A final settlement may be made any time after six months from the grant of letters, if the debts are all paid and the condition of the estate in other respects is otherwise capable of being settled. ALA. CODE § 43-2-501.

m. Filing of Account. In making settlements of an administration, the executor or administrator must make out an account between himself and the estate represented, charging himself with all the assets of the deceased which have come into his possession, except the lands, and crediting himself with all the credits he is by law entitled to; which account, verified by his oath, must be filed with the judge of probate of the court having jurisdiction. He must also file written evidence in his possession, on which he relies to sustain the credit side of such account, which may consist of an affidavit or any other legal evidence, in the discretion of the executor or administrator. He must, at the same time, file a statement, on oath, of the names of the heirs and legatees of such estate, specifying particularly which are under the age of 19 years; and, if any of them are persons of unsound mind, it must be stated; but if the names, ages, or condition of such heirs or legatees are unknown and they reside out of the state, they may be made parties as unknown heirs or legatees. He must state the sum of funds of the estate which he has used for his own benefit, the time and the profit resulting from such use, if over legal interest, or, if he has not so used any of the funds of the estate for his own benefit, he must expressly deny on oath that he has so used such funds, and any party interested in the estate may contest the same. The executor or administrator shall be allowed all reasonable premiums paid on his bond as administrator or executor. ALA. CODE § 43-2-502.

n. Settlement: Notice Required. Upon the filing of accounts, vouchers, evidence, and statements, the judge of probate is required to appoint a day for settlement and must give notice of such date in a county-wide newspaper for three consecutive weeks or by posting notices at public places throughout the county. If the settlement is final, the judges of probate must also give ten days' notice of the day set for making settlement to every adult distributee residing in the state whose place of residence is known or can be reasonably ascertained and to all sureties on the bond of executors or administrators (personal representatives) as well. The notice must include the name of the executor or administrator (personal representative), the name of the deceased, the day appointed for settlement, and the nature of the settlement, (i.e., whether annual or final.) ALA. CODE § 43-2-505. The court must appoint a competent attorney-at-law as guardian ad litem to represent the interests of minors and persons of unsound mind interested in such settlement. ALA. CODE § 43-2-504.

o. Settlement: Consent Without Notice. When an administration is conducted pursuant to letters of testamentary/letters of administration with the will annexed granted in this state and all the heirs and next of kin are of age and proof is provided that all legal charges of the estate have been paid in full, the probate court, upon petition of the personal representative consented to by written instrument properly executed and acknowledged by all heirs and next of kin, may approve a consent settlement without notice or publication or posting. If a distributee is either a minor or of unsound mind and has a duly appointed guardian, the guardian may approve a consent settlement on behalf of the ward. The guardian, however, must be a disinterested party to the settlement. ALA. CODE § 43-2-506.

p. Settlement: Contest of Account. Any person interested may appear and contest any item of the account and may examine the executor or administrator or any other witness and may introduce any legal evidence in support of his contest. ALA. CODE § 43-2-511.

q. Compelled Settlement. An executor or administrator

(personal representative) may be compelled to make a settlement following service of citation. A failure to file accounts and vouchers on the day named in the citation will result in the probate court or other court having jurisdiction of the estate seeking settlement may compel the executor or administrator (personal representative) to do so by attachment or may proceed to state the account against the executor or administrator (personal representative) from the materials on file or other available information and charging the personal representative with the assets which he or she may have handled. ALA. CODE § 43-2-530.

r. Presumption of Settlement. An estate is presumed settled after 20 years have elapsed since six months after letters testamentary or letters of administration on such estate were issued. ALA. CODE § 43-2-660. Such presumption may be raised by a petition filed, usually by the executor or administrator (personal representative), with the probate court. The court must grant a hearing on the petition and must give notice of the hearing by publication for three consecutive weeks. ALA. CODE § 43-2-661.

s. Sale of Personal Property. Any part of the personal property of a decedent may be sold by order of the probate court on the written application of the executor or administrator (personal representative), verified by affidavit. Sale may be ordered for the payment of debts, to make distribution among the distributees or legatees or to prevent waste or destruction of property likely to waste or of a perishable nature.[3] The sale of the latter must be proved beneficial to the estate. ALA. CODE § 43-2-410. If the property is perishable, no notice of application for sale is required to be given to adversely affected parties if the judge of probate is satisfied of the

[3] In caselaw, perishable property, has been described as follows: "all that is necessary to be shown is that the property in the hands of the court is likely to waste or be destroyed by keeping. In other words, quoting from [*McCreery v. Berney National Bank*], 'If it is shown that, by keeping the article, it will necessarily become, or is likely to become, worthless to the creditor, and by consequence to the debtor, . . .' [116 Ala. 224, 22 So. 579], then it does not matter what the subject matter is. 'It [can] be cotton bales, live stock, hardware, provisions, or dry goods.' -*McCreery v. Berney National Bank*, supra." *McCullough v. McCullough,* 113 So.2d 499, 501 (Ala. 1959).

truth of the allegations contained in the application. ALA. CODE § 43-2-411. The executor or administrator (personal representative) must give notice of the day, place, and terms of sale as well as a description of the property for three successive weeks by publication or posting on the courthouse door. ALA. CODE § 43-2-413. Such sales may be for cash or on credit not exceeding 12 months as the court may direct. ALA. CODE § 43-2-415.

t. Sale of Real Estate. Lands may be sold by the executor or administrator (personal representative) with the will annexed, for the payment of debts when the will otherwise gives no power to sell. ALA. CODE § 43-2-441. This is also true when the deceased dies intestate. ALA. CODE § 43-2-442. However, in those instances there must be court approval prior to the selling of real property. ALA. CODE § 43-2-844. If the lands of an estate cannot be equitably divided among the heirs or devisees, it can be sold by order of the probate court having jurisdiction of the estate, upon written consent of an adult heir or devisee. ALA. CODE § 43-2-443.

u. The Application for Sale of Land. The application for the sale of lands either for the payment of debts or for division must be made by the executor or administrator (personal representative) in writing verified by affidavit to the probate court. The application must describe the lands accurately and must give the names of the heirs or devisees and the places of their residences. The application must also state whether any of the heirs or devisees are under the age of 19 or of unsound mind, and it must name those heirs. ALA. CODE § 43-2-444. The probate court must appoint a day, not less than 30 days from the time of the making of the application, for hearing the application, and, in the event heirs are either minors or of unsound mind, must appoint a guardian ad litem to represent the infirmed party or parties. The guardian ad litem and all adult heirs or devisees, must be notified at least ten days prior to the day set for the hearing. ALA. CODE § 43-2-445. Following the hearing of the application by the executor or administrator (personal representative), the court may direct the sale of all or such portion of the real estate as may be necessary to pay the debts, if the power is not otherwise provided. ALA. CODE § 43-2-450. A deed or patent

is sufficient evidence to authorize the court to proceed to hear the application. ALA. CODE § 43-2-453. Unless the probate court has taken evidence by deposition showing the necessity of the sale, no order for sale may be granted when minors or persons of unsound mind or possible unknown parties exist, whether or not the allegations in the petition are denied by the appointed guardian. ALA. CODE § 43-2-452. Notice of the sale for three weeks by either publication or posting is required. ALA. CODE § 43-2-455.

v. Report and Examination of Sale. The executor or administrator (personal representative) must, within 30 days after a sale, report on oath the proceedings to the court, indicating the pecuniary interest of the executor or administrator (personal representative), if any, in the sale. The probate court is to examine the sale and examine any witnesses relating to the sale. ALA. CODE § 43-2-459. If it appears from the report of either the administrator or executor (personal representative) that he was directly or indirectly the purchaser at the sale or otherwise had an interest adverse to the heirs, the probate court shall set a day for hearing the report. All parties are to be given ten days' notice of the hearing. ALA. CODE § 43-2-460.

w. Setting Aside Sale of Land. In the event the court is satisfied that the sale was conducted unfairly or that the amount for which the land was sold is greatly less than its real value, the probate court has the authority to vacate the sale either in whole or in part. Likewise, should the court confirm that the sureties taken on notes or bonds of the purchasers or the security given is insufficient, the sale may not be confirmed until sufficient security for the purchase money is given to satisfy the court. If such security is not given within ten days, the sale must be vacated as to the purchaser.

When any sale of land is vacated, in whole or in part, the probate court must direct another sale in accordance with the general procedure as outlined above. ALA. CODE § 43-2-461.

x. Confirmation of Sale. If the court is satisfied with all aspects of the sale, an order of confirmation is to be made ten days

after the report is filed. ALA. CODE § 43-2-462. The executor or administrator (personal representative) must report to the probate court the payment of purchase money for land sold on credit within 30 days following such payment. ALA. CODE § 43-2-463. Upon such report of payment of purchase money, the court must order a conveyance to be made to such purchaser. ALA. CODE § 43-2-464.

y. Citation to Report Sale of Land. Should the executor or administrator (personal representative) fail to properly report the sale of any land, the purchaser, on a motion in the probate court, may have a citation issued requiring the executor or administrator (personal representative) to appear before the probate court within 20 days of service to report the sale. In the event the executor or administrator (personal representative) fails to appear following the issuance of the citation, the probate court is to review all aspects of the sale on the day set or other day set by the court to determine if it was regular and fair. The probate court, upon a determination that all aspects of the sale were proper and the purchase money was paid by the purchaser, must authorize a conveyance of title to the land to the appropriate purchaser. ALA. CODE § 43-2-465.

z. Resignation, Death, or Removal of an Administrator or Executor (Personal Representative). An executor or administrator (personal representative) may resign by submitting a written resignation to be filed and entered on the record in the court having jurisdiction of the matter. ALA. CODE § 43-2-270. The probate court having jurisdiction of the estate may grant letters of administration in case of intestacy or letters of administration with the will annexed should an administrator or executor (personal representative) die, resign, or be removed. ALA. CODE § 43-2-272. Grounds for removal of an administrator or executor (personal representative) include: imbecility; intemperance; sickness rendering the individual incapable of discharging required duties; failure to make or return inventories or to do any act when lawfully required by the judge of probate; maladministration of the estate; the use of estate funds for personal benefit, or a prison or jail sentence of 12 or more months. ALA. CODE §§ 43-2-290 and 43-2-291.

aa. Successor Personal Representative. A successor personal representative has the same power and duty as the original personal representative except as to any power made expressly personal to the personal representative named in the will. ALA. CODE § 43-2-845.

bb. Compensation of Personal Representatives. The personal representative is entitled to reasonable compensation for his or her services. Factors to be considered by the court in determining the amount include such things as the difficulty and novelty of the estate, the skill required to perform the service, the customary fee charged in that locality, the amount involved and the results obtained, the nature and the length of the professional relationship with the decedent, the experience, reputation, diligence and ability of the personal representative. Additional factors are also enumerated in ALA. CODE § 43-2-848.

The fee shall not exceed two and a half (2 ½) percent of the value of all the property received and under the possession and control of the personal representative, and two and a half (2 ½) percent of all disbursements. However, the court may allow reasonable compensation for any extraordinary service performed for the estate. ALA. CODE § 43-2-848.

Notwithstanding the foregoing, the decedent or all the affected beneficiaries can agree in writing with the personal representative as to the amount or the method for determining the compensation for the personal representative. This agreement will be binding on all parties provided that the agreement is not unconscionable. ALA. CODE § 43-2-848. Upon any annual, partial or final settlement, the court may allow compensation or attorney fees up to the time of settlement. ALA. CODE § 43-2-682.

Payment of compensation to a personal representative without prior court approval must be *expressly* authorized by the will. ALA. CODE § 43-2-844(7); *Wehle v. Bradley*, 49 So.3d 1203 (Ala. 2010), distinguished by *Ruttenberg v. Friedman*, 97 So.3d 114 (Ala. 2012).

H. SMALL ESTATES ACT

A surviving spouse or person who is to inherit all or a portion of an estate is entitled to the property of a decedent without waiting for the appointment of a personal representative or the probate of will if all of the following conditions exist:

(1) The value of the entire estate does not exceed $25,000 (amount adjusted annually to reflect adjustments in the Consumer Price Index).

(2) The decedent died a resident of the state of Alabama.

(3) No petition for the appointment of a personal representative is pending or has been granted.

(4) At least 30 days have elapsed since the notice of the filing of the petition was published as hereinafter provided.

(5) All funeral expenses of the decedent have been paid or arrangements have been made by the surviving spouse or distributee to pay for such.

(6) When the decedent died intestate, the awards due under the Alabama descent and distribution statute have been determined by the judge of probate.

(7) When the deceased died testate, the document purported to be the will must be properly executed on its face, witnessed and attested in compliance with Alabama law and filed in the judge of probate's office.

(8) Notice of the filing of a petition for summary distribution must be published one week in a newspaper of general circulation in the county in which the decedent was domiciled, or if there is no

newspaper of general circulation in the county, then notice must be posted at the county courthouse for one week.

(9) All the claims against the decedent's estate have been paid or arrangements for the payment out of the estate of the decedent have been made by the surviving spouse or other distributee according to the following schedule of priority:

a. Funeral expenses.

b. Judges of probate fees.

c. Expenses incurred in the decedent's last illness.

d. Taxes (state, county, and municipal) which accrued prior to decedent's death.

e. To secured creditors.

f. To unsecured lienholders.

g. To each remaining general unsecured creditor of the decedent.

h. To those entitled to take under descent and distribution or to each devisee entitled to take under any testamentary disposition of the decedent.

ALA. CODE § 43-2-692. When all the above conditions occur, the judge of probate shall enter an order directing summary distribution of the estate. ALA. CODE § 43-2-693.

a. Bank Accounts of Deceased Depositors. When a decedent dies leaving $5,000 or less deposited in a bank, the bank,

at its discretion, may pay the funds to:

(1) The surviving spouse directly, or

(2) If there is no spouse, to the adult children, or

(3) To the person having the actual custody and control of the minor children of the deceased.

If the person having custody of the minor child(ren) is not the legal guardian of the child(ren), a bond must be approved by the judge of probate in double the amount of the deposit to be paid over by the bank.

In the event there is no surviving spouse or children, a bank may pay the person who is the next of kin of the deceased and who would inherit this personal property under the law of distribution. For the bank to be fully protected, an affidavit of a reputable citizen as to the facts of death of the depositor and the family relationship between the deceased and the party receiving the deposit is required.

Payment of a deceased depositor's account is limited under this provision. First, the bank cannot pay if the accounts of the deceased total more than $5,000. Second, no payment may be made by the bank before the lapse of 60 days from the date of the depositor's death. Finally, this provision is inapplicable if letters testamentary or letters of administration have been issued to a personal representative or if a proceeding is pending in a court having jurisdiction of the estate. ALA. CODE §§ 5-5A-38 and 5-5A-39.

I. ADVANCEMENTS

A duty closely related to the administration of estates is the judge of probate's authority to receive petitions, conduct the necessary proceedings, and decide on advancements made from an estate. ALA. CODE §§ 43-8-50 through 43-8-54.

J. EXEMPTIONS

The judge of probate may receive petitions and conduct necessary proceedings on claims for exemptions from executions, attachments and garnishments. As part of this jurisdiction, the judge of probate has authority to receive petitions claiming a homestead or other exemption, to conduct the necessary proceedings, and to grant final decrees awarding the exemption when justified. The procedures to be followed are outlined in the following sections: claim and contest of exemptions, ALA. CODE §§ 6-10-20 through 6-10-43;[4] exemption from administration and payment of debts, ALA. CODE §§ 43-8-110 through 43-8-116; and exemptions to surviving spouses and minor children, ALA. CODE §§ 6-10-80 through 6-10-107. ALA. CODE §§ 6-10-80 through 107 set forth the procedure to follow for the appointment of appraisers and the procedure to follow for the hearing.

K. PROPERTY AND CONVEYANCES

The judge of probate will invariably be confronted with matters related to property and conveyances. Some actions will be related to records, while others will be in relation to proceedings in court.

a. General. The judge of probate has authority to partition personal, real, or mixed property held in joint ownership and to partition or permit the sale of crops held in joint ownership upon application. Property held by joint tenants may be partitioned, decrees may be issued for the sale of property for distribution, and crops may be partitioned among joint tenants.

Information on both property and conveyances is found in Title 35 of the Code. The provisions regarding partition in probate court are explained in ALA. CODE §§ 35-6-40 through 35-6-66; recordation and registration generally, ALA. CODE §§ 35-4-50 through 35-4-76; recordation necessary as to purchasers, mortgagees, and judgment creditors, ALA. CODE §§ 35-4-90 through

[4] *See* Ala. Code § 6-10-21 concerning recordation.

35-4-98; lost or unclaimed property, ALA. CODE §§ 35-12-1 through 35-12-6 and 35-12-70 through 35-12-96; and liens, ALA. CODE §§ 35-11-1 through 35-11-454.

b. Proof of Value. ALA. CODE § 40-22-1 requires a person presenting a deed, bill of sale, or other instrument conveying any real or personal property within this state or any interest in any such property to the judge of probate for recording to present proof of the actual purchase price of property *or* actual value of the property. If proof is not presented, the privilege or license tax shall be based upon the assessed value of the property *and* the person failing to submit the required proof shall be subject to monetary penalties for failure to comply with the law. ALA. CODE § 40-22-1.

ALA. CODE § 40-22-1(h) provides: "Any person who submits an instrument for recording pursuant to this section and intentionally fails to submit proof of the value of the property or the actual purchase price paid for the property as required in subsection (c) following a specific request for such proof from the probate office or who presents false proof of same, in addition to payment of the tax due as calculated on the actual value of the property, shall pay a penalty of one hundred dollars ($100) or 25 percent of the privilege or license tax actually due, whichever is greater." The judge of probate shall assess penalties as set out in ALA. CODE § 40-22-1(h) to be paid in addition to the tax due. ALA. CODE § 40-22-1.

L. GUARDIANSHIPS

Under the format developed by the Alabama Uniform Guardianship and Protective Proceedings Act, the responsibility of care for the person is under the guardianship provisions, and the responsibility for the care of one's property is under the conservator provisions. ALA. CODE §§ 26-2A-1 through 26-2A-160. Generally speaking, a guardian is responsible for food, clothing, medical, and shelter issues relating to a minor or incapacitated adult.

a. General. The provisions relating to the guardian of the person are generally divided into guardians of minors and guardians

of incapacitated persons. ALA. CODE §§ 26-2A-70 through 26-2A-111. The guardians appointed under guardianships prior to January 1, 1988 have all of the same powers as guardians and conservators under the Alabama Uniform Guardianship and Protective Proceedings Act. ALA. CODE § 26-2A-8.

At any point in a proceeding, a court may appoint a guardian ad litem, who must be an attorney, 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. ALA. CODE § 26-2A-52. Generally, fees for the guardian ad litem are paid from the estate. However, if the Department of Human Resources is the petitioner, the guardian ad litem's fees for representation of incapacitated person are properly taxed to the county department of human resources (DHR) as costs in the event the assets of the estate in a protective proceeding or in a guardianship proceeding are insufficient to pay them. ALA. CODE § 26-2A-142; *Calhoun County Dept. Of Human Resources v. Frye*, 74 So.3d 958 (Ala. Civ. App. 2011).

b. Delegation of Parental Powers. A parent or guardian of a minor or incapacitated person may delegate temporary powers regarding health, support, education or maintenance of the person or property of the minor child or ward, except the power to consent to marriage or adoption of a minor ward. This may be accomplished by a properly executed power of attorney. ALA. CODE § 26-2A-7.

c. Testimony. Generally, witness testimony must be taken in open court. Ala. R. Civ. Pro. 43(a). In *Greener v. Killough*, 1 So.3d 93 (Ala. Civ. App. 2008), the court stated that a probate court exceeded its discretion by allowing a physician to testify by telephone in a hearing on a daughter's petition to be appointed guardian and conservator for her mother. However, in a footnote, the court stated, "Nothing in this opinion should be construed as preventing the parties from 'taking testimony by agreement in a manner different from . . . [the manner] provided [in Rule 43(a)]

unless the court limits or prohibits such agreed manner.' Rule 43(a), Ala. R. Civ. P. (emphasis added). We merely hold that in the absence of an agreement of the parties to accept testimony by telephone, the trial court has no discretion to allow testimony by that means." *Greener v. Killough*, 1 So.3d 93, 104 n.6 (Ala. Civ. App. 2008).

d. Guardian of Minors.

1. Appointment. A person may become a guardian of a minor by either parental appointment or by appointment by the court. ALA. CODE § 26-2A-70. A parent may appoint a guardian for their unmarried minor by either a will or other writing that is signed by the parent and attested to by two witnesses. ALA. CODE § 26-2A-71. A parental appointment becomes effective under the enumerated circumstances under the statute, such as when there is no surviving parent who has parental rights and the guardian files an acceptance with the court. ALA. CODE § 26-2A-71.

2. Objection by Minor of Fourteen or Older to Parental Appointment. A minor who is 14 years of age or older may prevent a parental appointment or cause it to terminate by filing a written objection to the appointment with the probate court. However, the court may in a later proceeding appoint the parental nominee or any other suitable person. ALA. CODE § 26-2A-72.

3. Court Appointment of Guardian. When there is no parent having parental rights of a minor, a guardian may be appointed by the court. A parental appointment has priority. However, if the parental appointee fails to file an acceptance of the appointment within 30 days, the court may proceed in making another appointment. ALA. CODE § 26-2A-73.

The court may appoint a temporary guardian even if all parental rights have not been terminated. The temporary guardian has the full authority of a general guardian.

Nevertheless, the temporary guardianship may not last more than six months. ALA. CODE § 26-2A-73.

4. Venue. The venue in a guardianship proceeding is where the minor resides or is present at the time of the filing of the proceedings. ALA. CODE § 26-2A-74.

5. Procedure, Duties and Terminations. ALA. CODE § 26-2A-75 establishes the procedure for the court appointment of guardians. If the minor is 14 years of age or older, the court shall appoint the person nominated by that minor unless that appointment would be contrary to the child's best interest. ALA. CODE § 26-2A-76.

The powers and duties of the guardian are enumerated in ALA. CODE § 26-2A-78. ALA. CODE §§ 26-2A-79 through 26-2A-81 provides for termination, resignation and removal of guardians.

e. Guardians of Incapacitated Persons. An incapacitated person is someone who is impaired by reason of mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent of lacking sufficient understanding or capacity to make or communicate responsible decisions. ALA. CODE § 26-2A-20(8).

1. Appointment. A guardian for an unmarried, incapacitated person may be appointed by a parent by will or other writing signed by the parent and attested to or acknowledged by at least two witnesses. The spouse of a married, incapacitated person may appoint a guardian for the incapacitated person by a will or other writing which is signed by the spouse and attested to or acknowledged by at least two witnesses. ALA. CODE § 26-2A-100.

2. Jurisdiction. In 2010, the Legislature passed the

Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. *See* Ala. Act 2010-500; *see also* ALA. CODE §§ 26-2B-101 through 26-2B-503. This Act determines which state has jurisdiction over interstate adult guardianship cases. ALA. CODE §§ 26-2B-101 through 26-2B-503. It also provides that Alabama can decline to exercise jurisdiction if Alabama acquired jurisdiction based on unjustifiable conduct or may decline jurisdiction if Alabama determines that another state is a more appropriate forum. ALA. CODE §§ 26-2B-206 and 26-2B-207.

The Act provides for a transfer of a guardianship or conservatorship to another state from Alabama. ALA. CODE § 26-2B-301. The act provides for a transfer of a guardianship or conservatorship from another state to Alabama. ALA. CODE § 26-2B-302.

3. Venue. The venue is the place where the incapacitated person resides or is present at the time of the commencement of the proceedings. And, if the incapacitated person is admitted to an institution pursuant to a court order, venue can also be in the county in which the court is located. ALA. CODE § 26-2A-101.

4. Procedure and Notice. An incapacitated person or an interested person may petition for the appointment of a limited or general guardian. The court shall appoint an attorney to represent the incapacitated person unless he or she already has counsel. ALA. CODE § 26-2A-102.

Notice and other aspects of the proceeding are covered under ALA. CODE §§ 26-2A-102 and 26-2A-103. Notice must be served personally on the alleged incapacitated person who may not waive notice.

5. Priorities and Duties. ALA. CODE § 26-2A-104 provides a numerical listing of priorities for guardianship, with the spouse and other relatives having the highest

priority. Nevertheless, unless for good cause, the court shall appoint as guardian the person nominated in the incapacitated person's most recent durable power of attorney. ALA. CODE § 26-2A-104.

A private non-profit corporation can be appointed as guardian for a person designated as "developmentally disabled" and determined by the probate court as needing some degree of guardianship. The term “developmentally disabled” is defined as a person whose impairment of general intellectual functioning or adaptive behavior which is manifested before the person attains the age of 22 and results in intellectual disability, cerebral palsy, epilepsy, or autism. Furthermore, the private non-profit corporation's board is required to have a minimum 35% of its membership representing parents or siblings of persons with developmental disabilities. The corporation must also be set up to provide a lifetime of service to those persons placed under its care. ALA. CODE § 26-2A-104.1.

The general powers and duties of guardians are also enumerated. ALA. CODE § 26-2A-105.

6. Temporary Guardian. If an emergency exists and an incapacitated person has no guardian and no other person appears to have authority to act, the court, without notice, may appoint a temporary guardian. Generally, the authority of a temporary guardian may not extend beyond 30 days. ALA. CODE § 26-2A-107. However, under the Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act, when issues concerning interstate jurisdiction exist, an emergency guardian can be appointed for up to 90 days. ALA. CODE § 26-2B-204.

Moreover, if an appointed guardian is not effectively performing his or her duties, the court may appoint a temporary guardian for a period not to exceed six months. ALA. CODE § 26-2A-107.

7. Corporate Guardians for Developmentally Disabled. An Alabama private non-profit corporation that is qualified under the Internal Revenue Code as a 501(c)(3) tax exempt corporation may be designated to serve as a guardian for a person with developmental disabilities. The Alabama Department of Mental Health is required to assist the courts in the implementation of this new law and is required to develop guidelines for the provisions of services to be performed by the corporation under this section. ALA. CODE § 26-2A-104.1.

f. Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act.

1. Communication Between Courts. A court of this state may communicate with a court in another state concerning a proceeding arising under this Act. The court may allow the parties to participate in the communication. If the parties are not allowed to participate in the communication, the court shall give all parties the opportunity to present facts and legal arguments before the court issues an order establishing jurisdiction. ALA. CODE § 26-2B-104.

Except for communications concerning schedules, calendars, court records, and other administrative matters, the court:

(1) Shall make a record of any communication under this section; and

(2) promptly inform the parties of the communication and grant them access to the record.

ALA. CODE § 26-2B-104.

2. Cooperation Between Courts. An Alabama court

may request another state court to do any of the following:

(1) Hold an evidentiary hearing.

(2) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state.

(3) Order that an evaluation or assessment be made of the respondent.

(4) Order any appropriate investigation of a person involved in a proceeding.

(5) Forward to our court a certified copy of the transcript or other record of a hearing, any evidence, evaluation or assessment, etc.

(6) Issue any orders necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person.

(7) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state.

ALA. CODE § 26-2B-105.

3. Taking Testimony in Another State. The court, on its own motion, may order that the testimony of an out-of-state witness be taken in another state and may prescribe the manner and the terms upon which the testimony is to be taken. For example, testimony of an out-of-state witness may be offered by deposition. A witness may be deposed or testify by telephone or audiovisual or other electronic means.

ALA. CODE § 26-2B-106.

4. Definitions; Significant Connection Factors. "Home state" is the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of the petition (or, if no state meets that criteria, where the respondent was physically present, including any period of temporary absence, for six consecutive months prior to that time). "Significant-connection state" is a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available. ALA. CODE § 26-2B-201.

5. Jurisdiction. When the jurisdiction is contested, the proceeding may be removed to circuit court by the court's own motion or in accordance with ALA. CODE § 26-2-2. This provision does not limit the jurisdiction of Alabama probate courts with equity jurisdiction. ALA. CODE § 26-2B- 203.

6. Special Jurisdiction. A court of this state lacking jurisdiction under ALA. CODE § 26-2B-203 has special jurisdiction to do any of the following:

(1) Appoint an emergency guardian for a respondent who is physically present in this state (not exceeding 90 days).

(2) Issue a *protective order* with respect to real or tangible personal property located in this state.

(3) Appoint a guardian or conservator for an incapacitated or protected person for whom a provisional order to transfer the proceeding

> from another state has been issued under procedures similar to ALA. CODE § 26-2B-301.

If Alabama was not the respondent's home state on the date the petition for an emergency guardian was filed, the court shall dismiss the proceeding at the request of the court of the home state (whether dismissal is requested before or after the emergency appointment).

The court may entertain successive petitions based upon its special jurisdiction under this section, provided that the court receives no request for dismissal from the court of the respondent's home state and the court determines that the need for guardianship and/or conservatorship under this section continues. ALA. CODE § 26-2B-204.

7. Appropriate Forum. An Alabama court may decline to exercise its jurisdiction if it determines, at any time, that a court of another state is a more appropriate forum. If Alabama declines to exercise its jurisdiction under ALA. CODE § 26-2B-206(a), it shall either dismiss or stay the proceeding.

The court may impose any condition the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state. ALA. CODE § 26-2B-206.

8. Jurisdiction Declined by Reason of Conduct. If Alabama determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(1) Decline to exercise jurisdiction;

(2) Exercise jurisdiction for the limited purpose

of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, (including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction); or

(3) Continue to exercise jurisdiction.

ALA. CODE § 26-2B-207.

9. Information to Be Submitted to Court. Except as otherwise provided in this section, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the respondent's present address or whereabouts, the places and addresses where the respondent has lived during the last five years. The affidavit required by this section is based upon the UCCJEA affidavit (child custody).

As noted in the comments to ALA. CODE § 26-2B-210, this provision allows for the nondisclosure of information when disclosure might place the incapacitated individual at risk.

Use of the particular form in the commentary is not mandated, however, the content is mandated. ALA. CODE § 26-2B-210.

10. Transfer of Guardianship or Conservatorship to Another State.

(a) **Notice.** Notice of a petition must be given to the persons that would be entitled to notice of a petition in Alabama for the appointment of

a guardian or conservator under current law. On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition to transfer to another state. ALA. CODE § 26-2B-301.

(b) **Provisional Order.** The court shall issue a provisional order provisionally granting a petition to transfer a guardianship or conservatorship; and the court shall direct the guardian to petition for guardianship or conservatorship in the other state if the court is satisfied that the guardianship or conservatorship will be accepted by the court in the other state and the court finds that:

(1) The protected person will move permanently to other state or has significant connections to other state;

(2) No objection to transfer or transfer not contrary to interest of protected person; and

(3) Adequate arrangements have been made for protected person's property.

ALA. CODE § 26-2B-301.

(c) **Guardian Ad Litem.** The court may appoint a guardian ad litem to represent the respondent and may require prepayment of the guardian ad litem fees. ALA. CODE § 26-2B-301.

11. Accepting Guardianship or Conservatorship Transferred from Another State.

(a) **Notice.** Notice of the petition must be given:

(1) To the same persons who would be entitled to notice in Alabama and the transferring state; and

(2) In the same manner as notice is required to be given in Alabama.

ALA. CODE § 26-2B-302.

(b) **Hearing.** The court shall hold a hearing on the petition on request of:

(1) The guardian or conservator;

(2) The incapacitated or protected person;

(3) Other person required to be notified of the proceeding; or

(4) On the court's own motion.

ALA. CODE § 26-2B-302.

(c) **Petition.** The petition must include the following:

(1) A certified copy of the other state's provisional order of transfer.

(2) An inventory of the protected person's estate as of the date of the petition

(3) Proof of the conservator's bond; and

(4) Final accounting.

ALA. CODE § 26-2B-302.

(d) **Provisional Order.** The court shall issue a provisional order granting the petition filed unless:

(1) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(2) The guardian or conservator is ineligible for appointment in Alabama.

(3) The petitioner fails to comply with the provisions of ALA. CODE § 26-2B-302(a).

ALA. CODE § 26-2B-302.

(e) **Final Order.** The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian or conservator in Alabama:

(1) Upon its receipt a final transfer order from the other state; and

(2) Proof or compliance with Alabama's bond law.

ALA. CODE § 26-2B-302.

(f) **Modification.** Not later than 90 days after issuance of a final order accepting transfer, the court shall determine whether the guardianship or conservatorship needs to be modified to conform to the law of this state. Such modification may include, among other things, an inventory or an accounting as required pursuant to Alabama law. ALA. CODE § 26-2B-302.

(g) **Form.** A sample "General Information and Asset Summary Sheet" is in the Alabama Comment. Although the use of this specific form is not mandated by this section, it is designed to provide the court with some of the information required under ALA. CODE § 26-2B-302(a). ALA. CODE § 26-2B-302.

12. Recording and Recognition of Orders from Other States. An out-of-state guardian or conservator may record an order in Alabama by recording certified copies of the order and letters of office as a foreign judgment in an Alabama court:

(1) After giving notice to the appointing court of their intent to register; and

(2) If a petition for the appointment of a guardian or conservator is not pending in Alabama.

ALA. CODE §§ 26-2B-401 and 26-2B-402.

13. Effect of Recording. After recording, the out-of-state guardian or conservator may exercise in Alabama all the powers authorized under ALA. CODE § 26-2A-160. ALA. CODE § 26-2B-403.

g. Guardian for Incompetent Veteran.

1. To Receive Veterans' Benefits. Whenever the Veterans' Administration requires that a guardian be named for a veteran ward before the United States will pay any benefits, the procedure for such appointment and the limitations of the appointment are set forth in ALA. CODE §§ 26-9-1 through 26-9-19.

2. Commitment of Incompetent Veterans to Veterans' Hospital. Any incompetent veterans who are eligible for treatment in a United States veterans' hospital may be directed by an Alabama court to a veterans' hospital for treatment. ALA. CODE § 26-9-13.

3. Sale and Purchase of Real Estate. The guardian of the veteran ward may invest the ward's funds by making real estate loans and may purchase a home or farm for the ward. The title to the land is held in the name of the ward. Any real property purchased by the guardian for the ward must be free and clear from any encumbrance. ALA. CODE § 26-9-10.

h. Guardian for Handling Funds from Governmental Entities. A recipient of Social Security or other public assistance who appears to be physically or mentally incapable of managing his or her monthly assistance payments and who has no guardian may have a legal representative appointed to receive and disburse the recipient's assistance payments. This is done through a petition to the judge of probate with the approval of the Alabama Department of Human Resources. ALA. CODE § 38-1-3.

It is important to note that the Social Security Administration takes the position that it is not bound by the court appointments of a state judge of probate. While they often accept the court appointed guardian or conservator, they have their own rules and procedures to appoint a representative payee for social security payments.

M. CONSERVATOR OF PROPERTY

a. In General. The Alabama Uniform Guardianship and Protective Proceedings Act distinguishes between a guardian of the person and a conservator of the estate of a minor or incapacitated person.[5]

Upon petition and after notice and hearing in accordance with the provisions of the act, the court may appoint a conservator. ALA. CODE § 26-2A-130.

b. Removal. A guardianship proceeding may be removed from probate court to circuit court at any time prior to final settlement by the guardian, guardian ad litem, next friend of the ward, or anyone entitled to support out of the estate of the ward. ALA. CODE § 26-2-2. Under limited circumstances, the circuit court may remand the case back to the probate court, but only in those counties where the judge of probate is required to be learned in the law. ALA. CODE § 26-2-3. The removal of a conservatorship proceeding from probate court to circuit court is governed by the statute addressing the administration or conduct of any guardianship or conservatorship, not the statute governing the removal of administration of estates from probate court. *Hoff v. Goyer,* 107 So.3d 1085 (Ala. 2012); ALA. CODE § 26-2-3.

c. Venue. Venue is where the protected person resides or is present at the time the proceedings are commenced. ALA. CODE § 26-2A-101.

d. Petition, Notice and Hearing. The petition must furnish the court with certain information which is in the statute. ALA. CODE

[5] The duties of a guardian appointed prior to January 1, 1988, relating to the property of a ward will be performed by a conservator. ALA. CODE § 26-2A-8. Curators appointed under Chapter 7A of Title 26 (which was repealed in 1995) are considered conservators after January 1, 1997 and have the powers and duties of a conservator pursuant to Chapter 2A of Title 26, subject to limits imposed by the court on the curator. ALA. CODE § 26-2A-9.

§ 26-2A-133. The provisions for notice and hearing are quite specific. ALA. CODE §§ 26-2A-134 and 26-2A-135.

Among others, notice must be given to the person alleged to be incapacitated, his or her spouse, and adult children, or if none, his or her parents. Notice must be served personally on the alleged incapacitated person. Notice to other persons as required by ALA. CODE § 26-2A-103(a)(1) must be served personally if the person to be notified can be found within the state. In all other cases, required notices must be given as provided in ALA. CODE § 26-2A-50(d). The person alleged to be incapacitated may not waive notice. ALA. CODE § 26-2A-103. If the incapacitated person is a minor, the following must also be given notice: (1) The minor, if 14 years or more years of age and not the petitioner; (2) Any person alleged to have had the principal care and custody of the minor during the 60 days preceding the filing of the petition; and (3) Any living parent of the minor. ALA. CODE § 26-2A-75.

e. Court's Protective Powers. The court is to use its extensive powers of the protected person's estate in a manner to encourage the development of maximum self-reliance and independence of a protected person. ALA. CODE § 26-2A-136.

After establishing the necessity for a conservator, the court is authorized to make protective arrangements for the protected person's property without appointing a conservator. The court may appoint a special conservator to assist with the protective arrangements. ALA. CODE § 26-2A-137. The court may also authorize the transfer of oil, gas, and other mineral rights of a protected person without appointing a conservator. ALA. CODE § 26-2A-137(b).

f. Testimony. Generally, witness testimony must be taken in open court. Ala. R. Civ. Pro. 43(a). In *Greener v. Killough*, 1 So.3d 93 (Ala. Civ. App. 2008), the court stated that a probate court exceeded its discretion by allowing a physician to testify by telephone in a hearing on a daughter's petition to be appointed guardian and conservator for her mother. However, in a footnote,

the court stated, "Nothing in this opinion should be construed as preventing the parties from 'taking testimony by agreement in a manner different from . . . [the manner] provided [in Rule 43(a)] unless the court limits or prohibits such agreed manner.' Rule 43(a), Ala. R. Civ. P. (emphasis added). We merely hold that in the absence of an agreement of the parties to accept testimony by telephone, the trial court has not discretion to allow testimony by that means." *Greener v. Killough*, 1 So.3d 93, 104 n.6 (Ala. Civ. App. 2008).

g. Priorities. ALA. CODE § 26-2A-138 establishes priorities for appointment as a conservator. A person within several of the categories of priorities may designate a substitute and transfer the priority to the substitute. The court may select a conservator with a lower priority if it is in the best interest of the protected person. ALA. CODE § 26-2A-138.

h. Bond. The court must require a conservator to post bond unless the protected person had specifically exempted the conservator from giving bond in the document nominating the conservator. The judge of probate may incur personal liability for failing to order a required bond or for ordering an insufficient bond. Generally, the bond must be in an amount of the aggregate capital value of property within the conservator's control, plus one year's estimated income, and minus the value of the securities or land which the conservator cannot sell or convey without court authorization. ALA. CODE § 26-2A-139.

i. Compensation. Conservators, attorneys, and others are entitled to reasonable compensation from the estate for the services they have rendered. ALA. CODE § 26-2A-142.

j. Inventory, Records and Accounts. Within 90 days after appointment, a conservator shall prepare and file a complete inventory of the estate subject to the conservatorship. A copy shall be furnished to a protected person who is at least 14 years old if practicable. The parent or guardian with whom the protected person resides shall also be given a copy. ALA. CODE § 26-2A-146. The conservator must give an accounting to the court at least every three

years. ALA. CODE § 26-2A-147.

k. Title to Property. The appointment of a conservator vests in the conservator title as trustee to all of the property of the protected person in the conservator, or to the part of the property specified in the order. This includes the title to any property currently held or thereafter acquired and includes previously held property for the protected person. ALA. CODE § 26-2A-148.

l. Recording of Conservator's Letters. Subject to the general statutes governing the filing or recordation of documents of title to land or other property, letters of conservatorship and orders terminating conservatorships may be filed or recorded to give record notice of title between the conservator and the protected person. ALA. CODE § 26-2A-149.

m. Conflict of Interest. The sale to or purchase from a conservator, spouse, agent or attorney of a conservator, any person related to a conservator by blood or marriage within the fourth degree, or any corporation, trust, or other organization in which a conservator has a substantial beneficial interest is voidable unless approved by the court. ALA. CODE § 26-2A-150.

n. Powers. ALA. CODE § 26-2A-152 of the Code of Alabama divides the powers of a conservator into (1) actions that may be taken without court authorization or confirmation, and (2) actions that require court authorization. This statute should be carefully reviewed prior to performing any action relating to real property. Furthermore, two additional sections concerning conservator's powers should also be reviewed. They are as follows:

§ 26-2A-153 Distributive Duties and Powers of a Conservator.

§ 26-2A-154 Enlargement or Limitation of Powers of a Conservator.

o. Standard of Care and Performance. A conservator is required to use the same standard of care in his or her dealings that

would be exercised by a prudent person dealing with the property of another. However, if a conservator has special skills or is appointed as a conservator on the basis of representations of special skills or expertise, the conservator is under a duty to use those skills. ALA. CODE § 26-2A-145.

p. Failure of Conservator to Obey Process to Appear and File Accounts and Vouchers. If a conservator fails to obey any court order requiring him or her to appear and file his or her accounts and vouchers for a final or partial settlement, the probate court may, by attachment, compel his or her appearance and may, if on appearance he or she refuses to file such accounts and vouchers or to show good cause for his or her omission, imprison him or her for a period not exceeding six months. ALA. CODE § 26-5-35.

N. HEARINGS FOR COMMITMENT TO MENTAL INSTITUTIONS

a. Petition for Hearing. When any individual desires to have another individual involuntarily committed to the custody of the Alabama State Department of Mental Health or other such facility, a petition executed under oath must be filed with the judge of probate of the county in which the respondent, the person who is the subject of the hearing, is located. The petition must be in writing, executed under oath, and it must contain:

(1) The name and address, if known, of the respondent.

(2) The name and address, if known, of the respondent's spouse, legal counsel or next-of-kin.

(3) That the petitioner has reason to believe the respondent is mentally ill or is mentally ill with a secondary diagnosis of co-occurring substance use disorder.

(4) That the beliefs of the petitioner are based on specific behavior, acts, attempts, or threats, which shall be specified and described in detail.

(5) The names and addresses of other individuals with knowledge of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder who may be called as witnesses.

(6) Any other relevant information.

ALA. CODE § 22-52-1.2.

b. Review of Petition by Judge of Probate. The judge of probate is required to review such petitions immediately and require the petitioner to be sworn and answer under oath questions regarding the petition and the person sought to be committed. The judge will order the petition dismissed without further proceedings if it appears from either the petition or testimony that the petition is totally without merit. ALA. CODE § 22-52-2.

c. Service of Notice by Sheriff. When the petition has been reviewed, the judge of probate is to order the sheriff of the county in which the respondent was located at the time of the filing to serve the respondent with a copy of the petition and the order for a hearing upon the respondent. This notice must include:

(1) The time, date, and place of the hearing;

(2) A clear statement of the purpose of the proceeding and the possible consequences to the subject thereof;

(3) The alleged factual basis for the proposed commitment;

(4) A statement of the legal standards upon which commitment is authorized; and

(5) A list of the names and addresses of the witnesses who may be called to testify in support of the petition.

Adequate notice of a hearing must be given to the respondent. ALA. CODE § 22-52-3.

d. Appointment of Attorney and Guardian Ad Litem for Persons Sought to Be Committed. When the petition has been filed, the judge of probate must appoint a guardian ad litem to represent and to protect the rights of the respondent. If the judge of probate determines that the respondent either lacks the funds with which to employ an attorney or the mental ability to secure the services of an attorney, the judge of probate is responsible for appointing an attorney to represent the person. The attorney may be the same person as the guardian ad litem. The judge of probate shall immediately inform the attorney of his appointment. No statement made or act done by the respondent in the presence of the judge of probate prior to obtaining an attorney shall be considered by the judge of probate in determining whether the respondent should be committed. ALA. CODE § 22-52-4.

The judge of probate is also required to appoint an attorney to serve as the advocate in support of the petition to commit and in all related matters. Such attorney is unnecessary in the event that the person or persons filing the petition employ an attorney to appear in support of the petition. ALA. CODE § 22-52-5.

The Alabama Department of Mental Health or designated mental health facility must be informed of the pendency of the petition and the date of the final hearing to commit. ALA. CODE § 22-52-6.

e. Person to Be Committed Brought Before Judge of Probate. When a petition has been filed seeking to have limitations placed upon the liberty of a respondent pending the outcome of a final hearing on the merits, the judge of probate is to order the sheriff of the county in which the respondent was located at the time of

filing to serve a copy of the petition upon the respondent and to either bring the respondent before the judge of probate or to be evaluated as provided in ALA. CODE § 22-52-7(a)(2). The judge of probate is then to determine from an interview with the respondent what limitations, if any, shall be imposed on the person's liberty and what temporary treatment, if any, shall be imposed upon the respondent pending further hearings. In making these determinations, the judge of probate may also interview any other available individuals or officers and may consult with or seek an evaluation by a licensed medical physician or qualified mental health professional. If limitations on the respondent's liberty is ordered, the judge of probate may order the respondent detained at a designated mental health facility or hospital. ALA. CODE § 22-52-7.

f. When Limitations on Liberty Permitted Pending Final Hearing. No limitations shall be placed on the respondent's liberty nor treatment imposed upon the respondent unless the limitations are determined necessary by a judge of probate to prevent the respondent from posing a real and present threat of substantial harm to self or others or to prevent the respondent from leaving the jurisdiction of the court. The respondent is not to be placed in a jail or other detention facility for individuals accused or convicted of committing crimes. ALA. CODE § 22-52-7; *see Lynch v. Baxley*, 744 F.2d 1452 (11th Cir. 1984).

g. Medical Examination Can Be Ordered. The judge of probate shall order the respondent to appear at the times and places set for hearing the petition and may order the respondent to appear at the times designated times and places to be examined by licensed medical doctors or qualified mental health professionals. If the respondent does not appear as ordered by the judge of probate, the judge of probate may order the sheriff of the county in which the respondent is located to take the respondent into custody and compel the respondent's attendance as ordered by the judge or probate. If temporary treatment or admittance to a hospital is ordered for the respondent, such treatment shall be supervised by a licensed medical doctor or qualified mental health professional who has willingly

consented to treat the respondent, and admission to a hospital shall be ordered by a licensed medical doctor who has willingly consented to admit and treat the respondent. ALA. CODE § 22-52-7.

h. When Probable Cause Hearing Held. When a respondent sought to be committed has any limitation imposed upon his liberty or temporary treatment imposed, the judge of probate is to set a probable cause hearing within seven days of such imposition. If the judge of probate finds that probable cause exists and that such respondent should be detained temporarily, and, further, that temporary treatment would be in the best interest of the respondent, an order stating such and setting the date, time and place of a final hearing on the merits must be entered. ALA. CODE § 22-52-8.

i. Final Hearing: When. The final hearing must be held within 30 days of the date the person was served with a copy of the petition. ALA. CODE § 22-52-8.

j. Conduct of Hearings. The following rules apply to all hearings, including probable cause hearings and final hearings for involuntary commitment:

(1) The respondent shall be present unless, prior to the hearing, the attorney for such person has filed in writing a waiver of the presence of such person on the ground that the presence of the respondent would be dangerous to such person's physical or mental health or that such person's conduct could reasonably be expected to prevent the hearing from being held in an orderly manner, and the judge of probate 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. Upon such findings an order shall be entered approving the waiver.

(2) The respondent shall have the right to compel the attendance of any witness who may be located

> anywhere in the state of Alabama and to offer evidence including the testimony of witnesses, to be confronted with the witnesses in support of the petition, to cross-examine them and to testify in his own behalf, but no such person shall be compelled to testify against himself. The attorney representing the respondent shall be vested with all of the rights of said person during all of the hearings if such person is not present in court to exercise his rights.
>
> (3) The judge of probate shall cause the hearing to be transcribed or recorded stenographically, mechanically or electronically and shall retain such transcription for a period of not less than three years from the date the petition is denied or granted and not less than the duration of any commitment pursuant to such hearings
>
> (4) All hearings shall be heard by the judge of probate without a jury and shall be open to the public unless the respondent or his attorney requests in writing that the hearings be closed to the public.
>
> (5) The rules of evidence applicable in other judicial proceedings in this state shall be followed in involuntary commitment proceedings.
>
> ALA. CODE § 22-52-9.

k. Findings by the Judge of Probate. 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 outpatient treatment or inpatient treatment. The least restrictive alternative necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder shall be ordered. The petition for involuntary commitment shall be

dismissed if the criteria for commitment is not proved. The judge shall immediately report an order for involuntary commitment to the Alabama State Law Enforcement Agency, in a manner prescribed by the Alabama Justice Information Commission, for entry into the state firearms prohibited persons database and the National Instant Criminal Background Check (NICS) system. The judge shall report to the Alabama State Law Enforcement Agency, in a method determined by the commission, updates to any order for involuntary commitment that was previously forwarded to the Alabama State Law Enforcement Agency under this section, including notice of any reversal of petition or appeal. ALA. CODE § 22-52-10.1.

l. Outpatient Treatment. A respondent may be committed to outpatient treatment if the judge of probate, based upon clear and convincing evidence, finds that:

(1) The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder.

(2) As a result of the mental illness or mental illness with secondary diagnosis of co-occurring substance use disorder, 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(a).

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 judge of probate 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 judge of probate finds, based upon clear and convincing evidence, all of the following:

> (1) The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder.
>
> (2) As a result of the mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder, 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(b).

The probate court shall not order outpatient treatment unless a designated mental health facility has consented to treat the respondent on an outpatient basis under the terms and conditions set forth by the probate court. The order for outpatient treatment shall contain the specific conditions to be followed and the general condition that the respondent follow the directives and treatment established by the designated mental health facility. An order for outpatient treatment shall not exceed 150 days unless the order

pertains to a renewal outpatient commitment order up to one year. ALA. CODE § 22-52-10.3.

A petition for renewal of an outpatient commitment order may be filed by the director of a designated mental health facility or his or her designee at least 30 days prior to the expiration of the current commitment order. The petition, together with a copy of the original commitment order and copies of any subsequent renewal commitment orders, shall be filed with the probate court of the county where the commitment was originally ordered. The petition shall explain in detail why renewal of the order is being requested and shall include testimony affirming the facility's belief that the respondent meets the requirements for renewal pursuant to ALA. CODE § 22-52-10.2. The judge of probate shall then conduct the renewal procedure as follows:

(1) The judge of probate shall conduct a hearing, within 30 days after the date of petition, to consider the petition for renewal of the commitment order.

(2) Adequate written notice shall be provided to the respondent prior to the hearing.

(3) The hearing shall be conducted in accordance with ALA. CODE § 22-52-9. A copy of the order shall be forwarded to the probate court having original jurisdiction. The burden of proof shall be to prove, based on clear and convincing evidence, the criteria of prescribed in ALA. CODE § 22-52-10.2.

(4) Any order renewing an order for commitment to outpatient treatment shall not exceed a period of one year.

(5) In cases where outpatient treatment has been renewed, a revocation petition seeking inpatient treatment may not be filed and a new petition seeking inpatient treatment shall be required.

ALA. CODE § 22-52-10.10.

Any material noncompliance with the outpatient treatment order shall be reported in writing immediately by the designated mental health facility to the probate court and the report is required to be sworn. The report will set forth the need to revoke the outpatient order. If, at the hearing to consider the motion for revocation of the outpatient treatment order, the probate court finds, based upon clear and convincing evidence, that the conditions of outpatient treatment have not been met and that the respondent meets inpatient criteria, the probate court may order commitment to inpatient treatment. ALA. CODE § 22-52-10.3.

The county will not be financially responsible for the costs of outpatient mental health services. ALA. CODE § 22-52-10.3.

m. Inpatient Treatment. The probate court will order a respondent committed to inpatient treatment if it finds, based on clear and convincing evidence, that:

(1) The respondent has a mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder;

(2) As a result of the mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder, the respondent poses a real and present threat of substantial harm to self and/or others;

(3) The respondent will, if not treated, continue to suffer mental distress and experience deterioration of the ability to function independently; and

(4) The respondent is unable to make a rational and informed decision as to whether treatment for mental illness or a mental illness with a secondary diagnosis

> of co-occurring substance use disorder would be desirable.

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. ALA. CODE § 22-52-10.4.

When deciding if a respondent is a real and present threat of substantial harm to self or others a judge of probate should look at the respondent's behavior to determine if there is a significant risk that an individual who is exhibiting behavior consistent with a mental illness, as a result of mental illness, will do the following:

> (1) By action or inaction, cause, allow, or inflict serious bodily harm upon himself, herself, or another individual.
>
> (2) Be unable to satisfy his or her need for nourishment, medical care, shelter, or self-protection so that there is a substantial likelihood of death, serious bodily harm, serious physical debilitation, serious mental debilitation, or life-threatening disease.

ALA. CODE § 22-52-1.1(9).

The least restrictive alternative necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder shall be ordered. ALA. CODE § 22-52-10.1. If no treatment is presently available but that confinement is necessary to prevent harm to himself and others, the order committing the respondent shall provide that, should treatment for the respondent's mental illness or a mental illness with a secondary diagnosis of co-occurring substance use disorder become available while the respondent is confined, such treatment will be made available to him immediately.

In determining whether an individual poses a real and present threat of substantial harm to self or others, all available relevant information may be considered, including any known relevant aspects of the individual's psychosocial, medical, and psychiatric history, in addition to the individual's current behavior. ALA. CODE § 22-52-10.4.

The probate court may order that the respondent be committed to inpatient treatment at either a state mental health facility or a designated mental health facility. An order for inpatient treatment shall not exceed 150 days. The county will not be financially responsible for the costs of inpatient mental health services. ALA. CODE § 22-52-10.5.

A petition for renewal of an inpatient commitment may be filed by the director of a state mental health facility or his designee at least 30 days prior to the expiration of the current commitment order. The petition, together with a copy of the original commitment order and copies of any subsequent renewal commitment orders shall be filed with the probate court in the county where the facility is located. ALA. CODE § 22-52-10.6.

Whenever it becomes necessary that a special judge of probate is needed with regard to the renewal of commitment orders, it will be the responsibility of the judge of probate in the county so affected to determine, select and appoint the special judge of probate who shall be paid that compensation as determined by the judge of probate, not to exceed $100 per case. The county where the hearing for renewal is held shall be allowed a fee of $20 per case to compensate the county for additional record keeping. ALA. CODE § 22-52-10.6.

The qualifications for a special judge of probate is that he shall:

(1) Be a citizen of Alabama;

(2) Have previously served for a minimum of six years as an Alabama judge of probate or shall be licensed to practice law in this state;

(3) Take the present oath of office upon entering his official duties; and

(4) Serve without bond.

ALA. CODE § 22-52-10.6. Any hearing conducted shall be held in the facilities where the person committed is a patient. An attorney is to be appointed to serve as guardian ad litem to represent and protect the rights of the respondent. The written acceptance of the appointment shall be returned to the judge of probate at least five days prior to the hearing.

Adequate written notice shall be provided to the respondent prior to the hearing. The Commissioner of the Alabama Department of Mental Health shall designate one or more members of his staff to serve as advocate in support of the petition and such advocate shall be required to be an attorney. The hearing shall be conducted in accordance with ALA. CODE § 22-52-9. A copy of the order shall be forwarded to the probate court having original jurisdiction. The burden of proof shall be to prove, based on clear and convincing evidence, the criteria as prescribed in this article. The Alabama Department of Mental Health shall provide the advocate in support of the petition and the expert witness at no cost to the State General Fund; and all other costs allowable by law shall be paid as prescribed in Section 22-52-14. ALA. CODE § 22-52-10.6.

Any order renewing an order for inpatient treatment shall not exceed a period of one year. ALA. CODE § 22-52-10.6. A respondent committed to inpatient treatment may be transferred from any treatment facility to another treatment facility when deemed to be in the best interest of respondent. Any law enforcement officer or any designated employee of the department or designated mental health facility shall have the authority to transport committed respondents from any facility to any other facility within the State of Alabama

so long as it is in the best interest of the committed respondents. ALA. CODE 22-52-10.7.

n. Recommendation for Transfer of Respondent to Outpatient Treatment. The director of a state mental health facility or designated mental health facility to which a respondent is currently committed for inpatient treatment, not later than 30 days prior to the expiration of the current commitment order, shall assess the appropriateness of transferring the respondent to outpatient treatment as the least restrictive alternative necessary and available for the treatment of the respondent's mental illness. The director may recommend to the probate court in writing that the order be modified to commit the respondent to outpatient treatment.

A recommendation shall do both of the following:

(1) State the grounds for the director's determination that outpatient treatment is the least restrictive alternative necessary and available for the treatment of the respondent's mental illness or mental illness with a secondary diagnosis of co-occurring substance use disorder.

(2) Identify the designated mental health facility to which the director recommends that the respondent be committed for outpatient treatment.

Notice for the recommendation shall be provided to both of the following:

(1) The respondent.

(2) The director of the designated mental health facility identified under subsection (b), unless the director is the individual making the recommendation.

Upon request of the respondent or any other interested party, the probate court shall hold a hearing on the recommendation. The

judge of probate shall appoint an attorney to represent the respondent at the hearing. The hearing shall be conducted in accordance with ALA. CODE § 22-52-9.

If a hearing is not requested, the judge of probate may make a decision regarding the facility director's recommendation based upon both of the following:

(1) The grounds stated in the recommendation.

(2) Consultation with the director of the designated mental health facility, or his or her designee, concerning the availability of resources to treat the respondent as an outpatient.

If the probate court modifies the order, the modified order shall conform to all requirements of an original commitment to outpatient treatment under ALA. CODE § 22-52-10.3, except that the modified order may not extend beyond the term of the original order by more than 60 days. ALA. CODE § 22-52-10.11.

o. Order for Involuntary Commitment to be Entered into Criminal Justice Information System and NICS. Effective January 1, 2025, the judge of probate must immediately report an order for involuntary commitment to the Alabama State Law Enforcement Agency, in a manner prescribed by the Alabama Justice Information Commission, for entry into the state firearms prohibited person database and the National Instant Criminal Background Check System (NICS). ALA. CODE § 22-52-10.1. ALA. CODE § 22-52-10.8 requires that, when the judge of probate of a county enters an order for the involuntary commitment of a person pursuant to ALA. CODE § 22-52-10.1, and the order is for a final commitment for inpatient treatment to the Department of Mental Health or a Veterans' Administration Hospital, or as otherwise provided by law, the judge shall immediately forward the order to the Alabama Law Enforcement Agency (ALEA) in the manner provided by the Alabama Justice Information Center (AJIC) Commission and the order shall be entered in the National Instant Criminal Background

Check System. The AJIC may allow a judge of probate access to its system for involuntary commitment hearings, name-change petitions, and other official probate functions. ALA. CODE § 22-52-10.8(a).

When any individual who has been committed is released from commitment, the person may petition the judge of probate for a review of the person's mental capacity to purchase a firearm. After review, the judge of probate may enter an order finding that the person is not subject to a mental infirmity requiring a limitation on the purchase of a firearm. A copy of the order shall be forwarded to the ALEA directing that the prior order be removed from the National Instant Criminal Background Check System. ALA. CODE §§ 22-52-10.8(b) and 22-52-10.9.

p. Renewal of Outpatient Commitment Order. A petition for renewal of an outpatient commitment order may be filed by the director of a designated mental health facility or his or her designee at least 30 days prior to the expiration of the current commitment order. The petition, together with a copy of the original commitment order and copies of any subsequent renewal commitment orders, shall be filed with the probate court of the county where the commitment was originally ordered. The petition shall explain in detail why renewal of the order is being requested and shall include testimony affirming the facility's belief that the respondent meets the requirements for renewal pursuant to ALA. CODE § 22-52-10.2. The judge of probate shall conduct a hearing, within 30 days after the date of petition, to consider the petition for renewal of the commitment order. Adequate written notice shall be provided to the respondent prior to the hearing. The hearing shall be conducted in accordance with ALA. CODE § 22-52-9. A copy of the order shall be forwarded to the probate court having original jurisdiction. The burden of proof shall be to prove, based on clear and convincing evidence, the criteria as prescribed in ALA. CODE § 22-52-10.2. Any order renewing an order for commitment to outpatient treatment shall not exceed a period of one year. In cases where outpatient treatment has been renewed, a revocation petition seeking inpatient

treatment may not be filed and a new petition seeking inpatient treatment shall be required. ALA. CODE § 22-52-10.10.

q. Transfer from Inpatient to Outpatient Treatment. The director of a state mental health facility or designated mental health facility may, not later than 30 days prior to the expiration of the current commitment order, assess the appropriateness of outpatient treatment and may recommend to the probate court, in writing, that the inpatient order be modified to commit the respondent to outpatient treatment. The probate court may hold a hearing on the recommendation upon the request of the respondent or any other interested party. If a hearing is not requested, the judge of probate may make a decision regarding the facility director's recommendation. If the probate court modifies the order, it shall conform to all requirements of an original outpatient commitment order, except that the modified order may not extend beyond the original order by more than 60 days. ALA. CODE § 22-52-10.11.

r. Retention of Jurisdiction. The probate court committing any person retains jurisdiction over such person concurrently with the probate court of the county in which the person is subsequently located for as long as the person is in custody of the department of mental health or other public facility. ALA. CODE § 22-52-11.

s. Appeals. An appeal from an order of the probate court committing a person lies to the circuit court for trial de novo unless the judge of probate who granted the petition was learned in the law, in which case the appeal lies to the Alabama Court of Civil Appeals on the record. Notice of appeal must be given in writing within five days after the respondent has received actual notice of the granting of the petition, at which point the judge of probate is to determine and enter an order setting forth the limitations to be placed upon the liberty of the person sought to be committed pending the appeal. ALA. CODE § 22-52-15.

t. Transfer of Committed Persons to the Custody of the Veterans Administration. Any person committed by the judge of probate to the custody of the Alabama State Department of Mental

Health, and who is entitled to care or treatment offered by the United States Veterans Administration or another U.S. government agency, may be transferred by the Department of Mental Health to the government agency on such terms as agreed upon by the Department of Mental Health and the government agency. ALA. CODE § 22-52-13.

u. Fees and Costs. The fees of any attorney appointed by the judge of probate to act as advocate for the petition and any attorney or guardian ad litem appointed by the judge of probate for the person sought to be committed shall be set at the rates established by ALA. CODE 15-12-21; and any expert employed to offer expert testimony, in such amounts as found to be reasonable by the judge of probate; and all other costs allowable by law shall be paid by the state general fund upon order of the judge of probate; except, that if the petition is denied and the petitioner is not indigent and is not a law enforcement officer or other public official acting within the line and scope of his or her duties, all costs may be taxed against the petitioner, and if the petition is granted and the person sought to the committed is not indigent, the judge of probate may order all costs paid from the estate of the person committed. Fees for an attorney appointed to advocate for the petitioner may include reasonable fees related to consultation and preparation of the petition prior to appointment, subject to approval by the judge of probate. ALA. CODE § 22-52-14.

O. CHILDREN

a. Adoption. "In Alabama, the right of adoption is purely statutory and in derogation of the common law, ... and unless the statute by express provision or necessary implication confers the right of adoption, such right does not exist." *Evans v. Rosser,* 190 So.2d 716, 717 (Ala. 1966) (citing *Doby v. Carroll,* 147 So.2d 803 (Ala. 1962)). Furthermore, "[w]e have always required strict adherence to the statutory requirements in adoption proceedings." *McCoy v. McCoy,* 549 So.2d 53, 57 (Ala. 1989) (citing *Ex parte Sullivan,* 407 So.2d 559 (Ala. 1981)).

In 2023, Ala. Act 2023-92 was passed, amending the Alabama Adoption Code effective January 1, 2024. The Alabama Adoption Code, as amended and as the laws relate to the adoption of a minor child, is now cited as the *Alabama Minor Adoption Code*. ALA. CODE § 26-10E-1.

The authority to receive petitions for adoption, to hold hearings, and to issue final judgments of adoption is delegated to the probate courts, who shall have original jurisdiction over adoption cases. ALA. CODE § 26-10E-3.

1. Petition for Adoption. A petition for adoption shall bear the caption "In the Matter of the Adoption Petition of [each named petitioner]". The completed petition shall be signed and verified by each petition and shall set forth each of the enumerated provisions as set out in ALA. CODE § 26-10E-16(a). The petitioner or petitioners shall attach each of the following to the petition:

(1) A government-issued document bearing photographic identification of each petitioner.

(2) If the petitioners are married, a certified document establishing proof of marriage or an affidavit of their common law marriage.

(3) A certified copy of the adoptee's birth certificate issued within six months of the date of the filing of the petition or an affidavit stating that application for the birth certificate has been made.

(4) Any written authorization allowing the adoptee to be placed in the home of the petitioner or petitioners.

(5) A copy of any court orders affecting the custody, visitation with, or parentage of, the adoptee accessible to the petitioner or petitioners.

(6) Any and all existing express consents and relinquishments upon which the petitioner or petitioners rely for the adoption.

(7) If a pre-placement investigation is required, a copy of the pre-placement investigative report.

(8) An accounting of all anticipated costs and expenses for the adoption.

ALA. CODE § 26-10E-16(b).

2. Notice of Pendency of Adoption Proceeding. Unless notice has been previously waived, notice of the pendency of an adoption proceeding shall be served on those individuals and/or entities as set out and enumerated in ALA. CODE § 26-10E-17(a).

The notice shall contain specified information, as enumerated in ALA. CODE § 26-10E-17(b), to include that the notified party has 30 days from the time of proper service of the notice to respond to the notice.

Service of the notice shall be made in accordance with the Alabama Rules of Civil Procedure, unless otherwise provided in ALA. CODE § 26-10E-17(c).

3. Native Americans. Special provisions apply if the child to be adopted is of native American ancestry. *See* Indian Child Welfare Act, 25 U.S.C. §§ 1901 through 1963.

4. Custody Pending Final Judgement. Once a petitioner or petitioners receive the adoptee into his or her home for the purpose of adoption and a petition has been filed, an interlocutory decree may be entered delegating to the petitioner or petitioners custody of the adoptee. ALA. CODE § 26-10E-18 modifies previous law, which required the probate court to issue an interlocutory decree upon the filing of the petition, and provides clarification for exceptions (i.e., custody shall be retained by the county department of human resources or the licensed child placing agency that held custody at the time of the placement until the entry of final judgment of adoption).

5. Required Investigation. ALA. CODE § 26-10E-19 addresses the requirements of pre-placement and post-placement investigative reports. These reports are required in cases when the petitioner or petitioners are not related to the minor adoptee. *See* ALA. CODE §§ 23-10E-26 and 26-10E-27 for limited investigation requirements in related adoption cases.

The pre-placement investigation shall be filed with the court at the time of the filing of the petition for adoption, unless the court grants leave to file the report after the filing of the petition for good cause shown on the record. The pre-placement investigation must be performed within 12 months of the filing of the petition for adoption.

The post-placement investigative report shall address the enumerated issues as set out in ALA. CODE § 26-10E-19(e). The required pre-placement and post-placement investigations must be performed by one of the following:

(1) The Department of Human Resources

(2) A licensed child placing agency

(3) A social worker licensed by the Alabama Board of Social Work Examiners who is also certified by the Alabama Board of Social Work Examiners for private independent practice in the social casework specialty, as provided in ALA. CODE § 34-30-3.

The final judgment approving the adoption shall be entered until a full post-placement investigative report has been completed and filed with the court.

6. Stepparent Adoptions and Adoption by Relatives. Before the entry of the final judgment of adoption, the minor adoptee must have resided for a period of one year with the stepparent or other petitioner or petitioners who are related to the minor adoptee. ALA. CODE § 26-10E-27 provides a list of the familiar relation to the adoptee for consideration of relatives who may adopt a minor. In both cases, a limited investigation shall be conducted to determine the suitability of the petitioner or the petitioners, and the home in which the adoptee will reside, and the report of the investigation shall include those requirements as set out in ALA. CODE §§ 26-10E-19(a)(1), 26-10E-19(a)(2), and 26-10E-19(a)(14), and may include other information required by ALA. CODE § 26-10E-19(a) as directed by the court. The investigative report shall be filed with the court.

7. Persons from whom Consent to the Adoption is Required. ALA. CODE § 26-10E-7 enumerates all required parties or entities whose contents to the petition for adoption is required. Notwithstanding any law to the contrary, a court having jurisdiction over an adoption case shall have the power to determine the biological or legal parentage of a minor to ascertain whose consent shall be required or to adjudicate any other claim or issue in the case. Further, this statute separates the substantive right to consent to the adoption from the procedural due process right to notice of the adoption proceedings.

8. Implied Consent. A rebuttable presumption that a parent has impliedly consented to the adoption or the relinquishment for adoption of an adoptee arises when clear and convincing evidence shows any of the following:

(1) Abandonment of the adoptee by the parent during the four months immediately preceding the date of the filing of the petition for adoption.

(2) Abandonment by the legal father or putative father of the biological mother by failing to offer to the biological mother financial or emotional support, or both, during the four months immediately preceding the birth of the adoptee despite knowing or having reason to know of the pregnancy.

(3) The parent, without good cause or excuse, left the adoptee without provision for his or her identification for a period of 30 days.

(4) The parent voluntarily and knowingly, without good cause or excuse, left the adoptee with another person without personally providing support for, initiating communication with, or otherwise maintaining a substantial relationship with the adoptee for the four consecutive months immediately preceding the date of the filing of the petition.

A rebuttable presumption that any individual or agency whose consent is required has impliedly consented to the adoption, or the relinquishment for adoption of an adoptee arises when clear and convincing evidence shows that the individual or agency has received notification of the pendency of the adoption proceedings pursuant to ALA.

CODE § 26-10E-17 and has failed to answer or otherwise respond to the petition within 30 days.

Implied consent may not be withdrawn.

9. Putative Father Registry, The Department of Human Resources maintains a putative father registry that keeps the names, Social Security number, date of birth, and addresses of:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock.

(2) Any person who has filed with the registry before or after the birth of a child born out of wedlock, a notice of intent to claim paternity of the child.

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of a child born out of wedlock, where a certified copy of the court order has been filed with the registry by the person or any other person.

(4) Any person who has filed with the registry an instrument acknowledging paternity.

A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall include:

(1) The father's name, Social Security number, date of birth, and current address.

(2) The mother's name, including all other names known to the putative father that have been used by the mother, Social Security number, date of birth, and address, if known.

(3) The father's current income and financial information by attaching a child support obligation income statement/affidavit form to be prescribed by regulations of the department.

(4) The child's name and place of birth, if known.

(5) The possible date or dates of sexual intercourse.

The Department of Human Resources provides the names and addresses of persons listed with the registry to the probate court after receiving notice of the pendency of a petition for adoption. These names are listed on the Acknowledgement Letter, sent to the probate court.

The Department of Human Resources shall, upon request, provide the names and addresses of persons listed with the registry to any court when request thereof has been made. ALA. CODE § 26-10C-1.

10. Contested Hearing. Upon the filing of a pleading or a motion by a party contesting the adoption, or upon transfer of a contested case pursuant to ALA. CODE § 26-10E-3, the court shall set the matter for a contested hearing. The statutory provisions to be determined by the court are enumerated in ALA. CODE § 26-10E-23. A guardian ad litem shall be appointed by the court to represent the interests of the minor adoptee in a contested hearing.

11. Dispositional Hearing; Final Judgment. Once the petition for adoption and any accompanying documentation has been filed, the court shall set a dispositional hearing to take place as soon as practicable, but no later than 120 days after the filing. Upon good cause shown, the court may extend the time for the dispositional

hearing. At the dispositional hearing, the court shall approve the if it finds, based on clear and convincing evidence that all prerequisites have been met and that the specific statutory requirements have been met.

The court shall enter its finding in a written final judgment of adoption, which shall also include the new name of the adoptee after adoption and shall not include any other name by which the adoptee has been known or any names of the former parent. The final judgment of the adoption shall further order that, from the date of the entry of judgement, the adoptee shall be the child of the petitioner or petitioners, and that the adoptee shall be accorded the status set forth in ALA. CODE § 26-10E-28.

After the final judgment has been issued, all papers, pleadings and other documents pertaining to the adoption shall be sealed, kept as a permanent record of the court and withheld from inspection. No person shall have access to them nor identifying information disclosed, except upon order of the court in which the final judgment of adoption was entered or as provided in ALA. CODE § 22-9A-12 through the Office of Vital Statistics. ALA. CODE § 26-10E-30.

12. Challenge of Final Judgment; Appeals. A party may file a post judgment motion challenging any final judgment. Any post judgment motion must be filed within 14 days of the entry of final judgment, and no post judgment motion may remain pending for more than 14 days, at which time it shall be deemed denied by operational law. ALA. CODE § 26-10E-25.

All appeals shall comply with the Alabama Rules of Appellate Procedure. An appeal may be made to the Alabama Court of Civil Appeals by the proper filing of a notice of appeal with the clerk of the court entering the final judgment within 14 days of the entry of the final judgment,

subject to Rule 4(a)(3) of the Alabama Rules of Appellate Procedure and Rule 77(d) of the Alabama Rules of Civil Procedure.

b. Foreign Adoption*: *Certificate of Foreign Birth Without Judicial Proceedings. The State Registrar is authorized to issue a Certificate of Foreign Birth without judicial proceedings if certain criteria are satisfied. ALA. CODE § 22-9A-11.1.

c. Adult Adoption. In 2023, Ala. Act 2023-92 was passed, amending the Alabama Adoption Code, effective January 1, 2024. Pursuant to the Act, the provisions for the adoption of an adult are no longer combined with those of the adoption of a minor. The Alabama Adoption Code, as amended, provides for a separate chapter for adult adoption laws, and now may be cited as *Adult Adoption Code*. ALA. CODE § 26-10F-1.

d. Legitimation. A father seeking to legitimate a child is required to file a notice of declaration of legitimation with the judge of probate of the county of either his or the child's residence. Notice of the declaration of legitimation, consistent with Rule 4 of the Alabama Rules of Civil Procedure, must be given both to the mother and to the child. In the event the mother makes a timely objection to the prospective legitimation or to the extent the court feels such to be in the best interest of the child, the probate court is to appoint a guardian ad litem to represent the child. Upon either the response of the mother or the expiration of time for such response, the probate court must conduct an informal hearing at which all interested parties may present evidence concerning legitimation. Following such hearing, the court must issue an order granting or denying the declaration of legitimation. ALA. CODE § 26-11-2. A similar procedure is followed if a petition is filed for a name change in conjunction with a petition for a declaration of legitimation. ALA. CODE § 26-11-3.

Alternatively, the paternity of an illegitimate child may be established after the death of the father through adjudication resulting in judicial determinations of paternity. *Cotton v. Terry*, 495

So.2d 1077 (Ala.1986). ALA. CODE § 43–8–48(2)b., rather than the 2008 Alabama Uniform Parentage Act, governs judicial determinations of paternity for purposes of intestate succession. *Clemons v. Howard*, 124 So.3d 738 (Ala. Civ. App. 2013).

e. Name Change of a Minor. Pursuant to § 23-13-1, "the probate court shall have original and general jurisdiction as to all matters mentioned in this section and shall have original and general jurisdiction as to all other matters which may be conferred upon them by law, unless the law so conferring jurisdiction expressly makes the jurisdiction special or limited."

The probate court shall have original and jurisdiction over "the change of the name of any minor residing in their county, upon the filing of a declaration in writing, signed by the parent or legal guardian of the minor, stating the name by which the minor is known and the name to which it is to be changed, along with the consent from all persons who have natural parental or legal rights of the minor. Consent of the minor is required if the minor is 14 or more years of age. This [statute] does not apply to a minor who is involved in a domestic relations matter that is pending in the circuit court or to a minor whose name is ordered by a court to be changed pursuant to the Uniform Parentage Act." ALA. CODE § 12-13-1(b)(11).

P. EMINENT DOMAIN

a. Jurisdiction. Jurisdiction to condemn privately owned land rests in the probate court pursuant to the "Alabama Eminent Domain Code." A judge of probate receives petitions for condemnation, conducts the necessary proceedings, and issues the final condemnation order. ALA. CODE §§ 18-1A-1 through 18-1A-311. In addition to condemnation for public uses, this jurisdiction extends to the erection of dams for gristmills, sawmills, gin factories or plants to generate electricity by water power and to the acquisition of rights-of-way for private owners. ALA. CODE §§ 18-2-1 through 18-2-21; 18-3-1 through 18-3-22.

The jurisdiction of the probate court and the procedure to be followed in condemnation cases are explained in Title 18 of the Code of Alabama. Other important provisions are ALA. CODE §§ 42-2-1 through 42-2-12, which explain condemnation action on land sought by the United States.

b. Authority. The exercise of eminent domain by the state requires that the taking of land must be for public use and just compensation must be paid the landowner. ALA. CONST. art. I, § 23. The Alabama Constitution provides for the exercise of eminent domain by cities, counties and other corporations and individuals vested with the right to take property for public use. ALA. CONST. art. XII, § 235.

The Alabama Legislature has placed some restrictions on the exercise of eminent domain for nongovernmental retail, office, commercial, residential, or industrial development or use. These restrictions do not apply to property considered to be a blight in an area covered by a redevelopment or urban renewal plan, nor do these restrictions apply to the condemnation of property for public utility purposes (telephone, gas, water, electricity) or for streets, roadways, government buildings, or park and recreation facilities. ALA. CODE § 18-1B-2.

If condemned property is not ever used for the purposes for which it was condemned or for some other public use, that is subsequently determined to be sold, the property shall be first offered for sale to the person or persons from whom the property was condemned, or his or her known or ascertainable heirs or assigns, in the manner prescribed by law. ALA. CODE § 18-1B-2.

In 2015, the Legislature passed a law that prohibits a government entity from acquiring mortgages or deed of trust through the exercise of its eminent domain power unless there is a public use for the property. ALA. CODE §§ 18-1B-3 and 11-47-170.

c. Procedure Prior to Commencement of Condemnation Action.

1. Appraisal. Before commencing a condemnation action, a condemnor must have the property appraised to determine the amount that would constitute just compensation for the taking. The owner or the owner's representative must be given a reasonable opportunity to accompany the appraiser during the inspection of the property. ALA. CODE § 18-lA-21.

2. Offer. Before commencing a condemnation action, a condemnor must offer the owner an amount based on an appraisal believed to be just compensation. The condemnor shall provide the owner with a written statement and summary showing the amount determined to be just compensation. ALA. CODE § 18-1A-22.

3. Payment or Deposit Before Surrender of Possession. An owner is not required to surrender possession of the property before the condemnor either pays the agreed purchase price or pays or deposits the amount awarded by the condemnation order. ALA. CODE § 18-1A-23.

4. Notice. Except in an emergency, a condemnor may not require an occupant of the condemned property to move prior to a 90-day notice of the move. ALA. CODE § 18-1A-24.

5. Uneconomic Remnant. If the acquisition of part of the property would leave the owner with an uneconomic remnant, the condemnor must offer to buy the remnant. ALA. CODE § 18-1A-27.

6. Entry. A condemnor and its agents and employees may enter upon the property for a reasonable time to make surveys, examinations, tests, or other activities for the

purpose of appraising the property or determining whether it is suitable and within the power of the condemnor to take for public use, in the matter prescribed by law. ALA. CODE §§ 18-1A-50 through 18-1A-54.

7. Offer as Prerequisite. The condemnor must offer to acquire the property at its approved offer by purchase before commencing the condemnation action in probate court. ALA. CODE § 18-1A-55.

d. Commencement of Condemnation Action. The procedure prior to the commencement of condemnation action often results in a settlement of property acquisition by a condemnor at a satisfactory purchase price negotiated between the parties. The two most common reasons a settlement cannot be reached are: 1) condemnor and property owner cannot agree on amount of just compensation; and 2) even if there is an agreement as to just compensation, a condemnor cannot obtain clear title due to unresolvable title defects. Both of these reasons require a condemnation action that is commenced by the condemnor filing a complaint for condemnation with the probate court in the county in which the property or any part thereof sought to be taken is located. ALA. CODE § 18-1A-71.

The Alabama Eminent Domain Code has strict deadlines and procedures for the probate court and the condemnor. Procedures are outlined below.

1. Complaint and Notice of Pending Action. There are six general elements that a complaint (sometimes referred to as an application or a petition) must contain. ALA. CODE § 18-1A-72. The six general elements include:

(1) Designation of plaintiffs (condemnors) on whose behalf the property is sought to be taken;

(2) Naming all defendants (condemnees), who to

plaintiff's knowledge, are owners of or who have or claim any interest in the property sought to be taken;

(3) Legal description of the property and the interest sought to be taken;

(4) Allegation of the basis of the plaintiff's right to take the property by eminent domain;

(5) List of all items which the plaintiff proposes to acquire and which plaintiff deems to be equipment or fixtures attached to or a part of the property; and

(6) Map or diagram portraying the property sought to be taken and the remainder, if any.

After commencement of a condemnation action, the plaintiff shall cause a notice of the pendency of the proceedings (lis pendens) to be recorded in the office of the probate court in each county in which any property described in the complaint is located in ALA. CODE § 18-1A-75.

2. Service of Process. Upon the filing of the complaint, the probate court must enter an order appointing a day for the hearing and issue to the defendants a copy of the complaint and notice of the day set for hearing, unless notice is waived. Service upon defendants may be in accordance with Rule 4 of the Alabama Rules of Civil Procedure. ALA. CODE § 18-lA-74. The probate court shall conduct the hearing within 45 days after filing of the complaint (unless continued to provide reasonable notice or for other compelling reasons). The probate court must hear the allegations of the complaint, any objections which may be filed, and any legal evidence, and, within 10 days after the hearing, shall make an order granting or refusing the complaint. ALA. CODE § 18-1A-276.

3. Defendant's Response. The defendant may respond by answer but is not required to do so unless the defendant challenges the right to condemn or disputes the area to be acquired or remain. ALA. CODE § 18-1A-90.

4. Appointment of Commissioners. Within 10 days after the complaint is granted, the judge of probate must appoint three citizens of the county (who shall possess the qualifications of jurors and shall be disinterested) to serve as commissioners. ALA. CODE § 18-1A-279. The probate court shall immediately issue notice of the appointment to the commissioners. ALA. CODE § 18-1A-280.

5. Commissioner's Hearing and Assessment of Damages. After notice to all parties, the commissioners shall hold a hearing to receive evidence offered by any party relating to the amount of damages the owners of the lands and other parties interested there in will sustain and the amount of compensation they are entitled to receive. ALA. CODE § 18-1A-281. Commissioners may view the property and receive opinion evidence as to the value of the property, but certain evidence is not admissible. ALA. CODE §§ 18-1A-191 through 18-1A-197.

An owner of property acquired by eminent domain is entitled to compensation. If there is a partial taking, the valuation rule is the difference between the fair market value of the entire property before the taking and the fair market value of the remainder after the taking. ALA. CODE § 18-1A-170.

The fair market value is defined as the price the property would bring when offered for sale by a willing seller who is not forced to sell and which is sought by a willing buyer who is not required to buy, after due consideration of all the elements affecting value. ALA. CODE § 18-1A-172.

The amount of compensation to which the owners and other parties interested there in are entitled must not be reduced or diminished because of any incidental benefits which may accrue to them or to their remaining lands. However, in the condemnation of lands for rights-of-way for public highways, water or sewer lines, the value of the enhancement to the remaining lands of such owner may be considered and allowed as a setoff against the damages to be awarded. ALA. CODE § 18-1A-171.

6. Commissioner's Report, Order, and Notice of Right to Appeal. Within 20 days from their appointment, the commissioners must make a report in writing to the probate court stating the amount of damages and compensation ascertained. Within seven days of receipt of report of commissioners, the probate court must issue an order that the report be recorded and the property be condemned upon payment or deposit into probate court of the damages and compensation assessed. Notice of entry of the order and the amount of the award shall immediately be mailed by first class mail to each party, together with notice of the right to appeal to the circuit court within 30 days from the date of the order. ALA. CODE § 18-1A-282.

The commissioners shall file a certificate that neither of them had ever been consulted, advised with, or approached by any person in reference to the value of the lands or the proceedings to condemn the same prior to the assessment of damages and that they knew nothing of the same prior to their appointment. ALA. CODE § 18-1A-279.

7. Appeal to Circuit Court. Within 30 days of the order of condemnation, any party may appeal to the circuit court by filing in the probate court a written notice of appeal for a trial de novo, and the probate court shall "send up the proceeding" to circuit court. ALA. CODE § 18-1A-283.

8. Payment of Damages and Compensation. The condemnor has 90 days to pay into probate court the damages and compensation assessed in the order. ALA. CODE § 18-1A-290. The probate court may extend this time period by 30 days for "good cause." Within 30 days after deposit of the damages and compensation, the court shall give written notice by first class mail to each defendant. ALA. CODE § 18-1A-214. Any defendant may file a claim for defendant's part of the damages and compensation assessed, and the probate court may set a hearing to determine same. ALA. CODE §§ 18-1A-291 and 18-1A-292. If the condemnor fails to make payment within the specific time period, the property owner can treat the failure to pay as an abandonment of the proceeding and move for dismissal as well as litigation expenses. ALA. CODE §§ 18-1A-215 and 18-1A-232.

If an appeal to circuit court was filed, the condemnor has 60 days after the appeal is determined to pay into probate court the damages and compensation assessed in the order. ALA. CODE § 18-1A-290. The condemnor does not have to pay into probate court the damages and compensation while the case is on appeal to circuit court. However, if the condemnor fails to pay the award into court (and post a bond, if applicable) and the case is appealed, the probate court's order of condemnation is suspended. ALA. CODE § 18-1A-284. If the condemnor desires to go forward with the project while the case is on appeal (i.e., gain a right of entry onto the property to proceed with the project), the condemnor must pay into probate court the damages and compensation assessed, must pay costs of court proceedings to date, and must give a bond in double the amount of the assessed damages and compensation. ALA. CODE § 18-1A-284. Some entities may be exempt from the bond.

9. Costs. The condemnor must pay "the costs of the complaint and proceedings thereunder up to and through the entry of final judgement, including the compensation of

commissioners." ALA. CODE § 18-1A-293.

Note: There is no statutory requirement for an order after the payment of award by the condemnor, but issuing one serves the practical purpose of alerting others that the condemnor has paid the damages and compensation, and thus, that the condition precedent to the actual condemnation has in fact occurred. Moreover, if there is an appeal to circuit court, receipt of this order signifies that the condemnor has met the requirements of ALA. CODE § 18-1A-289 and has perfected (if a bond has been posted, where required) its right of entry onto the condemned property to begin construction work.

e. Condemnation Action Procedure Timetable. A summary of the condemnation procedure is provided below:

Step	**Action**	**Citation**
1	Complaint filed; court must enter order appointing day for hearing	ALA. CODE § 18-1A-74
	If any land owner is an infant, of unsound mind, or unknown, a guardian ad litem must be appointed by the court.	ALA. CODE § 18-1A-275
2	Service upon defendants of notice of hearing with copy of complaint and order must be made in accordance with Rule 4 of ARCP	ALA. CODE § 18-1A-74
3	Plaintiff must file notice of pendency of the proceeding (lis pendens) in real estate records	ALA. CODE § 18-1A-75
4	Defendants may/may not answer complaint and/or file preliminary objections	ALA. CODE §§ 18-1A-90 and 18-1A-91

5	Within 45 days of complaint being filed, a hearing on the complaint must be held by the court (preliminary objections may be heard at the same or a different time)	ALA. CODE §§ 18-1A-276 and 18-1A-93
6	Within 10 days of the hearing, the court must make order granting or refusing complaint	ALA. CODE § 18-1A-276
7	If complaint is granted, within 10 days of order, the court must appoint three commissioners	ALA. CODE § 18-1A-279
8	Notice of the appointment is to be given to the commissioners immediately	ALA. CODE § 18-1A-280
9	Commissioners must give notice to all parties and hold a hearing to receive legal evidence of amount of damages sustained and compensation entitled	ALA. CODE § 18-1A-281
10	Within 20 days of their appointment, commissioners must file report in writing to the court stating the amount of damages and compensation ascertained and assessed	ALA. CODE § 18-1A-282
11	Within seven days of receipt of the report, the court must issue order that report be recorded and property condemned upon payment/deposit of damages and compensation assessed	ALA. CODE § 18-1A-282
12	Immediately upon issuance of the order, notice of entry of the order, amount of award, and notice of right to appeal within 30 days must be mailed to each party	ALA. CODE § 18-1A-282

13	Within 30 days of the order, any party may file written notice of appeal with the court; the court then "sends up the proceeding" to the circuit court	ALA. CODE § 18-1A-283
****IF APPEAL IS NOT FILED**		
Damages and compensation must be paid within 90 days after assessment (the court may extend for additional 30 days for good cause)		ALA. CODE §§ 18-1A-290 and 18-1A-214(a)
Court must give written notice to each defendant within 30 days after payment of award		ALA. CODE § 18-1A-214(c)
Defendant(s) may file claim for his/her/its share of award (the court sets hearing and distributes award based upon its finding)		ALA. CODE § 18-1A-291
Court may set hearing to determine distribution of award if no claims are filed by the defendants and proper division is doubtful		ALA. CODE § 18-1A-292
If damages and compensation are not timely paid, the defendant may move for dismissal and litigation expenses		ALA. CODE §§ 18-1A-215 and 18-1A-232
****IF APPEAL IS FILED**		
Damages and compensation must be paid within 60 days after the appeal is determined		ALA. CODE § 18-1A-290
To have right of entry onto property (proceed with project) during appeal, the plaintiff must pay costs, damages and compensation, AND bond/money in DOUBLE the amount of damages and compensation		ALA. CODE § 18-1A-284
After payment of award and before entry of judgment, the defendant by motion may withdraw the amount of the plaintiff's approved offer		ALA. CODE § 18-1A-110

Upon motion of a party at any time after deposit of award, the court may direct money not withdrawn be invested in CD and interest earned shall be disbursed pro rata in relation to final award	ALA. CODE § 18-1A-111

Q. NOTARIES PUBLIC

a. Appointment and Commissioning. Notaries public for the state at large shall be appointed and commissioned by the judges of probate of the several counties of the state. Each notary shall hold office for a period of 4 years, which can be renewed. ALA. CODE § 36-20-70. The judge of probate shall report to the Secretary of State the name, county of residence, date of issuance, and date of expiration of the commission of each notary public appointed and commissioned. ALA. CODE § 36-20-70. The jurisdiction of notaries public shall not be limited to the counties of their residence and shall extend to any county of the state. ALA. CODE § 36-20-70. The judge of probate shall collect a fee of twenty-five dollars ($25) for each notary commission issued. ALA. CODE § 36-20-70. It is unconstitutional to deny a commission as notary public to a legal alien who has in all other respects complied with the statutory requirements pertaining to office of notary public. *See Babcooke v. Duncan*, 486 So.2d 431, 432 (Ala. 1986) (citing *Bernal v. Fainter*, 467 U.S. 216 (1984)).

b. Application and Training. Each applicant for notary public commission shall pay a ten-dollar ($10) application fee. A judge of probate may accept or deny any application and shall deny an application on any of the following grounds:

(1) The applicant is not a resident of this state.

(2) The applicant makes the application to a judge who is not the judge of probate of the county of the applicant's residence.

(3) The applicant has been convicted of a felony or crime of moral turpitude.

(4) The applicant is currently a debtor in a bankruptcy proceeding.

(5) The applicant is under a current order adjudicating him or her incapacitated.

(6) The applicant provides false information on the application.

(7) The applicant is unable or unwilling to successfully complete the training program required in ALA. CODE § 36-20-70(e) within 30 days after submitting his or her application. This time frame may be extended by the judge of probate upon good cause shown.

Ala. Code § 36-20-70(c).

Before being commissioned, an applicant for a notary public commission shall successfully complete a training program. An attorney who is commissioned as a notary public is not required to complete the training requirement. A notary public who is commissioned as of September 1, 2023, shall be required to complete the training requirement upon submitting a renewal application. ALA. CODE § 36-20-70(e).

c. Bond. Notaries public shall give a bond with sureties, obtained from an Alabama licensed producer of such bonds, to be approved by the judge of probate of the county of their residence, in the sum of fifty-thousand dollars ($50,000.00) payable to the State of Alabama. The bond must be executed, approved, filed and recorded in the office of the judge of probate of the county of the notary public's residence, before the notary public enters on the duties of the office. ALA. CODE § 36-20-71(a). All existing notaries public functioning on September 1, 2023, shall continue to function

pursuant to their existing bond for the remainder of their existing commission. ALA. CODE § 36-20-71(b).

d. Seal, Form and Content. For the authentication of his or her official acts, each notary public shall provide a seal of office, which shall present, by impression or stamp, the name, office, and state for which the notary was appointed. ALA. CODE § 36-20-72(a). The form and content of any notarial act on an instrument to be recorded in public records, including the court system, shall include an oath, acknowledgment, and signature of each party to the document, or his or her mark, and the signature of the notary public and his or her seal of office by either ink stamp or embossed impression. ALA. CODE § 36-20-72(b).

e. Powers. Notaries public may do the following:

(1) Administer oaths in all matters incident to the exercise of their office.

(2) Take acknowledgments or proof of instruments of writing relating to commerce or navigation and certify the same and all other of their official acts under their seal of office.

(3) Demand acceptance and payment of bills of exchange, promissory notes and all other writings which are governed by the commerce law as to the days of grace, demand and notice of nonpayment and protest the same for nonacceptance or nonpayment and to give notice thereof as required by law.

(4) Exercise such other powers as, according to commercial usage of the laws of this state, may be belong to a notary public.

ALA. CODE § 36-20-73.

f. Attestations. Except as otherwise provided, any signature acknowledged by a notary public shall be executed within this state and shall be executed in the physical presence of the notary public at the time of the acknowledgment, only after the notary public has positively identified the prospective signatory via personal knowledge of the prospective signatory or the examination of photo identification issued by a governmental entity or agency. Unless otherwise provided by law, the powers and functions of a notary public require his or her original signature. ALA. CODE § 36-20-73.1.

g. Remote Notarization. An individual may personally appear before an acknowledging notary by either of the following:

(1) Physically appearing before the notary as provided in ALA. CODE § 36-20-73.1(a).

(2) Appearing through the use of two-way audio-video communication technology that allows a notary public and a remotely located signatory to communicate with each other simultaneously by sight and sound, provided that the notary public is physically located in this state and the two-way audio-video communication is recorded and maintained for a period of seven years by the notary public.

ALA. CODE § 36-20-73.1(d).

If appearing through the use of two-way audio-video communication, the identity of the signatory shall be verified by the notary public using either of the following methods:

(1) The personal knowledge of the notary public of the identity of the signatory.

(2) Both of the following:

a. The presentation of two valid forms of government issued identification, one of which shall include the face and signature of the signatory; and

b. A process by which the notary public verifies the identity of the signatory through a review of public or private data sources.

ALA. CODE § 36-20-73.1(e).

The two-way audio-video communication recording shall contain all of the following:

(1) The date and time of the remote notarial act.

(2) A description of the documents to which the remote notarial act relates.

(3) An attestation by the notary public of being physically located in this state.

(4) A description of how the identification of the signatory was verified.

(5) A clear image of any government issued identification, if applicable.

(6) A clear image of the act of signing observed by the notary public.

ALA. CODE § 36-20-73.1(f).

The official date and time of the notarization is the date and time the notary public witnessed the signature, including the date and time the signature was witnessed via two-way audio-video communication technology. All documents used during the two-way audio-video communication, shall be provided to the notary

public for his or her authentication and original signature. ALA. CODE § 36-20-73.1(g).

Any action taken before July 1, 2021, allowing for the remote notarization of signatures under the Emergency Management Act of 1955, Article 1 of Chapter 9 of Title 31, is ratified and confirmed. ALA. CODE § 36-20-73.1(h).

Remote notarization may not be used to notarize an absentee ballot application or an absentee ballot affidavit, or for any purpose related to voting. ALA. CODE § 36-20-73.1(i).

h. Fees. A notary public is entitled to a reasonable fee, not to exceed the sum of ten dollars ($10), for carrying out any of the enumerated powers in ALA. CODE § 36-20-73. No fee may be charged by a state, county, or municipal employee for a notarial act performed during, and as a part of, his or her public service, unless otherwise provided by law. ALA. CODE § 36-20-74.

i. Professional Services. Notwithstanding ALA. CODE § 36-20-70, a professional who is commissioned as a notary public, in the normal court of providing a professional service in exchange for a fee, commission, or other payment, may perform any acknowledgement or other notarial act that is required in order to provide the professional service.[6] Additionally, notwithstanding ALA. CODE § 36-20-70, an individual who is employed by a professional and who is commissioned as a notary public may perform any acknowledgment or other notarial act that is required in the normal course of providing a professional service for which the employing professional receives a fee, commission, or other payment. ALA. CODE § 36-20-70.1(b).

j. Violations. The commissioning judge of probate, or his or her successor in office, may issue a warning to a notary public or

[6] "Professional service" means any service or occupation that may be lawfully performed only pursuant to a license issued by a state court, state regulatory licensing board, or other similar agency. The term "professional" refers to an individual who holds the license. ALA. CODE § 36-20-70.1(a).

restrict, suspend, or revoke a notarial commission for a violation of Alabama's notary public laws and on any ground for which an application for a commission may be denied under statute. A period of restriction, suspension, or revocation does not extend the expiration date of a commission. ALA. CODE § 36-20-75.

Except as otherwise permitted by law, an individual who commits any of the following acts is guilty of a Class C misdemeanor:

(1) Holding one's self out to the public as a notary public without being commissioned.

(2) Performing a notarial act with an expired, suspended, or restricted commission.

(3) Performing a notarial act before taking an oath of office.

(4) Charging a fee for a notarial act in excess of the maximum fee allowed by Alabama's notary public laws.

(5) Taking an acknowledgment or administering an oath or affirmation without the principal appearing in person before the notary public or following the procedures for remote notarization set out in this article.

(6) Taking an acknowledgment or administering an oath or affirmation without personal knowledge or satisfactory evidence of the identity of the principal.

(7) Taking a verification or proof without personal knowledge or satisfactory evidence of the identity of the subscribing witness.

ALA. CODE § 36-20-75(b).

A notary public is guilty of a Class D felony if he or she does any of the following with the intent to commit fraud or to intentionally assist in the commission of a fraudulent act:

(1) Takes an acknowledgment, or a verification or proof, or administers an oath or affirmation he or she knows or reasonably believes to be false.

(2) Takes an acknowledgment or administers an oath or affirmation without the principal appearing in person before the notary public, or without following the procedures for remote notarization set out in Alabama's notary public laws.

(3) Takes a verification or proof without the subscribing witness appearing in person before the notary public, or without following the procedures for remote notarization set out in Alabama's notary public laws.

(4) Performs notarial acts in this state with the knowledge that he or she is not properly commissioned under Alabama's notary public laws.

ALA. CODE § 36-20-75(c).

Further, any party to a transaction requiring a notarial certificate for verification, and any attorney licensed in this state who is involved in such a transaction in any capacity, may execute an affidavit and file it with either the Secretary of State or the judge of probate who issued the commission to the notary public, setting forth the actions which the affiant alleges are violations. Upon receipt of an affidavit, the Secretary of State or judge of probate shall forward the affidavit to the Alabama State Law Enforcement Agency. Upon receipt of the affidavit, the Alabama State Law Enforcement Agency shall initiate and carry out, on its own or in coordination with local law enforcement agencies, investigations of violations. Founded investigations shall be referred to the

appropriate district attorney for prosecution. ALA. CODE § 36-20-75(d)(1).

Resignation or expiration of a notarial commission does not terminate or preclude an investigation into the conduct of a notary public by the Secretary of State, a judge of probate, or a law enforcement agency who may pursue the investigation to a conclusion, whereupon it may be a matter of public record whether or not the finding would have been grounds for disciplinary action. ALA. CODE § 36-20-75(d)(2).

The commissioning judge of probate may order injunctive relief against any individual who violates this chapter including, but not limited to, ordering the surrender and destruction of a notary commission and a notary seal. ALA. CODE § 36-20-75(d)(3).

Lastly, any individual who knowingly solicits, coerces, or in any material way influences a notary public to commit official misconduct is guilty as an aider and abettor and is subject to the same level of punishment as the notary public. ALA. CODE § 36-20-75(e).

R. RETIRED OR SUPERNUMERARY JUDGES OF PROBATE

Every judge of probate who meets the requirements for retirement shall be entitled to receive a pension as provided in Article 4 of Chapter 18 of Title 12 of the Code of Alabama. Furthermore, every judge of probate who has retired pursuant to this article may, on the request of the Chief Justice, be called to active duty status as a judge of probate. Retired judges of probate who are called into active duty are entitled to certain compensation. ALA. CODE §§ 12-18-80 and 12-18-88.

Any judge of probate who qualifies to retire from active service with a benefit from the Judicial Retirement Fund is entitled to participate in the State Employees' Health Insurance Plan. ALA. CODE § 36-29-16.

S. CANONS OF JUDICIAL ETHICS

The Alabama Canons of Judicial Ethics is a set of rules governing the behavior and activities of judges. Because judges of probate are judicial officers, these rules do apply to judges of probate. However, because judges of probate are charged with many administrative and executive duties, the rules are slightly modified to govern the unique position of a judge of probate. A judge of probate should be familiar with all the Canons of Judicial Ethics and pay special attention to the section concerning judges of probate. Please review the Canons of Judicial Ethics and the Appendix in this Handbook to determine which Canons apply to the judge of probate. All the Canons of Judicial Ethics and the Compliance with the Canons of Judicial Ethics are located in the Rules of the Alabama Supreme Court, which is currently in Volume 23C of the Code of Alabama.

T. MISCELLANEOUS

a. Appointment of Special Coroner. The judge of probate has authority to appoint a special coroner under the following conditions:

(1) When the coroner has not qualified or the office is vacant and the emergency requires such officer;

(2) When the coroner is absent from the county, having no deputy therein;

(3) When the coroner is imprisoned; or,

(4) When the sheriff and coroner are both parties or both interested.

ALA. CODE § 11-5-10.

b. Awarding Attorney Fees. In appropriate cases, when it is provided for by law, statute, or contract, the judge of probate may

award reasonable attorney fees to a prevailing party. The determination of whether an attorney fee is reasonable is within the sound discretion of the trial court and its determination on such an issue will not be disturbed on appeal unless in awarding the fee the trial court exceeded that discretion. *See State Bd. of Educ. v. Waldrop*, 840 So.2d 893, 896 (Ala. 2002); *City of Birmingham v. Horn*, 810 So.2d 667, 681-82 (Ala. 2001); *Ex parte Edwards*, 601 So.2d 82, 85 (Ala. 1992) (citing *Varner v. Century Fin. Co.*, 738 F.2d 1143 (11th Cir. 1984)); *Pharmacia Corp. v. McGowan*, 915 So.2d 549, 552 (Ala. 2004). In determining the reasonableness of an attorney fee, the court may consider:

(1) The nature and value of the subject matter of the employment;

(2) The learning, skill, and labor requisite to its proper discharge;

(3) The time consumed;

(4) The professional experience and reputation of the attorney;

(5) The weight of his responsibilities;

(6) The measure of success achieved;

(7) The reasonable expenses incurred;

(8) Whether a fee is fixed or contingent;

(9) The nature and length of a professional relationship;

(10) The fee customarily charged in the locality for similar legal services;

(11) The likelihood that a particular employment may preclude other employment; and

(12) The time limitations imposed by the client or by the circumstances.

Pharmacia Corp. v. McGowan, 915 So.2d 549, 552-553 (Ala. 2004) (quoting *Van Schaack v. AmSouth Bank, N.A.*, 530 So.2d 740, 749 (Ala. 1988)). These criteria are for purposes of evaluating whether an attorney fee is reasonable; they are not an exhaustive list of specific criteria that must all be met. *Beal Bank, SSB v. Schilleci*, 896 So.2d 395, 403 (Ala. 2004) (citing *Graddick v. First Farmers & Merchants Nat. Bank of Troy*, 453 So.2d 1305, 1311 (Ala. 1984)); *Pharmacia Corp. v. McGowan*, 915 So. 2d 549, 553 (Ala. 2004).[7]

The Alabama Litigation Accountability Act governs the awarding of attorney fees in limited circumstances involving frivolous actions. *See* ALA. CODE §§ 12-19-270 through 12-19-276.

c. Burial Places. The judge of probate receives and takes action on petitions to locate and extend boundaries of rural burial places. However, before such an application may be approved, the judge must request the county board of health to investigate the request and to recommend action to be taken. Due weight must be given to the conclusions expressed by the board of health in the final decision on the application. ALA. CODE § 22-20-4.

If the petition is approved, the judge of probate must appoint commissioners to survey, map and plat the land and to fix the boundary. ALA. CODE § 11-17-2. The judge of probate then receives a report from the commissioners and the payment of damages, if any, from the petitioners. ALA. CODE §§ 11-17-3 through 11-17-5. The report and all proceedings are recorded in the probate office. ALA. CODE § 11-17-5. Appeals on the amount of the damages assessed by the commissioners are heard by the judge in the same

[7]A trial court's order regarding an attorney fee must allow for meaningful appellate review by "articulating the decisions made, the reasons supporting those decisions, and the performance of the attorney-fee calculation." *City of Birmingham v. Horn*, 810 So.2d 667, 682 (Ala. 2001) (citing *American Civil Liberties Union of Georgia v. Barnes*, 168 F.3d 423, 427 (11th Cir. 1999)).

manner in which contested wills are heard, including the requirements of trial by jury. ALA. CODE 11-17-7 and 11-17-10. ALA. CODE §§ 11-17-1 through 11-17-16 and ALA. CODE § 22-20-4 explain the duties and responsibilities of judges of probate regarding burial places.

d. Change of Name. The probate court has authority to change the name of any person residing in the county upon receipt of a declaration from the person whose name is to change. ALA. CODE §§ 12-13-1;[8] 26-10E-28; and 26-11-3. A probate court's jurisdiction to change the legal name of a child is limited to legitimation proceedings and does not extend to custody disputes. *See Russell v. Fuqua*, 176 So.3d 1224 (Ala. 2015).

e. Contested Elections. The judge of probate receives statements contesting the election results of judges of the circuit court and constables whose duties are limited to his county. When such statements are received a trial of the contest must be held. The judge then determines the correct election results and enters a corresponding judgment. Appeals in contested election cases lie to the Alabama Supreme Court. ALA. CODE §§ 17-16-54 through 17-16-59.

f. Correction of Marriage Licenses. The judge of probate, upon the receipt of a proper petition and proof of error, has the authority to correct marriage licenses, applications for marriage licenses, and marriage certificates. *See* ALA. CODE § 30-1-16 for a more detailed explanation.

g. Declaration of Residence. ALA. CODE § 12-13-23 allows a person absent from the state for military duty, eleemosynary journey, mission assignment, or other similar venture to designate their residency by filing with judge of probate a Notarized Declaration of Residence. ALA. CODE § 12-13-23(b). However, there are some limitations of the effectiveness of the Declaration. For example, this statute does not affect the person right to register

[8]According to Ala. Att'y Gen. Op. 81-00073, the probate court's jurisdiction over name changes extends to petitions to change the name of a minor.

to vote or qualify for elected office. ALA. CODE § 12-13-23(d). Likewise, this Declaration does not satisfy the requirements for certain enumerated benefits. ALA. CODE §§ 12-13-23(g) and 12-13-23(i).

h. Discretion to Authorize an Agent with the Right of Disposition of a Deceased Person. The judge of probate of the county of a decedent's residence may award the right of disposition to the person the judge determines to be the most fit and appropriate to manage the right of disposition and make decisions regarding the remains of the decedent if the persons possessing the right of disposition do not agree. ALA. CODE § 34-13-11.

If two or more persons who possess an equal right of disposition are not able, by majority vote, to agree upon the disposition of the remains of the decedent, any of those persons or the funeral establishment with the custody of the remains may file a petition asking the judge of probate to make a determination in the matter. In making such a determination, the judge of probate shall consider all of the following:

(1) The reasonableness and practicality of the proposed funeral and disposition arrangements.

(2) The degree of the personal relationship between the decedent and each person possessing a right of disposition.

(3) The financial ability and willingness of each person possessing a right of disposition to pay the cost of the funeral and disposition arrangements.

(4) The convenience and needs of other family members and friends who wish to pay their respects and the degree to which the funeral arrangements would allow maximum participation by all who wish to pay their respects.

(5) The desires of the decedent.

ALA. CODE § 34-13-11(c).

NOTE: ALA. CODE § 34-13-11(a) lists the priority in which the right to control the disposition of a deceased person shall vest. ALA. CODE § 34-13-11(c) states when the right of disposition shall be forfeited and passed to the next qualifying person.

i. Drainage Districts. The probate court has "jurisdiction, power and authority" to establish, alter, and dissolve drainage or water management districts; to locate and establish levees, drains or canals; to cause any ditch, drain or water course to be constructed or altered; to construct levees or embankments and outlets; and to erect flood gates and pumping stations for reclaiming wet, swamp, or overflow lands. ALA. CODE §§ 9-9-5; 9-9-50; and 9-9-57. This authority may be exercised upon the receipt of a proper petition. ALA. CODE §§ 9-9-7; 9-9-50; and 9-9-57. When such petition is received, the court in which it is filed has original and exclusive jurisdiction co-extensive with the boundaries and limits of the district without regard to county lines. ALA. CODE § 9-9-8. A record of all reports, surveys, and proceedings by the court is required for each district. ALA. CODE § 9-9-6. The duties and responsibilities of the judge of probate in the establishment and administration of drainage districts, together with procedures to be followed are explained in Chapter 9 of Title 9 of the Code of Alabama.

j. Filing of Bond. Generally, public official's bond must be filed within 40 days after declaration of election or after appointment to office. ALA. CODE § 36-5-2. No officer, with whom any official bond is required to be filed, shall allow the same to be filed in his office, unless the approval of the proper officer appears thereon, endorsed in accordance with the Code. ALA. CODE § 36-5-8. Every officer, in whose office the official bond of any public officer is filed, must endorse on such bond the day and year when the same was filed and sign his name to such endorsement. ALA. CODE § 36-5-9. Any officer who fails to endorse the date of the filing

of an official bond as required by law must, on conviction, be fined not less than $50.00. ALA. CODE § 36-5-10.

If any officer required by law to give a bond fails to do so timely, then he vacates his office. In such case, it is the duty of the officer in whose office such bond is required to be filed at once to certify such failure to the appointing power, and the vacancy must be filled as in other cases. ALA. CODE § 36-5-15. If any public officer required by law to give a bond fails to do so timely, notice of such failure must be given by the officer in whose office such bond is required to be filed in two days to the district attorney of the circuit to which such county belongs. ALA. CODE § 36-5-16. Any officer who omits to give notice of failure by a public officer to file his official bond as required by law must, on conviction, be filed not less than $100. ALA. CODE § 36-5-17.

k. Filing of False Liens. A person commits the crime of offering a false instrument for recording against a public servant, which is a Class C felony, if the person offers, for recording, a written instrument which relates to or affects the real or personal property, or an interest therein, or a contractual relationship of a public servant, knowing that the written instrument contains a materially false statement or materially false information, with the intent to defraud, intimidate, or harass the public servant, or to impede the public servant in the performance of his or her duties. ALA. CODE § 13A-9-12.

A person or entity whose rights are affected by the filing of a false lien or other instrument may petition the judge of probate to nullify or expunge the filing. ALA. CODE § 13A-9-12(e). Within 14 days of the filing of the petition, the judge of probate shall give written notice of the filing of the petition to the person or entity who filed the lien or instrument or who claims the rights or interests thereby. The notice must state that any additional proof of the validity of the lien or instrument shall be filed with the judge of probate within 14 days of the date of mailing the notice and that the failure to do so could result in the lien or instrument being nullified or expunged. ALA. CODE § 13A-9-12(e).

If the petition is not granted within 28 days of the date that it is filed, the petition shall be deemed denied. An order granting or denying a petition, if rendered, shall be delivered to the parties by the judge of probate by certified first class mail, but shall not be enforced, acted upon or effective before the expiration of 28 days from the date of mailing or the final adjudication of any and all appeals of that decision, at which time any final order granting the petition shall be recorded and indexed in order to provide notice that the lien or instrument has been nullified or expunged. Ala. Code § 13A-9-12(e).

If appealed, a notice of the appeal shall also be filed with the judge of probate, who shall file the notice as a lis pendens filing. ALA. CODE § 13A-9-12(e).

l. Mandatory Continuing Judicial Education. According to Rule IV of the Rules for Mandatory Continuing Judicial Education for Municipal Court Judges, Municipal Magistrates/Clerks, and Probate Judges, all judges of probate must attend a designated orientation program for new probate judges of at least six hours during their first 12 months in office. All judges of probate shall, after their first year in office, earn a minimum of 12 approved judicial-education credits in each calendar year. Each calendar year, all judges of probate must earn a minimum of six judicial-education credits at courses offered by the Alabama Law Institute. The Alabama Law Institute also administers the program of mandatory continuing judicial education in conjunction with the Alabama Probate Judges Association.

By Resolution of the Alabama Probate Judges' Association, the requirements for mandatory judicial education were extended to the chief clerks. The Rules for Mandatory Continuing Judicial Education for Probate Court Chief Clerks became effective on January 1, 2012. All chief clerks are required to earn a minimum of 12 approved judicial education credits each calendar year. The program is administered by the Alabama Law Institute.

m. Mine Surveys. Authority is delegated to the probate court to receive applications made by adjacent land owners and lessees for permission to enter and survey mine operations in order to ensure that the mine operators are not encroaching on their property. Upon receipt of an application, the judge must conduct hearings to determine the merits of the request. When the application is considered to be justified, the judge must make an order requiring the Department of Industrial Relations to employ an engineer to survey the mine. A report of the survey must be filed in the judge of probate's office. ALA. CODE § 25-9-321.

n. Municipalities. The judge of probate receives petitions, holds hearings, and conducts elections and other proceedings for the establishment and dissolution of municipal corporations, and for the reinstatement of dormant municipal corporations. *See* ALA. CODE §§ 11-41-1 through 11-41-28. The judge also issues court orders confirming election results on the question of merger, annexation, and change of municipal limits. ALA. CODE §§ 11-42-2; 11-42-3; 11-42-42 through 11-42-44; 11-42-51; 11-42-127; 11-42-151; and 11-42-154. Hearings are conducted by the judge of probate on proposals to reduce municipal limits, and, if objections are presented, an order of election on the question must be made. When an objection to the reduction is not presented, the judge may enter an order establishing the municipal limits as proposed by the municipal governing body. *See* ALA. CODE §§ 11-42-200 through 11-42-205. The order to be entered and records to be kept in these proceedings and elections vary from case to case and are explained in the Titles of the Code of Alabama mentioned above.

***o. Public Improvement Authorities*.** The judge of probate receives petitions for establishing improvement authorities and has summary jurisdiction upon the complaint of an elector to determine the sufficiency of the petition. After hearing complaints on the petition, an order is issued based upon the evidence received. Summary proceedings must be initiated within ten days after the petition is filed.

If the petition is received and complaints disposed of not less than thirty days nor more than sixty days prior to a general city or town election, the question must be proposed at the general election. Otherwise, a special election must be held. Notice of the election must be given by publication in a newspaper with general circulation in the territory at least once on the same day of each week for three consecutive weeks. ALA. CODE §§ 39-7-4 through 39-7-8.

p. Refund of Taxes. The judge of probate also receives petitions claiming that excess ad valorem taxes were paid by mistake or error. The judge receives these petitions, examines the evidence presented, and decides on the merits of the claim. If the allegation is correct, a refund may be ordered for the petitioner. *See* ALA. CODE §§ 40-10-160 through 40-10-166 for more details.

q. Rites of Marriage. The judge of probate has the authority to solemnize marriages. ALA. CODE § 30-1-7.

***r. Sale of Land for Delinquent Taxes*.** The probate court is empowered to order the sale of land for the payment of delinquent county and state ad valorem taxes, and of municipal taxes due as a result of local improvement assessments. ALA. CODE § 40-10-1. Action is initiated upon the receipt of a report from the tax collector stating an inability to collect the taxes assessed against the property. ALA. CODE § 40-10-1. Upon receipt of this report, the judge issues a notice of delinquency and proposed sale to the delinquent taxpayer. ALA. CODE § 40-10-4. If the address of the delinquent taxpayer is not known, notice must be published once a week for three consecutive weeks in a newspaper published in the county. If no newspaper is published in the county, notice must be posted at the courthouse for three consecutive weeks. ALA. CODE § 40-10-5. At the hearing, if there is no contest of the allegation, the judge issues a decree for the sale of land. ALA. CODE § 40-10-8. If there is a contest, the judge hears the evidence and decides if it is sufficient to prevent a sale. If the evidence is not sufficient, the judge must order the sale to be conducted. ALA. CODE § 40-10-11. The sale must be advertised at least thirty days before its commencement. ALA.

CODE § 40-10-12. Appeals from the decrees for the sale of land go to the circuit court. ALA. CODE § 40-10-25.

The judge of probate must attend these sales and keep a record describing the parcel of land sold, to whom the land was sold, price paid, and the date of the sale. When there is no sale, the reason must be stated in the record. The record of sales must also include the type of tax penalties and the amount of the fees and costs of each case. ALA. CODE § 40-10-15. If no bid offered at the sale is sufficient to pay the sum specified in the decree of sale, the judge of probate must bid that sum for the state. ALA. CODE § 40-10-18. After such sales have been completed, they must be confirmed by the court within five days of the tax collector's report of the sale unless an objection with merit is filed. ALA. CODE § 40-10-13. Redemption proceedings initiated within three years from the date of sale, or the issuance of deeds to purchasers when redemption proceedings have not been initiated within this period, are also handled by the judge of probate. ALA. CODE §§ 40-10-29 and 40-10-121.

For those municipalities which elect to permit the county tax collector to collect municipal taxes, the judge of probate has the same authority and responsibility in tax sales and redemption proceedings which he has for county and state taxes. ALA. CODE §§ 11-48-56; 11-48-57; 11-48-59; 11-51-61; 11-51-64; 11-51-70; and 11-51-71.

For a more in-depth discussion of delinquent tax sales, tax deeds, and duties of the Land Commissioner, *see Handbook for Alabama Tax Administrators*, published by the Alabama Law Institute.

s. Redemption of Land Sold for Taxes. Article 5 of Chapter 10 of Title 40 covers the redemption of land that has been sold for taxes. The right of redemption is established in Section 40-10-120 which is as follows:

> "Real estate which hereafter may be sold for taxes and purchased by the state may be redeemed at any

> time before the title passes out of the state or, if purchased by any other purchaser, may be redeemed at any time within three years from the date of the sale by the owner, his or her heirs, or personal representatives, or by any mortgagee or purchaser of such lands, or any part thereof, or by any person having an interest therein, or in any part thereof, legal or equitable, in severalty or as tenant in common, including a judgment creditor or other creditor having a lien thereon, or on any part thereof; and an infant or insane person entitled to redeem at any time before the expiration of three years from the sale may redeem at any time within one year after the removal of the disability; and such redemption may be of any part of the lands so sold, which includes the whole of the interest of the redemptioner. If the mortgage or other instrument creating a lien under which a party seeks to redeem is duly recorded at the time of the tax sale, the party shall, in addition to the time herein specified, have the right to redeem the real estate sold, or any portion thereof covered by his or her mortgage or lien, at any time within one year from the date of written notice from the purchaser of his or her purchase of the lands at tax sale served upon such party, and notice served upon either the original mortgagees or lienholders or their transferee of record, or their heirs, personal representatives, or assigns shall be sufficient notice."

ALA. CODE § 40-10-120.

The process for the redemption of land sold to the state, including the amount to be deposited with the probate court, is set out in ALA. CODE § 40-10-121. The process for the redemption of land sold to a party other than the state, including the amount to be deposited with the probate court, is set out in ALA. CODE § 40-10-122. Both of these statutes provide that a party seeking to redeem property sold for unpaid taxes must pay an eight-percent interest rate

on the taxes due at the time of default. Upon payment as required by law, the judge of probate shall issue a certificate of redemption. ALA. CODE § 40-10-127. Payment includes the amount to be deposited directly with the probate court to cover the tax-sale price, interest, and unpaid taxes under Ala. Code § 40-10-122(a), as well as any insurance premiums and improvement costs owed under ALA. CODE § 40-10-122(c). *Wall To Wall Properties v. Cadence Bank, N.A.*, 163 So.3d 384 (Ala. Civ. App. 2014).

A party aggrieved by the erroneous issuance of a certificate of redemption may petition a circuit court in the county in which the probate court lies for a writ of mandamus to compel the vacating of the certificate. ALA. CODE § 6-6-640; *Wall to Wall Properties v. Cadence Bank, N.A.*, 163 So.3d 384 (Ala. Civ. App. 2014). A petition for a writ of mandamus filed in a circuit court under ALA. CODE § 6-6-640 must be filed without unreasonable delay. Any more specific deadline for filing a petition for a writ of mandamus, found in Rule 21 of the Alabama Rules of Appellate Procedure, applies only in the three designated appellate courts in this state and not in the circuit court. *See* Ala. R. App. P. 1.

Distinct lots or parcels of land may be redeemed without redeeming the entire property. Any owner desiring to redeem any one or more parcels of land must also pay all tax on personal property assessed against him in said assessment, together with all costs of court and advertising fees. *See* ALA. CODE §§ 40-10-123 through 40-10-126.

Within five days from the redemption of any real estate bid in by the state, the judge of probate shall notify the tax assessor and tax collector of his county and shall, on demand, pay to them the costs and fees to which they are respectively entitled. ALA. CODE § 40-10-130.

***t. Social Security Number and Birthdate Redaction*.** Before recording any document that conveys any interest in real or personal property (deeds, mortgages, etc.) or purports to encumber an interest in real or personal property (e.g., liens), with the exception of federal

and state tax liens, as public record with the probate court, Social Security numbers and birthdates must be redacted to make that information illegible. ALA. CODE § 12-13-22. Any other document, including military discharge forms, that is filed as public record in the probate court should be redacted in the same manner. ALA. CODE § 12-13-22. The person submitting the document should redact, remove or otherwise make illegible the Social Security number; otherwise, the judge of probate can do so under the authority given under ALA. CODE § 12-13-22(c).

Additional limitations are placed on the use of Social Security numbers on documents available for public inspections in ALA. CODE § 41-13-6. Moreover, ALA. CODE § 4-13-7 places limitation on identifying information of state employees on records available for public inspection, including Social Security numbers.

In contrast, there are some statutes that require the inclusion of the Social Security number on some documents, such as marriage licenses. ALA. CODE § 30-3-194.

u. Taxpayer About to Jeopardize Possibility of Tax Collection. When the tax collector has good reason to believe that any person owing taxes is about to leave or remove his property from the county, or that such person is closing out or going out of business or disposing of substantially all of his personal property and thereby the collection of such taxes is endangered, it is the tax collector's duty to make out and certify to the judge of probate a bill against such person for the amount of such taxes and any fees due the assessor or collector.[9]

Upon the approval thereof by the judge of probate in writing endorsed thereon, such bill shall operate as a writ of fieri facias (writ of execution) which the collector is authorized to execute by levy and sale in the same manner as sheriffs are authorized to execute

[9] Advertisements in newspapers or otherwise of sales of any personal property as a closing out sale, fire sale, bankrupt sale, or any sale of like character shall be prima facie evidence that the collection of taxes due on property so advertised is endangered within the meaning of this ALA. CODE § 40-5-31.

such writs when issued out of the circuit court. Said writ may be executed in any county of the state where property of the taxpayer is found. ALA. CODE § 40-5-31.

V.

THE FUNCTIONS OF THE JUDGE OF PROBATE AS CHAIRMAN OF THE COUNTY GOVERNING BODY

A. GENERALLY

One of the most distinctive features of county government in Alabama is the great diversity marking the composition of functioning of the county commissions. In particular, the number of members on each commission and the role of the judge of probate in the body vary from county to county.

The number of members on the county commission varies from three to eight, with five members being the most common number. While the general law provides that the judge of probate shall be a member of the county commission, over a period of years a majority number of judges have been removed from the county commission and no longer serve as chairman of these bodies.

Even in the counties where the judge of probate is the chairman of the county commission, his duties and responsibilities in that position vary considerably from county to county. Some duties are assigned by state statutes, while others may be delegated, formally or informally, by the county commission. Such delegation makes a complete and accurate discussion of these duties and responsibilities difficult.

The number and kind of duties which are delegated to a particular judge of probate vary from county to county. Consequently, in one county the judge will be expected to carry the major burden of county operations, while in others the commissioners will assume the greater part of the workload.

a. Administrative Tasks. Unless otherwise provided by local law or court order, the judge of probate shall serve as the chairperson of the county commission. ALA. CODE § 11-3-1. As chairman of the

county commission, the judge of probate is assigned several administrative tasks—by state law and by delegations by the commission. When acting in this capacity, the judge of probate has basically the same powers as chairperson but does not vote except in the event of a tie. ALA. CODE § 11-3-20. The judge is responsible for recording the proceedings of the commission. ALA. CODE § 11-3-20. The judge of probate is also assigned the responsibility for the maintenance of county fiscal records by general law and is responsible for ensuring that these records are current and accurate. This duty includes supervising the accounts, auditing claims against the county, and issuing warrants. The performance of most of these duties may be delegated to subordinate personnel in the office. However, the judge must personally review each claim against the county, determining the factual and legal sufficiency of the claim. ALA. CODE § 11-8-9; ALA. CODE §§ 11-12-10 through 11-12-12. The duties of the judge of probate and county commission in relation to the fiscal records and claims against the county are explained in ALA. CODE §§ 11-8-1 through 11-8-6, ALA. CODE §§ 11-8-9 through 11-8-12, and ALA. CODE §§ 11-8-15 through 11-8-17. Other administrative duties include the preparation of a tentative budget, purchasing for the county, and the preparation of the agenda for the commission.

b. County Board of Health. In addition to those duties delegated to the judge of probate by the commission, in those counties in which the judge of probate is chairman of the county commission, he is ex officio a member of the County Board of Health. ALA. CODE § 22-3-1. The duties and responsibilities of this board are explained in ALA. CODE § 22-3-2.

c. Keeping Other Members of the Commission Informed on Matters. The judge of probate is ordinarily expected by the members of the county commission to keep them informed on matters affecting the commission's activities. This is particularly true in counties which do not have full-time commissioners. Included in the matters normally brought to their attention are new opinions by the attorney general, recent court decisions, and new statutes affecting the jurisdiction and authority of the governing body. Citations of

existing laws applicable to questions pending before the commission may also be requested.

In most of the counties in which the judge of probate is chairman of the county commission, the commissioners are part-time officials who are often more directly concerned with roads, bridges, and highways than some of the other functions of the governing body. Therefore, the judge of probate is expected to bring to the attention of the commissioners the duties and responsibilities of the county commission in relation to other county functions. For example, the judge of probate usually notifies the commissioners of certain official and board members who must be appointed by the commission. The judge is generally responsible for the codification and publication of local acts applicable to the county and for an explanation of the fiscal responsibilities of the governing body.

d. Preparation of Budgets. ALA. CODE § 11-8-3 sets out the requirements and procedures for establishing the county general fund budget. Generally speaking, the judge of probate, as chairman of the county commission, is expected to prepare or compile the tentative budget or to supervise its preparation for submission to the county commission. All county officials must submit a tentative budget, and, in counties in which budget practices are not elaborate, all agency budgets are simply compiled and submitted to the county governing body. S*ee Handbook for Alabama County Commissioners, 14th ed.*, for a comprehensive review of the laws concerning purchases and competitive bid laws.

e. Responsibility for Other Executive Acts. It is not uncommon for other executive acts of the commission to be delegated to the judge. Among these are: making contacts with state agencies; publishing of receipts and expenditures; arranging contracts in cooperation with the county attorney; and procuring forms of books which the commission is required to provide for other county officials.

f. Summary. This enumeration does not cover all of the ex officio duties of the judge of probate as chairman of the county commission. Many other duties have undoubtedly been assigned by

the county governing body itself. Local acts may also impact on the duties of the judge of probate in his or her role as the chair of the county commission. For more information concerning Alabama county commissioners *see Handbook for Alabama County Commissioners, 14th ed.*, published by the Alabama Law Institute.

PETITION FOR LETTERS OF ADMINISTRATION

PETITION FOR LETTERS OF ADMINISTRATION

THE STATE OF ALABAMA) PROBATE COURT
_____ COUNTY)

In the Matter of the Estate of _____, Deceased

To the Honorable _____
Judge, Probate Court, _____ County:

The petition of the undersigned respectfully represents that _____ died in _____ County, on or about the _____ day of _____, 20__ leaving no will, so far as your petitioner knows or believes, and that decedent's death was more than five days before this day, and this petition further shows that the said decedent was, at the time of death domiciled in _____ County, Alabama and died owning real and personal property in this state consisting chiefly of_____ [all of said property being estimated to have a value of _____ Dollars, and probably not more] [all of said property being of a total value less than the homestead allowance, exempt property and the family allowance as provided by Alabama Code §§ 43-8-110 through 43-8-112 (1975, as amended in 1982)]; that the names, residence, ages and condition of the heirs of the estate of the said decedent so far as your petitioner knows are as follows, to-wit: (Here give name of surviving spouse, then list the names, addresses and ages of heirs and their relation to the deceased).

That the said _____ has declined to administer the said estate, as appears from _____that your petitioner, being _____ of said deceased, an inhabitant of this State, nineteen or more years of age, and not disqualified under the law from serving as a personal representative, believing that said estate should be immediately administered, to the end that the said property may be collected and preserved for those who shall appear to have legal right or interest therein, does therefore, by virtue of his/her right under the statute, pray that your Honor will grant Letters of Administration _____ on the estate of _____(upon him/her entering into bond in such sum as is required by the statute, and with such security or securities as shall be approved by your Honor) (and since the total value of the estate does not exceed the value of the homestead allowance, exempt property and family allowance as provided in Alabama Code §§ 43-8-110 through 43-8-112 (1975, as amended in 1982), the amount of the bond required by statute shall be set at Zero ($0) dollars).

_____
Petitioner

THE STATE OF ALABAMA, _____ COUNTY.

_____ being duly sworn, deposes and says that the facts averred in the above petition are true, according to the best of his/her knowledge, and belief.

_____
Petitioner

Subscribed and sworn to before me, this _____ day of _____, 20__.

Ala. Code § 43-2-40 (1975)

_____
Judge of Probate

ORDER GRANTING LETTERS

ORDER GRANTING LETTERS

STATE OF ALABAMA **PROBATE COURT**

COUNTY OF _____

IN THE MATTER OF THE ESTATE OF
_____, Deceased.

TO THE HONORABLE _____,
JUDGE OF PROBATE, _____ COUNTY.

Now, on this day comes _____ and presents to the Court a petition in writing, under oath, praying that LETTERS OF ADMINISTRATION for the Estate of _____, deceased, issue to _____, which petition is examined by this Court and ordered to be Filed and Recorded; and it appearing to the Court from the allegations contained in said petition, and from other good and sufficient evidence, that the said _____ departed this life at _____ on or about the _____ day of _____, 20___, being at the time of death an inhabitant of said County and State; that _____ died leaving assets in said County and State, which assets, including both real and personal property, are estimated to have a value of approximately _____ dollars, consisting of

[Here give a general description and value of deceased's real property and general description and value of deceased's personal property.]

and leaving NO WILL, testament or other writing, relating to the disposal or distribution of (her)(his) estate, and that the death of the said Decedent was more than five (5) days before this day, [*and now also (here name person(s) waiving administration and the relationship(s) to the deceased*) of the said intestate, having previously (*use "previously" only if waiver was filed*) relinquished (his)(her) priority under the statute to administer said estate]; and it further appearing to the satisfaction of the Court that _____, the said Petitioner, is _____ (*here give relationship to the Deceased*) of said Deceased, is over nineteen (19) years of age, an inhabitant of this State, and a suitable person, under the law and in the estimation of this Court, to serve as Personal Representative and no person having appeared to oppose the granting of LETTERS OF ADMINISTRATION to the said _____, (Petitioner) or show cause why the prayer of said Petitioner should not be granted, it is ORDERED that the same be granted, *provided* that the said _____(*Petitioner*) first file in this Court a bond in the sum of _____ dollars, meeting the terms and requirements of bonds prescribed in Code of Alabama § 43-2-852 (1975, as amended). It is FURTHER ORDERED that the said petition be Recorded.

Further, Petitioner presents to this Court for approval a bond complying with the terms and requirements required by Code of Alabama § 43-2-852; with _____ _____ as securities thereon; and this Court being now sufficiently advised

concerning said bond and said security, it is ORDERED and adjudged by this Court that the said bond be Accepted, Approved, and Recorded.

It is therefore further ORDERED, ADJUDGED AND DECREED by this Court, that the petition for the Appointment of _____ as Personal Representative is hereby granted, that LETTERS OF ADMINISTRATION on the estate of said deceased be granted to _____, as Personal Representative, and that [he][she] be and hereby is authorized to administer said estate.

It is further ORDERED by this Court that said Personal Representative shall have all the powers, without limitation, [**EXCEPT** for the powers in numbers _____] and duties to act in transactions as enumerated in Code of Alabama § 43-2-843 (1975, as amended) as follows:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.
2. Receive assets from fiduciaries, or other sources.
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do either of the following:
    a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.
    b. Deliver a deed in escrow with directions that the proceeds when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.
6. Abandon personal property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.
7. Vote stocks or other securities in person or by general or limited proxy.
8. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.
9. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the

nominee in connection with the security so held.

10. Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.
11. Borrow money without security or with security of personal property to be repaid from the estate assets or otherwise; and advance money for the protection of the estate.
12. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien.
13. Pay taxes, assessments, and other expenses incident to the administration of the estate.
14. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
15. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term not to exceed one year.
16. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.
17. Employ necessary persons, including appraisers, attorneys, auditors (who may include certified public accountants, public accountants, or internal auditors), investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon recommendations of agents or advisors; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.
18. Prosecute or defend claims or proceedings in any jurisdiction for the protection or benefit of the estate and of the personal representative in the performance of duties of the personal representative.
19. Continue any unincorporated business or venture in which the decedent was engaged at the time of death as provided in any of the following:
    a. In the same business form for a period of not more than one year from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will.
    b. In the same business form for any additional period of time that may be approved by order of the court in a proceeding to which the persons interested in the estate are parties.
    c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate.

20. Incorporate any business or venture in which the decedent was engaged at the time of death.
21. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
22. Satisfy and settle claims and distribute the estate as provided in Title 43 of the Code of Alabama 1975.

[It is further ORDERED that the said Personal Representative, in addition to the general powers and duties granted herein, specifically is authorized to act in transactions as follows:

[*copy all transactions enumerated in Code of Alabama (1975, as amended) § 43-2-844, or those transactions for which the Probate Judge is willing to grant prior court approval by category*]
(*Use this paragraph only if the Court wishes to grant prior court approval for certain types of additional transactions by category.)*

It is further ORDERED by this Court that the aforesaid limitations or additional powers be prominently endorsed upon the face of the LETTERS OF ADMINISTRATION when issued. It is further ORDERED that the said Personal Representative proceed without delay to collect and take into possession or control the goods and chattels, money, books, papers and evidences of the said Deceased's property interests, except the personal property exempted from administration under Code of Alabama § 43-8-111 (1975, as amended) and make due return, under oath, to this Court, a full and complete Inventory thereof within two (2) months.

_____
Judge of Probate

WAIVER OF NOTICE

WAIVER OF NOTICE

IN THE MATTER OF THE ESTATE OF

_____

Deceased

IN THE PROBATE COURT OF
_____ COUNTY, ALABAMA

The undersigned, over the age of majority, as heir _____ at law and next of kin of _____, deceased, hereby accept _____ notice of the filing in the Probate Court of _____ County, Alabama, of an application, in writing by _____ to probate an instrument purporting to be the Last Will and Testament of _____, deceased, and of the time appointed by said Court for the hearing on the matter of the probate thereof and waive further notice thereof, either by publication or by personal citation, and the undersigned hereby consent _____ that said instrument may be immediately admitted to probate and record as the Last Will and Testament of _____, deceased.

This the ___ day of _____, 20__.

Executed in the presence of:

_____

_____

_____

_____

_____

_____

PERSONAL REPRESENTATIVE

PERSONAL REPRESENTATIVE

THE STATE OF ALABAMA) **PROBATE COURT**
_____COUNTY)

_____, 20__

In the matter of the Estate of _____, Deceased.

Know all by these Presents, That _____, as principal(s) and _____ as surety (sureties) are held and firmly bound unto the Probate Judge of said County in the penal sum of _____ Dollars, for the payment of which, we do bind ourselves, our heirs and our personal representatives, jointly and severally, firmly by these presents.

Sealed with our seals and dated, this _____ day of _____, 20__.

The Condition of this Obligation is such, That if _____ as personal representative of the estate of _____, deceased, or any of them, shall well and truly administer the estate according to law, then this obligation will be null and void, but otherwise it will remain in full force and effect.

And we, and each of us hereby waive all rights of claim of exemption as to personal property we or either of us have now or may hereafter have, under the Constitution and Laws of Alabama, and we hereby severally certify that we have property free from all encumbrance, to the full amount of the above bond.

Witness our hands and seals, this _____ day of _____, 20__.

_____(L.S.)
Petitioner
_____(L.S.)
Surety
_____(L.S.)
Surety

Taken and approved, this _____ day of _____, 20__.

Ala. Code § 43-2-80 (1975)

_____
Judge of Probate

WAIVER OF RIGHT TO SERVE AS ADMINISTRATOR

WAIVER OF RIGHT TO SERVE AS ADMINISTRATOR

IN THE MATTER OF _____) **IN THE PROBATE COURT OF**

THE ESTATE OF _____) **_____ COUNTY, ALABAMA**

_____, DECEASED)

TO THE HONORABLE _____, JUDGE OF PROBATE COURT OF _____ COUNTY, ALABAMA:

I, _____, widow of _____, deceased, who departed this life in testate in _____ County, Alabama do hereby renounce and waiver my right to serve as administratrix of the estate of _____, deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ___ day of _____, 20__.

_____

STATE OF ALABAMA)

_____ COUNTY)

_____, being duly sworn, deposes and says that the facts averred in the above petition are true.

Subscribed and sworn to before me this _____ day of _____, 20__.

_____

Judge of Probate

LETTERS OF ADMINISTRATION

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____

LETTERS OF ADMINISTRATION

Letters of Administration on the _____ of _____, Deceased, are hereby granted to _____ who has duly qualified and given bond as such Personal Representative, and is authorized to administer such estate. Subject to the priorities stated in Code of Alabama (1975, as amended) § 43-8-76, the said Personal Representative, acting prudently for the benefit of interested persons, has all the powers, without limitation, [**EXCEPT** for the powers in numbers_____] authorized in transactions under Code of Alabama (1975, as amended) § 43-2-843, as follows:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.
2. Receive assets from fiduciaries, or other sources.
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do either of the following:
   a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.
   b. Deliver a deed in escrow with directions that the proceeds when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.
6. Abandon personal property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.
7. Vote stocks or other securities in person or by general or limited proxy.
8. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.
9. Hold a security in the name of a nominee or in other form without disclosure of the

interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.

10. Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.
11. Borrow money without security or with security of personal property to be repaid from the estate assets or otherwise; and advance money for the protection of the estate.
12. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien.
13. Pay taxes, assessments, and other expenses incident to the administration of the estate.
14. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
15. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term not to exceed one year.
16. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.
17. Employ necessary persons, including appraisers, attorneys, auditors (who may include certified public accountants, public accountants, or internal auditors), investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon recommendations of agents or advisors; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.
18. Prosecute or defend claims or proceedings in any jurisdiction for the protection or benefit of the estate and of the personal representative in the performance of duties of the personal representative.
19. Continue any unincorporated business or venture in which the decedent was engaged at the time of death as provided in any of the following:
    a. In the same business form for a period of not more than one year from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will.
    b. In the same business form for any additional period of time that may be approved by order of the court in a proceeding to which the persons interested in the estate are parties.
    c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention

in the estate.

20. Incorporate any business or venture in which the decedent was engaged at the time of death.
21. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
22. Satisfy and settle claims and distribute the estate as provided in Title 43 of the Code of Alabama 1975.

WITNESS my hand, and dated this ___ day of _____, 20__.

_____
Judge of Probate

THE STATE OF ALABAMA
_____ COUNTY

I, the undersigned, Judge of Probate of _____ County, Alabama, hereby certify that the foregoing is a true and correct copy of the Letters of Administration issued in the above-styled cause as appears of record in said Court. I further certify that said Letters are in full force and effect.

Given under my hand and seal of said Court, this the ___ day of _____, 20__.

_____
Judge of Probate
_____ County, Alabama

NOTICE OF APPOINTMENT TO BE PUBLISHED BY PERSONAL REPRESENATIVE

NOTICE OF APPOINTMENT TO BE PUBLISHED BY PERSONAL REPRESENTATIVE

ESTATE OF _____) **PROBATE COURT**

_____) **OF** _____ **COUNTY**
Deceased)

Letters _____ of said deceased having been granted to _____, Personal Representative on the __ day of _____, 20__, by the Honorable _____, Judge of Probate Court of _____ County, notice is hereby given that all persons having claims against said estate are hereby required to present the same within time allowed by law or the same will be barred.

_____

TO _____

Publisher of _____

Please publish the above notice three successive weeks in said newspaper.

_____

ORDER TO SET DAY FOR HEARING

ORDER TO SET DAY FOR HEARING

STATE OF ALABAMA) IN THE PROBATE COURT OF

_____ COUNTY) _____ COUNTY, ALABAMA

IN THE MATTER OF THE ESTATE OF _____, DECEASED.

This day came _____, the Administratrix of the Estate of said decedent, and filed her account, verified by her affidavit, vouchers and evidence, and statement upon oath, for a final settlement of her administration.

It is therefore, ordered that the __ day of _____, 20__, be appointed a day for said settlement, and that notice of the same, stating the name of the Administratrix, the name of the deceased, and the time and nature of the settlement be given by publication for three consecutive weeks in the _____, a Newspaper published in said County.

It is further ordered that _____, who is a competent person, be and he is hereby appointed guardian ad litem to represent the interest of _____ in said settlement, she being the only minor interested.

It is further ordered that the _____ have notice of said appointment.

_____
Judge of the Circuit Court
_____ County, Alabama

PERSONAL REPRESENTATIVE'S SETTLEMENT NOTICE

PERSONAL REPRESENTATIVE'S SETTLEMENT NOTICE

THE STATE OF ALABAMA) **PROBATE COURT**

_____ COUNTY) **_____ 20___**

To:_____

Notice is hereby given that on the _____ day of _____, 20__, _____, Personal Representative of the Estate of _____, deceased, has filed petition, account, and vouchers, for _____ (partial or final) settlement of said Estate.

It is ordered that the ____ day of _____, 20__, be, and the same hereby is, appointed as the day for the hearing of the said petition and for the auditing and stating of said account, at which time all persons interested may appear and contest the same, if they desire to do so.

Witness my hand this ___ day of _____, 20__.

_____
Judge of Probate

THE STATE OF ALABAMA)

COUNTY OF _____)

Service of the above notice is hereby accepted and service of the same by the sheriff, publication or otherwise is hereby waived.

This the _____ day of _____, 20__.

_____

PROCEEDINGS FOR DISCHARGE OF PERSONAL REPRESENTATIVE

PROCEEDINGS FOR DISCHARGE OF PERSONAL REPRESENTATIVE

PETITION

IN THE MATTER OF THE ESTATE) IN THE PROBATE COURT OF

OF _____, DECEASED.) _____ COUNTY, ALABAMA

TO THE HONORABLE _____, JUDGE OF THE PROBATE COURT OF _____ COUNTY, ALABAMA:

1. Comes your Petitioner, the undersigned _____, and respectfully shows unto this Honorable Court that _____ was on, to-wit: the ____ day of _____, 20__, appointed as Personal Representative of the Estate of _____, deceased, in the Probate Court of _____ County, Alabama, and qualified as such Personal Representative as provided by Law.

2. The Personal Representative of said Estate submits to the Court the following report of her acts and doings as such Personal Representative from the ___ day of _____, 20__, until the____ day of _____, 20__.

3. Your Petitioner avers that the following are all the heirs and distributees of the Estate of _____, deceased, so far as your Petitioner knows and believes, to-wit: Your Petitioner, _____, the widow of _____, deceased, and _____.

4. Your Petitioner avers that notice has been given as required by Section 43-2-505 Alabama Code, and that all debts and claims filed against said Estate, due and payable by said estate, have been paid in full as hereinafter set forth, and that more than six months has elapsed since the date of the administration of the Estate, it has been more than five months from the date of the first publication of notice, and more than 30 days have elapsed since actual notice was given to all known creditors, and, therefore, the time for filing other claims has expired and that there only remains to be paid out of the funds belonging to said Estate, the Court Costs, including a reasonable fee to be paid to the guardian ad litem.

5. Your Petitioner avers that all of the claims filed against the Estate were paid by the Personal Representative of this Estate out of the funds on deposit with her belonging to said estate.

6. Your Petitioner avers that she has funds with which to pay the balance of the Court Costs and the guardian ad litem fees in connection with this Estate.

THE PREMISES CONSIDERED, YOUR PETITIONER PRAYS THAT YOUR Honor will set a date to hear this petition and that proper notice will issue as provided in Section 43-2-505, Code of Alabama, to _____, and to _____, as Attorney-

in-fact for the _____, surety on the Personal Representative's bond; that a guardian ad litem be appointed by the Court to represent the interest of said minor on the hearing of this petition, and that upon the hearing thereof, the Court will determine the balance due for Court Cost, including guardian ad litem's fee and will approve the accounting filed herewith in connection with the administration of said estate and determine how the assets of this Estate should be distributed and that the Court make and enter an order or decree directing the Personal Representative to pay out of the funds in her hands, belonging to said Estate, the balance of the Court Cost, including guardian ad litem's fee and will approve the accounting filed herewith in connection with the administration of said estate and determine how the assets of this Estate should be distributed and that the Court make and enter an order or decree directing the Personal Representative to pay out of the funds in her hands, belonging to said estate, the balance of the Court Cost, including guardian ad litem's fee determined to be due and unpaid, and to deliver and pay over the balance of such funds to _____, as the guardian of _____, a minor, and that upon full compliance by the _____ and the Personal Representative, of said order or decree that _____ be fully and completely discharged as such Administratrix and her bondsmen relieved from further liability under said Administratrix's bond, and your Petitioner prays for any and all other orders and decrees as may be necessary and appropriate in the premises.

_____
Personal Representative of the Estate of
_____, deceased

STATE OF ALABAMA)

_____ COUNTY)

Before me, a Notary Public, in and for said County in said State, personally appeared _____, who being duly sworn, deposes and says that she has read the foregoing petition and that the averments contained therein are true and correct to her best knowledge, information and belief.

_____
AFFIANT

Sworn to and subscribed before me this ____ day of _____, 20__.

_____
NOTARY PUBLIC
My Commission Expires_____

DECREE DISCHARGING PERSONAL REPRESENTATIVE

DECREE DISCHARGING PERSONAL REPRESENTATIVE

STATE OF ALABAMA) IN THE PROBATE COURT OF

_____COUNTY) _____ COUNTY OF ALABAMA

This cause coming on to be heard and being submitted for Decree on the sworn petition of _____, Personal Representative of the Estate of _____, deceased, for final settlement of said Estate, the answer of the Guardian ad Litem, _____, for _____, Minor, and testimony taken in open court, and upon consideration thereof, the Court finds that:

(1) More than six months have expired from the date that the first notice was given of the appointment of an Personal Representative of said Estate until the date of the filing of this petition for final settlement; it has been more than five months from the date of the first publication of notice; and more than 30 days have elapsed since actual notice was given to all known creditors.

(2) Notice of the filing of the petition for final settlement of said Estate was given by publication for three consecutive weeks in the _____, a newspaper published in this County.

(3) Notice was given to all parties having an interest in said Estate, including all of the distributees and heirs-at-law of _____, deceased, the widow of _____, and the Sureties on the Personal Representative's Bond, as required and provided by law.

(4) _____, an Attorney at Law of this County, was appointed to act as guardian ad litem and accepted such appointment to represent and protect the interest of a Minor having an interest in said Estate.

(5) _____, a widow of _____, deceased, and _____, deceased, are all of the parties having an interest in the assets of said Estate and being entitled thereto, after the payment of all debts due from said Estate and payment of the cost of this proceedings.

(6) That the Personal Representative, as set forth in her petition for discharge, has distributed no funds of said Estate, all of said funds being held by the Personal Representative for proper court of this Honorable Court for a distribution thereof. That all of the debts filed against said Estate, amounting to $_____, and Attorney's fees, was ordered by this Honorable Court, under Decree dated the ___ day of _____, 20__, to be paid by the Personal Representative out of the funds in her hands belonging to said Estate, and that the balance of said funds belonging to said Estate remain in her hands, subject to further orders of this Court, there now being in the hands of the Personal Representative the sum of $_____.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that:

The fee to be paid _____, Guardian ad Litem for the above named Minor, be and it is hereby fixed at _____ Dollars, the same be taxed as part of the cost in this case.

The Petitioner, _____, be, and she is hereby taxed with the cost of this proceedings, and which are to be paid out of the funds now in the hands of the Personal

Representative.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Personal Representative of this Court pay out of the funds now in his hands, belonging to the Estate, the sum of $_____, being the Court Costs, including guardian ad litem fees, and the balance remaining in his hands, amounting to $_____, be delivered and paid over to _____ entering into a good and sufficient bond, in double the amount of the funds coming into their hands.

_____, as Personal Representative of said Estate, upon complying with the above Order and Decree, shall be discharged as Personal Representative of said Estate and relieved from all and further liability as such Personal Representative and the Surety on the Personal Representative's Bond, _____, discharged from said bond and relieved from all and any further liability on its bond.

Done and ordered this the ___ day of _____, 20__.

_____
Probate Judge from the
_____ County, Alabama

_____, having fully complied with the above order and decree, it is further Ordered, Adjudged and Decreed that she be and is hereby discharged as Personal Representative of the Estate of _____, deceased, and is relieved from all further liability as such Personal Representative, and it is further Ordered, Adjudged and Decreed that the _____ be and is hereby discharged as Surety on the Personal Representative's Bond of _____, as Personal Representative of the Estate of _____, deceased, and is relieved from all further liability thereunder.

Done and ordered this the ____ day of _____, 20__.

_____
Probate Judge from the
_____ County, Alabama

ATTORNEY'S CHECKLIST

ATTORNEY'S CHECKLIST - ALABAMA ADOPTION CODE
PROBATE COURT OF _____ COUNTY

I. Related Adoption Checklist.
II. Non-related Adoption Checklist.

Note: a. Please note that each of the items listed in the checklist must be addressed.

b. (**FORM**) appearing at the end of an item indicates that the Court has available a form which the attorney may review.

I. RELATED ADOPTIONS (§ 26-10E-26 and § 26-10E-27)

[ ] 1. Petition for Adoption on form prescribed by § 26-10E-16. (**FORM**)

[ ] 2. Birth Certificate of child, or affidavit as required by § 26-10E-16(b), to be filed with petition.

[ ] 3. Consents of those required by § 26-10E-7 on form prescribed by § 26-10E-11, to be filed on or before the date of the final hearing. (**FORM**).

[ ] 4. Proof of Notice/Waivers as required by § 26A-10E-17, to be filed on or before the date of the final hearing. (**FORM**).

[ ] 5. Report of Adoption (VS-17) for State Registrar of Vital Statistics, to be filed with the Court on or before the date of the final hearing. (**FORM**).

[ ] 6. Marriage License and Divorce Decrees, if applicable, for the petitioners, to be filed on or before the date of the final hearing.

[ ] 7. One character witness for final hearing to appear with petitioner(s) and attorney.

II. NON-RELATED ADOPTIONS

[ ] 1. Pre-placement Investigation Report, pursuant to § 26-10E-19, **to be filed with the petition for adoption**. Request for investigation may be filed with Court, DHR or LCPA. (**FORM**).

[ ] 2. Petition for Adoption on form prescribed by § 26-10E-16. (**FORM**).

[ ] 3. Birth Certificate of child, or affidavit as required by § 26-10E-16(b), to be filed with petition.

[ ] 4. Consents from those required by § 26-10E-7 on form prescribed by § 26-10E-11, to be filed on or before the date of the final hearing. (**FORM**).

[ ] 5. Proof of Notice/Waivers as required by § 26-10E-17, to be filed on or before the date of the final hearing. (**FORM**).

[ ] 6. Disclosure of Anticipated Costs & Fees pursuant to § 26-10E-22(b), to be filed as soon as possible but no later than the date of the final hearing. (**FORM**).

[ ] 7. Disclosure of Costs & Fees Paid pursuant to § 26-10E-22(c), to be filed on or before the date of the final hearing. (**FORM**).

[ ] 8. Affidavit from <u>each</u> petitioner and <u>each</u> parent pursuant to § 26-10E-22(d), to be filed as soon as a possible, but no later than the date of the final hearing. (**FORM**) **Note: If child has been placed by the Department of Human Resources or a Licensed Child Placing Agency, the affidavits from the natural parents will not be required**.

[ ] 9. Report of Adoption (VS-17) for State Registrar of Vital Statistics, to be filed with the Court on or before the date of the final hearing. (**FORM**).

[ ] 10. Marriage License and Divorce Decrees, if applicable, for the petitioners, to be filed on or before the date of the final hearing.

Please note that the foregoing information is provided for assistance only. Special circumstances may require additional pleadings, reports, information, etc.

Probate Court of _____ County

_____

(Date)

PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED IN ADOPTION PROCEEDINGS

PERSONS WHOSE CONSENTS OR RELINQUISHMENTS ARE REQUIRED IN ADOPTION PROCEEDINGS

(§ 26-10E-7, Code of Alabama 1975, as amended)

A. The adoptee, if fourteen (14) years of age or older.

B. The adoptee's mother.

C. The adoptee's presumed father, regardless of paternity (see Code for exceptions and requisites regarding presumed father).

D. The agency to which the adoptee has been relinquished or which holds permanent custody and which has placed the adoptee for adoption, except the Court may grant the adoption without the consent of the agency if the adoption is in the best interest of the adoptee and there is a finding that the agency has unreasonably withheld its' consent.

E. The putative father if made known by the mother or is otherwise made known to the Court provided he responds within thirty (30) days to the notice he receives under § 26-10E-17.

Other

Prior to a minor parent giving consent, a Guardian ad Litem must be appointed to represent the interest of the minor parent whose consent is required.

The consent or relinquishment of the following persons shall not be required for an adoption:

(A) A parent whose rights with reference to the adoptee have been terminated;

(B) A parent who has been adjudged incompetent pursuant to law or parent whom the Court finds to be mentally incapable of consenting or relinquishing;

(C) A parent who has relinquished his or her minor child to the Department of Human Resources or other licensed child placing agency;

(D) A deceased parent or one who is presumed to be deceased under Alabama law;

(E) An alleged father who has signed a written statement denying paternity;

(F) The natural father where the natural mother indicates the natural father is unknown, unless the natural father is otherwise made known to the Court.

INFORMATION ON NOTICE REQUIREMENTS UNDER THE ALABAMA ADOPTION CODE

INFORMATION ON NOTICE REQUIREMENTS UNDER THE ALABAMA ADOPTION CODE

TO: Attorneys -

Pursuant to the new Alabama Adoption Code, in non-contested adoptions the Petitioner(s) shall give notice of the pendency of an adoption proceeding and file proof of service of the notice with the Court before the final hearing. For your assistance the Court has available a notice form which may be used in this matter. Also, please refer to § 26-10A-17 of said code for the specific requirements regarding notice, the same being as follows:

"§ 26-10E-17. Notice of pendency of adoption proceeding.

(a) Unless notice has been previously waived as provided in subsection (d), notice of pendency of an adoption proceeding shall be served by the petitioner on each of the following:

(1) Any individual, agency, or institution whose consent or relinquishment is required.

(2) The legal father of the adoptee.

(3) The putative father of the adoptee, if made known to the court, provided the putative father has complied with Section 26-10C-1.

(4) The legal custodian or guardian of the adoptee.

(5) The spouse of a petitioner who is a stepparent unless express consent is attached to the petition.

(6) A grandparent of the adoptee if the grandparent's child is a deceased parent of the adoptee and, before his or her death, the deceased parent had not executed an express consent or relinquishment or the deceased parent's parental relationship to the adoptee had not been otherwise terminated.

(7) Any person known to the petitioner or petitioners as currently having physical custody of the adoptee or having visitation rights with the adoptee under an existing court order.

(8) The agency or individual authorized to investigate the adoption under Section 26-10E-19.

(9) The Alabama Department of Human Resources.

(10) If the adoptee is in foster care, the director of the county department of human resources with legal custody of the adoptee.

(11) Any other person designated by the court.

(b) The notice shall contain all of the following information:

(1) That a petition for adoption of the adoptee has been filed in the probate court.

(2) That the notified party may appear in the adoption proceeding to contest or to support the petition.

(3) That the notified party has 30 days from the time of proper service of the notice to respond to the notice.

(4) That if the notified party fails to respond within 30 days of proper service, the court may construe that failure as an implied consent to the adoption and as a waiver of a right to appear and of further notice of the adoption proceedings.

(5) That if the adoption is approved, the parental rights of the notified party, if any, will be considered terminated.

(c) Service of the notice shall be made in the following manner:

(1) Service of process shall be made in accordance with the Alabama Rules of Civil Procedure unless otherwise provided herein. Service on the parties designated in subdivisions (a)(8), (a)(9), and (a)(10) shall be by certified mail. As to any other individual, agency, or institution for whom notice is required under subsection (a), service by certified mail, return receipt requested, shall be sufficient. If this service cannot be completed after two attempts, upon motion and affidavit, the court shall issue an order providing for one of the following:

a. Service by publication.

b. Posting notice in the courthouse of the court exercising jurisdiction over the adoption proceedings and in the courthouse of the probate court of the county of the biological parents' last known address.

c. Any other substituted service as determined by the court.

(d) Service by publication shall be made in the county of the last known address of the mother and the legal or putative father unless no newspaper of general circulation exists in the county, in which case service by publication shall be made in a newspaper with general circulation in that county.

(e) The notice required by this section may be waived in writing by the person entitled to receive notice. A party listed in subdivisions (a)(8), (a)(9), and (a)(10) may appoint an employee to waive notice on its behalf.

(f) Proof of service of the notice on all persons for whom notice is required by this section must be filed with the court before the adjudicatory hearing of a contested case provided for in Section 26-10E-23."

MOTION FOR PRE-PLACEMENT INVESTIGATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

MOTION FOR PRE-PLACEMENT INVESTIGATION

COME(S) NOW _____, ("Petitioner(s)") pursuant to *Ala. Code* § 26-10E-19 (1975) and file(s) this request for a pre-placement investigation in the above styled cause, and moves the Court to direct said investigation as may be proper. Your Petitioner(s) pray(s) for such other and different relief as may be appropriate, the premises considered.

Dated this _____day of _____, 20____

_____
Petitioner

_____
Petitioner

ORDER DIRECTING PRE-PLACEMENT INVESTIGATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

ORDER DIRECTING PRE-PLACEMENT INVESTIGATION

This cause came before the Court on Motion for Pre-Placement Investigation ("Motion") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **ORDERS** as follows:

The Motion is **GRANTED** and _____ishereby appointed to perform the preplacement investigation in accordance with the requirements of the Alabama Minor Adoption Code and make written report thereof to the said Petitioner(s).

The costs of this proceeding, including a fee to the appointed investigator, shall be taxed to the Petitioner(s), **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record by electronic service or U.S First Class Mail, parties in interest and any *pro se* parties by U.S. First Class Mail at the last address provided to the Court.

ORDERED AND DECREED this the____day of _____, 20___.

_____
Judge of Probate

PETITION FOR PRE-APPROVAL OF FEES AND CHARGES

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

MOTION FOR PRE-APPROVAL OF FEES AND CHARGES

COME(S) NOW _____, ("Petitioner(s)") and move(s) the Court to review, consider and pre-approve the fees and charges as set forth in the attached Exhibit A.

Your Petitioner(s) pray(s) for such other and different relief as may be appropriate, the premises considered

Dated this _____day of _____, 20____

_____
Petitioner

_____
Petitioner

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

Given under my hand this the __ day of _____, 20__.

_____
Notary Public
My Commission expires:_____

(AFFIX NOTARY SEAL)

ORDER ON PRE-APPROVAL OF FEES AND CHARGES

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

ORDER ON PRE-APPROVAL OF FEES AND CHARGES

This cause is before the Court on the Motion for Pre-approval of Fees and Charges ("Motion") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration and review of the applicable fees and charges, the Court **ORDERS** as follows:

The proposed charges and fees as set forth below are hereby **APPROVED**:

_____

The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record by electronic service or U.S. First Class Mail and parties in interest and *pro se* parties by U.S. First Class Mail at the last address provided to the Court.

DONE this the_____day of _____, 20___.

_____
Judge of Probate

MINOR ADOPTION FEE WORKSHEET

MINOR ADOPTION FEE WORKSHEET

ATTACHMENT TO:
- ☐ PETITION FOR PRE-APPROVAL OF FEES AND CHARGES
- ☐ DISCLOSURE OF ANTICIPATED DISBURSEMENTS
- ☐ DISCLOSURE AND ACCOUNTING OF DISBURSEMENTS PAID

INSTRUCTIONS: Enter information and amounts where appropriate. Items which DO NOT apply should be noted by *N/A*.

☐ Department of Human Resources ("DHR") or

☐ _____ or
(Name of Licensed Child Placing Agency)

☐ _____

☐ DHR Investigation Fee $300.00 (§ 26-10-4.1)

☐ Professional Placement Fee _____ % of income; Minimum $_____ and Maximum $ _____

☐ Professional Placement Fee; Flat Fee of $_____

☐ Professional Placement Fee (Special Needs Child) ____ % of income; Minimum $_____ and Maximum $ ____; Fee to be charged is $_____

☐ Professional Placement Fee (Special Needs Child); Flat Fee of $_____

☐ Application Fee $ _____

☐ Home Study Fee (Pre-Placement) $_____

☐ Home Study Update Fee (Pre-Placement) $_____

☐ Home Study Post-Placement Fee $____

☐ Supervision (per hour rate)/Interviews/Consultations/Counseling $____

☐ Fingerprint Fee $_____ x _____persons; paid to_____

☐ Interview Fee $_____

☐ Interstate Compact Fee $ _____

☐ Travel (Mileage for Social Worker) _____or $_____per mile

☐ Medical Tests (AIDS, Drug Screening, Other), per person $_____
per test performed _____

☐ Review Fee $_____

☐ Medical Examinations $ _____ /hour; Range $ _____to $ _____;
$_____ Flat

☐ Psychiatric Examinations $ _____ /hour; Range $ _____to $ _____;
$_____ Flat

☐ Medical Care of Mother (Be specific as to amount, reason and vendor)
$_____ _____
$_____ _____

☐ Medical Care of Child (Be specific as to amount, reason and vendor)
$_____ _____
$_____ _____

☐ Maternity Care (Be specific as to amount, reason and vendor)
$_____ _____
$_____ _____

☐ Living Expenses as may be permitted as an act of charity (Be specific as to amount, reason and vendor)
$_____ _____
$_____ _____

☐ Other Professional Service, Legal, etc., excluding Medical (List amount, service and name of vendor)
$_____ _____
$_____ _____

☐ Other Medical (List amount, service and name of vendor)

$_____ _____

$_____ _____

☐ Other (Be specific, list item, vendor, and indicate flat rate, range or per hours charge, etc.)

$_____ _____

$_____ _____

$_____ _____

$_____ _____

$_____ _____

$_____ _____

CONFIDENTIAL – ADOPTION WORKSHEET – RELATED

CONFIDENTIAL - ADOPTION WORKSHEET - RELATED

Name of Minor: _____

Case No: _____ Date of Birth: _____

Attorney: _____ Phone: _____

Petitioner(s): _____

Petition to Adopt Filed: _____

Minor child has resided in home of Petitioner(s) since: _____

Relationship: _____

PROOFS OF SERVICE OR WAIVER(S)

☐ Placement Investigation Report	☐ DHR acknowledged
☐ Consent by Mother	☐ Mother waived
☐ Consent by Father (Legal)	☐ Father waived
☐ Consent of Father (Putative)	☐ Spouse of Petitioner (if not joined) waived
☐ Consent by Minor (14 yrs.+)	☐ Grandparents (where parent is deceased) waived
☐ Consent by Guardian	☐ Publication to _____
☐ Consent by DHR	☐ Pub: _____
☐ Child placing agency	☐ Special Guardian ad Litem _____
☐ Birth Certificate or Affidavit re: same	☐ Report of Special Guardian ad Litem
☐ Report of Adoption (HS-17)	
☐ Divorce Decree(s)	
☐ Marriage License(s)	

BENCH NOTES:

(These notes for inter-office use only and are **not** a part of the official record in this case)

CONFIDENTIAL – ADOPTION WORKSHEET – NON-RELATED

CONFIDENTIAL - ADOPTION WORKSHEET -NON- RELATED

Name of Minor: _____

Case No.:_____ Date of Birth:_____

Attorney:_____ Phone:_____

Petitioner(s): _____

Petition to Adopt Filed: _____

Minor child has resided in home of Petitioner(s) since:_____

DHR ☐ Licensed Child Placing Agency ☐ Placement ☐

☐ Pre-placement report
☐ Post-placement report
☐ Birth Certificate, or
☐ Affidavit re: same
☐ Disclosure of Anticipated Costs

☐ Disclosure of Costs and Fees Paid
☐ Affidavit from each Petitioner (§ 26-10E-22(d))
☐ Affidavit from each Parent (§ 26-10E-22(d))

☐ Report of Adoption (HS-17)
☐ Marriage License(s)
☐ Divorce Decree(s)
☐ Consent of Mother
☐ Consent of Father (Legal)
☐ Consent of Father (Putative)
☐ Consent of Minor (14 yrs.+)
☐ Consent of_____

PROOFS OF SERVICE OR WAIVER(S) AS APPROPRIATE

☐ DHR acknowledged ☐
☐ Mother waived ☐
☐ Father waived ☐

☐ Spouse of Petitioner (if not joined) waived ☐
☐ Grandparents (where parent is deceased) waived ☐
☐ Minor (14 yrs.+) waived ☐
☐ Spouse of adoptee
☐ Investigator
☐ Publication to._____
☐ Pub:_____
☐ Special Guardian ad Litem _____
☐ Report of Special Guardian ad Litem

BENCH NOTES:

(These notes for inter-office use only and are **not** a part of the official record in this case)

AUTHORIZATION FOR RELEASE AFFIDAVIT (INDIVIDUAL(S) OR PARENT(S))

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

*
*
* **Case Number_____**
*
*

AUTHORIZATION FOR RELEASE AFFIDAVIT
(*Ala. Code* § 26-10E-15 (1975))
(Individual(s) or Parent(s))

I/We, _____,
☐ being the parent(s) or ☐ individual(s), having legal custody of minor child, born on the _____ day of _____, 20___ at ____ o'clock __.m. and ☐ who is or ☐ who will be the subject of an adoption proceeding before the Probate Court of _____ County, Alabama, do hereby, pursuant to *Ala. Code* §26-10E-15 (1975), authorize

_____
(Name of Health Facility)
to surrender physical custody of said minor child to _____, whose address is _____.

DATED this ____ day of _____, 20___ at _____ o'clock ___.m.

_____
(Signature of Affiant)

_____
(Signature of Affiant)

STATE OF _____

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE: The said health facility shall make a written report to the Department of Human Resources on forms supplied by the Department within 48 hours from the surrendering of custody pursuant to *Ala. Code* § 26-10E-15(b) (1975).

AUTHORIZATION FOR RELEASE AFFIDAVIT (LICENSED CHILD PLACING AGENCY)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

AUTHORIZATION FOR RELEASE AFFIDAVIT
(*Ala. Code* § 26-10E-15 (1975))
(Licensed Child Placing Agency)

I, _____
as_____, for _____, having legal custody of minor child, born on the _____ day of _____, 20___ at ____ o'clock __.m. and ☐who is or☐ who will be the subject of an adoption proceeding before the Probate Court of _____ County, Alabama, do hereby, pursuant to *Ala. Code* §26-10E-15 (1975), authorize

_____
(Name of Health Facility)
to surrender physical custody of said minor child to _____, whose address is _____.

DATED this ____ day of _____, 20___ at _____ o'clock ___.m.

_____
(Signature of Affiant)

STATE OF _____

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that ____ whose name _____, as_____(title) of _____(entity name), a _____ corporation, is signed to the foregoing instrument, and who is known to me, acknowledges before me on this day that the statements contained herein are true and correct and (s)he has full authority to execute the same, and that (s)he is voluntarily doing so on the day the same bears date.

Given under my hand this the __ day of _____, 20___.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE: The said health facility shall make a written report to the Department of Human Resources on forms supplied by the Department within 48 hours from the surrendering of custody pursuant to *Ala. Code* § 26-10E-15(b) (1975).

PRE-FILING NOTICE TO PUTATIVE FATHER OF CONSIDERATION OF ADOPTION

NOTICE
(*Ala. Code* §26-10E-9(e) (1975))

TO:_____, the alleged putative father of _____

Please take **notice** that_____, the mother of an unborn child due on or about _____is considering an adoptive placement for the above unborn child. If you intend to contest an adoptive placement for the above unborn child, you have thirty (30) days from the date of service of this notice to file an action to establish the paternity of the above unborn child under *Ala. Code* §26-17-611 (1975) or register with the putative father registry pursuant to *Ala. Code* §26-10C-1 (1975). If you fail to respond within thirty (30) days from the date of service of the above notice, such failure shall be deemed an irrevocable implied consent and waiver of a right to appear and of notice of the adoption proceedings. If the adoption is approved, your parental rights, if any, will be considered terminated.

DONE this_____day of_____, 20_____.

Attorney for Mother or Mother (*pro se*): (Name and Address)

_____
_____
_____

Attorney for Prospective Adoptive Parents or Licensed Child Placing Agency: (Name and Address)

_____
_____
_____

ATTORNEY'S CERTIFICATE OF SERVICE

I, the undersigned as attorney of record for said petitioner, do certify that I have this date forwarded a copy of this notice to the putative father named herein by CERTIFIED MAIL properly addressed with the sufficient postage affixed. (*Proof of service on certified mail shall be attached when submitting form to Probate Court.)*

_____
(Signature of Attorney)

Date: _____

(OPTIONAL)
CERTIFICATE OF SERVICE - PERSONAL SERVICE (IN STATE)

I, the undersigned do hereby certify that on the date noted below I served a copy of this notice on

_____.
(*Putative Father)*

Date: _____

_____
(Signature of duly appointed Process Server)

_____
(Print Name)

_____
(Address)

MOTION FOR PLACEMENT PRIOR TO PRE-PLACEMENT INVESTIGATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

MOTION FOR PLACEMENT PRIOR TO PRE-PLACEMENT INVESTIGATION
(*Ala. Code* § 26-10E-19(d) (1975))

COME(S) NOW the Petitioner(s) in the above matter and request that this Court grant leave for _____ a minor child born on the _____ day of _____, 20___ at _____ (Name of Health Facility) County of _____, State of _____, to be placed with Petitioner(s), whose address is as follows: _____ prior to the completion of a pre-placement investigation due to the following reason(s):

_____
_____
_____
_____

DATED this _____ day of _____, 20____.

_____
Petitioner

_____
Petitioner

CHILD CUSTODY PROCEEDING AFFIDAVIT

State of Alabama Unified Judicial System Page 1 of 2 JU-23 Rev. 10/2023	**CHILD CUSTODY PROCEEDING AFFIDAVIT**	Court Case Number

IN THE _____ **COURT OF** _____ **COUNTY, ALABAMA**
(Circuit, District or Probate) *(Name of County)*

[Check one of the following boxes]:

☐ **In the matter of** _____, **a child**
(Name of Child)

☐ **In the matter of the Adoption Petition of [Full Name(s) and Age(s) of Petitioner(s) and His/Her/Their Residence Address(es), Including City(ies) or Town(s), State(s), and Zip Code(s)]:**

_____

_____

☐ _____ **v.** _____
Plaintiff **Defendant**

Before me, the undersigned authority, personally appeared _____,
(Name of Affiant)
who first by me being duly sworn, on oath, provides the following:

Child's present address or whereabouts: _____

_____

Place(s) where the child has lived in the past five years: _____

_____

_____

_____

Name(s) and present address(es) of the person(s) with whom the child has lived in the past 5 years:

Name:_____ Name:_____
Address:_____ Address:_____
_____ _____

Name:_____ Name:_____
Address:_____ Address:_____
_____ _____

☐ ***I have participated as a party or witness in the following custody or visitation proceeding(s) concerning this child.***
[Check whether you were a party or witness, the court in which the case was filed, the case number, and the date of the custody determination]:

☐ Party ☐ Witness
Name of Court: _____
Case Number: _____
Date of Custody Det.: _____

☐ Party ☐ Witness
Name of Court: _____
Case Number: _____
Date of Custody Det.: _____

☐ Party ☐ Witness
Name of Court:_____
Case Number: _____
Date of Custody Det.: _____

☐ Party ☐ Witness
Name of Court:_____
Case Number: _____
Date of Custody Det.: _____

Ala.Code 1975, § 12-15-121(a)

State of Alabama Unified Judicial System Page 2 of 2 JU-23 Rev. 10/2023	**CHILD CUSTODY PROCEEDING AFFIDAVIT**	Court Case Number

☐ ***I have knowledge of the following proceedings (including proceedings relating to domestic violence, protection from abuse, termination of parental rights, and adoption) that may affect the current case:***

Type of Case: _____
Court: _____
Case Number: _____

Type of Case: _____
Court: _____
Case Number: _____

Type of Case: _____
Court: _____
Case Number: _____

Type of Case: _____
Court: _____
Case Number: _____

☐ ***I have knowledge of the following person(s) who have physical custody of the child other than the parties:***

Name:_____
Address:_____
_____

Name:_____
Address:_____
_____

_____
Signature of Affiant

Sworn to and subscribed before me this the
_____ day of _____, _____.

_____
Signature of Officer Authorized to Administer Oaths/Notary Public
(Notary Public Only: My Commission expires on _____ (Date)).

§ 12-15-121(a), Ala. Code 1975

INTERLOCUTORY DECREE
(RELATED)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

INTERLOCUTORY DECREE

Heretofore on _____came _____ and filed in this Court a Petition for Leave to Adopt _____, a minor; and it appears to the Court that said minor is the _____ of said Petitioner(s); and that a pre-placement investigation report concerning this proceeding is not required pursuant to *Ala. Code* ◯§26-10E-26 or ◯§26-10E-27 (1975); and upon due consideration of said petition and the laws in such matters it **ORDERED** as follows:

Custody of said minor is **GRANTED** to _____ and the Petitioner(s) is/are hereby conferred the responsibility of the maintenance and support of the adoptee, which shall include the authority to obtain and consent to necessary medical or surgical treatment for said adoptee.

The Petitioner(s) is/are **DIRECTED** to serve notice of these proceedings as required by *Ala. Code* §26-10E-17 (1975) in the manner prescribed by said Section on those entitled to the same and submit written proof of service of said notice to this Court. This Order shall not stop the running of the time periods prescribed in *Ala. Code* §26-10E-9 (1975).

Adoption cases are confidential. As such, attorneys and parties are **DIRECTED** not to make or cause to be made any postings or statements regarding this matter on any media platform (Rule 3.6, *Alabama Rules of Professional Conduct* and *Ala. Code* §26-10E-30(k) (1975)). Parties should be mindful that posting or statements regarding this matter on any media platform in violation of this Order will be a factor considered by the Court in discerning what constitutes the best interests of the child.

A copy of this Decree shall be forwarded to counsel of record and to the ALABAMA DEPARTMENT OF HUMAN RESOURCES, OFFICE OF ADOPTION, 50 RIPLEY STREET, MONTGOMERY, ALABAMA 36130.

DONE this ___day of _____, 20___.

_____
Judge of Probate

INTERLOCUTORY DECREE
(NON-RELATED; PRE-PLACEMENT RECEIVED)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

INTERLOCUTORY DECREE

Heretofore on _____ came _____ and filed in this Court a Petition for Leave to Adopt _____, a minor; and it appears to the Court that said minor is not related to said Petitioners; and that a pre-placement investigation report concerning this proceeding has been made by _____, which report has been filed, reviewed and is hereby approved by this Court; and upon due consideration of said petition and said report and the laws in such matters it is **ORDERED** as follows:

Custody of said minor is **GRANTED** to _____. The Petitioner(s) is/are hereby conferred the responsibility of the maintenance and support of the adoptee, which shall include the authority to obtain and consent to necessary medical or surgical treatment for said
adoptee.

A full post placement investigation shall be made in accordance with statute and that _____ is/are hereby appointed to make said investigation and report in writing to the Court and counsel for the Petitioners.

The Petitioner(s) is/are **DIRECTED** to serve notice of these proceedings as required by *Ala. Code* §26-10E-17 (1975) in the manner prescribed by said Section on those entitled to the same and submit written proof of service of said notice to this Court. This Order shall not stop the running of the time periods prescribed in *Ala. Code* §26-10E-9 (1975).

Adoption cases are confidential. As such, attorneys and parties are **DIRECTED** not to make or cause to be made any postings or statements regarding this matter on any media platform (Rule 3.6, *Alabama Rules of Professional Conduct* and *Ala. Code* §26-10E-30(k) (1975)). Parties

should be mindful that posting or statements regarding this matter on any media platform will be a factor considered by the Court in discerning what constitutes the best interests of the child.

A copy of this Decree shall be forwarded to counsel of record and to the ALABAMA DEPARTMENT OF HUMAN RESOURCES, OFFICE OF ADOPTION, 50 RIPLEY STREET, MONTGOMERY, AL 36130 and to the above named investigator.

DONE this ___day of _____, 20__.

_____
Judge of Probate

INTERLOCUTORY DECREE
(NON-RELATED; PRE-PLACEMENT WAIVED)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

INTERLOCUTORY DECREE

Heretofore on _____ came _____ and filed in this Court a Petition for Leave to Adopt _____, a minor; and it appears to the Court that said minor is not related to said Petitioner(s); and that a pre-placement investigation report concerning this proceeding is hereby dispensed with for cause now shown to the satisfaction of the Court and upon due consideration of said petition and the laws in such matters it is **ORDERED** as follows:

Custody of said minor is **GRANTED** to _____. The Petitioner(s) is/are hereby conferred the responsibility of the maintenance and support of the adoptee, which shall include the authority to obtain and consent to necessary medical or surgical treatment for said adoptee.

A full post-placement investigation shall be made in accordance with statute and that _____ is hereby appointed to make said investigation and report in writing to the Court and counsel for the Petitioner(s).

The Petitioner(s) shall serve notice of these proceedings as required by *Ala. Code* §26-10E-17 (1975) in the manner prescribed by said Section on those entitled to the same and submit written proof of service of said notice to this Court. This Order shall not stop the running of the time periods prescribed in *Ala. Code* §26-10E-9 (1975).

Adoption cases are confidential. As such, attorneys and parties are **DIRECTED** not to make or cause to be made any postings or statements regarding this matter on any media platform (Rule 3.6, *Alabama Rules of Professional Conduct* and *Ala. Code* §26-10E-30(k) (1975)). Parties

should be mindful that posting statements regarding this matter on any media platform will be a factor considered by the Court in discerning what constitutes the best interests of the child.

A copy of this Decree shall be forwarded to counsel of record and to the ALABAMA DEPARTMENT OF HUMAN RESOURCES, OFFICE OF ADOPTION, 50 RIPLEY STREET, MONTGOMERY, AL 36130 and to the above named investigator.

DONE this ___ day of _____, 20___.

_____
Judge of Probate

ORDER FOR HOME STUDY

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : CASE NO.

:

Minor

In Re: Petition for adoption filed by _____

ORDER FOR HOME STUDY

On due consideration, and for due cause now shown, it is **ORDERED** by the Court that _____, a person having the credentials as required by law in such matters, be and is hereby appointed to conduct a full home study investigation in the matter and render a report and recommendations to this Court on or before the next date set as follows.

It is further **ORDERED** by the Court that a hearing to further consider this matter and to receive and review the said home study be and is hereby set for _____.

It is further **ORDERED** by the Court that _____, petitioners, deposit with the Clerk of the Court a check in the amount of $_____ for the expenses of said home study, the same to be done forthwith.

Done this ____ day of _____, 20__.

_____

_____, **Judge of Probate**

NOTICE OF WITHDRAWAL OF CONSENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

NOTICE OF WITHDRAWAL OF CONSENT
(*Ala. Code* § 26-l0E-14 (1975))

COME(S) NOW, _____ [*enter name of movant*] ("Movant") being the _____ of the Minor in the above styled adoption proceeding, and pursuant to the *Ala. Code* §26-10E-14 (1975) does hereby withdraw(s) that certain consent heretofore executed by me on the ____ day of _____, 20__, and as grounds therefor do hereby state as follows:

_____

Movant prays that the Court will accept this withdrawal of consent and enter such orders, after conducting a proper hearing with notice if appropriate, to grant the same and restore the custody of the Minor to ☐ *the Movant,* ☐ *the Department of Human Resources,* ☐ *the designated Licensed Child Placement Agency, or* ☐ *as the Court may direct.* Movant further prays for any and all other appropriate relief as the Court may grant, the premises considered.

Dated this ____ day of _____, 20___, at ____ __.m.

_____
Movant

_____
(Witness)

_____
(Address)

_____
(Witness)

_____
(Address)

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the___day of _____, 20___.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

Certificate of Service

I certify that on this the ___day of ___, 20___ that a copy of the foregoing has been served U.S. First Class Mail on all counsel of record and *pro se* parties as follows:
(*insert name(s) and addresse(s)*)

_____
_____
_____
_____
_____

ORDER GRANTING WITHDRAWAL OF CONSENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

ORDER GRANTING WITHDRAWAL OF CONSENT

This cause is before the Court on a Withdrawal of Consent filed by_____, the natural parent(s) of the Minor in in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS** and **CONCLUDES** as follows:

It appears to the Court that the said withdrawal of consent has been properly filed and/or postmarked within ☐ five (5) business days after its execution ☐ five (5) business days after the birth of the subject minor or ☐ was obtained by fraud, duress, mistake, or undue influence as provided under *Ala. Code* §26-10E-14 (1975); and upon due and careful consideration of the evidence adduced, the Court does hereby:

The Court finds that the withdrawal of consent is timely and accordingly, the same is hereby allowed.

It is **ORDERED** by the Court that custody of said child be restored to _____ ○his/her parent(s) ○the Alabama Department of Human Resources ○the Licensed Child Placing Agency.

It is further **ORDERED** by the Court that the costs of this proceedings be taxed to _____ **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record by electronic service or U.S. First Class Mail, parties in interest, any *pro se* parties by U.S. First Class Mail at the last address provided to the Court, and to the Legal Division of _____ County Department of Human Resources; _____, Director of _____ County Department of Human Resources; Alabama State Department of Human Resources - State Adoption Office by Certified Mail.

DONE this _____ day of _____, 20____.

_____
Judge of Probate

ORDER GRANTING WITHDRAWAL OF CONSENT (ALTERNATIVE)

STATE OF ALABAMA) **IN THE PROBATE COURT OF SAID COUNTY)**
COUNTY OF _____) **CASE NO. _____)**

IN THE MATTER OF THE ADOPTION PETITION OF

_____

ORDER GRANTING WITHDRAWAL OF CONSENT

(Alternative)

This cause is now before the Court on the withdrawal of consent in the above entitled adoption as filed by _____, the natural parent(s) of the subject minor; and

It now appears that said natural parent is represented by _____, Esq., that the petitioner(s) is/are represented by _____, Esq.; that said matter is now properly before the Court and that the parties in interest have been given notice of these proceedings; and

It further appears to the Court that the said withdrawal of consent has been properly filed within [fourteen] (14) days after its execution] [fourteen (14) days after the birth of the subject minor]; and upon due and careful consideration of the evidence adduced, the Court does hereby:

FIND, ORDER, ADJUDGE AND DECREE that the withdrawal of consent is reasonable and is in the best interest of said child and accordingly, the same is hereby allowed.

It is further **ORDERED** by the Court that custody of said child be restored to [(his/her parent(s)) (the State Department of Human Resources) (LCPA)].

It is further **ORDERED** by the Court that the costs of this proceedings be taxed to _____ **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

DONE this _____ day of _____, 20__.

_____
Judge of Probate

NOTICE OF HEARING

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

*
*
*
*
*

Case Number_____

NOTICE OF HEARING
(*Ala. Code* §26-10E-17 (1975))

TO:_____

Please take **notice** that a petition for adoption in the above styled matter has been filed in said Court by the Petitioner(s) named below. As a notified party, you may appear in the adoption proceeding to contest or support the attached petition. Please be advised that if you intend to contest this adoption, you must file a written response within thirty (30) days of service of this notice with counsel for said Petitioner, whose name and address are as shown below and with the Clerk of the Probate Court at the following address:_____(*mailing address*). If you fail to respond within thirty (30) days and appear at the hearing, the Court may construe that failure as an implied consent to the adoption and waiver of a right to appear and of further notice of the adoption proceedings. If the adoption is approved, your parental rights, if any, will be considered terminated. A copy of the petition to adopt is attached to this notice as required by statute.

DONE this_____day of_____, 20_____.

Attorney for Petitioner(s): (Name and Office Address) **Petitioner(s)**: (Name(s) and Address(es))

ATTORNEY'S CERTIFICATE OF SERVICE

I, the undersigned as attorney of record for said petitioner(s), do certify that I have this date forwarded a copy of this notice to the party named herein by CERTIFIED MAIL properly addressed with the sufficient postage affixed. (*Proof of service by certified mail shall be attached when submitting form to Probate Court.)*

_____
(Signature of Attorney)

Date: _____

(OPTIONAL)
CERTIFICATE OF SERVICE - PERSONAL SERVICE
(IN STATE)

I, the undersigned do hereby certify that on the date noted below I served a copy of this notice on

_____.
(Person or Entity to be served)

Date: _____

_____
(Signature of duly appointed Process Server)

_____
(Print Name)

_____
(Address)

MOTION FOR ALTERNATIVE METHOD OF PERFECTING NOTICE

STATE OF ALABAMA) **IN THE PROBATE COURT OF**
SAID COUNTY)
COUNTY OF _____) **CASE NO. _____)**

IN THE MATTER OF THE ADOPTION

PETITION OF _____

MOTION FOR ALTERNATIVE METHOD OF PERFECTING NOTICE
(§ 26-10E-17)

Comes now _____ and respectfully represents unto the Court that [(the identity) and/or (whereabouts) of _____ the parent(s) of the adoptee is/are unknown] or that _____, the _____ of said adoptee (has failed) (refuses) to disclose the identity and/or whereabouts of _____, the (mother/father) of said adoptee, or that service by certified mail on _____ has failed after at least two attempts and pursuant to § 26-10E-17, it is prayed that the Court will direct the issuance of notice by suitable methods as found proper and permitted by statute.

_____
Attorney for Petitioner(s)

ORDER

On due consideration of the foregoing motion and for cause now appearing, it is **ORDERED** that notice issue to_____, the (mother/father) of said child by [publication pursuant to ARCP 4] [posting notice at _____] [first class mail to the last known address of said party] _____(other suitable means)_____]; and that proof of said notice shall be filed with the Court prior to the final hearing in this cause.

Done this _____ day of _____, 20__.

_____
Judge of Probate

ORDER TO PROVIDE RECORDS FOR *IN CAMERA* INSPECTION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

In Re: Department of Human Resources Acknowledgment Letter.

_____, Esq., Attorney for Petitioner
_____ County Department of Human Resources
Alabama Department of Human Resources

ORDER TO PROVIDE RECORDS FOR *IN CAMERA* INSPECTION

This cause is before the Court on a Motion for *In Camera* Inspection filed by_____. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS, CONCLUDES,** and **ORDERS** as follows:

Based on the comments provided by the Alabama Department of Human Resources in its acknowledgment dated _____, the _____ County Department of Human Resources, the Alabama Department of Human Resources, its agents or employees, are **DIRECTED** to copy and deliver to this Court any and all information and documents (authenticated copies) pertaining to this adoption proceedings and the subject child as referenced in the said Department of Human Resources acknowledgment for inspection by the Court *in camera*, the said information to be filed on or before the next date set.

A Status Hearing on_____at_____o' clock in_____, Alabama be and is hereby set for the next hearing on this matter.

The Clerk of the Court is **DIRECTED** to forward a copy of this Order by United States First-Class Mail to the Legal Division of _____ County Department of Human Resources; _____, Director of _____ County Department of Human Resources; Alabama Department of Human Resources - State Adoption Office; and by electronic service or U.S. First Class mail to _____, Esq.

DONE this ___ day of _____, 20__.

_____
Judge of Probate

ORDER

STATE OF ALABAMA	)	**IN THE PROBATE COURT OF**
	)	**SAID COUNTY**
	)	
COUNTY OF _____	)	**CASE NO. _____**

IN THE MATTER OF THE ADOPTION PETITION OF _____

ORDER

This cause is before the Court this date on motion to approve payment of charges, fees, etc. which have been reported by the Petitioner(s) on the accounting heretofore filed; and it now appears that said matter is properly before the Court; that the Petitioner(s) is/are presented by _____, Esq.; that notice has been perfected and proof of same submitted; and

Upon due consideration of the evidence adduced, the Court **FINDS, ORDERS, ADJUDGES AND DECREES** that the said accounting [is approved as submitted] [is approved in part and denied in part as follows], viz:

[LIST - Approved and Denied fees, etc. should have specified reason (findings) set out]

It is further **ORDERED** by the Court that the Petitioner(s) pay the costs of this proceeding, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

_____

_____, Judge of Probate

NOTICE OF ADOPTION HEARING: GENERAL NOTICE (FATHER)

NOTICE OF ADOPTION HEARING
PROBATE COURT OF _____ COUNTY
CASE NO. _____N.S.

To: _____ father of _____, a minor. Please take note that a petition for the adoption of the above named minor child who was born to on or about the _____ day of _____, _____, has been filed in said Court. Please be advised that if you intend to contest this adoption you must file a written response with the attorney for the petitioner(s) named below and with the Clerk of the Probate Court, _____ as soon as possible but no later than thirty (30) days from the last day this notice is published.

Attorney for Petitioner(s): (Name and Address)
_____
_____
_____

TO NEWSPAPER - Instructions for publications:
The above is a legal notice and should be placed in the appropriate section of the newspaper with other like notices. **Said notice shall run once a week for four (4) consecutive weeks** unless otherwise instructed. Upon completion of publication, Proof of Service must be furnished to the attorney of record.

BILLING INFORMATION - A Statement of the cost of this publication should be sent to the attorney of record named above and not to the Court.

TO COUNSEL - Please have the following publication notice run and file Proof of Publication with the Court at least 5 days prior to the hearing date.

NOTICE OF ADOPTION HEARING: GENERAL NOTICE (UNKNOWN FATHER)

NOTICE OF ADOPTION HEARING
PROBATE COURT OF _____ COUNTY
CASE NO. _____

To: _____, the unknown father of _____, a minor.

Please take notice that a petition for the adoption of the above named minor child who was born to _____ on or about the _____ day of _____, 20___ has been filed in said Court. Please be advised that if you intend to contest this adoption you must file a written response with the attorney for the petitioner(s) named below and with the Clerk of the Probate Court, _____, _____, Alabama _____ as soon as possible but no later than thirty (30) days from the last day this notice is published.

Attorney for Petitioner(s): (name and address)
_____
_____
_____

_____

TO NEWSPAPER - Instructions for Publications:

The above is a legal notice and should be placed in the appropriate section of the newspaper with other like notices. **Said notice shall run once a week for four (4) consecutive weeks** unless otherwise instructed. Upon completion of publication, Proof of Service must be furnished to the attorney of record.

BILLING INFORMATION - A statement for the cost of this publication should be sent to the attorney of record named above and not to the Court.

TO COUNSEL - Please have the following publication notice run and file Proof of Publication with the Court at least 5 days prior to the hearing date.

NOTICE OF ADOPTION HEARING: GENERAL NOTICE (ALLEGED FATHER)

NOTICE OF ADOPTION HEARING
PROBATE COURT OF _____ COUNTY
CASE NO. _____

To: _____, the alleged father

_____, the mother of _____, a minor,

Please take note that a petition for adoption has been filed and is pending in said Court by the Petitioner(s) named below. Please be advised that if you intend to contest this adoption you must file a written response with the attorney for the petitioner(s) named below and with the Clerk of the Probate Court, _____ as soon as possible, but no later than thirty (30) days from the last day this notice is published.

Attorney for Petitioner(s): (Name and Address)

_____
_____
_____

Petitioner(s): (Name and Address)

_____
_____
_____

TO NEWSPAPER - Instructions for publications:

The above is a legal notice and should be placed in the appropriate section of the newspaper with other like notices. **Said notice shall run once a week for four (4) consecutive weeks** unless otherwise instructed. Upon completion of publication, Proof of Service must be furnished to the attorney of record.

BILLING INFORMATION - A Statement of the cost of this publication should be sent to the attorney of record named above and not to the Court.

TO COUNSEL - Please have the following publication notice run and file Proof of Publication with the Court at least 5 days prior to the hearing date.

ORDER TRANSFERRING CASE TO JUVENILE COURT PURSUANT TO § 26-10E-3(d)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

*
*
* **Case Number_____**
*
*

ORDER

This cause came before the Court on _____, on the motion of ☐ the Court, ☐ the Petitioner(s) or ☐ the Contestant(s) to transfer this cause to the Juvenile Court of _____County, Alabama pursuant to *Ala. Code* §26-10E-3(d) (1975) as a contest to the above adoption petition has been filed by the Contestant(s). Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration of the pleadings and after consultation with the parties, the Court **ORDERS** as follows:

1. The cause is hereby transferred to the Juvenile Court of _____County, Alabama for the limited purpose of adjudicating the contest.

2. Once the contest is resolved, the Juvenile Court shall return the case to the Probate Court of _____County, Alabama for further dispositional proceedings.

3. The Clerk of the Court shall forward a certified copy of this Order and the Court's file in this cause by Certified Mail to the Juvenile Court of _____ County, Alabama, _____. The Clerk of the Court shall forward a copy of this Order to all counsel of record by electronic mail or U.S. First Class Mail and to all parties in interest, and all *pro se* parties by U.S. First Class Mail to the last address provided to the Court.

Done this ___day of _____, 20__.

_____
Judge of Probate

ORDER TRANSFERRING CASE TO JUVENILE OR CIRCUIT COURT PURSUANT TO § 26-10E-3(C)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

ORDER

This cause came before the Court on _____, on the motion of ☐ the Court, ☐ the Petitioner(s) *or* ☐ the Contestant(s) to transfer this cause to the ☐ Juvenile or ☐ Circuit Court of _____ County, Alabama pursuant to *Ala. Code* §26-10E-3(c) (1975) as there is an action presently pending in that court concerning the custody or parentage of the minor adoptee in the above cause. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration of the pleadings and after consultation with the parties, the Court **ORDERS** as follows:

1. The cause is hereby transferred to the ☐ Juvenile or ☐ Circuit Court of _____ County, Alabama.

2. The transferee court shall have jurisdiction to decide all matters relating to the adoption and to enter a final judgment resolving the adoption case.

3. The Clerk of the Court shall forward a certified copy of this Order and the Court's file in this cause by Certified Mail to the ☐ Juvenile or ☐ Circuit Court of _____ County, Alabama,_____. The Clerk of the Court shall forward a copy of this Order to all counsel of record by electronic mail or U.S. First Class Mail and to all parties in interest, and all *pro se* parties by U.S. First Class Mail to the last address provided to the Court.

Done this ___day of _____, 20___.

_____
Judge of Probate

FINAL JUDGMENT OF ADOPTION
(RELATED; NO IMPLIED CONSENT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

FINAL JUDGMENT OF ADOPTION

This cause is before the Court on the Petition for Adoption ("Petition") filed by the Petitioner(s) in the above-styled matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS and CONCLUDES** as follows:

The Court being satisfied from clear and convincing evidence adduced that the facts alleged in the Petition are true; that the adoptee has been in the actual physical custody of the Petitioner(s) for a period of one year or more; that there has been no contest or objections brought in this cause; that the Petitioner(s) are/is suitable to be the parent(s) of said adoptee and (s)he/they desire(s) to establish a parent/child relationship with the adoptee; that the best interest of the adoptee will be served by granting the Petition; and that a change of name of the adoptee and a change of guardianship to the Petitioner(s) is proper.

It is therefore **ORDERED, ADJUDGED** and **DECREED** by the Court that the Petition for Adoption is **GRANTED**; that said adoptee is hereby legally adopted by the Petitioner(s) and from this date the said adoptee shall be, as to all legal intents and purposes, the child of the Petitioner(s) to be accorded the status as set forth in the Alabama Adoption Code; and that the name of the adoptee in this matter is hereby changed to _____, as prayed.

It is **DIRECTED** by the Court that all pleadings, papers and other documents filed in this cause be recorded and sealed.

It is further **DIRECTED** by the Court that a copy of this order be sent to all legal counsel of record by electronic mail or U.S. First Class Mail and forwarded to the Alabama Department of Human Resources and to the State Registrar of Vital Statistics electronically or by U.S. First Class Mail.

Done this ___ day of _____, 20___.

_____
Judge of Probate

FINAL JUDGMENT OF ADOPTION
(NON-RELATED; NO IMPLIED CONSENT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

FINAL JUDGMENT OF ADOPTION

This cause is before the Court on the Petition for Adoption ("Petition") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS and CONCLUDES** as follows:

The Court being satisfied from clear and convincing evidence adduced that the facts alleged in the Petition are true; that the adoptee has been in the actual physical custody of the Petitioner(s) for a period of 60 days or more; that there has been no contest or objections brought in this cause; that the Petitioner(s) is/are suitable to be the parent(s) of said adoptee and (s)he/they desire(s) to establish a parent/child relationship with the adoptee; that the best interests of the adoptee will be

served by granting the Petition; and that a change of name of the adoptee and a change of guardianship to the Petitioner(s) is proper.

It is therefore **ORDERED, ADJUDGED** and **DECREED** that the Petition for Adoption is **GRANTED**; that said adoptee is hereby legally adopted by the Petitioner(s) and from this date the said adoptee shall be, as to all legal intents and purposes, the child of the Petitioner(s) to be accorded the status as set forth in the Alabama Minor Adoption Code; and that the name of the adoptee in this matter is hereby changed to _____, as prayed.

It is **DIRECTED** by the Court that all pleadings, papers and other documents filed in this cause be recorded and sealed.

It is further **DIRECTED** by the Court that a copy of this order be sent to all legal counsel of record by electronic mail or U.S. First Class Mail and forwarded to Alabama Department of Human Resources and to the State Registrar of Vital Statistics electronically or by U.S. First Class Mail.

Done this ___ day of _____, 20___.

_____

Judge of Probate

FINAL JUDGMENT OF ADOPTION
(RELATED; IMPLIED CONSENT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

FINAL JUDGMENT OF ADOPTION

This cause is before the Court on the Petition for Adoption ("Petition") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS and CONCLUDES** as follows:

The Court finds that _____the legal father and _____ the mother of said child have failed to answer or respond to notice of these proceedings, and implied consent has therefore been given by said parties pursuant to *Ala. Code* §26-10E-9 (1975).

The Court being satisfied from clear and convincing evidence adduced that the facts alleged in the Petition are true; that the adoptee has been in the actual physical custody of the Petitioner(s) for a period of one year or more; that there has been no contest or objections brought in this cause; that the Petitioner(s) are suitable to be the parent(s) of said adoptee and (s)he/they desire(s) to establish a parent/child relationship with the adoptee; that the best interest of the adoptee will be served by granting the Petition; and that a change of name of the adoptee and a change of guardianship to the Petitioner(s) is proper.

It is therefore **ORDERED, ADJUDGED** and **DECREED** by the Court that the Petition for Adoption is **GRANTED**; that said adoptee is hereby legally adopted by the Petitioner(s) and from this date the said adoptee shall be, as to all legal intents and purposes, the child of the Petitioner(s) to be accorded the status as set forth in the Alabama Minor Adoption Code; and that the name of the adoptee in this matter is hereby changed to [*NAME CHANGED TO*], as prayed.

It is further **ORDERED** by the Court that a copy of this order be sent to all counsel of record by electronic mail or U.S. First Class Mail and forwarded to Alabama Department of Human Resources and to the State Registrar of Vital Statistics electronically or by U.S. First Class Mail.

It is further **ORDERED** by the Court that all pleadings, papers and other documents filed in this cause be recorded and sealed.

Done this ___ day of _____, 20___.

_____

Judge of Probate

FINAL JUDGMENT OF ADOPTION
(NON-RELATED; IMPLIED CONSENT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

FINAL JUDGMENT OF ADOPTION

This cause is before the Court on the Petition for Adoption ("Petition") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS and CONCLUDES** as follows:

The Court finds that _____the legal father and _____ the mother of said child have failed to answer or respond to notice of these proceedings, and implied consent has therefore been given by said parties pursuant to *Ala. Code* §26-10E-9 (1975). The Court being satisfied from clear and convincing evidence adduced that the facts alleged the Petition are true; that the adoptee has been in the actual physical custody of the Petitioner(s) for a period of 60 days or more; that there has been no contest or objections brought in this cause; that the Petitioner(s) are suitable to be the parent(s) of said adoptee and (s)he/they desire(s) to establish a parent/child relationship with the adoptee; that the best interests of the adoptee will be served by granting the petition; and that a change of guardianship to the Petitioner(s) is proper. It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the Petition for Adoption is hereby **GRANTED**; that said adoptee is hereby legally adopted by the Petitioner(s) and from this date the said adoptee shall be, as to all legal intents and purposes, the child of the Petitioner(s) to be accorded the status as set forth in the Alabama Minor Adoption Code; and that the name of the adoptee in this matter is hereby changed to _____, as prayed.

It is **DIRECTED** by the Court that all pleadings, papers and other documents filed in this cause be recorded and sealed.

It is further **DIRECTED** by the Court that a copy of this order be sent to all counsel of records by electronic mail or U.S. First Class Mail and forwarded to Alabama Department of Human Resources and to the State Registrar of Vital Statistics electronically or by U.S. First Class Mail.

Done this ___ day of _____, 20___.

_____

Judge of Probate

PETITION FOR GRANDPARENT VISITATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number**_____
*
*

PETITION FOR GRANDPARENT VISITATION

COME(S) NOW, _____ the ☐ maternal or ☐ paternal grandparent(s) of _____, a minor, and the subject of the above styled adoption, and pursuant to *Ala. Code* §26-10E-29 (1975) petition(s) the Court to grant visitation rights to your Petitioner(s) as determined proper and in the best interest of the minor child.

Petitioner(s) pray that the Court will assume jurisdiction of this matter, issue notice to those parties in interest as appropriate, conduct a hearing to consider this pleading and issue such orders to authorize the requested visitation. Petitioner(s) pray for such other, further and different relief, the premises considered.

_____
Petitioner

_____
Petitioner

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

Name and Address of Attorney:
_____
_____
_____
_____

ORDER SETTING HEARING FOR GRANDPARENT VISITATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

Case Number_____

NOTICE AND ORDER SETTING HEARING ON PETITION FOR GRANDPARENT VISITATION

This cause is before the Court on the Petition for Grandparent Visitation filed by _____, ("Petitioner(s)"), the ○*maternal* ○*paternal* grandparent(s) of a minor, the subject of the above styled adoption. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS, CONCLUDES,** and **ORDERS** as follows:

The Petition is set for hearing on_____ at _____ o'clock _.m in Courtroom__,_____,Alabama.

It is **DIRECTED** that notice of these proceedings issue to _____

_____

(*names of parties - adopting parents, and others as the Court directs*) and that _____,Esq., a person learned in the law, be and is hereby appointed as guardian ad litem to represent and protect the interest of the minor child in this proceeding and that notice of such appointment be issued.

It is further **DIRECTED** by the Court that Petitioner(s), within ___days deposit with the Clerk of the Court a check in the amount of $_____ for the anticipated court costs including the guardian ad litem fees.

The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record, parties in interest, and any *pro se* parties by U.S. First Class Mail at the last address provided to the Court.

DONE this_____ day of_____, 20___.

_____
Judge of Probate

ORDER ON GRANDPARENT VISITATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

ORDER ON PETITION FOR GRANDPARENT VISITATION

This cause is before the Court on the Petition for Grandparent Visitation filed by _____, ("Petitioner(s)"), the ◯*maternal* ◯*paternal* grandparent(s) of a minor, the subject of the above styled adoption. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS, CONCLUDES,** and **ORDERS** as follows:

1. The Petition is due to be **GRANTED.**
2. _____shall be afforded reasonable visitation with _____, the Minor, as follows: _____
   _____
   (*Set out times, date or other information as found to be in the best interest of the minor if denied, the same being not in the best interest of the minor at this time*).
3. The costs of this proceeding, including a fee to the guardian ad litem, in the sum of $ _____ be taxed to the Petitioner(s), **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**
4. The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record by electronic mail or U.S. First Class Mail and any parties in interest and any *pro se* parties by U.S. First Class Mail at the last known address provided to the Court.

DONE this __ day of _____, 20___.

_____
Judge of Probate

PETITION FOR DISCLOSURE OF ADOPTION INFORMATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF *
THE ADOPTION PETITION OF *
*
Case Number_____

_____

PETITION FOR DISCLOSURE OF ADOPTION INFORMATION
(*Ala. Code* §26-10E-30 (1975))

COMES NOW_____, age_____, being the (Check one or more below:)

(☐) subject of the above referenced adoption;
(name before adoption) _____.
(☐) natural mother of the child; _____.
(☐) natural father of the child; _____.
(☐) adoptive mother of the child; _____.
(☐) adoptive father of the child; _____.
(☐) attorney for the party marked; _____.
(☐) child's name after adoption; _____.

and petitions the Court of obtain a copy of the final decree of adoption entered in this matter, which document is requested for the following reason (s):

_____

Mailing address of Petitioner: _____

Phone number of Petitioner: _____

Whereupon Petitioner prays that the Court will take jurisdiction of this matter and grant the relief sought. Petitioner further prays for such other and different relief, the premises considered.

_____
Petitioner

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

Notary Public:_____
My Commission expires:_____

ORDER SETTING HEARING FOR DISCLOSURE OF ADOPTION INFORMATION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

NOTICE AND ORDER SETTING HEARING
FOR DISCLOSURE OF ADOPTION INFORMATION

This cause is before the Court on the Petition for Disclosure of Adoption Information filed by _____, ("Petitioner"). This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS, CONCLUDES,** and **ORDERS** as follows:

The Petition is set for hearing on_____ at _____ o'clock __.m in Courtroom___, _____, Alabama.

_____is hereby appointed Court Intermediary in this matter to ☐ access such information ☐ make contact with_____, if possible, and obtain the requested information without disclosing the identity of the Petitioner and determine if said party(ies) has/have any objection to said petition being granted.

It if further **DIRECTED** by the Court that Petitioner, within ___days deposit with the Clerk of the Court a check in the amount of $_____ for anticipated court costs.

It is further **ORDERED** that a sealed written report containing all information obtained in this matter by the said Intermediary be filed with the Court on the date above set.

_____
Judge of Probate

ORDER ON PETITION TO DISCLOSE ADOPTION INFORMATION

STATE OF ALABAMA	)	**IN THE PROBATE COURT OF**
	)	**SAID COUNTY**
COUNTY OF _____	)	**CASE NO. _____**

IN THE MATTER OF AN ADOPTION

ORDER ON PETITION TO DISCLOSE ADOPTION INFORMATION

It now appears that the petition of _____ for disclosure of certain adoption information is now properly before the Court, that notice, if any, has been perfected, and that said petitioner(s) is/are represented by _____, Esq.; [and also comes _____, Esq., for the natural parent(s) of that certain minor child adopted under case number shown above]; and also comes _____, as Court Intermediary appointed in this matter; and

Upon due consideration of the said petition, and the evidence and information now before the Court, it is **ORDERED, ADJUDGED AND DECREED** as follows:

(State the information to be released or deny the petition)

It is further **ORDERED** by the Court that the costs of this proceeding be taxed to the petitioner(s), FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

_____
Judge of Probate

PETITION FOR ADOPTION

State of Alabama Unified Judicial System Page 1 of 3 Form PR-1: 6/07	**PETITION FOR ADOPTION** **(*Ala. Code* §26-10E-16 (1975))**	Probate Court Case No.:

STATE OF ALABAMA
COUNTY OF_____
PETITIONER(S) MUST COMPLETELY FILL OUT THIS FORM
In the Matter of the Adoption Petition of (*Full Name(s) of Petitioner(s) and D.O.B.s*):

_____
_____
_____

To Adopt:_____(*full name of minor*)

COMES NOW, the above-named Petitioner(s), wishing to adopt the minor named above pursuant to the laws of the State of Alabama, who allege(s) the following *(Check which boxes are applicable):*

☐ 1. The Petitioner(s),_____(*full name(s) of petitioner(s)*), ☐ is/are (a) resident(s) of, or ☐ is/are in military service in, or ☐ [for offices of any agency or institution operating under the laws of this state having guardianship or custody of a minor is located, specifically_____(*business address, city or town, state, and zip code*) has/have an office in, the State of Alabama and the county(ies) of _____. The age(s) and his/her/their home or business address(es) including city(ies) or town(s), state(s), and zip code(s) are as follows: _____
_____

☐ 2. The Petitioners are married which marriage occurred on_____(*date*), in_____(*city or town and state*).

☐ 3. The Petitioner(s) respectfully petition(s) this Court for leave to adopt the above-named minor, whose birth name is_____,with more detailed information set out below.

☐ Other Name(s) By Which the Minor Has Been Known: _____
_____

☐ Proposed New Name of Minor : _____
☐ City or Town, County, and State in Which the Minor Now Resides or Has a Legal Residence:
_____

☐ The minor is not in the physical custody of the Petitioner(s) but the Petitioner(s) intend(s) to acquire physical custody on _____(*date*).
☐ Date and City or Town, County, and State of Birth of Minor:
_____

State of Alabama Unified Judicial System Page 2 of 3 Form PR-1: 6/07	**PETITION FOR ADOPTION** **(*Ala. Code* §26-10E-16 (1975))**	Probate Court Case No.:

☐ 4. The minor's name after adoption shall be as follows or state that the minor is 14 years of age or older and desires to retain their present legal name:

_____

☐ 5. The Petitioner(s) wish(es) to establish a parent-child relationship with the minor being adopted, and the Petitioner(s) represent(s) to the Court that (s)he/they is/are (a) fit and proper person(s) able to care for and provide for the adopted minor's welfare.

☐ 6. The above-named minor being adopted is related to the Petitioner(s) as follows:

_____

☐ 7. The Petitioner(s) aver(s) that the above-named minor being adopted is now in the physical custody of *(If applicable, name(s) and home or business address(es), including city(ies) or town(s), state(s), and zip code(s), of any person(s), agency(ies), etc. who or which currently have custody of the above-named minor to be adopted):* _____

_____

_____

Name, County, and State of Court Issuing Custody Order and Date of Order:

_____

☐ 8. The Petitioner(s) further aver(s) that there exist(s) the following order(s) of court regarding guardianship and/or conservatorship, and/or parentage and/or custody and/or visitation with, or access to, the minor being adopted(*name(s), county(ies), and state(s) of court(s) issuing custody, visitation, or access order(s) and date(s) of order(s)*):

_____

_____

_____

☐ 8a. The Petitioner(s) further aver(s) that the following action(s) relating to the custody, support, visitation, parentage or other matter(s), relating to the minor being adopted (*name(s), county(ies), and state(s) of court(s) where case(s) was/were filed):* _____

_____

_____

☐ 9. If applicable, the name(s) and business address(es) (*including city(ies) or town(s), state(s), and zip code(s)*) of the placing agency(ies) is/are as follows: _____

State of Alabama Unified Judicial System Page 3 of 3 Form PR-1: 6/07	**PETITION FOR ADOPTION** **(*Ala. Code* §26-10E-16 (1975))**	Probate Court Case No.:

☐ 10. The name(s), relationship(s), age(s), and home or business address(es) of a/the person(s) known to the Petitioner(s) at the time of the filing of this Petition from whom (a) consent(s) or relinquishment(s) or notice to/of this adoption are required by law are as follows:

Consent/Implied Consent	Name/Relationship	Age	Home or Business Address
☐ ☐	_____	_____	_____
☐ ☐	_____	_____	_____
☐ ☐	_____	_____	_____
☐ ☐	_____	_____	_____

(If implied consent is asserted as to any person(s) above, the Petitioner(s) must file a verified affidavit stating the factual basis for the assertion of implied consent.)

☐ 11. The minor has been in the physical custody of the Petitioner(s) for purposes of adoption and has been residing with the Petitioner(s) since _____ or (*if this is not the case, include a statement of good cause as to why placement and physical custody is not required or should be excused or waived*):

_____

Attached to this Petition is a copy of the birth certificate of the person who is a minor being adopted or a copy of an affidavit stating that an application for a birth certificate has been made (*except in cases where a minor has been abandoned*).

The premises considered, the Petitioner(s) pray(s) that this Court will do the following, if applicable: (1) take jurisdiction of the matters contained in this Petition for Adoption; (2) issue an interlocutory order delegating custody and/or the responsibility for care, maintenance, and support of the minor being adopted; (3) set a time and date for a dispositional hearing; and (4) make such other and further orders and decrees as may be necessary to effectuate the legal adoption of the person.

Dated this the_____day of_____, 20_____.

_____ _____

Signature of Petitioner Signature of Petitioner

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

(AFFIX NOTARY SEAL)

_____
Notary Public
My commission expires: _____

Attorney: _____
_____
_____

AFFIDAVIT OF PETITIONER(S)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

AFFIDAVIT OF PETITIONER
(*Ala. Code* §26-10E-22 (1975))
(*A separate affidavit should be executed by each Petitioner.*)

COMES NOW, _____, ("Petitioner") the Petitioner in the above matter, having been first duly sworn and placed under oath to speak the truth, does hereby state that I have paid no money or other things of value to any party in connection with this adoption proceeding except that which was approved by the Court. I further state that I make the foregoing under penalty of perjury and may suffer the legal punishment for the same and that which is prescribed by §26-10E-33 of the Alabama Minor Adoption Code.

_____
(Signature of Affiant)

STATE OF_____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that the Petitioner, whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

ORDER FOR POST-PLACEMENT INVESTIGATION REPORT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF THE ADOPTION PETITION OF	* * * * *	**Case Number _____**
_____		

ORDER FOR POST-PLACEMENT INVESTIGATION REPORT

This cause came before the Court on Motion for Post-Placement Investigation ("Motion") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration, the Court **ORDERS** as follows:

That_____, a person having the credentials as required by *Ala. Code* §26-10E-19 (1975) in such matters, be and is hereby appointed to conduct a full Post-Placement Investigation Report in accordance with *Ala. Code* §26-10E-19 (1975) and render a report and recommendation to this Court on or before _____ , 20____.

It if further **DIRECTED** by the Court that Petitioner(s), deposit with the Clerk of the Court a check in the amount of $_____ for the expenses of the Report.

The Clerk of the Court is **DIRECTED** to forward copies of this Order to all counsel of record by electronic service or U.S. First Class Mail, parties in interest and any *pro se* parties by U.S. First Class Mail at the last address provided to the Court.

DONE this: _____, 20__

_____
Judge of Probate

POST-PLACEMENT INVESTIGATIVE REPORT FORM

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF *
THE ADOPTION PETITION OF *
*
Case Number_____
_____ *
*

Post-Placement Investigative Report Form

(*Ala. Code* §26-10E-19(i) (1975))

(Do not include copies of documents previously submitted with the Pre-Placement Investigative Report)

1._____, the individual performing the Post-Placement Investigative Report, under the authority of: agent.

☐ The Department of Human Resources

☐ A licensed child-placing agency

☐ A social worker licensed as provided by *Ala. Code* §34-30-3 (1975)

2.Petitioner(s)

(Name/DOB)

_____

3.Date Adoptee Placed in Petitioner(s) Home:

_____

4.Date of Pre-Placement Interview: _____

5.Date of Post-Placement Observation of Adoptee in the Petitioner(s) home: _____

(must be within 45 days of placement in Petitioner(s) home)

6. Biography(ies) of Petitioner(s), include medical and social history(ies):

_____

_____

7. List any other circumstances which may be relevant to the placement of the adoptee with the Petitioner(s):

_____

8. Why do the biological parents or legal parents, if living, desire to be relieved of the care, support, and guardianship of the adoptee?

_____

9. Have the biological parents or legal parents abandoned the adoptee or why are they unsuitable to have custody of the adoptee?

   _____

10. The medical and mental health histories of the adoptee's biological parent are as follows:

    _____

11. All copies of any order, judgment, and/or decree affecting the custody of the adoptee or any children of the petitioner(s) are attached. ☐

12. All Letters of Suitability Received ☐ date last updated _____

    FBI: date received _____, date updated _____

    ABI: date received _____, date updated _____

13. Child Abuse/Neglect Registry clearances received for all household members 14 years of age or older from any state in which any petitioner or household member has resided for five years or more, list each member of the household:

    _____

    date received _____, date updated _____

    _____ _____

14. National Sex Offender Public Registry: date received _____, date updated _____
15. County Criminal Records Completed (from each county the petitioner(s) have resided for the two years prior to the anticipated date of finalization of the adoption):

    _____

16. The anticipated costs and expenses related to the adoption

    _____

17. Six reference letters, four unrelated, two related (if there are two petitioners, one related reference letter by a member of each petitioner's family): Attached ☐

18. Medical reports on all individuals living in the home, including letters for any prescribing doctors for any controlled substance prescriptions: Attached ☐

19. Financial Worksheet or a Copy of the Previous Year's Tax Return: Attached ☐

20. Copies of Petitioner(s) birth certificates and marriage licenses if applicable:

    Attached ☐ N/A ☐

21. Copies of current pet vaccinations, Attached ☐ N/A ☐

22. Copies of any divorce decrees, Attached ☐ N/A ☐

23. Copies of death certificates if applicable, Attached ☐ N/A ☐

24. Verification of supervisory visits, Attached ☐ NA ☐

25. Home Safety Inspection indicating that he home of the Petitioner(s) is safe for the adoptee: date _____

26. ICPC Check list has been completed Attached ☐ N/A ☐

27. List any property owned by the adoptee:

_____

28. Updated medical and mental health histories of the adoptee have been completed and provided to the Petitioner(s): ☐

_____
(Signature of Affiant)

STATE OF _____

COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the___day of _____, 20___.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____,whose name, as_____(title) of _____(entity name), a_____corporation, is signed to the foregoing instrument, and who is known to me, acknowledges before me on this day that the statements contained herein are true and correct and (s)he has full authority to execute the same, and that (s)he is voluntarily doing so on the day that bears date.

Given under my hand this the___day of _____, 20___.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

PRE-TRIAL ORDER FOR CONTESTED ADOPTION WITH GUARDIAN AD LITEM DEPOSIT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number**_____
_____	*	
	*	

ORDER

This cause came before the Court on _____, for a ☐ pretrial conference *or* ☐ status hearing of the above referenced case. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration of the pleadings and after consultation with the parties, the Court **ORDERS** as follows:

1. The _____, and the Petitioner(s),_____, are each **ORDERED** to post a $_____cash deposit with the Court (totaling $_____) *on or before* _____, 20__, relating to expected court costs in this cause. Upon receipt of the same, the Court will proceed to appoint a Guardian ad Litem to represent the minor in this cause.

2. No discovery shall be conducted until the Guardian ad Litem is appointed. All discovery in this cause shall be completed on or before _____. All parties are under a duty to supplement responses with respect to discovery as provided by Rule 26(e)(3) of the *Alabama Rules of Civil Procedure.*

3. This cause shall be set for trial on _____, 20___, at _____.m. in Courtroom__, _____County, Alabama.

4. The triable issues in this cause identified at this time are:

   a. _____

   b. _____

5. Each party shall furnish all documents, exhibits and physical evidence, or copies thereof, expected to be used at trial to the other parties on or before _____, 20__. The same shall then be considered **authenticated** and will be considered admissible into evidence **without further proof on authenticity grounds**, unless written objections to any such documents or exhibits be made to the Court on or before _____, 20___, specifying the grounds for objection and evidence in opposition to the authenticity of the proposed document, exhibit or physical evidence.

6. Documents, exhibits or physical evidence not timely exhibited to other parties prior to trial may not be offered in evidence at the trial unless the ends of justice so require.

7. Documents, exhibits, or physical evidence to be offered by parties during the course of their case in chief (but not rebuttal), as well as an exhibit list, shall be presented to the Court Reporter for marking into evidence on _____, 20___.

8. Unless previously obtained by discovery, each party will furnish to all other parties the names, addresses and qualification of all expert witnesses expected to testify, together with a brief summary of their opinions, on or before _____, 20___. Opposing parties may make written objection to the qualification to the Court on or before _____, 20___, stating therein the specific objection and evidence in support thereof.

9. The *Alabama Rules of Civil Procedure* shall apply, with the Court exercising its Constitutional and statutory jurisdiction (see Rule 1, *Alabama Rules of Civil Procedure*).

10. The parties shall submit to the Clerk of the Court on or before _____, 20__, subpoenas and/or subpoenas duces tecum with copies of said requests to be served on all other counsel.

11. The Court will reconsider any portion of this Order upon **timely** application of any party.

12. The Clerk of the Court shall forward a copy of this Order by electronic service or U.S. First Class Mail to all counsel of record and to all parties in interest, and all *pro se* parties by U.S. First Class Mail to the last address provided to the Court.

Done this ___day of _____, 20___.

_____

Judge of Probate

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION (FOR INDIVIDUAL)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF *

THE ADOPTION PETITION OF *

* **Case Number_____**

_____ *

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION

(*Ala. Code* §26-10E-11 and 13 (1975))

KNOW ALL MEN BY THESE PRESENTS, that I, _____, born on _____having been first duly placed under oath, do hereby voluntarily and unequivocally state, agree and consent to the following:

1. That I, the____(*relationship to the minor*) of

   (a) _____,(*include all names known by*) a minor; born on _____; **or**

   (b) an unborn child whose expected date of birth is _____; do hereby:

   (c) consent to the adoption of the said minor only by (*list all legal names*) _____ ; **or**

   (d) relinquish the said minor for the purpose of adoption to _____ in order that said minor may have all the privileges which may be accorded to_____by the laws of Alabama upon_____legal adoption.

2. I ◯am or ◯am not of American Indian Heritage.

3. I am executing this document voluntarily and unequivocally thereby ◯*consenting to the adoption of* ◯*relinquishing said minor;*

4. I understand that by signing this document and the subsequent court order to ratify the consent, I will forfeit all rights and obligations to said minor and that I understand the ◯ *consent to the adoption* ◯ *relinquishment* and execute it freely and voluntarily;

5. I understand that the ◯ *consent to the adoption* ◯ *relinquishment* may be irrevocable, and I should not execute it if I need or desire psychological or legal advice, guidance or counseling;

6. I have received or been offered a copy of this document along with the Notice of Withdrawal;

7. I know the identity or I waive the right to know the identity of each petitioner(s) who petitions to adopt the said minor child;

8. ◯ *I waive further notice of the adoption proceedings by the execution of this relinquishment to the named agency* **or** ◯ *I waive further notice of the adoption proceedings by the execution of this consent, unless there is a contest or appeal of the adoption proceedings*;

9. 9. I have been advised and understand that notice of withdrawal of ◯ *consent* ◯ *relinquishment* must be mailed to and/or filed with the Probate Court of _____County at the following address: _____ (*mailing address*) or _____ (*physical address*) and a copy to the Petitioner(s)' attorney/ Licensed Child Placing Agency/Petitioner(s) _____ *(mailing address) or* _____ (*physical address*)

10. I have been advised and understand that such withdrawal of ◯ *consent to the adoption* ◯ *relinquishmen*t must be mailed to and/or filed with the Probate Court of _____County, Alabama within five (5) business days after the birth of said minor or the execution of this document whichever comes last.

11. I understand that after the five (5) business days but before the entry of the final judgment of adoption, the express ◯ *consent* ◯ *relinquishment* may be withdrawn if the Court determined, it was obtained by fraud, duress, mistake, or undue influence on the part of, or on behalf of the petitioner(s).

12. I understand that the adoption may not be collaterally attacked after entry of the final judgment of adoption, except as authorized by *Ala. Code* §26-10E-14 (1975). After one year from the date of entry of the final judgment of adoption and after all appeals, if any, an express ◯ *consent* ◯ *relinquishment* may not be challenged on any ground except in cases of fraud or cases in which the adoptee has been kidnapped.

13. I do hereby request that the Judge of Probate make all such orders and decrees as may be necessary or proper to legally effectuate said adoption; and

14. I do ◯ **or** do not ◯ consent to the disclosure of identifying information to said child after (s)he reaches the age of 19 years as such information relates to me.

Given under my hand at___o'clock, the__day of_____, 20___at_____.

(*Address of Place of Execution*)

_____
(Affiant's Signature)

STATE OF _____

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____, whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct

and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__ day of _____, 20__ .

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE OF WITHDRAWAL

(Once executed this document must be delivered to the Probate Court of _____County, AL.)

I,_____, on this_____day of _____20__ at____ a.m. p.m. in the presence of the two adult witnesses whose signatures and addresses are subscribed below or in the presence of a notary public whose signature is subscribed below, hereby withdraw the adoption *consent* *relinquishment* previously signed by me.

_____

(Affiant's Signature)

_____

(Witness)

_____

(Address)

_____

(Witness)

_____

(Address)

or

STATE OF _____

COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____

Notary Public

My Commission expires:_____

The address of the Probate Court of _____County is : _____

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION (BY MINOR PARENT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF THE ADOPTION PETITION OF

Case Number_____

_____

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION BY A MINOR
(*Ala. Code* §26-10E-11 and 13 (1975))

KNOW ALL MEN BY THESE PRESENTS, that I, , born on _____ having been first duly placed under oath, do hereby state, agree and consent to the following:

1. That I, the____(*state relationship to the minor*) of
   (a) _____, (*state all names known by*) a minor; born on _____; **or**
   (b) an unborn child whose expected date of birth is _____ ; do hereby:
   (a) consent to the adoption of the said minor only by _____; **or**
   (b) relinquish the said minor for the purpose of adoption to_____
   in order that said minor may have all the privileges which may be accorded to_____ by the laws of Alabama upon _____legal adoption.
2. I am executing this document voluntarily and unequivocally and having reviewed this document with my court appointed Guardian ad Litem thereby ◯ *consent to the adoption of* ◯ *relinquish* said minor;
3. I understand that by signing this document and the subsequent court order to ratify the consent, I will forfeit all rights and obligations to said minor and that I understand the ◯ *consent to the adoption* ◯ *relinquishment* and execute it freely and voluntarily;
4. I understand that the ◯ *consent to the adoption* ◯ *relinquishment* may be irrevocable, and I should not execute it if I need or desire psychological or legal advice, guidance or counseling;
5. I have received or been offered a copy of this document and the Notice of Withdrawal;
6. I waive the right to know the identity of each petitioner(s) who petitions to adopt the said minor child;
7. ◯ *I waive further notice of the adoption proceedings by the execution of this relinquishment to the named agency* **or** ◯ *I waive further notice of the adoption proceedings by the execution of this consent, unless there is a contest or appeal of the adoption proceedings;*

8. I have been advised and understand that notice of withdrawal of ◯*consent* ◯*relinquishment* must be mailed to and/or filed with the Probate Court of _____County at the following address: _____ (*mailing address*) or _____ (*physical address*) and a copy to the Petitioner(s)' attorney/Licensed Child Placing Agency/Petitioner(s) _____ *(mailing address) or* _____ (*physical address*)

9. and that such withdrawal must be mailed with a postmark of and/or filed with the Probate Court within five (5) business days after the birth of said minor or the execution of this document whichever comes last; I understand that the adoption may not be collaterally attacked after entry of final judgment, except as authorized by *Ala. Code* §26-10E-14 (1975).

10. I do hereby request that the Probate Judge make all such orders and decrees as may be necessary or proper to legally effectuate said adoption; and

11. ◯I do **or** ◯do not consent to the disclosure of identifying information to said child after he/she reaches the age of 19 years as such information relates to me.

Given under my hand at___o'clock, the__day of_____,20_____at_____ _____.
(Address of Place of Execution)

_____
(Affiant's Signature)

_____
(Guardian ad Litem's Signature)

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

_____
Notary Public
My Commission expires:_____

(AFFIX NOTARY SEAL)

I acknowledge receipt of two copies of this document and the Notice of Withdrawal.

_____
(Affiant's Signature)

_____
(Guardian ad Litem's Signature)

Date: _____

NOTICE OF WITHDRAWAL

(Once executed this document must be delivered to the Probate Court of _____, AL.)

I,_____, on this _____ day of __20__at ___ ◯a. m. ◯p.m. in the presence of the two adult witnesses whose signatures and addresses are subscribed below or in the presence of a notary public whose signature is subscribed below, hereby withdraw the adoption ◯*consent* ◯*relinquishment* previously signed by me.

_____
(Affiant's Signature)

_____
(Witness)

_____
(Address)

_____
(Witness)

_____
(Address)

or

STATE OF _____

COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires: _____

The address of the Probate Court of _____County is:

_____
_____

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION (BY ENTITY)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF *
THE ADOPTION PETITION OF *
*
Case Number_____
_____ *
*

CONSENT OR RELINQUISHMENT OF MINOR FOR ADOPTION
(*Ala. Code* §26-10E-11 and 13 (1975))
(LICENSED CHILD PLACING AGENCY)

KNOW ALL MEN BY THESE PRESENTS, that I, _____, as_____(*title*) of _____(*entity name*), having been first duly placed under oath, do hereby state, agree and consent to the following:

1. That _____ (*Licensed Child Placing Agency*) custodian of :
   (a) _____,(*include all names known by*) a minor; born on _____; does hereby:
   (b) consent to the adoption of the said minor only by *(list all legal names)* _____ ; **or**
   (c) relinquish the said minor for the purpose of adoption to _____ in order that said minor may have all the privileges which may be accorded to the minor by the laws of Alabama upon the legal adoption.
2. I am executing this document voluntarily and unequivocally thereby ◯*consenting to the adoption of* ◯*relinquishing* said minor;
3. I understand that by signing this document and the subsequent court order to ratify the consent, I will forfeit all rights and obligations to said minor and that I understand the ◯*consent to the adoption* ◯*relinquishment* and execute it freely and voluntarily;
4. I understand that the ◯*consent to the adoption* ◯*relinquishment* may be irrevocable, and I should not execute it if I need or desire psychological or legal advice, guidance or counseling;
5. I have received or been offered a copy of this document and the Notice of Withdrawal;
6. I waive the right to know the identity of each petitioner(s) who petition(s) to adopt the said minor child;

7. ◯ *I waive further notice of the adoption proceedings by the execution of this relinquishment to the named agency* **or** ◯ *I waive further notice of the adoption proceedings by the execution of this consent, unless there is a contest or appeal of the adoption proceedings*;

8. I have been advised and understand that notice of withdrawal of ◯ *consent* ◯ *relinquishment* must be mailed to and/or filed with the Probate Court of _____ County at the following address: _____ (*mailing address*) or _____ (*physical address*) and a copy to the Petitioner(s)' attorney/Licensed Child Placing Agency/Petitioner(s) _____ *(mailing address) or* _____ (*physical address*).

9. I have been advised and understand that such withdrawal of ◯ *consent to the adoption* ◯ *relinquishmen*t must be mailed to and/or filed with the Probate Court of _____ County, Alabama within five (5) business days after the birth of said minor or the execution of this document whichever comes last.

10. I understand that after the five (5) business days but before the entry of the final judgment of adoption, the express ◯ *consent* ◯ *relinquishment* may be withdrawn if the Court determined, it was obtained by fraud, duress, mistake, or undue influence on the part of, or on behalf of the petitioner(s).

11. I understand that the adoption may not be collaterally attacked after entry of the final judgment of adoption, except as authorized by *Ala. Code* §26-10E-14 (1975). After one year from the date of entry of the final judgment of adoption and after all appeals, if any, an express ◯ *consent* ◯ *relinquishmen*t may not be challenged on any ground except in cases of fraud or cases in which the adoptee has been kidnapped.

12. I do hereby request that the Judge of Probate make all such orders and decrees as may be necessary or proper to legally effectuate said adoption; and

13. ◯ I do **or** ◯ do not consent to the disclosure of identifying information to said child after he/she reaches the age of 19 years as such information relates to me.

Given under my hand at___o'clock, the__day of_____,20___at_____.
(*Address of Place of Execution*)

_____
(Affiant's Signature)

STATE OF _____
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____,whose name_____,as_____ (title) of _____(entity name), a_____corporation, is signed to the foregoing instrument, and who is known to me, acknowledges before me on this day that the statements contained herein are true and correct and (s)he has full authority to execute the same, and that (s)he is voluntarily doing so on the day that bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE OF WITHDRAWAL

(Once executed this document must be delivered to the Probate Court of _____County, AL.)

I,_____, on this _____day of 20__ at_____ ◯a.m. ◯p.m. in the presence of the two adult witnesses whose signatures and addresses are subscribed below or in the presence of a notary public whose signature is subscribed below, hereby withdraw the adoption ◯*consent* ◯*relinquishment* previously signed by me.

_____
(Affiant's Signature)

_____
(Witness)

_____
(Address)

_____
(Witness)

_____
(Address)

or

STATE OF _____

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ , whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires: _____

The address of the Probate Court of _____ County is:

_____

AFFIDAVIT OF BIOLOGICAL MOTHER

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

Case Number_____

AFFIDAVIT OF BIOLOGICAL MOTHER

(*Ala. Code* §26-10E-16(c) (1975))

COMES NOW, _____, the biological mother of a minor, ☐ born on ☐ an unborn child whose expected date of birth is _____ who is the adoptee in this adoption proceeding and, having been first duly sworn and placed under oath to speak the truth, attest that I make the foregoing under penalty of perjury and may suffer the legal punishment for same, does hereby state that I have no knowledge regarding the identity of the putative father of the above adoptee, and in support of my statement respond to the following questions. I further understand that the statements contained below will only be used for the limited purpose of adoption and, once the adoption is complete, will be sealed. I am aware of the remedies available for protection from abuse pursuant to Alabama law, commencing with *Ala. Code* §30-5-1, et seq. (1975).

1. Were you married at the probable time of conception of the adoptee, or at a later time?
   Yes ☐ No ☐
   If yes, identify the name and last known address of your husband:
   _____

2. Were you cohabiting with a man at the probable time of conception of the adoptee?
   Yes ☐ No ☐
   If yes, identify the man by name, list his last known address, and explain why you contend that the man is not the legal father or putative father of the adoptee:
   _____

3. Did you receive payments or promises of support from any man with respect to the adoptee or your pregnancy?
   Yes ☐ No ☐
   If yes, identify the man by name, list his last known address, and explain why you contend that the man is not the legal father or putative father of the adoptee:
   _____

4. Did you name any man as the father on the birth certificate of the adoptee or in connection with applying for or receiving public assistance?
   Yes ☐ No ☐
   If yes, identify the man by name, list his last known address, and explain why you contend that the man is not the legal father or putative father of the adoptee:
   _____

5. Did you identify any man as the legal father or putative father to any hospital personnel at the time of the adoptee's birth?
   Yes☐ No ☐
   If yes, identify the man by name, list his last known address, the hospital address and explain why you contend that the man is not the legal father or putative father of the adoptee:

   _____

6. Did you inform any man that he may be the legal or putative father of the adoptee?
   Yes ☐ No ☐
   If yes, identify the man by name, list his last known address, and explain why you contend that the man is not the legal father or putative father of the adoptee:

   _____

7. Did any man formally or informally acknowledge or claim paternity of the adoptee in any jurisdiction at any time?
   Yes ☐ No ☐
   If yes, identify the man by name, list his last known address, and explain why you contend that the man is not the legal father or putative father of the adoptee.

   _____

Dated this_____day of_____,_____.

_____
(Signature of Affiant)

STATE OF _____
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and she executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

AFFIDAVIT OF ADOPTEE'S PARENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

Case Number_____

AFFIDAVIT OF ADOPTEE'S PARENT
(*Ala. Code* §26-10E-22 (1975))
(*A separate affidavit should be executed by each legal parent.*)

COMES NOW, _____, the legal parent of _____, ○ a minor, born on _____ ◉ an unborn child whose expected date of birth is _____ who is the subject of this adoption proceeding, does hereby truthfully state that I have received no money or other things of value or been paid for consenting to the adoption of the minor. I further state that I make the foregoing on oath under penalty of perjury and may suffer the legal punishment for the same and that which is prescribed by §26-10E-33(b) of the Alabama Minor Adoption Code.

_____
(Signature of Affiant)

STATE OF _____
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____, whose name is signed to the foregoing and who is known to me, who acknowledged before me on this day, that that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires: _____

AFFIDAVIT REGARDING BIRTH CERTIFICATE

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

AFFIDAVIT REGARDING BIRTH CERTIFICATE
(*Ala. Code* §26-10E-16(b)(3) (1975))

COME(S) NOW, the Petitioner(s) in the above matter and do hereby state to the Court that the birth certificate for _____, a minor, who was born on _____, at _____ in the County of _____, State of _____, is not presently available and cannot be filed with the petition for leave to adopt as required by *Ala. Code* §26-10E-16(b)(3) (1975); and that application for said birth certificate has been made and will be forwarded to the Court upon receipt thereof.

Dated this_____day of_____,_____.

_____
Signature of Petitioner

_____
Signature of Petitioner

STATE OF ALABAMA
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who being first duly sworn on oath, acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

CONSENT OF MINOR TO ADOPTION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

CONSENT OF MINOR
(*Ala. Code* §26-10E-7(a)(1) (1975))

KNOW ALL MEN BY THESE PRESENTS, that I,_____,
(*include all names known by*) having been first duly placed under oath, do hereby voluntarily and equivocally state, agree and consent to the following:

1. That I am_____years of age, having been born on the_____day of ____, 20__.
2. That I have received a copy of the Petition for Adoption ("Petition") in the above matter which is for my adoption by _____,("Petitioner(s)").
3. That I have read the Petition and understand its content and purpose;
4. That if the Petition is granted by the Court, there will then exist a legal parent/child relationship between the Petitioner (s) and myself;
5. That if such adoption is one by my stepparent, then the legal relationship with my natural parent who is married to the Petitioner will not be disturbed;
6. That a hearing will be conducted by the Probate Court of _____ regarding the Petition of which hearing I will be informed in writing;
7. That I am entitled and encouraged to be present in Court on the date of hearing and to participate if I desire to do so;
8. That I do hereby consent and agree that the aforesaid petition be filed and granted by the Probate Court, if it finds proper, to effectuate my legal adoption by _____

   _____, the Petitioner(s);

9. I understand that the consent to adoption may be irrevocable, and I should not execute it if I need psychological or legal advice, guidance or counseling.

10. I have received or been offered a copy of this document along with the Notice of Withdrawal.
11. I have been advised and understand that a withdrawal of the express consent to adoption must be mailed to and postmarked and/or filed with the Probate Court of _____County, Alabama within five (5) business days after the execution of the consent at the following address: _____(*mailing address*) or _____ (*physical address*) and a copy to the Petitioner(s)' attorney/Licensed Child Placing Agency/Petitioner(s) at the following address: _____ (*mailing address*) or _____(*physical address*).
12. I understand that after the five (5) business days but before the entry of the final judgment of adoption, the express consent may be withdrawn if the Court determined, it was obtained by fraud, duress, mistake, or undue influence on the part of, or on behalf of the Petitioner(s).
13. I understand that the adoption may not be collaterally attacked after entry of the final judgment of adoption, except as authorized by *Ala. Code* §26-10E-14 (1975). After one year from the date of entry of the final judgment of adoption and after all appeals, if any, an express consent may not be challenged on any ground except in cases of fraud or cases in which the adoptee has been kidnapped.
14. I do hereby request that the Judge of Probate make all such orders and decrees as may be necessary or proper to legally effectuate said adoption.

Given under my hand at___o'clock, the__day of_____, 20___at_____.

Address of Place of Execution: _____

_____
(Affiant's Signature)

STATE OF ALABAMA
COUNTY OF_____

I,the undersigned authority, in and for said County and State, hereby certify that _____, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day, that the statements contained herein are true and correct and I executed the same voluntarily on the day the same bears date.
Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE OF WITHDRAWAL

(Once executed this document must be delivered to the Probate Court of _____ County, AL.)

I, _____, on this _____day of __ 20__ at ____☐a.m. or ☐p.m. in the presence of a notary public or the two witnesses whose signatures and addresses are subscribed below, hereby withdraws the adoption consent previously signed by me.

_____
(Affiant's Signature)

_____
(Witness)

_____
(Address)

_____
(Witness)

_____
(Address)

Or

STATE OF ALABAMA

COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that_____, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires: _____

The address of the Probate Court of _____County is:

_____

_____

WAIVER OF NOTICE

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF *
THE ADOPTION PETITION OF *
*
Case Number_____
_____ *
*

WAIVER OF NOTICE
(*Ala. Code* § 26-l0E-17(e) (1975))

COMES NOW_____, _____, in the above matter, and hereby waives any and all notice of the pendency of the adoption proceeding ☐ of_____ a minor, born on _____ or ☐ of an unborn child whose expected date of birth is _____. By executing this waiver, I am waiving any right to appear and of any further notice of the adoption proceedings. I understand that if the adoption is approved, my parental rights to the adoptee will be considered terminated.

Signed this _____ day of _____ 20___.

_____
Signature of Affiant

STATE OF _____
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who being first duly sworn on oath, acknowledged before me on this day, that the statements contained herein are true and correct and I executed the same voluntarily on the day the same bears date. Given under my hand this the___ day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

-OR-

STATE OF _____
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that_____ whose name, as_____(title) of _____(entity name), a _____corporation, is signed to the foregoing instrument, and who is known to me, acknowledges before me on this day that the statements contained herein are true and correct and (s)he has full authority to execute the same, and that (s)he is voluntarily doing so on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires: _____

DISCLOSURE OF ANTICIPATED DISBURSEMENTS

STATE OF ALABAMA) **IN THE PROBATE COURT OF**
) **SAID COUNTY)**
COUNTY OF _____) **CASE NO. _____)**

IN THE MATTER OF THE ADOPTION PETITION OF

_____

DISCLOSURE OF ANTICIPATED DISBURSEMENTS

Comes now, _____ and _____, the Petitioners in the above styled adoption proceeding and pursuant to § 26-10E-22(b) do hereby submit to this Honorable Court for its consideration a listing of all anticipated charges, expenses and fees for services which said Petitioners will be paying in this matter, the same being as follows:

Recipient/Purpose **Amount**

Petitioners pray that this Disclosure of Anticipated Disbursement be filed for record and that the Court upon first conducting a proper hearing, will consider each item reported and enter its decision as to the same.

Petitioners pray for such other further and different relief as may be proper, the premises considered.

DONE this _____ day of _____, 20___.

_____

_____

I/We, _____, sign my/our name(s) to this instrument this _____ day of _____, 20__, and being first duly sworn do hereby declare to the undersigned authority that I/we execute it as my/our free and voluntary act for the purposes therein expressed, and that I/we am/are _____ years of age or older, of sound mind, and under no constraint or undue influence.

_____

_____

STATE OF ALABAMA)
)
COUNTY OF _____)

Subscribed, sworn to and acknowledged before me by _____ this _____ day of _____, 20___.

SEAL

_____
Official Capacity of Officer:

_____

DISCLOSURE AND ACCOUNTING OF DISBURSEMENTS PAID IN ADOPTION

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
*
*
*

Case Number_____

DISCLOSURE AND ACCOUNTING OF DISBURSEMENTS PAID IN ADOPTION

COME(S) NOW, _____("Petitioner(s)") in the above styled adoption proceeding and pursuant to *Ala. Code* §26-10E-22(c) (1975) do hereby make a full accounting of all disbursements paid in this adoption which have been previously approved by the Court on_____, the same being set out as follows:

To Whom Paid and Purpose	**Amount**

DONE this_____day of_____,_____.

_____
Petitioner

_____
Petitioner

STATE OF ALABAMA
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

AFFIDAVIT FOR PUBLICATION (ATTORNEY)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

Affidavit for Publication
(Attorney)
(Rule 4.3 ARCP)

COMES NOW, the undersigned counsel of record for the Petitioner(s) in this cause and, upon first being duly sworn, does hereby state to this Court that service of process on:

_____

_____

party(ies) to these proceedings, cannot be made because of the following:

☐ the current residence of said party(ies) is/are unknown to the affiant and cannot with reasonable diligence be ascertained; the facts supporting this reason are (include all social media, Alacourt, Alabama Department of Corrections searches that were performed):

_____

_____

_____

☐ the resident party(ies) has/have been absent for more than 30 days since the filing of the pleading; the facts supporting this reason are:

_____

_____

_____

OR

☐ the said party(ies) avoid(s) service; the facts supporting this reason are:

_____

_____

_____

Done this___day of____, 20____.

_____
Signature of Counsel

Attorney for: _____

STATE OF ALABAMA
COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____,whose name(s) is/are signed to the foregoing and who is known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

AFFIDAVIT FOR PUBLICATION (PETITIONER(S))

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF

_____

*
*
* **Case Number_____**
*
*

Affidavit for Publication
(Petitioner(s))
(Rule 4.3 ARCP)

COMES NOW, the Petitioner(s) in this cause and, upon first being duly sworn, does hereby state to this Court that service of process on:

_____

party(ies) to these proceedings, cannot be made because of the following:

☐ the current residence of said party(ies) is/are unknown to the affiant and cannot with reasonable diligence be ascertained; the facts supporting this reason are (include all social media, Alacourt, Alabama Department of Corrections searches that were performed):

_____

☐ the resident party(ies) has/have been absent for more than 30 days since the filing of the pleading; the facts supporting this are:

_____

OR

☐ the said party(ies) avoid(s) service; the facts supporting this are:

_____

Done this___day of____, 20____.

_____
Signature of Petitioner

_____
Signature of Petitioner

STATE OF _____

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____,whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that the statements contained herein are true and correct and (s)he/they executed the same voluntarily on the day the same bears date.

Given under my hand this the__day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

ALABAMA REPORT OF ADOPTION

A L A B A M A
REPORT OF ADOPTION

INSTRUCTIONS: Parts I and II of this report must be completed by the petitioners, their attorney, or the Court. If the child was placed by a licensed child-placing agency or the State Department of Human Resources, information about 1) the natural parents, 2) place of birth of the child, and 3) birth certificate number may be omitted. This information is to be furnished to the State Registrar by the agency which placed the child.

Within ten (10) days after the final decree of adoption has been made, the Clerk of the Court shall make his certification in Part III, affix his official seal, and forward this report with the final decree of adoption to the State Registrar, Center for Health Statistics, P. O. Box 5625, Montgomery, Alabama 36103-5625. If the child was born in Alabama a new certificate listing the child's new name and adoptive parents will be prepared. The fee to prepare this new birth certificate is $25.00 payable to the Alabama State Board of Health. This fee also includes one certified copy of the new certificate. If the adopted child was not born in Alabama, the State Registrar will forward the certified copy of the final decree of adoption and the report of adoption to the proper official in the state of birth. The fee to forward the final decree of adoption and report of adoption to the proper official in the state of birth is $10.00 payable to the Alabama State Board of Health. To obtain a certified copy of this birth certificate, contact the state ofbirth.

PART I — **INFORMATION ABOUT CHILD (To Identify Original Birth Certificate)**

NOTE: If the official birth certificate number is entered, the names of the father and mother may be omitted.

Full Name of Child at Birth First Middle Last			Birth Certificate Number
Place of Birth City–Town or Location	State and Country of Birth	Date of Birth	Sex
Full Maiden Name of **NATURAL** Mother First Middle Last			
Full Name of **LEGAL** Father /Parent First Middle Last			

PART II — **INFORMATION AFTER ADOPTION (For New Birth Certificate)**

Full Name of Child After Adoption First Middle Last			
FATHER/PARENT — Full Name First Middle Last			
Father/Parent State of Birth (If not in U.S.A., name country)	Father/Parent Date of Birth		Father/Parent (Check One) Adoptive ☐ Natural ☐
MOTHER /PARENT Maiden Name First Middle Last	Mother/Parent Legal Name First Middle Last		
Mother/Parent Date of Birth	Mother/Parent State of Birth (If not in U.S.A., name country)	Mother/Parent Usual Residence—State	
Mother/Parent Residence — County	Mother/Parent Residence — City or Town and Zip Code		
Mother/Parent Residence — Street Address (If rural, give location)	Mother/Parent Residence — inside City Limits (Specify Yes or No)		Mother/Parent (Check One) Adoptive ☐ Natural ☐
Mailing Address of Adoptive Parents		Phone Number	
Name and Full Address of Attorney Or Agency Representative	Phone Number	Title	

PART III — **CERTIFICATION OF CLERK OF COURT**

Must be properly signed, dated and sealed.

Name of Court Probate For City, County of

I hereby certify that the adoption as set forth above was made final in this Court by decree dated _____

and bearing No. _____ .

Signature _____

(Seal) Title Chief Clerk

By _____

ADPH-HS-17/Rev. 10/2015

PETITION FOR ADULT ADOPTION

State of Alabama Unified Judicial System Page 1 of 3 Form PR-1: 6/07	**PETITION FOR ADOPTION** **(*Ala. Code* §26-10F-8 (1975))**	Probate Court Case No.:_____

STATE OF ALABAMA

COUNTY OF_____

PETITIONER MUST COMPLETELY FILL OUT THIS FORM

In the Matter of the Adoption Petition of [Full Name(s) of Petitioner(s)]:

_____

_____

To Adopt _____(Name of Person) an adult,

COMES NOW, the above-named Petitioner(s), wishing to adopt the person named above pursuant to the laws of the State of Alabama, who allege(s) the following *(Check which boxes are applicable):*

☐ 1. The Petitioner(s), _____[full name(s) of petitioner(s)], ☐ is/are (a) resident(s) of, or ☐ is/are in military service in, or ☐ [for offices of any agency or institution operating under the laws of this state having guardianship or custody of an adult is located, specifically_____[Business Address, city or town, state, and zip code]] has/have an office in, the State of Alabama and the county(ies) of _____. The age(s) and his/her/their home or business address(es) including city(ies) or town(s), state(s), and zip code(s) are as follows: _____

_____

☐ 2. The Petitioners are married which marriage occurred on _____(date), in_____(city or town and state).

☐ 3. The Petitioner(s) respectfully petition(s) this Court for leave to adopt the above-named person, whose birth name is _____,with more detailed information set out below.

☐ Other Name(s) By Which the Person Has Been Known: _____

_____

☐ Proposed New Name of Person: _____

☐ City or Town, County, and State in Which the Person Now Resides or Has a Legal Residence:

_____

☐ Date and City or Town, County, and State of Birth of Person:

_____

_____

_____

State of Alabama Unified Judicial System Page 2 of 3 Form PR-1: 6/07	**PETITION FOR ADOPTION** **(*Ala. Code* §26-10F-8 (1975))**	Probate Court Case No.:_____

The reason(s) why the person is being adopted *(Check which boxes are applicable)*:

☐ The person is an adult stepchild or former stepchild by marriage;

☐ The person is an adult who is related by any degree of kinship as defined by the intestacy laws of Alabama;

☐ The person is an adult with a total and permanent disability;

☐ The person is an adult determined to be incapacitated pursuant to *Ala. Code* §26-2A-20 (1975);

☐ The person is an adult who has been in a de facto parent-children relationship with each petitioner during the minority of the adoptee.

☐ 4. The person's name after adoption shall be as follows:

_____

☐ 5. The Petitioner(s) wish(es) to establish a parent-child relationship with the person being adopted, and the Petitioner(s) represent(s) to the Court that he/she/they is/are (a) fit and proper person(s) able to care for and provide for the adopted person's welfare.

☐ 6. The above-named person being adopted is related to the Petitioner(s) as follows:

_____

☐ 7. The Petitioner(s) aver(s) that the above-named person being adopted is now in the custody of *(If applicable, name(s) and home or business address(es), including city(ies) or town(s), state(s), and zip code(s), of any person(s), agency(ies), etc. who or which currently have custody of the above-named person to be adopted):* _____

_____

_____

Name, County, and State of Court Issuing Custody Order and Date of Order:

_____

☐ 8. The Petitioner(s) further aver(s) that there exist(s) the following order(s) of court regarding guardianship and/or conservatorship, and/or custody and/or visitation with, or access to, the person being adopted [*Name(s), County(ies), and State(s) of Court(s) Issuing Custody, Visitation, or Access Order(s) and Date(s) of Order(s)*]:

_____

_____

_____

☐ 8a. The Petitioner(s) further aver(s) that the following action(s) relating to the custody, support, visitation, or other matter(s), relating to the person being adopted *(Name(s), County(ies), and State(s) of Court(s) Where Case(s) Was/Were Filed):* _____

_____

_____

☐ 9. If applicable, the name(s) and business address(es) [including city(ies) or town(s), state(s), and zip code(s)] of the placing agency(ies) is/are as follows: _____

ADULT ADOPTION NOTICE OF HEARING

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

*
*
*
*
*

Case Number_____

NOTICE OF HEARING
(*Ala. Code* §26-10F-9 (1975))

TO:_____

Please take **notice** that a petition for adoption in the above styled matter has been filed in said Court by the Petitioner(s) named below. As a notified party, you may appear in the adoption proceeding to contest or support the attached petition. Please be advised that if you intend to contest this adoption you must file a written response within thirty (30) days of service of this notice with counsel for said Petitioner(s), whose name and address are as shown below and with the Clerk of the said Probate Court. If you fail to respond within thirty (30) days, the court may construe that failure as an implied consent to the adoption and waiver of a right to appear and of further notice of the adoption proceedings. If the adoption is approved, your parental rights and responsibilities, if any, will be considered terminated. A copy of the petition to adopt is attached to this notice as required by statute.

DONE this_____day of_____, 20_____.

Attorney for Petitioner:
(Name and Address)
_____
_____
_____

Petitioner:
(Name and Address)
_____
_____
_____

ATTORNEY'S CERTIFICATE OF SERVICE

I, the undersigned as attorney of record for said petitioner, do certify that I have this date forwarded a copy of this notice to the party named herein by CERTIFIED MAIL properly addressed with the sufficient postage affixed. (*Proof of service on certified mail shall be attached when submitting form to Probate Court.)*

_____
(Signature of Attorney)
Date: _____

(OPTIONAL)
CERTIFICATE OF SERVICE - PERSONAL SERVICE (IN STATE)

I, the undersigned do hereby certify that on the date noted below I served a copy of this notice on

_____
(Person or Agency to be served)

Date: _____

_____
(Signature of duly appointed Process Server)

_____
(Print Name)

_____
(Address)

CONSENT FOR ADULT TO BE ADOPTED

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF
THE ADOPTION PETITION OF
_____

*
*
* **Case Number_____**
*
*

CONSENT OF ADOPTEE
(*Ala. Code* §26-10F-7(a)(1) (1975))

KNOW ALL MEN BY THESE PRESENTS, that I,_____,
(*include all names known by*) having been first duly placed under oath, do hereby voluntarily and equivocally state, agree and consent to the following:

1. That I am_____years of age, having been born on the____ day of _____, 20____.
2. That I have received a copy of the Petition for Adoption ("Petition") in the above matter which is for my adoption by _____,("Petitioner(s)").
3. That I have read the Petition and understand its content and purpose.
4. That if the Petition is granted by the Court, there will then exist a legal parent/child relationship between the Petitioner (s) and myself;
5. That if such adoption is one by my stepparent, then the legal relationship with my natural parent who is married to the Petitioner will not be disturbed;
6. That a hearing will be conducted by the Probate Court of _____ regarding the Petition of which hearing I will be informed in writing;
7. That I am entitled and encouraged to be present in Court on the date of hearing and to participate if I desire to do so;
8. That I do hereby consent and agree that the aforesaid petition be filed and granted by the Probate Court, if it finds proper, to effectuate my legal adoption by _____

   _____, the Petitioner(s).

9. I understand that the consent to adoption may be irrevocable, and I should not execute it if I need psychological or legal advice, guidance or counseling.
10. I have received or been offered a copy of this document along with the Notice of Withdrawal.

11. I have been advised and understand that a withdrawal of the express consent to adoption must be filed with the Probate Court of _____County, Alabama before the dispositional hearing on the adoption petition at the following address:_____(*mailing address*) or _____(*physical address*) and a copy to the Petitioner(s)' attorney/ Petitioner(s) at the following address: _____(*mailing address*) or _____(*physical address*).
12. I understand that the adoption may not be collaterally attacked after entry of the final judgment of adoption, except as authorized by *Ala. Code* §26-10F-13(h)((1975). After one year from the date of entry of the final judgment of adoption and after all appeals, if any, an express consent may not be challenged on any ground except in cases of fraud or cases in which the adoptee has been kidnapped.
13. I do hereby request that the Judge of Probate make all such orders and decrees as may be necessary or proper to legally effectuate said adoption.

Given under my hand at___o'clock, the__ day of_____, 20___at_____.

Address of Place of Execution: _____

_____
(Affiant's Signature)

STATE OF ALABAMA
COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____, whose name is signed to the foregoing and who is known to me, acknowledged before me on this day, that the statements contained herein are true and correct and I executed the same voluntarily on the day the same bears date.

Given under my hand this the___ day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
My Commission expires:_____

NOTICE OF WITHDRAWAL
(Once executed this document must be delivered to the Probate Court of _____County, AL.)

I, _____ , on this ___day of _____, 20___in the presence of a notary public or the two witnesses whose signatures and addresses are subscribed below, hereby withdraws the adoption consent previously signed by me.

_____
(Affiant's Signature)

_____

(Witness)

_____

(Address)

_____

(Witness)

_____

(Address)

Or

STATE OF ALABAMA

COUNTY OF _____

I,the undersigned authority, in and for said County and State, hereby certify that _____,whose name is signed to the foregoing andwhoisknowntome,acknowledged before me on this day, that the statements contained herein are true and correct and (s)he executed the same voluntarily on the day the same bears date.

Given under my hand this the___day of _____, 20__.

(AFFIX NOTARY SEAL)

_____
Notary Public
MyCommission expires:_____

The address of the Probate Court of _____County is:

_____

_____

FINAL JUDGEMENT OF ADOPTION (ADULT)

PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	*	
THE ADOPTION PETITION OF	*	
	*	**Case Number_____**
_____	*	
	*	

FINAL JUDGMENT OF ADOPTION

This cause is before the Court on the Petition for Adoption ("Petition") filed by the Petitioner(s) in the above matter. This cause is properly before the Court pursuant to its jurisdiction and authority conferred by statute and Constitutional provisions. Upon due consideration, the Court **FINDS** and **CONCLUDES** as follows:

The Court being satisfied from clear and convincing evidence adduced that the facts alleged in said petition are true; that there has been no contest or objections brought in this cause; that the Petitioner(s) is/are suitable to be the parent(s) of said adoptee and (s)he/they desire(s) to establish a parent/child relationship with the adoptee; that the best interest of the adoptee will be served by granting the petition.

It is therefore **ORDERED, ADJUDGED AND DECREED** that the Petition for Adoption is **GRANTED**; that said adoptee is hereby legally adopted by the Petitioner(s) and from this date the said adoptee shall be, as to all legal intents and purposes, the child of the Petitioner(s) to be accorded the status as set forth in the Alabama Adoption Code; and that the name of the adoptee in this matter is hereby changed to _____, as prayed.

It is **DIRECTED** by the Court that a certified copy of this order be forwarded to all counsel of record by electronic mail or by U.S. First Class Mail and the Alabama Department of Human Resources and the State of Registrar of Vital Statistics electronically or by United States mail.

It is further **DIRECTED** by the Court that all pleadings, papers and other documents filed in this cause be recorded and sealed.

Done this ___ day of _____, 20___.

_____

Judge of Probate

NOTICE OF APPEAL

State of Alabama Unified Judicial System Form ARAP-1 (front) Rev.1/97	NOTICE OF APPEAL TO THE (Check appropriate block) ☐ SUPREME COURT OF ALABAMA ☐ COURT OF CIVIL APPEALS OF ALABAMA	Civil Action Number:

IN THE _____ COURT OF _____ COUNTY, ALABAMA

APPELLANT	
V. APPELLEE	
TRIAL JUDGE	
DATE OF JUDGMENT:	DATE OF POST – JUDGMENT ORDER:

NOTICE IS HEREBY GIVEN THAT _____ appeal(s) to the above-named court from the ☐ Final Judgment ☐ Order_____ entered in this cause.
(describing it)

CHECK THE PROPER DESCRIPTION OF THE APPEALED CASE UNDER THE APPROPRIATE COURT:

SUPREME COURT
1. ☐ Summary Judgment, amount claimed more than $ 50,000
2. ☐ Judgment Amount exceeds $50,000
3. ☐ Amount Sought in trial court more than $50,000, Judgment for defendant
4. ☐ Equitable Relief, except for domestic relations
5. ☐ Other:_____

COURT OF CIVIL APPEALS
1. ☐ Summary Judgment, amount claimed $ 50,000 or less
2. ☐ Judgment Amount $50,000 or less
3. ☐ Amount Sought $50,000 or less, judgment for defendant
4. ☐ Workmen's Compensation
5. ☐ Domestic Relations
6. ☐ Other:_____

APPELLANT FILES WITH THIS NOTICE OF APPEAL:
1. ☐ **Security for costs of appeal**
2. ☐ **A supersedeas bond in the amount of $ _____**
3. ☐ **Deposited cash security in the amount of $ _____**
4. ☐ **Is exempted by law from giving security for costs of appeal by virtue of _____**

Filed _____ (Date)

CERTIFIED AS A TRUE COPY

_____
Circuit Clerk

_____
Address

_____ _____
Telephone Number

_____
Appellant or Attorney for Appellant

Email_____

SECURITY FOR COSTS

We hereby acknowledge ourselves security for costs of appeal. For the payment of all costs secured by this undertaking, we hereby waive our right of exemption as to personal property under the Constitution and laws of the State of Alabama.

Executed with our seals this _____ day of _____ . _____.

Filed and approved: _____ (Date)

_____(L.S.)
Appellant-principal

_____(L.S.)
Surety

_____ _____(L.S.)
Surety

Circuit Clerk
(Amended November 9, 1976; October 1, 1991.)

SUPERSEDEAS BOND

We, the undersigned principal and sureties, hereby acknowledge ourselves bound unto_____ In the sum of _____ Dollars, for the payment of which we bind ourselves, and each other, our heirs, executors, [(for amount of bond see Rule 8(a) and administrators, jointly and severally, and as part of this undertaking we hereby waive our rights of exemption as to personal property under the Constitution and laws of the State of Alabama.

Form ARAP-1 (back) Rev. 1/97	NOTICE OF APPEAL TO THE ☐ Supreme Court of Alabama ☐ Court of Civil Appeals of Alabama

WHEREAS, the above-named appellee (s) recovered a judgment against appellant (s) for the sum of _____ Dollars (and the further acts or duty _____) [describing judgment in addition to or other than for money only]_____ Dollars, the costs in that behalf expended.

NOW, therefore, the condition of the foregoing obligation is such that, if the appellant shall prosecute this appeal to effect, and satisfy such judgment, penalties, and costs including costs of appeal as may be rendered in this case, then the said obligation to be null and void, otherwise to remain in full force and effect.

Executed with our seals this _____ day of _____, _____ .

Filed and approved: _____ (Date)

_____ (L.S.)
Appellant-principal

_____ (L.S.)
Surety

_____
Circuit Clerk

_____ (L.S.)
Surety

EXECUTION OF JUDGMENT STAYED:

Bond fixed at: $ _____
(Not required for money judgment only.)

_____ (L.S.)
Circuit Judge

DESIGNATION OF RECORD ON APPEAL

DESIGNATION OF CLERK'S RECORD: Appellant requests the clerk to include the following checked materials in the clerk's record:

1. ☐ Complaint
2. ☐ Answer
3. ☐ Counter-claim
4. ☐ Cross-Claim
5. ☐ Third-party Complaint
6. ☐ Third-party Answer
7. ☐ Motion to dismiss
8. ☐ Pretrial order
9. ☐ Entire record (less those items set forth in Rule 10 (a)
10. ☐ Motion for summary judgment
11. ☐ Opposition to motion for summary judgment
12. ☐ Final (Judgment) (Order)
13. ☐ Motion for New Trial
14. ☐ Ruling on Motion
15. ☐ Others:_____
16. ☐ Exhibit Number:_____

TRANSCRIPT STATUS

☐ Transcript will not be ordered. [See Rule 10(b), ARAP.]

☐ Transcript will be ordered. [See Rules 10(b)(2) and 11 (a)(2), ARAP. Form 1A or 1B.] Court reporter(s):

_____.
_____.
_____.

NOTE: If more than one court reporter was involved in this case, you must file a Transcript Purchase Order Form in compliance with Rules 10(b) and 11(c), Form 1A or 1B of the ARAP, for each court reporter.
(Amended October 1, 1991.)

CERTIFICATE OF FILING

I certify that I have this date filed with the clerk of the trial court the original and _____ copies of the foregoing notice of appeal (along with $ 200 docket fee), and such other instruments as have been completed and included herein. A true copy of each of these items will be served by the clerk of the trial court on each of the following:

1) Clerk of the appellate court, (the $ 200 docket fee shall be transmitted with this filing) or affidavit of hardship.
2) Court Reporter.
3) Counsel for appellee, or appellee if no counsel.
   Name: _____
   Address: _____

DATED this _____ day of _____, _____.

_____
Attorney for Appellant

(Amended October 1, 1991.)

DOCKETING STATEMENT

State of Alabama
Unified Judicial System
Form ARAP-24 (front) **1/97**

DOCKETING STATEMENT
Appeal to the Supreme Court of Alabama
NOTE: completed Civil Case Cover Sheet must be attached

Appellate Case Number
(to be filled in by appellate court)

COUNTY | CIVIL ACTION NUMBER | TRIAL JUDGE

I. PARTY/ PARTIES FILING
APPEAL (Appellant) : _____
APPELLANT'S
ATTORNEY: _____ (____) _____
Telephone Number
_____
Address City State Zip Code

II. PARTY/ PARTIES APPEALED
APPEAL (Appellee) : _____
APPELLEE'S
ATTORNEY: _____ (____) _____
Telephone Number
_____
Address City State Zip Code

III. APPELLANT IS THE TRIAL COURT: ☐ Plaintiff ☐ Defendant ☐ Other
IV. IS THIS A CROSS-APPEAL? ☐ Yes ☐ No

V. RELIEF AWARDED/REQUESTED: please check the appropriate block (s):

A. ☐ Monetary damages were either sought or awarded, as set out below:

1. Compensatory damages were:
   (a) ☐ awarded in the amount of $ _____;
   (b) ☐ not awarded, but sought in the amount of $ _____;
   (c) ☐ sought, but not awarded - the amount sought was not specified in the complaint.

2. Punitive damages were:
   (a) ☐ awarded in the amount of $ _____;
   (b) ☐ not awarded, but sought in the amount of $ _____;
   (c) ☐ sought, but not awarded - the amount sought was not specified in the complaint.

3. A general award of damages (not differentiating between compensatory and punitive) was:
   (a) ☐ made in the amount of $ _____;
   (b) ☐ not made, but sought in the amount of $ _____;
   (c) ☐ sought, but not made - the amount sought was not specified in the complaint.

4. Other monetary damages (Type: _____ _____)were:
   (a) ☐ awarded in the amount of $ _____;
   (b) ☐ not awarded, but sought in the amount of $ _____;
   (c) ☐ sought, but not awarded - the amount sought was not specified in the complaint.

5. Was there a remittitur or additur at issue in the trial court? ☐ Yes ☐ No
   (If yes, please provide the details in the "FACTS" section on the back of this form)

B. ☐ Equitable and/or declaratory relief was sought in the trial court

C. ☐ Other

(Please provide in the details of the issue(s) before the Court in the "ISSUES" section on the back of this form.)

VI. TYPE OF JUDGMENT OR ORDER APPEALED. (Please check one) :

A ☐ Judgment based on a jury Verdict
B ☐ Judgment based on a Non-jury Decision
C ☐ Judgment Notwithstanding the Verdict (JNOV)
D ☐ Order granting a New Trail
E ☐ Judgment as a Matter of Law
F ☐ Summary Judgment
G ☐ Dismissal
H ☐ Default Judgment
I ☐ Other

VII. IF THE CASE WENT TO TRIAL, HOW MANY DAYS DID THE TRIAL TAKE? _____

VIII. FINALITY OF JUDGMENT: Date of entry of judgment or order appealed from: _____
Month Day Year

1. Is the judgment or order appealed from in compliance with rule 58, A.R.Civ.P.? ☐ Yes ☐ No
2. Does the order appealed from constitute a disposition of all claims as to all parties? ☐ Yes ☐ No
3. If not, did the trial court enter an order intended to make the order final pursuant to rule 54(b)? ☐ Yes ☐ No
4. If the trial court intended to make the order appealed from final pursuant to rule 54 (b), did the court in the Rule 54 (b) order expressly determine that there was no just reason for delay and expressly direct that final judgment be entered? ☐ Yes ☐ No
5. If the answer to question 2 is "NO" , and the trial court did not make the order final by full compliance with Rule 54(b), please explain the basis for seeking appellate review and cite the authority for this appeal:

_____
_____

IX. POST-JUDGMENT MOTIONS: List all post-judgment motions by date of filing, type, and date of disposition (whether by trial court order or by the provisions of Rule 59.1, A.R.Civ.P.):

DATE OF FILING			TYPE OF POST-JUDGMENT MOTION	DATE OF DISPOSITION		
Month	Date	Year		Month	Date	Year

Form ARAP-25 (back) 1/97	DOCKETING STATEMENT Appeal to the Supreme Court of Alabama

X. CONSTITUTIONAL ISSUES:

1. Are the provisions of Rule 44, A.R.App.P., applicable to this appeal? ☐ Yes ☐ No
2. If so, have the provisions been complied with? ☐ Yes ☐ No

XI. NATURE OF CASE ON APPEAL: In the left column of boxes proceeding the categories listed below, check the box (check only one) that best describes or categorizes the basis or theory of the primary issue on appeal. In the right column of boxes, check any secondary theories that are applicable to the suit.

TORTS:
- 01 ☐ Bad Faith
- 02 ☐ Fraud
- 03 ☐ Legal Malpractice
- 04 ☐ Medical Malpractice
- 05 ☐ Other Malpractice
- 06 ☐ Products/AEMLD
- 07 ☐ Negligence (Vehicular)
- 08 ☐ Negligence (Gen./other)
- 09 ☐ Personal Property
- 10 ☐ Real property
- 11 ☐ Wrongful Death (All Types)
- 12 ☐ Wantonness
- 13 ☐ Conversion
- 14 ☐ Wrongful Employ Termination
- 15 ☐ Premises Liability
- 16 ☐ Outrage
- 29 ☐ Other: _____

CONTRACTS
- 30 ☐ Commercial
- 31 ☐ Personal
- 32 ☐ Pension
- 33 ☐ Insurance
- 34 ☐ Employment
- 39 ☐ Other: _____

OTHER:
- 40 ☐ Real Property
- 41 ☐ Civ Rights (Prisoner)
- 42 ☐ Civil Rights (Other)
- 43 ☐ Wills/Trusts/ Estates
- 44 ☐ Declaratory judgment
- 45 ☐ Injunction (Commercial)
- 46 ☐ Injunction (Employment)
- 47 ☐ Injunction (Other)
- 48 ☐ Extraordinary Writ
- 49 ☐ Pub. Service Comm
- 50 ☐ RR/Seaman(FELA)
- 51 ☐ RICO
- 99 ☐ Other: _____

XII. APPELLATE REVIEW: Please take notice that your case may be initially reviewed by the Court of Civil Appeals. Pursuant to § *12-2-7, Code of Alabama 1975*, the Supreme Court has the authority to transfer any civil case within its jurisdiction to the court of Civil Appeals, except cases presenting a substantial question of federal or state constitutional law; cases involving a novel legal question, the resolution of which will have significant statewide impact; utility rate cases appealed pursuant to § 31-1-140, *Code of Alabama 1975*, bond validation cases appealed pursuant to § 6-6-754, *Code of Alabama 1975*, or Alabama State bar disciplinary proceedings.

If you believe this case should not be transferred to the Court of Civil Appeals, please state with specificity the reason(s) why it should not be transferred, referring to pertinent sections of § 12-2-7. Reasons should be supported in the ISSUES and FACTS sections of this docketing statement.

XIII. ISSUES: Briefly summarize the issue(s) on appeal.

XIV. FACTS: without argument, briefly summarize the facts to inform the court of the nature of the case.

Date _____ Signature of Attorney/Party Filing this Form _____

TRANSCRIPT PURCHASE ORDER OF APPELLANT (CIVIL)

State of Alabama Unified Judicial System Form ARAP 1A Rev. 8/91	TRANSCRIPT PURCHASE ORDER OF APPELLANT – CIVIL *(See Rules 10(b) and 11(a) of the Alabama Rules of Appellate Procedure)*	Appellate Case Number (To be filled in by appellate court) _____

APPELLANT
v. APPELLEE

Civil Action Number	Trial Judge	
Court Reporter	County	Date of Notice of Appeal

PART I. TO BE COMPLETED AND FILED WITH THE COURT REPORTER BY APPELLANT WITHIN 7 DAYS OF THE FILING OF THE NOTICE OF APPEAL.

A. Request is hereby made to the reporter for a transcript of the following proceedings (give particulars):
NOTE: exhibits are included in the clerk's record and need not be specified - see Rule 10 (b)(1), A.R.App.p.

- ☐ Entire Transcript
- ☐ Testimony of Plaintiff
- ☐ Testimony of Defendant
- ☐ Testimony of Witness _____
- ☐ Testimony of Witness _____
- ☐ Oral Charges to the Jury
- ☐ Objection to Oral Charge
- ☐ Objection to Refused Requested Written Charge(s), Numbers _____
- ☐ Others: _____

NOTE: Unless the entire transcript is ordered, appellant must attach a statement of the issues to pages 4 and 5.

B. I CERTIFY that I HAVE paid the Court Reporter the estimated cost of transcribing that part of the proceedings I have deemed necessary to be included in the record.

_____ _____ _____
Date Signature Telephone Number

NOTE: Upon Completion of PART I, appellant should distribute pages as follows:

*	Pages 1, 2 and 3 – Court Reporter	Page 4 – Trial Court	Pages 5 – Appellee	Pages 6 – Retained by appellant

PART II. TO BE COMPLETED BY COURT REPORTER ON SAME DATE TRANSCRIPT PURCHASE ORDER IS RECEIVED.

A.

Date Transcript Purchase Order Received	Estimated Completion Date
Estimated Number of Pages	Estimated Cost

B. I CERTIFY THAT ☐ I HAVE ☐ I HAVE NOT (*Check one*) been paid the estimated cost of the transcript.

_____ _____ _____
Date Signature Telephone Number

NOTE: Upon Completion of PART II, Court Reporter should distribute pages as follows:

*	Pages 1 and 2 – Retained by the Court Reporter	Pages 3 – Transmitted to the Appropriate Appellate Court on Same Date Transcript Purchase Order is Received.

PART III. CERTIFICATE OF COMPLETION OF REPORTER'S TRANSCRIPT

NOTE: This is to be completed by court reporter on date of filing of transcript in trial court. On the day of completion, this certificate must be forwarded to the appropriate appellate court (page 2) and copies thereof shall be served on the clerk of the trial court and each of the parties.

I CERTIFY that I have this date completed and filled with the clerk of the trial court the original of a true and correct transcript of the evidence and matters designated by the parties. All pages are numbered serially in the upper right corner of the pages, prefaced by an index, and ending with the following number: _____

I CERTIFY that photocopies of this certificate are this date being served on the clerk of the trial court and each of the parties, along with a copy of the index (with copies of the transcript as ordered).

Dated this _____ day of _____, _____ _____
Court Reporter

NOTE: Upon Completion of PART III, Court Reporter should distribute pages as follows:

*	Pages 1 - Retained by the Court Reporter	Pages 2 – Transmitted to the Appropriate Appellate Court

** Distribution Code:	Page 1: White	Page 2: Blue	Page 3: Green	Page 4: Canary	Page 5: Pink	Page 6: Goldenrod

WRIT FOR BODY – INTERVIEW

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

Case No._____

In the matter of the sworn petition filed with this Court by _____ for the involuntary commitment of _____ to the Alabama State Department of Mental Health:

WRIT FOR BODY

INTERVIEW

TO: THE _____ COUNTY SHERIFF'S OFFICE,
_____ COUNTY, ALABAMA,:

You are hereby **ORDERED** to take into custody _____, a person alleged to be mentally ill (Respondent), and have _____ present before this Court on the ____ day of _____, 20__ at __.m.

You are further **ORDERED** to serve said alleged with a copy of this writ and make due return to this Court stating the matter in which you have executed the same.

Done and **ORDERED** this ___ day of _____, 20__.

_____
_____, Judge of Probate

Location of Respondent:

_____
_____

Attachments:

( ) Notice (§ 22-52-3)
( ) Copy of petition to commit
( ) Other

EMERGENCY ORDER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)
)
_____)
Respondent.

Case No._____

EMERGENCY ORDER

This cause came before the Court on _____, 20__, on the petition filed by _____ ("Petitioner") for the involuntary commitment of the above named Respondent ("Respondent") into the custody of the Alabama Department of Mental Health and the request of the Petitioner for an emergency order confining the Respondent until such time as a probable cause hearing can be held, for the Respondent's and/or the general public's safety and well being. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration of the sworn petition and motion and after meeting with the Respondent, the Court **FINDS, CONCLUDES, AND ORDERS** as follows:

1. The Respondent shall be detained and confined on an emergency basis at _____ (name of facility) until _____ _____, 20__ at _____, at which time a probable cause hearing shall be held.

2. The requirements of Ala. Code §§ 22-52-7 and 8 (1975) are applicable and have been met in this cause.

3. The _____ (name of facility) is AUTHORIZED to impose such limitations and/or treatment as may become necessary and appropriate to prevent the Respondent from doing substantial harm to self or to others, or to prevent Respondent from leaving the jurisdiction of the Court pending a final hearing on the merits of the petition.

4. The Sheriff of _____ County, Alabama, or his duly authorized deputy shall take the Respondent into custody and forthwith deliver the Respondent to the proper authorities at the _____ (name of facility).

5. All individuals, medical care providers, and others [including, but not limited to _____, _____ (names of facilities)] having custody or 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 Respondent shall immediately provide to the _____ (name of facility) and the Guardian ad Litem any and all such information in their custody that may be requested.

6. Any medical information regarding the Respondent furnished to the _____ (name of facility) and the Guardian ad Litem pursuant to this Order shall: (1) remain in the custody of _____ (name of facility) and the Guardian ad Litem; (2) not be copied or distributed by _____ (name of facility) or the Guardian ad Litem, except for use in a court proceeding concerning the Respondent; and (3) destroyed after conclusion of this proceeding unless ordered otherwise by the Court.

7. In the event the Respondent escapes or elopes from the _____ (name of facility) while this Order is operative, the _____ (name of facility) shall immediately notify the Court, the City of _____ Police Department, and the _____ County Sheriff's Department of such event by telephone and facsimile and the _____ (name of facility) shall furnish to these law enforcement agencies a copy of this Order and other information that would aid in the recovery of the Respondent.

8. Notwithstanding any other provision stated herein, in the event the Respondent escapes or elopes from the _____ (name of facility) and is later located in a structure and the Respondent refuses to voluntarily surrender custody to a law enforcement officer present, no law enforcement officer shall attempt to gain entry to any premises where the Respondent may be located, without first obtaining further instructions or orders from this Court.

Dated: _____, 20__.

_____

_____, Judge of Probate

ORDER FOR INTERVIEW/EVALUATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

Case No. _____

In the matter of the sworn petition filed with this Court by _____ for the involuntary commitment of _____ to the Alabama State Department of Mental Health:

ORDER FOR INTERVIEW AND/OR EVALUATION

TO: THE HONORABLE _____, SHERIFF OF _____ COUNTY, ALABAMA,:

You are hereby **ORDERED** to take into custody _____, a person alleged to be mentally ill (Respondent), and deliver _____, to _____ (name of facility) for evaluation. Upon completion of such evaluation, you are to deliver _____ to the Probate Court on the ___ day of _____, 20___ at __.m.

You are furthered **ORDERED** to serve said alleged with a copy of this writ and make due return to this Court stating the matter in which you have executed the same.

Done and **ORDERED** this ___ day of _____, 20__.

_____
_____, Judge of Probate

Location of Respondent:

_____
_____

Attachments:

( ) Notice (§ 22-52-3)
( ) Copy of petition to commit
( ) Other

PETITION FOR INVOLUNTARY COMMITMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____, Case No. _____
Respondent

PETITION FOR INVOLUNTARY COMMITMENT

TO: _____, Judge of Probate

Comes petitioner _____, and respectfully represents unto your Honor that _____ is ____ years of age and a resident of _____ County, Alabama; residing at _____, but is temporarily residing at _____; that your petitioner has reason to believe that said person is mentally ill and as a consequence thereof poses a real and present threat of substantial harm to self and/or others; that such beliefs are based on specific behavior, acts, attempts, or threats, which are specified and described in detail as follows (please print):

1. (Date:_____)_____
_____
_____
_____
2. (Date:_____)_____
_____
_____
_____
3. (Date:_____)_____
_____
_____
_____

that the following persons have knowledge of the said respondent's mental illness and above information and may be called as witnesses at a hearing on this matter:

(NAME) (ADDRESS)

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____

Your petitioner further states that the name(s) and addresses(es) of the respondent's spouse, attorney and next of kin, if known, are as follows:

(NAME) (ADDRESS)

1. Spouse_____
2. Attorney_____
3. Next of Kin_____

Wherefore, petitioner prays that the Court will take jurisdiction of this matter; that a day be set for a hearing on this petition; that notice of the date, time, and place of the hearing be given to the respondent and that a Guardian ad Litem be appointed to represent him/her.

Petitioner further prays that a probable cause hearing be held to determine if said person should be confined pending a final hearing on the merits; and that upon such final hearing the Court will commit _____ to the custody of the Alabama Department of Mental Health for treatment.

Petitioner _____
Address_____
_____
Telephone_____

Subscribed to and sworn before me this ___ day of _____, 20__.

_____
Notary Public Commission Expires: _____

Attorney for petitioner: _____

_____

ADDITIONAL INFORMATION FOR COMMITMENTS

ADDITIONAL INFORMATION FOR COMMITMENTS

Name: _____

Date of Birth: _____

Social Security Number: _____

Race: _____

Sex: _____

Marital Status: _____

INSURANCE

Medicaid _____ Medicare _____ Other _____

Name: _____

(Note: Please attach to petition for commitment)

ORDER OF CONTINUANCE

IN RE THE MATTER OF:	)	**IN THE PROBATE COURT OF**
_____,	)	**_____ COUNTY, ALABAMA**
ALLEGED TO BE MENTALLY ILL	)	**CASE NO. _____**

ORDER OF CONTINUANCE

This cause came before the Court on _____[date], for a probable cause hearing on the petition filed by _____[petitioner], for the involuntary commitment of the above named Respondent into the custody of the Alabama Department of Mental Health. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Based upon a failed attempt by the Sheriff's deputies to locate the Respondent,

It is hereby **ORDERED, ADJUDGED, AND DECREED** that the probable cause hearing on the Petition be and is hereby continued. Said hearing shall be held at the Office of the Judge of Probate, _____[address] on the _____ day of _____, _____.

DONE AND ORDERED this _____ day of _____, 20__.

_____

_____, Judge of Probate

ORDER SETTING FINAL HEARING ON THE MERITS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF:)

_____,) **CASE NO._____**

Alleged to be Mental Ill)

ORDER SETTING FINAL HEARING ON THE MERITS

This matter was brought before this Court on the Petition for Involuntary Commitment filed by _____, the Petitioner in this cause, for the commitment of the above named Respondent to the Alabama Department of Mental Health. Upon due consideration of said sworn Petition and in accordance with Ala. Code § 22-52-8 (1975),

It is hereby **ORDERED, ADJUDGED, AND DECREED** that a final hearing on the merits of said Petition be and is hereby set for the _____ day of _____, _____ at _____ a.m./p.m. at the _____[location].

DONE AND ORDERED this _____ day of _____, 20__.

_____

_____, Judge of Probate

ORDER FOR EVALUATION OF RESPONDENT

IN THE PROBATE COURT OF _____, COUNTY, ALABAMA

IN THE MATTER OF:	)	
_____,	)	**CASE NO. _____**
Alleged to be Mentally Ill	)	

ORDER FOR EVALUATION OF RESPONDENT

This matter is before the Court on the Petition for Involuntary Commitment of the above named Respondent, as filed by _____. The Respondent is currently located at _____[location].

Upon due consideration of said Petition it is hereby **ORDERED, ADJUDGED, AND DECREED**, by this Court that a _____ counselor evaluate the Respondent by performing a mental status exam or other necessary evaluation. Said evaluation shall take place prior to the hearing set for the _____ day of _____, _____, at _____ a.m./p.m.

It is further **ORDERED** that a written report of the findings shall be prepared and remitted to the _____ County Probate Court prior to the Court hearing.

DONE this _____ day of _____, 20__.

_____

_____, Judge of Probate

ORDER TO TRANSFER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)

_____,) **CASE NO. _____**

Alleged to be Mentally Ill)

ORDER TO TRANSFER

In accordance with an Order made by Honorable _____, Judge of Probate Court of _____ County, Alabama on the _____ day of _____, _____, the following _____ County Probate file as numbered above is hereby transferred to Honorable _____, Judge of Probate Court of _____ County, Alabama.

1. Order to Transfer
2. Petition for Involuntary Commitment
3. Order Appointing Attorney for Petitioner/Acceptance of Appointment
4. Order Appointing Guardian Ad Litem/Acceptance of Appointment
5. Notice to Respondent and Order Setting Probable Cause Hearing/Proof of Service
6. Probate Court Liaison Consult Form
7. Outpatient Order/Proof of Service

Dated this _____ day of _____, 20__.

_____

_____, Judge of Probate

Received by _____, Judge of Probate, _____ County, Alabama, this _____ day of _____, 20__.

NOTICE TO RESPONDENT

TO: The _____ COUNTY SHERIFF'S OFFICE,
_____ COUNTY, ALABAMA,:

You are hereby COMMANDED to serve a copy of this instrument on the party named and make due return to this Court stating the manner in which you have executed the same.

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____ Case No._____
Respondent

NOTICE TO RESPONDENT

To:

You are hereby notified:

1. That on the ___ day of _____, 20__, _____ filed a petition in the Probate Court of _____ County, Alabama, alleging that you are mentally ill and that you should be committed to the custody of the Alabama State Department of Mental Health. A copy of that petition is attached to this Notice and is hereby made a part of this Notice as if set out in full herein.

2. That the Sheriff of _____ County, Alabama, has been ORDERED to take you into custody and to hold you until a hearing can be held to determine if there is probable cause to hold you for further action by this Court.

3. That a hearing has been set on the ____ day of ____, 20__ at _____, in the Probate Court of _____ County, in _____, Alabama, to determine if there is sufficient evidence to support the allegations of the said petition, to hold you in custody until a final hearing.

4. That you have the right to be present at the said hearing unless the Court, after appropriate inquiry determines that you are so mentally or physically ill as to be incapable of attendance.

5. That you have the right to be represented by a lawyer of your own choosing and, if you are unable to afford a lawyer, the Court will appoint a lawyer to represent you.

6. That at the said hearing, you shall have the right to offer evidence, to be confronted with the witnesses against you and to cross-examine them, and you shall not be compelled to testify against yourself.

7. That upon a final hearing in this matter, the petition could be dismissed or denied, or you could be committed to outpatient or inpatient treatment at a state mental health facility or a designated mental health facility.

DATED this ___ day of _____, 20__.

_____
_____, Judge of Probate

WRIT FOR BODY

IN THE PROBATE COURT OF _____, COUNTY, ALABAMA

Case No. _____

In the matter of the sworn petition filed with this Court by _____ for the involuntary commitment of _____ to the Alabama State Department of Mental Health:

WRIT FOR BODY

TO: THE _____ COUNTY SHERIFF'S OFFICE, _____ COUNTY, ALABAMA,:

You are hereby ORDERED to take into custody _____, a person alleged to be mentally ill (Respondent), and have _____ present before this Court on the ____ day of _____, 20__ at __.m.

You are further ORDERED to serve said alleged with a copy of this writ and make due return to this Court stating the matter in which you have executed the same.

Done and ORDERED this ____ day of _____, 20__.

_____
_____, Judge of Probate

Location of Respondent:

_____
_____

Attachments:

( ) Notice (§ 22-52-3)
( ) Copy of petition to commit
( ) Other

GUARDIAN AD LITEM APPOINTMENTS

In Re: Petition for Commitment to the State Department of Mental Health	:	**STATE OF ALABAMA**
	:	**COUNTY OF _____**
_____ Respondent	:	**PROBATE COURT**
	:	**Case No. _____**

To: _____, Esq.

ORDER

TAKE NOTICE that you are hereby appointed Guardian ad Litem to represent _____, respondent, interested in the above captioned matter. Please be advised that a probable cause hearing has been set for _____.

ORDERED AND DECREED this ____ day of _____, 20__.

_____
_____, Judge of Probate

ACCEPTANCE

I, the undersigned, do hereby accept the above appointment and as such Guardian ad Litem do hereby deny the allegations contained in the petition filed and demand strict and legal proof in support of the same.

_____
Guardian ad Litem for Respondent

ATTORNEY APPOINTMENTS

In Re: Petition for Commitment to the Alabama Department of Mental Health	:	**STATE OF ALABAMA**
	:	**COUNTY OF _____**
	:	**PROBATE COURT**
_____ Respondent	:	**Case No. _____**

To: _____, Esq.

ORDER

TAKE NOTICE that you are hereby appointed Attorney to represent _____, the petitioner in the above captioned matter. Please be advised that a probable cause hearing has been set for _____.

ORDERED AND DECREED this ___ day of _____, 20__.

_____
_____, Judge of Probate

ACCEPTANCE

I, the undersigned, do hereby accept said appointment as above stated.

_____
Attorney for Petitioner

MOTION TO WAIVE PRESENCE

IN THE PROBATE COURT OF_____ COUNTY, ALABAMA

_____ Case No. _____
Respondent

MOTION TO WAIVE PRESENCE

The undersigned Guardian ad Litem representing _____, Respondent, does hereby respectfully show unto the Court that due to the physical or mental health condition of said Respondent, it would not be in Respondent's best interest to be present at the hearing this day set; and the presence of said Respondent is hereby waived by the undersigned Guardian ad Litem, subject to the same being approved by the Court subsequent to an adversary hearing.

Dated this _____.

_____
Guardian ad Litem

ORDER

An adversary hearing in this cause having now been held this date, the Court finds that the above referenced Respondent ( ) is or ( ) is not so mentally or physically ill as to be incapable of attending said proceedings. Based thereon, the motion to waive presence of Respondent at the hearing in this matter is due to be ( ) granted or ( ) denied; and it is so **ORDERED** this _____ day of _____, 20__.

_____
Judge of Probate

PROBABLE CAUSE ORDER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
	)	**Case No. _____**
_____	)	
Respondent	)	

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER OF PROBABLE CAUSE

This cause came before the Court on _____, 20__, for a probable cause hearing on the petition filed by _____ ("Petitioner") for the involuntary commitment of the above named Respondent ("Respondent") into the custody of the Alabama Department of Mental Health. This cause is properly before the Court pursuant to its jurisdiction and authority conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon due consideration of the testimony and evidence adduced, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. Respondent poses a real and present threat of substantial harm to Respondent and/or members of the general public.

2. Probable cause exists to have the Respondent detained and confined at _____(name of facility), located at _____, in _____, Alabama, for diagnosis and treatment necessary for evaluation until _____, 20__, at ____ _.m. at which time a hearing on the merits will be held.

3. The requested detention and confinement is appropriate under the circumstances and AUTHORIZED and DIRECTED.

4. Testimony at the hearing on the merits regarding the evaluation of the Respondent shall be provided by qualified personnel of the _____(name of facility).

5. The requirements of Ala. Code §§ 22-52-7 and -8 (1975) are applicable and have been met in this cause.

6. The said _____ (name of facility) is AUTHORIZED to impose such limitations and/or treatment as may become necessary and appropriate to prevent the Respondent from doing substantial harm to self or to others, or to prevent Respondent from leaving the jurisdiction of the Court pending a final hearing on the merits of the petition.

7. The said _____ (name of facility) is AUTHORIZED and DIRECTED to conduct a drug screen on the Respondent upon the Respondent's admission to

the _____ (name of facility), if the Respondent was not in a secure facility or medical facility immediately prior to the probable cause hearing.

8. All individuals, medical care providers, and others [including, but not limited to _____ (names of facilities)] having custody or 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 Respondent shall immediately provide to the _____ (name of facility) and the Guardian ad Litem any and all such information in their custody that may be requested.

9. Any medical information regarding the Respondent furnished to the _____ (name of facility) and the Guardian ad Litem pursuant to this Order shall: (1) remain in the custody of the _____ (name of facility) and the Guardian ad Litem; (2) not be copied or distributed by the _____ (name of facility) or the Guardian ad Litem; except for use in a court proceeding concerning the Respondent; and (3) be destroyed after conclusion of this proceeding unless ordered otherwise by the Court.

10. The Sheriff of _____ County, or his duly authorized deputy shall take the Respondent into custody and forthwith deliver the Respondent to the proper authorities at the _____ (name of facility). On the date of the hearing on the merits the Sheriff of _____ County, Alabama or his authorized deputy shall take the Respondent into custody and deliver the Respondent before the Court at the appointed time.

11. In the event the Respondent escapes or elopes from the _____ (name of facility) while this Order is operative, the _____ (name of facility), shall immediately notify the Court, the City of _____ Police Department, and the _____ County Sheriff"s Department of such event by telephone and facsimile and the _____ (name of facility) shall furnish to these law enforcement agencies a copy of this Order and other information that would aid in the recovery of the Respondent.

12. Notwithstanding any other provision stated herein, in the event the Respondent escapes or elopes from the _____ (name of facility) and is later located in a structure and the Respondent refuses to voluntarily surrender custody to a law enforcement officer present, no law enforcement officer shall attempt to gain entry to any premises where the Respondent may be located, without first obtaining further instructions or orders from this Court.

Dated:_____, 20__.

_____

_____, Judge of Probate

HIPAA ORDER

IN THE PROBATE COURT OF _____ COUNTY
General Standing Order of Court

In re case number: _____

Name of Patient: _____

ORDER

In the referenced attached ruling, the Court has ordered certain further proceedings involving medical evaluation of _____ ["Respondent"], and based on same, the **COURT FINDS** that to expedite these proceedings to an early conclusion, all medical providers be and each are authorized to obtain any and all relevant personal health information concerning the said patient [respondent] in connection with the evaluation directed by the Court.

Accordingly, it is ORDERED by the Court that any medical provider to whom this order may be presented (including, but not limited to, _____ (names of facilities) (and physicians and others associated with them), the Alabama Department of Mental Health and Searcy Hospital and any other providers currently involved in the evaluation or treatment of the Respondent shall disclose to _____ (name of facility) all requested personal health information in its custody or under its control concerning the Respondent.

It is further ORDERED that any medical information regarding the Respondent furnished to the current provider pursuant to this order shall: (1) remain in the custody of the provider; (2) not be copied or distributed by the provider except for use in a court proceeding concerning the Respondent; (3) be destroyed after the conclusion of this proceeding unless directed otherwise by the Court.

This order is expressly given pursuant to the terms of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations implementing its privacy policy provisions contained at 45 CFR Part 164 and related provisions.

Done this _____ day of _____, 20__.

_____
_____, Judge of Probate

JOINT MOTION ORDER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____ : Case No. _____
Respondent

In Re: Petition for commitment as filed by _____

Probable Cause Hearing held on _____

JOINT MOTION TO ADOPT AND RATIFY EVIDENCE AND TESTIMONY AT HEARING ON PROBABLE CAUSE

Comes now said Petitioner, by and through counsel, together with and in conjunction with the said respondent. by and through counsel, and request this Honorable Court to adopt and ratify in the hearing on the merits of this case all of the evidence and testimony rendered in open Court and recorded therein during the probable cause hearing held on the date shown above.

The undersigned further requests that this motion be granted without a hearing, and agree that the Court may grant or deny this instanter motion by endorsement upon the face of said motion the Court's ruling as opposed to the entry of a separate written order.

It is understood by and between the said parties herein joined that each of the parties respectively reserve the right to hereinafter introduce new, other, different and additional evidence and testimony herein during the hearing on the merits which may be admissible under the Laws of the State of Alabama.

The parties hereto further move this Honorable Court that in the event of an appeal in this matter all testimony and evidence of record taken in said probable cause hearing shall be set down as part of the transcript and record in this case and shall be submitted to the Alabama Court of Civil Appeals as if fully adduced during the hearing on the merits.

Dated this _____.

_____
Attorney for Petitioner

_____
Attorney/Guardian ad Litem for Respondent

ORDER OF COURT

It is hereby **ORDERED** that the above joint motion be and the same is hereby granted and further that said Motion shall be filed and made a matter of record in the above referenced case.

Dated this _____.

_____
_____, Judge of Probate

OUTPATIENT COMMITMENT ORDERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)
)
) **Case No. _____**
_____)
Respondent)

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER OF OUTPATIENT COMMITMENT

This cause came before the Court on _____, 20__, for a hearing on the merits on the petition filed by _____ ("Petitioner") for the involuntary commitment of the above named Respondent ("Respondent") into the custody of the Alabama Department of Mental Health. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were noted in the record. Upon due consideration of the testimony and evidence adduced, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. Respondent is mentally ill.

2. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently.

3. Respondent is unable to make rational and informed decisions as to whether treatment for mental illness would be desirable.

4. Treatment is available for the mental illness diagnosed.

5. Outpatient commitment to a designated facility is appropriate and is the least restrictive alternative necessary and available for the treatment of Respondent's mental illness.

6. The Petition is GRANTED.

7. Respondent is hereby COMMITTED to outpatient treatment to be provided by _____ (name of facility) for treatment for a time period not to exceed 150 days, subject to renewal upon petition and hearing, with the condition that the Respondent shall follow the directions and treatment plan as established by the said designated mental health facility **and the Respondent shall obtain and complete treatment for the Respondent's co-occurring substance abuse condition**.

8. The costs of these proceedings, including a fee to the attorney for the Petitioner; a fee to the Guardian ad Litem, be taxed against _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

9. _____ (name of facility) is ORDERED to IMMEDIATELY report the occurrence of material noncompliance with the treatment plan on the part of the Respondent to the Court.

10. The Court retains jurisdiction over this cause for such other proceedings and orders as may become appropriate.

11. The Clerk of the Court shall forward a copy of this Order to the Petitioner, Respondent, all legal counsel of record and _____ (name of facility).

Dated:_____

_____

_____, Judge of Probate

INPATIENT COMMITMENT ORDERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)
)
) **Case No. _____**
_____)
Respondent)

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER OF INPATIENT COMMITMENT

This cause came before the Court on _____, 20__, for a hearing on the merits on the petition filed by _____ ("Petitioner") for the involuntary commitment of the above named Respondent ("Respondent") into the custody of the Alabama Department of Mental Health ("State"). This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon due consideration of the testimony and evidence adduced, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. Respondent is mentally ill and poses a real and present threat of substantial harm to Respondent and/or members of the general public.

2. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently.

3. Respondent is unable to make rational and informed decisions as to whether treatment for mental illness would be desirable.

4. Treatment is available for the mental illness diagnosed.

5. Inpatient commitment in the custody of the State is the least restrictive alternative necessary and available for the treatment of Respondent's mental illness.

6. The Petition is GRANTED.

7. Respondent is hereby COMMITTED to the custody of the State, _____ (name of facility), or its designated mental health facility, for treatment for a time period not to exceed 150 days, subject to renewal upon petition and hearing and further subject to the provisions of this Order.

8. [Choose one of the following alternatives]:

If, after treatment has been initiated and before this Order has expired by its express terms, the State or its designated mental health facility, shall determine that it is no longer necessary for the Respondent to be treated on an inpatient basis, then the State or its designated mental health facility shall assess whether the Respondent would benefit from court-supervised outpatient treatment upon discharge. If the State or its designated mental health facility shall determine that the same is desirable and in the Respondent's best interests, the State or its designated mental health facility shall file a motion with the Court at least ten (10) days prior to the Respondent's proposed discharge date or expiration of this Order (whichever shall occur first) and the Respondent shall remain in the custody of the State or its designated mental health facility, until the Court can conduct a hearing on said recommendation. OR

If, after treatment has been initiated and before this Order has expired by its express terms, the State or its designated mental health facility, shall determine that it is no longer necessary for the Respondent to be treated on an inpatient basis, then the State or its designated mental health facility shall notify the Honorable _____, Clerk of the Circuit Court of _____ County, the _____ County District Attorney's Office, the Honorable _____, Warden of the _____ Metro Jail, and the Probate Court of _____ County, Alabama, in writing at least 5 days before any expected discharge. When the Respondent meets the discharge criteria at _____ (name of facility), he/she is to be transported to the _____ County Metro Jail.

9. The Sheriff of _____ County, Alabama or his duly authorized deputy shall take the Respondent and forthwith deliver the Respondent to the proper authorities of the State at _____ (name of facility) or its designated mental health facility.

10. _____ (name of facility) shall immediately furnish to the State at _____ (name of facility) or its designated mental health facility copies of any and all records regarding the Respondent.

11. The costs of these proceedings, including a fee to the attorney for the Petitioner and a fee to the Guardian ad Litem, be taxed against _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

12. The Court retains jurisdiction over this cause for such other proceedings and orders as may become appropriate.

Dated: _____, 20__.

_____

_____, Judge of Probate

DISMISSAL ORDER

IN THE PROBATE COURT OF _____, COUNTY, ALABAMA

IN THE MATTER OF)
)
) **Case No.** _____
_____,)
Respondent.

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER OF DISMISSAL

This cause came before the Court on _____, 20____, for a hearing on the merits on the petition filed by _____ ("Petitioner") for the involuntary commitment of the above named Respondent ("Respondent") into the custody of the Alabama Department of Mental Health. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon motion made by _____, to dismiss this cause and due consideration of the testimony and evidence adduced, the Court FINDS and concludes that dismissal is appropriate and the Court ORDERS as follows:

1. The petition filed by _____ is DISMISSED WITHOUT PREJUDICE.

2. The costs of these proceedings, including a fee to the attorney for the Petitioner and a fee to the Guardian ad Litem, be taxed against _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

3. The Sheriff of _____ County, Alabama or his duly authorized deputy shall take the Respondent and forthwith return the Respondent to _____.

Dated: _____, 20___.

_____
_____, Judge of Probate

INVOLUNTARY COMMITMENTS
ATTORNEY'S FEE DECLARATION

State of Alabama Unified Judicial System Form FRMS-MC1 Rev.9/2011	ATTORNEY'S FEE DECLARATION **Involuntary Commitments**	County Code — —	Case Number __ ____ ____ ____ __ Jurisdiction Year Case# Suffix

Mark Appropriate Court:

☐ Probate Court
☐ Circuit Court
☐ Alabama Court of Civil Appeals All Limits: $1500

Attorney Name (Please type or print):

_____

_____
Social Security Number or FEIN

In the matter of _____ ☐ Commitment ☐ Recommitment ☐ Appeal
Respondent/Patient Name

The undersigned attorney, licensed to practice law in the State of Alabama, declares that on (date) _____, the Honorable _____, Probate Judge, appointed the undersigned to serve as Advocate for the Petitioner, or Guardian Litem, and the case was disposed of by _____.

(1) In Court Legal Services — Total Hours _____ x $ 70.00 per hour = $_____

(2) Out-of-Court Legal Services — Total Hours _____ x $ 70.00 per hour = $_____

(3) Appellate Level Legal Services — Total Hours _____ x $ 70.00 per hour = $_____

(4) Expert Expenses (If approved in advance by the court) = $_____

(5) Reimbursable Non-overhead Expenses (Receipts attached) (Must be approved in advance if in excess of $300) =$_____

TOTAL CLAIM OF ATTORNEY $_____

NOTICE TO ATTORNEY: Complete this form. Attach a copy of a complete itemization of (1) in-court legal services; (2) out-of-court legal services; (3) appellate level legal services; (4) expert expenses; and/or (5) reimbursable non-overhead expenses reflecting the date of actions and amount of time involved in each activity. Attach original invoice or receipt for all expenses and corresponding court orders. Make a copy of same for the court's record and a copy or your records. **This form and attachments must be received by the State Comptroller's Office, Fiscal Management through the Probate Court no later than 90 days from final disposition of the case.**

I, the undersigned attorney, declare that the above claim is true and correct and represents indigent legal services actually rendered as an attorney and that the amount is due and payable. I further declare that the above claim is not a duplication of charges and expenses in any case (companion or otherwise).

_____ _____
Signature of Attorney Date

Attorney Code _____

Mailing Address of Attorney
(please type or print) (including city, state, and zip code)

_____

_____

E-mail Address:_____

Telephone Number:_____

Fax Number: _____

I, the undersigned probate judge/judge, hereby certify that the attorney presenting this claim provided representation in this matter, that said matter has been concluded, and that to the best of my knowledge, the bill is reasonable based on the defense provided and the appointment date listed above is correct as stated.

_____ _____
Probate Judge's Signature Date

_____
Judge's Signature (Appeals Court other than Probate)

NOTICE TO ATTORNEY AND JUDGE: Ala. Code (1975) §§22-52-14 et seq. provide for the payment of attorney fees and expenses incurred by counsel appointed to represent indigent defendants in probate court proceedings.

THIS FORM MUST CONTAIN ORIGINAL SIGNATURES OF THE ATTORNEY AND THE JUDGE. THIS FORM WITH ATTACHED ITEMIZATION MUST BE SUBMITTED TO THE PROBATE JUDGE FOR CERTIFICATION, FILED WITH THE CLERK, AND THEN SUBMITTED TO THE STATE COMPTROLLER'S OFFICE, FISCAL MANAGEMENT.

Filed in the Clerk's Office at _____, Alabama, on _____.
date

PROBATE COURT MAIL FORM ATTACHED TO PROBATE JUDGE DECLARATION SHEET TO: State Comptroller's Office, Fiscal Management, 100 N Union St, Suite 216, Montgomery, Al 36130.

ORDER APPOINTING INDEPENDENT MENTAL EVALUATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____, **Case No.** _____

Respondent

ORDER DIRECTING INDEPENDENT MENTAL EXAMINATION

For due cause now shown, it is **ORDERED** by the Court that the motion for independent mental examination be granted and that _____, a person qualified by training and experience, be and is hereby appointed to examine and evaluate the said Respondent and review any and all hospital records maintained on the Respondent as may be necessary.

It is further **ORDERED** by the Court that said _____ appear at next hearing in this matter as set herein and offer testimony as to his/her findings and recommendations regarding the mental condition of said Respondent and in particular the need for continued inpatient commitment.

It is further **ORDERED** by the Court that said _____ shall be allowed reasonable compensation for the professional services rendered in this matter, the same to be first approved by the Court, and taxed as costs.

Done this _____ day of _____, 20___.

_____

_____, Judge of Probate

Copies mailed to:

Attorney of Record
Guardian ad Litem
Hospital Director
Doctor _____

HIPAA ORDER FOR INDEPENDENT MENTAL EVALUATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	**Case No. _____**
	)	
_____,	)	
Respondent	)	

ORDER

This cause came before the Court on _____ regarding the involuntary commitment of _____, Respondent ("Respondent"). This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were noted in the record. Based on the testimony and evidence presented, the Court ORDERS as follows:

1. _____ ("Dr. _____"), is APPOINTED to examine and evaluate the Respondent and make a recommendation to the Court as to whether the Respondent requires further treatment for mental illness and whether said treatment should be ordered by the Court.

2. _____ shall be permitted access to all information maintained at _____ (name of facility), owned and operated by _____, including doctors' orders, doctors' comments, nurses' comments and administered medication records electronically stored at _____ (name of facility), written documentation and records [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 Respondent in the possession of _____ (names of facilities). Further, personnel of _____ (name of facility) are AUTHORIZED and DIRECTED to speak with _____, if requested, concerning the Respondent and the Respondent's current and/or past treatment and care.

3. Any medical information regarding the Respondent furnished to _____ shall: (1) remain in the custody of _____; (2) not be copied or distributed by _____ except for use in a court proceeding concerning the Respondent; and (3) be destroyed after conclusion of this proceeding unless ordered otherwise by the court.

4. This order is expressly given pursuant to the terms of the Health Insurance Portability and Accountability Act of 1996 (HIPPA) and the regulations implementing its privacy policy provisions contained at 45 CFR Part 164 and

related provisions.

5. The Clerk of the Court shall forward a copy of this Order by facsimile to _____ and _____ (name of facility).

Dated: _____, 20___.

_____

_____, Judge of Probate

PETITION

PETITION

IN THE MATTER OF THE	)	**IN THE PROBATE COURT**
HEARING ON THE	)	**FOR _____**
COMPETENCY OF _____	)	**COUNTY, ALABAMA**
		CASE NO. _____

TO THE HONORABLE _____, JUDGE OF PROBATE IN AND FOR _____ COUNTY, ALABAMA

Now come your Petitioner and respectfully shows unto this Honorable Court the following facts as to a basis for the relief hereinafter prayed, to-wit:

1. That Petitioner _____ is a resident of the County of _____, State of Alabama, and over 19 years of age; that Petitioner is a _____ by marriage of the alleged incompetent; the alleged incompetent having no children surviving him/her.

2. That _____, who resides at _____, _____, Alabama in the County of _____, State of Alabama, is a male/female of ____ years, who is distracted in his/her mind by a reason of old age, disease, and feebleness of mind that he/she is incapable, unassisted, to properly manage and take care of himself/herself or his/her property, and that it would be to his/her best interest that a guardian be appointed to manage his/her property.

3. Your petitioner further alleges that Dr. _____, a psychiatrist attending _____, should be subpoenaed for the hearing to be held on this petition, or in the alternative, this Court should enter an order permitting him to respond in writing to any such subpoena.

4. Your petitioner further shows unto the Court that _____ is a qualified person to act as the guardian of the said _____.

THE PREMISES CONSIDERED, your petitioner prays that this Honorable Court will take jurisdiction of this petition for the appointment of a guardian for the property of the said _____, will appoint a date for the hearing thereof, and if the said _____ is not represented by counsel, will appoint a guardian ad litem to represent and defend him/her; that a subpoena be issued to Dr._____ requiring him to attend in person the hearing to be held on this petition or, in the alternative, to respond in writing with his opinion as to the mental competency of _____, and that upon a hearing of this petition, this Court will make and enter a decree declaring the said _____ to be a person of unsound mind and will commit the custody of his/her property to a guardian to be appointed by this Court and that the said petitioner, _____, hereinabove named petitioner be appointed as guardian.

And petitioner prays for such other and further relief, general or special, to which they may be entitled or to the Court may seem proper.

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF _____)

Personally appeared before me, the undersigned authority in and for said State and County, _____, who being by me first duly sworn, doth depose and say that the statements contained in the foregoing Petition are true and correct.

Subscribed and sworn to before me on this the _____ day of _____, 20___.

_____
Notary Public

_____
Petitioner

ORDER

ORDER

IN THE MATTER OF THE	**)**	**IN THE PROBATE COURT FOR**
HEARING ON THE	**)**	**_____ COUNTY,**
COMPETENCY OF _____	**)**	**ALABAMA.**
		CASE NO.: _____

This day came _____ and filed his/her petition in due form and under oath, alleging that _____, who is a citizen and resident of this County, having an estate herein; that the said _____ is incompetent and incapable of governing himself/herself or of conducting or managing his/her affairs; that the said _____ is of the male/female approximately _____ years of age, and that he/she resides in _____ County, Alabama; and further averring that petitioner believes from his/her conduct and statements that it will be to his/her best interest that a Guardian be appointed to manage his/her property; and praying the Court to take jurisdiction of the matter to appoint a day for the hearing thereof , to appoint a Guardian ad Litem for the said _____, to have due inquiry and determination as to the trust of the allegations of said petition , and asking that _____ be appointed as Guardian of the said _____.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the ____ day of _____, 20___, at _____ o'clock __.m. be appointed a day for the hearing of said petition; that a jury be drawn as by law directed and that a writ be issued to the Sheriff of said County to take said _____, alleged to be incompetent, into his custody, and, if consistent with his/her health or safety, have him/her present at the place of trial.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT _____, an attorney at law, be, and he/she is hereby, appointed Guardian ad Litem to represent said _____, alleged to be incompetent, at the hearing of said petition, it appearing to the Court that the said _____ does not have counsel to represent him/her in said hearing.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that a subpoena be issued from this Court to Dr. _____, whose address is _____, _____, Alabama, which said subpoena shall command him/her to appear in person before this Court on the day and at the time as set forth hereinabove for the purpose of testifying as to the mental competency of _____, however as an alternative to personally appearing at the hearing, Dr._____ may respond with a letter addressed to this Court which letter shall set forth his/her opinion, based on his/her treatment and care of _____, as to the mental competency of _____ together with sufficient facts to support his/her opinion.

ORDERED on this the _____ day of _____, 20____.

_____
Judge of Probate

_____
_____COUNTY, ALABAMA

NOTICE OF APPOINTMENT/ ACCEPTANCE OF APPOINTMENT

IN THE MATTER OF THE	)	**IN THE PROBATE COURT FOR**
HEARING ON THE	)	**_____ COUNTY,**
COMPETENCY OF _____	)	**ALABAMA.**
		CASE NO.:_____

NOTICE OF APPOINTMENT

IT IS ORDERED, ADJUDGED AND DECREED by the Court that _____ be, and he/she hereby is, appointed as Guardian ad Litem to represent and protect the interests of _____ alleged to be incompetent, in this proceeding, and that the _____ day of _____, 20____, has been appointed to hear said cause.

_____
Probate Judge

ACCEPTANCE OF APPOINTMENT

Now comes _____, an attorney at law, duly and legally licensed as such, and accepts said appointment and consents to act as the Guardian ad Litem of _____, alleged to be incompetent, and to represent and protect him/her interests in this proceeding; and denies the allegations of said petition and demands strict proof thereof.

_____
Guardian ad Litem for _____
alleged to be of unsound mind.

ORDER TO SHERIFF TO TAKE CUSTODY

IN THE MATTER OF THE	)	**IN THE PROBATE COURT**
HEARING ON THE	)	**OF _____ COUNTY**
COMPETENCY OF	)	**ALABAMA**
_____	)	**CASE NO.: _____**

ORDER TO SHERIFF TO TAKE CUSTODY

WHEREAS, _____, as _____ by marriage of _____, has on this day filed his/her petition with the Judge of this Court, alleging that the said _____ is incompetent, is over the age of 19 years, resides in this County, and praying that a hearing may be had in due form of law to try the truth of the allegations as to whether the said _____ is capable of governing himself/herself or conducting or managing his/her affairs; and,

WHEREAS, the Judge of the Court has, by an order made and entered in this cause, appointed the _____ day of _____, 20____, at ___ o'clock, ___.m., as the day for the hearing of this said petition, and for the due trial thereof.

You are hereby required to take the body of the said _____ and, if consistent with his/her health or safety, have his/her in Court to be present at the place of the trial and before the jury then to be empaneled to make said determination, and have you then and there this writ with your return thereon.

Given under my hand this the ____ day of _____, 20___.

_____
Judge of Probate of
_____ County, Alabama

SHERIFF'S RETURN

SHERIFF'S RETURN

It not being consistent with the health and safety of the said _____ alleged to be incompetent, I have not taken him/her into custody and do not have him/her present at the place of trial.

DATED this the _____ day of _____, 20____.

_____, SHERIFF

BY:_____
Deputy Sheriff

ORDER TO SUMMONS JURY

IN THE MATTER OF THE	)	**IN THE PROBATE COURT**
HEARING ON THE	)	**FOR _____ COUNTY,**
COMPETENCY OF _____	)	**ALABAMA.**
		CASE NO.: _____

ORDER TO SUMMONS JURY

TO THE SHERIFF OF _____ COUNTY, ALABAMA,:

WHEREAS, _____ as _____ by marriage of _____, did on the _____day of _____, 20____, file in the office of the Judge of Probate of said County, a petition to have _____, a citizen and resident of said County over the age of nineteen years, declared incompetent, and praying that a hearing of competency may be had in due form of law, and whereas, said Probate Court of said County did set the hearing of said petition for the _____ day of _____, 20___, at _____ o'clock _____.m., now therefore,

You are directed and commanded to summon six disinterested persons of the neighborhood where the said _____ resides, to appear before this Court on the ____ day of _____, 20___, to serve as jurors for the hearing of the issues raised in said petition, herein fail not, and have you return showing how you have executed this writ.

GIVEN under my hand this ____ day of _____, 20____.

_____
Probate Judge

SHERIFF'S RETURN

SHERIFF'S RETURN

In compliance with the mandate of the above writ, I have summoned the following disinterested persons of the neighborhood to serve as jurors for a hearing in competency for _____.

	NAME	ADDRESS
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____

_____, SHERIFF

BY_____
Deputy Sheriff

OATH OF JURY

IN THE MATTER OF HEARING	)	**IN THE PROBATE**
ON THE COMPETENCY OF	)	**COURT FOR _____**
_____	)	**COUNTY, ALABAMA**
		CASE NO.: _____

OATH OF JURY

You do solemnly swear that you will well and truly make inquiry of the facts alleged in the petition questioning the sanity of _____, and a true verdict render according to the evidence. So help you God.

This _____ day of _____, 20____.

_____
Juror

_____
Juror

_____
Juror

_____
Juror

_____
Juror

_____
Juror

JURY VERDICT

IN THE MATTER OF	)	**IN THE PROBATE COURT FOR**
THE HEARING ON	)	**_____COUNTY, ALABAMA**
THE COMPETENCY	)	**CASE NO.: _____**
OF _____	)	

JURY VERDICT

We, the jury, find from the evidence that the facts alleged in the petition are true, and that _____ is an incompetent person.

_____
Foreman of the Jury

DECREE

IN THE MATTER OF THE	)	**IN THE PROBATE COURT FOR**
HEARING ON THE	)	**_____ COUNTY,**
COMPETENCY OF _____	)	**ALABAMA.**
		CASE NO.: _____

DECREE

This cause coming to be heard before this Honorable Court on the _____ day of _____, 20____, the Petitioner placing sufficient evidence before this Court by oral testimony by Dr. _____ and _____; the alleged incompetent being represented by _____, an Attorney at Law, as Guardian ad Litem of _____; that said hearing was before a properly qualified jury of six, being summoned by the Sheriff of _____ County, Alabama: and the jurors having heard the testimony, and having deliberated the issue, did return a verdict "We, the jury, find from the evidence that the facts alleged in the petition are true, and that _____ is an incompetent person."

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by this Court that _____ being an incompetent person under the laws of the State of Alabama and that upon proper application by a responsible and qualified party this Court shall appoint a Guardian to serve in the interest of and over the estate of said _____, incompetent.

Done this the _____ day of _____, 20____.

_____
Judge of Probate

MOTION TO REVOKE OUTPATIENT COMMITMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____, Case No. _____
Respondent

MOTION TO REVOKE OUTPATIENT COMMITMENT

To: _____, Judge of Probate

Comes now your movant, _____, and reports to the Court that the above named respondent was committed to said facility for outpatient treatment on _____ is now in noncompliance with said order as follows:

_____
_____
_____
_____
_____
_____
_____
_____
_____

Based on the foregoing, your movant respectfully requests that the Court revoke said outpatient commitment, after conducting such hearings with notice as appropriate, and make further orders regarding the commitment of said respondent as may be found proper. Your movant prays for such other and different relief, the premises considered.

Signed this _____ day of _____, 20___.

_____
Movant's Signature

Subscribed to and sworn before me this _____ day of _____, 20___.

_____
Notary Public
Commission Expires: _____

ORDER TERMINATING OUTPATIENT COMMITMENT AND DIRECTING INPATIENT COMMITMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)
) **CASE No._____**
_____)
Respondent.)

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER TERMINATING OUTPATIENT COMMITMENT AND DIRECTING INPATIENT COMMITMENT

This cause came before the Court on _____, 20___, for a hearing on the merits on the motion filed by _____ ("Movant") to revoke the outpatient commitment of the above named Respondent ("Respondent") and to direct inpatient commitment of the Respondent in the custody of the Alabama Department of Mental Health. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon due consideration of the testimony and evidence adduced, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. The Court ordered outpatient commitment of the Respondent for mental illness on _____, 20___.
2. Respondent is mentally ill and poses a real and present threat of substantial harm to Respondent and/or members of the general public.
3. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently.
4. Respondent is unable to make rational and informed decisions as to whether treatment for mental illness would be desirable.
5. Treatment is available for the mental illness diagnosed.
6. Inpatient commitment in the custody of the Alabama Department of Mental Health, or its designated mental healthy facility, is the least restrictive alternative necessary and available for the treatment of Respondent's mental illness.
7. The Motion is GRANTED. The Court's _____ Order specifying outpatient commitment is VACATED and SET ASIDE.
8. Respondent is hereby COMMITTED to the custody of the Alabama Department of Mental Health, _____ (name of facility), or its designated mental health facility for treatment until _____, subject to renewal upon petition and hearing.
9. If, after treatment has been initiated and before this Order has expired by its express terms, the State or its designated mental health facility, shall determine that it is no longer necessary for the Respondent to be treated on an inpatient basis, then the State or its designated mental health facility shall assess whether the Respondent would benefit from court-supervised outpatient treatment upon discharge. If the

State or its designated mental health facility shall determine that the same is desirable and in the Respondent's best interests, the State or its designated mental health facility shall file a motion with the Court at least ten (10) days prior to the Respondent's proposed discharge date or expiration of this Order (whichever shall occur first) and the Respondent shall remain in the custody of the State or its designated mental health facility, until the Court can conduct a hearing on said recommendation.

10. The Sheriff of _____ County, Alabama or his duly authorized deputy shall take the Respondent and forthwith deliver the Respondent to the proper authorities of the Alabama Department of Mental Health at _____ (name of facility) or its designated mental health facility.
11. _____ (name of facility) shall immediately furnish to the Alabama Department of Mental Health at _____ (name of facility) or its designated mental health facility copies of any and all records regarding the Respondent.
12. The costs of these proceedings, including a fee to the attorney for the Petitioner and a fee to the Guardian ad Litem be taxed against _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.
13. The Court retains jurisdiction over this cause for such other proceedings and orders as may become appropriate.

Dated: _____, 20___.

_____

_____, Judge of Probate

ORDER TERMINATING OUTPATIENT COMMITMENT AND DIRECTING INPATIENT COMMITMENT (ALTERNATIVE)

IN THE PROBATE COURT OF _____COUNTY, ALABAMA

_____ **Case No.** _____

Respondent

ORDER TERMINATING OUTPATIENT COMMITMENT
AND DIRECTING INPATIENT COMMITMENT
(ALTERNATIVE FORM)

This cause is before the Court on the Motion to Revoke Outpatient Commitment for _____ is filed by _____; and it now appears that said matter is properly before the Court, that notice has been perfected; that the said _____ is represented _____, Esq., as Guardian ad Litem; and that _____, petitioner, is represented by _____, Esq.

It further appears to the Court that the said respondent was committed to outpatient treatment on to-wit the _____ day of _____; and

The Court finds from clear and convincing evidence adduced in open hearing; that the respondent is in material non-compliance with this Court's order for inpatient commitment; that the respondent is mentally ill; that as a result of the mental illness, the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; that the respondent is unable to make a rational informed decision as to whether treatment for the mental illness would be desirable; that the respondent poses a real and present threat of substantial harm to _____ ; that inpatient commitment to the Alabama Department of Mental Health or its designated facility is the least restrictive alternative necessary and available for the treatment of the person's mental illness; and accordingly, said motion is due to be granted; and

It is therefore **ORDERED** by the Court that _____, respondent, be and is hereby committed to the Alabama Department of Mental Health, _____, for treatment of _____ mental illness for a period not to exceed 150 days, subject to renewal if found appropriate upon petition and proceedings; that a copy of all medical records pertaining to the treatment of said person at _____, be forwarded to said state hospital with said patient; and that the Sheriff of

_____ County shall forthwith take into custody said mentally ill person and deliver _____ to the proper authorities at _____. Costs of this proceeding, including a fee to the attorney for the petitioner in the sum of $_____ and a fee to the Guardian ad litem in the sum of $_____are taxed to _____, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

The Court retains jurisdiction over this matter for such other proceedings and orders as may be appropriate.

Done and **ORDERED** this _____ day of _____, 20__.

_____

Judge of Probate

ORDER SETTING PETITION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____, **Case No. _____**
Respondent

ORDER SETTING PETITION TO RENEW
INPATIENT COMMITMENT

This day came _____, as the designee of the _____ (name of facility) and filed with this Court a petition to renew the inpatient commitment of the above named respondent to the State Department of Mental Health; and on consideration thereof, it is **ORDERED** by the Court as follows:

1. That said petition be filed and made a matter of record;

2. That a hearing on the said petition be and the same is hereby set for _____, 20__, __.m. at _____ (name of facility);

3. That written notice of this proceeding be given to the Respondent forthwith by the Sheriff of _____ County; and that further notice be given to the said Petitioner by copy of this order; and

4. That _____, Esq., a person learned in the law, be and is hereby appointed as Guardian ad Litem to represent and protect the interest of said Respondent in these proceedings, of which appointment, the said Guardian ad Litem shall receive notice.

It is further **ORDERED** by the Court that _____, Esq., who has been appointed as a special judge of probate for this type proceeding, be and is hereby assigned to this case.

DONE this ___ day of _____, 20__.

_____
_____, Judge of Probate

GUARDIAN AD LITEM ORDER

In Re: Petition for	:	**STATE OF ALABAMA**
Recommitment to the State	:	
Department of Mental Health	:	**COUNTY OF _____**
_____,	:	**PROBATE COURT**
Respondent		
	:	**Case No. _____**

TO: _____, Esq.

ORDER

TAKE NOTICE that you are hereby appointed Guardian ad Litem to represent _____, Respondent, interested in the above captioned matter. Please be advised that a hearing has been set for _____ at _____ (name of facility).

It is **ORDERED** that said Guardian ad Litem shall have supervised access to any and all hospital records maintained on the respondent, and should said Guardian ad Litem require copies of said records, or parts thereof, the same may be obtained under such conditions and at such times as may be reasonably established by the director of the hospital.

ORDERED AND DECREED this ____ day of _____, 20__.

_____
_____, Judge of Probate

ACCEPTANCE

I, the undersigned, do hereby accept the above appointment and as such Guardian ad Litem do hereby deny the allegations contained in the petition filed and demand strict and legal proof in support of the same.

_____
Guardian ad Litem for Respondent

MEMO FOR CONSUMERS OUT OF OTHER COUNTRIES

PROBATE COURT OF _____ COUNTY
Address
Phone Number

MEMO

TO: Probate Judge of _____ County

FROM: _____, Probate Judge of _____ County

DATE: _____

In re: Renewal of Commitment Hearing

Respondent:
Case No.:
Date:
Time:
Place:

The above named respondent was heretofore committed by your Court to the Alabama Department of Mental Health. Pursuant to Act 91-440, a Petition to Renew Inpatient Commitment has been filed with this court and has been set for hearing at the mental health facility as noted above.

In accordance with said act, I have assigned this case to a special judge of probate pending notification from you as to whether you will elect to hear said matter. In that regard, it is most respectfully requested that you notify this office of your decision within five (5) days of receipt of this memo. Please indicate same at the bottom of this page and return.

Thank you for your assistance in this matter and please let us know if you have any questions.

RESPONSE

[ ] I will preside over said matter as noted above.

[ ] I will not preside over said matter as noted above.

_____
Judge of Probate

ORDER APPOINTING SPECIAL JUDGE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

_____, Case No. _____
Respondent

ORDER APPOINTING SPECIAL JUDGES OF PROBATE

Pursuant to the authority granted to the undersigned by Alabama Code § 22-52-10.6, and for due cause now appearing, it is **ORDERED** that

are each appointed as a Special Judge of Probate to hear and enter appropriate orders with regard to Petitions for Renewal of Inpatient Commitment as may be assigned.

It is further **ORDERED** by the Court, and in accordance with said code section, that compensation in the sum of $100.00 per case is hereby set for the services of a special judge of probate, the same to be taxed as costs in each proceeding.

Done this ___ day of _____, 20___.

_____
_____, Judge of Probate

DISMISSAL OF RECOMMITMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
	)	
_____,	)	**Case No. _____**
Respondent.	)	

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER OF DISMISSAL

This cause came before the Court on _____, 20__, for a hearing on the Petition to Renew Inpatient Commitment filed by _____, as designee of the Alabama Department of Mental Health and the _____ ("Petitioner") regarding the above named Respondent ("Respondent"). This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon motion made by _____, to dismiss this cause and due consideration of the testimony and evidence adduced, the Court **FINDS** and concludes that dismissal is appropriate and the Court **ORDERS** as follows:

1. The petition to renew inpatient commitment filed by _____, is DISMISSED WITHOUT PREJUDICE.

2. The costs of these proceedings, including a fee to the Guardian ad Litem, are taxed against the State of Alabama General Fund, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

Dated: _____, 20___.

_____
_____, Special Judge of Probate

ORDER RENEWING INPATIENT COMMITMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
	)	
_____,	)	**Case No. _____**
Respondent.	)	

_____, Attorney for Petitioner
_____, Attorney for Respondent

ORDER RENEWING INPATIENT COMMITMENT

This cause came before the Court on _____, 20___, for a hearing on the Petition to Renew Inpatient Commitment filed by _____, as designee of the Alabama Department of Mental Health and the _____ ("Petitioner" or "State"), regarding the above named Respondent ("Respondent"). This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Appearances were as noted in the record. Upon due consideration of the testimony and evidence adduced, the Court **FINDS, CONCLUDES AND ORDERS** as follows:

1. Respondent is mentally ill and poses a real and present threat of substantial harm to Respondent and/or members of the general public.

2. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently.

3. Respondent is unable to make rational and informed decisions as to whether treatment for mental illness would be desirable.

4. Treatment is available for the mental illness diagnosed.

5. Inpatient commitment in the custody of the State is the least restrictive alternative necessary and available for the treatment of Respondent=s mental illness.

6. The Petition is GRANTED.

7. The inpatient commitment of the Respondent is RENEWED for treatment of the Respondent=s mental illness for a period not to exceed _____, subject to further renewal if found appropriate upon proper petition and proceedings.

8. If, after treatment has been initiated and before this Order has expired by its express terms, the State, or its designated mental health facility, shall determine that it is no longer necessary for the Respondent to be treated on an inpatient basis, then the State or its designated

mental health facility shall assess whether the Respondent would benefit from court-supervised outpatient treatment upon discharge. If the State or its designated mental health facility shall determine that the same is desirable and in the Respondent's best interests, the State or its designated mental health facility shall file a motion with the Court at least ten (10) days prior to the Respondent's proposed discharge date or expiration of this Order (whichever shall occur first) and the Respondent shall remain in the custody of the State or its designated mental health facility, until the Court can conduct a hearing on said recommendation.

9. _____ (name of facility) is **ORDERED** to forward a copy of the Respondent's recommitment Order to the Probate Court where the Respondent's order originated from.

10. The costs of these proceedings, including a fee to the Guardian ad Litem, be taxed against the State of Alabama General Fund, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

11. The Court retains jurisdiction over this cause for such other proceedings and orders as may become appropriate.

Date:_____, 20__.

_____
(Name)
Special Judge of Probate

NOTICE OF HEARING

NOTICE OF HEARING
CONDEMNATION PROCEEDINGS
Probate Court of _____ County, Alabama
_____, _____, AL _____

To:

Name of estate: _____(name of estate)
Case No.: case number
Cause No. Proceeding: cause, (e.g., final settlement, etc.)
Hearing date:
Time:
Court Room Number:

This notice and attached complaint are IMPORTANT and are provided to you as required by law to inform you of the proceedings now commenced in this Court and of the preliminary hearing noted above. ***You have thirty (30) days from the date of delivery/receipt of this notice to respond if you wish.*** You may be present at the hearing set or at any subsequent hearing at which the Court will allow you to participate. If you wish to answer or file an objection in this matter, you, or your attorney, should do so in writing by filing same with the Clerk of the Probate Court and by filing same with the attorney of record for the plaintiff. Absent a response by you and after thirty (30) days from service of this notice, the Court will proceed to consider the complaint accordingly. Case information may be obtained by visiting the Court's web site at: **www._____**. Click on the judicial button on the left side of the screen. At the judicial screen, use the case number search option to pull up case/ cause information. The attorney of record for the plaintiff is _____.

SERVICE

It is **ORDERED** that service of this notice be made as follows:

☐ First class mail
☐ Certified mail
☐ Sheriff of _____ County, or
☐ Process Server [name]

Return back date for Sheriff/Process Server: _____date due or n/a

Done this _____ date.

_____
_____, Judge of Probate

CONDEMNATION PUBLICATION

	INSTRUCTIONS TO:
COUNSEL:	**Please have the following publication notice run and file Proof of Publication with the Court at least 5 days prior to the hearing date.**
NEWSPAPER:	**The following shall run as a Legal Notice. Publish once a week for four (4) consecutive weeks. Mail Poof of Publication along with any bill for costs to the attorney of record as named.**

Notice is hereby given to _____; or any other person or persons in interest of the following proceedings in the Probate Court of _____ County, AL, viz:

STATE OF ALABAMA	:	**PROBATE COURT OF SAID COUNTY**
_____ COUNTY	:	_____
_____	:	**CASE NO.** _____
Plaintiff	:	
-VS-	:	
_____		
Defendants	:	

COMPLAINT FOR CONDEMNATION

This day came _____, by and through _____ attorney, _____, and filed _____ complaint in writing seeking to condemn for the uses and purposes set forth in said complaint that certain real property located in the County of _____, State of Alabama, and described as follows:

You are further notified that the hearing of said complaint has been set by this Court for _____, at which time you may appear and answer said complaint or file objections thereto if you so desire.

THE PARTIES TO WHICH NOTICE IS HEREBY GIVEN SHALL BE AFFORDED AT LEAST THIRTY (30) DAYS FROM THE DATE OF THE LAST PUBLICATION TO FILE AN ANSWER OR OTHER RESPONSE WITH THE COURT AND THE ATTORNEY FOR THE PLAINTIFF.

If the application to condemn is granted by the Court, a Commissioner's hearing will be scheduled within 30 days thereafter to determine damages which may be due the defendants. For information on the date and time of such hearing, please contact the Probate Court during regular business hours at_____.

Witness my hand this _____.

_____, Esq., Attorney

JUDGMENT AND ORDER GRANTING COMPLAINT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **CASE NO.** _____

_____ :
Plaintiff :

-VS-

_____ :
Defendant :

Condemnation of Land :

JUDGMENT AND ORDER GRANTING COMPLAINT

This cause is now properly before the Court pursuant to its jurisdiction and authority as conferred by state and constitutional provisions, and on due consideration of the Complaint and evidence adduced:

It now appears to the Court that notice of these proceedings and a copy of the Complaint have been served on all defendants _____and that publication has been given to those certain defendants entitled thereto, pursuant to law and as directed by the Court; and

After hearing and considering all the pleadings and the proof, the Court is of the opinion that the facts alleged in said Complaint _____ are established by the evidence; that the acquisition of the described land is for public use; that it is necessary that the property described in said Complaint _____ be condemned for the uses and purposes set forth in said Complaint _____ and that the prayer of said Complaint _____ be granted.

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the said Complaint, _____ as aforesaid, be and the same is hereby granted as prayed.

_____
_____, Judge of Probate

ORDER APPOINTING COMMISSIONERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

ORDER APPOINTING COMMISSIONERS

For due cause now shown, it is **ORDERED** by the Court that _____, who are citizens of _____ County, Alabama, and who possess the qualifications of jurors under the Laws of the State of Alabama, and who are disinterested parties to this proceeding, are hereby appointed Commissioners to assess the damages and compensation to which the Defendants, as owners and parties claiming or holding some right, title or interest in and to the land described in said Complaint _____, are entitled; said land being situated in the County of _____, State of Alabama, and more particularly described as follows:

It is further **ORDERED** by the Court that said Commissioners be forwarded notice of their appointment and duties thereunder by First Class United States Mail, postage pre-paid; and

It is further **ORDERED** by the Court that said Commissioners, within twenty (20) days from this date, shall make a report in writing to this Court stating the amount of damages and compensation ascertained and awarded by them to the said Defendants, as owners of, or claimants of the above described parcel _____ of land.

_____

_____, Judge of Probate

NOTICE TO COMMISSIONERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

NOTICE TO COMMISSIONERS

TO: _____

Please take **NOTICE** that by order of the Court this day entered you have been appointed **COMMISSIONERS** in the cause as set forth in the caption above.

Upon first being sworn, as jurors are sworn, you may view the property in question, which is more particularly described on the attached exhibit _____, and, after notice has been given to all parties, you must hold a hearing to consider the legal evidence offered by the parties in interest.

YOU MUST, within twenty (20) days from this date, make a written report to this Court stating the amount of damages and compensation ascertained and assessed by you for the owners of each tract of land, or persons injured and other parties interested therein. Attached to said report you shall file a certificate under oath that neither of you have ever been consulted, advised with or approached by any person in reference to the value of the lands or the proceedings to condemn the same prior to the assessment of damages and that you knew nothing of the same prior to your appointment.

The foregoing is given pursuant to Section 18-1A-279, 280, 281 and 282, *Code of Alabama 1975*, as last amended.

ORDERED AND DECREED this _____ day of _____.

_____, Judge of Probate

By:_____

CERTIFICATE [OATH] OF COMMISSIONERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

CERTIFICATE OF COMMISSIONERS
(§ 18-1A-279)

I, the undersigned, do hereby certify as follows:

That I have been appointed as a Commissioner by the Probate Court of _____ County, Alabama, in the above entitled cause now pending in said Court;

That I possess the qualifications of a juror in _____ County, Alabama;

That I will well and truly try the issues submitted to my decision and to be tried in said cause;

That I am neither directly or indirectly interested in the issues to be tried;

That I have never been consulted, advised with or approached by any person in reference to the value of said lands or the proceedings to condemn the same prior to the assessment of damages and that I knew nothing of the same prior to this appointment;

That I am not biased or prejudiced against any of the parties to said cause and that I will render such compensation to the defendants as shall seem just and proper in the premises.

_____

Date:_____

Witness:

_____

ORDER REVOKING APPOINTMENT OF COMMISSIONER AND ORDER REAPPOINTING COMMISSIONER

IN THE PROBATE COURT OF _____ COUNTY

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

ORDER REVOKING APPOINTMENT OF COMMISSIONER AND ORDER REAPPOINTING COMMISSIONER

This day came _____, and reported to the Court that _____ is unable to serve on the appointment heretofore made by this Court as Commissioner to appraise certain lands described in the above entitled case; the Court is of the opinion that the appointment of _____ should be revoked.

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the appointment of _____ with _____and _____, as Commissioners, to assess the damages and compensation to which the owners of said property are entitled, in the above entitled cause, be and the same is hereby revoked.

It is further **ORDERED** by the Court that _____, who is a citizen of _____ County, Alabama and who possesses the qualifications of a juror under the Laws of the State of Alabama, and who is a disinterested party to this proceeding, is hereby appointed Commissioner to serve with _____ and _____, to assess the damages and compensation to which the Defendants, as owners and parties claiming or holding some right, title or interest in and to the land described in said Complaint _____, are entitled; said land being situate in the County of _____, State of Alabama, and more particularly described as follows:

It is further **ORDERED** by the Court that _____ be forwarded notice of _____ appointment and duties thereunder by First Class United States Mail, postage pre-paid; and

It is further **ORDERED** by the Court that said Commissioners, within twenty (20) days from the _____ day of _____, make a report in writing to this Court stating the amount of damages and compensation ascertained and awarded by them to the said Defendants, as owners of, or claimants of the above described parcel _____ of land.

_____

_____, Judge of Probate

ORDER REVOKING APPOINTMENT OF COMMISSIONERS AND ORDER REAPPOINTING COMMISSIONERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

ORDER REVOKING APPOINTMENT OF COMMISSIONERS AND ORDER REAPPOINTING COMMISSIONERS

This day came _____, the Commissioners heretofore appointed to appraise certain lands described in the above entitled cause, and reported to the Court that they were unable to report to this Court within twenty (20) days as required by law and requests that they be reappointed.

It is **ORDERED, ADJUDGED AND DECREED** by the Court that the appointments of _____, as Commissioners to assess the damages and compensation to which the owners of said property are entitled in the above entitled cause, be and the same is hereby revoked.

It is further **ORDERED** by the Court that _____, who are citizens of _____ County, Alabama, and who possess the qualifications of jurors under the laws of the State of Alabama and are disinterested are hereby appointed Commissioners to assess the damages and compensation to which the defendants as owners and parties claiming or holding some right, title or interest in and to the land described in said complaint_____, are entitled, said land being situated in the County of _____, State of Alabama and more particularly described as follows:

It is further **ORDERED** by the Court that said Commissioners be forwarded notice of their appointment and duties thereunder by First Class United States Mail, postage pre-paid; and

It is further **ORDERED** by the Court that said Commissioners, within twenty (20) days from this date, shall make a report in writing to this Court stating the amount of damages and compensation ascertained and awarded by them to the said Defendants, as owners, of, or claimants of the above described parcel _____ of land.

_____

_____, Judge of Probate

JUDGMENT, ORDER FILING REPORT OF COMMISSIONERS AND ORDER OF CONDEMNATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

JUDGMENT, ORDER FILING REPORT OF COMMISSIONERS AND ORDER OF CONDEMNATION

This day came _____, the Commissioners heretofore appointed by this Court to assess and ascertain the damages and compensation to which the owners and other parties claiming or holding some right, title or interest in and to the said land described in said Complaint, _____ are entitled and filed their report in writing and under oath, setting forth among other things that after each of them had been sworn as jurors are sworn they executed their duties in strict accordance with the conditions of the commissions issued and the decree of this Court; and

It appears to the Court that _____, have filed appropriate written disclaimer _____ in this proceeding.

It is **ORDERED** that said _____party be stricken as to _____their disclaimed interest.

The Commissioners awarded compensation and damages to the following named persons, in the following amount, for their interest to the following described land, situated in the County of _____, State of Alabama, viz:

It is **ORDERED, ADJUDGED AND DECREED** by the Court that the said report of commissioners be filed and recorded.

It now appears to the Court that _____, the Plaintiff in this cause, has the authority and right to take said property by eminent domain pursuant to _____, it is therefore further **ORDERED, ADJUDGED AND DECREED** by the Court that the property heretofore described, be and the same is hereby condemned for the uses and purposes set forth in said Complaint _____ and that title to the said property shall be transferred to the Plaintiff upon the payment of the damages and compensation so assessed, or the deposit of the same in the Court, **plus interest thereon, if any.**

It is further **ORDERED** by the Court that said plaintiff pay all costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

_____

_____, Judge of Probate

ORDER AWARDING COMMISSIONERS' FEES

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	:	**CASE NO. _____**
_____	:	
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

ORDER AWARDING COMMISSIONERS' FEES

In the above captioned matter and in consideration of the time and efforts expended by _____, the Commissioners heretofore appointed, who have made their written report as required by law, the Court finds that a fair and reasonable fee to allow each Commissioner is the sum of $_____, which amount the Plaintiff is hereby **ORDERED** to pay as a part of costs, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

_____

_____, Judge of Probate

PAYMENT OF AWARD INTO COURT

STATE OF ALABAMA	:	**PROBATE COURT OF SAID COUNTY**
_____COUNTY	:	
_____	:	**CASE NO. _____**
Plaintiff	:	
-VS-	:	
_____	:	
Defendant	:	
Condemnation of Land	:	

PAYMENT OF AWARD INTO COURT

Pursuant to the Order of Condemnation entered in the above entitled matter on to-wit, _____, this day came _____ and paid into this Court the amount of damages assessed and awarded by the Commissioners to the persons named as owners, or holders of interest in the following described lands, situated in the County of _____, State of Alabama, to-wit:

It is **ORDERED** that the said award _____ be accepted and deposited with the Court.

If an interested party seeks payment of all or a portion of the award now held by the Court, reference should be made to Ala. Code § 18-1A- 214 (1975).

_____
_____, Judge of Probate

CLAIM TO AWARD PUBLICATION

INSTRUCTIONS TO:

PETITIONER: **Please have the following publication notice run and file Proof of Publication with the Court at least 5 days prior to the hearing date.**

NEWSPAPER: **The following shall run as a Legal Notice. Publish once a week for three (3) consecutive weeks. Mail Proof of Publication along with any bill for costs to the attorney of record as named.**

Notice is hereby given to _____; or any other person or persons in interest in the following proceedings in the Probate Court of _____ County AL, viz:

STATE OF ALABAMA : PROBATE COURT OF SAID COUNTY

_____ COUNTY :

_____ : Case No. _____

IN RE: Claim to Award

This day came _____, by and through _____ attorney, _____, and filed in this Court _____ claim to the award heretofore paid into this Court by _____, for the taking of certain land described in the above entitled cause and on file in the Probate Court.

You are hereby further notified that the hearing of said claim to award has been set for _____, at which time you may appear and answer said claim or file objections thereto if you so desire.

Witness my hand this _____ day of _____.

_____, Judge of Probate

PUBLISH ONCE A WEEK FOR THREE (3) CONSECUTIVE WEEKS

_____, Attorney

CLAIM TO AWARD ORDER

STATE OF ALABAMA	:	**PROBATE COURT OF SAID COUNTY**
_____ COUNTY	:	
_____	:	**CASE NO. _____**
Plaintiff	:	
-VS-	:	
_____	:	
Defendants	:	
Condemnation of Land	:	
In Re: Claim to Award	:	

_____

ORDER

This cause is now properly before the Court pursuant to its jurisdiction and authority as conferred by statute and constitutional provisions, and on due consideration of the pleading and evidence adduced:

It is hereby **ORDERED** by the Court that _____, less the cost of this proceeding and any unpaid ad valorem taxes which may be due.

_____
_____, Judge of Probate

PROCEDURES FOR LAND COMMISSIONERS

(SAMPLE)

MOBILE COUNTY PROBATE COURT
LAND CONDEMNATION COMMISSIONERS
February 2007

I. INTRODUCTION

"Eminent Domain" is one of the "rights" a sovereign government has - to take private property for public use. The Alabama Constitution [1901 *Ala. Const.* Art. I, § 23] provides that just compensation must be paid to the landowner. The Alabama Constitution also provides for the exercise of eminent domain by cities, counties and other corporations and individuals vested with the right to take property for public use [1901 *Ala. Const.* Art. XII, § 235]. Jurisdiction to condemn privately owned property rests in the Probate Court. The Judge of Probate receives petitions for condemnation, conducts the necessary proceedings and issues the final condemnation order. In addition to condemnation for public uses, this jurisdiction extends to the erection of dams for mills, gins or factories, and to rights-of-way for private owners.

II. PROCEDURE PRIOR TO COMMENCEMENT OF CONDEMNATION ACTION

To better inform land commissioners as to the entire land condemnation process, the following summary of the procedure preceding the commencement of a condemnation action is offered.

A. Appraisal

Before beginning a condemnation action, a condemnor must have the property appraised to determine the amount that would constitute just compensation for the taking. The owner or the owner's representative must be given a reasonable opportunity to accompany the appraiser during the inspection of the property.

B. Offer

Before beginning a condemnation action, a condemnor must offer the owner an amount believed to be just compensation. The condemnor shall provide the owner with a written statement and a written summary showing the basis for the amount determined to be just compensation.

C. Payment Or Deposit Before Surrender Of Property

An owner is not required to surrender possession of the property before the condemnor either pays the agreed purchase price or deposits the amount awarded.

D. Notice

Except in an emergency, a condemnor may not require an occupant of the condemned property to move prior to a 90 day notice of the move.

E. Uneconomic Remnant

If the acquisition of part of the property would leave the owner with an uneconomic remnant, the condemnor must offer to buy the remnant.

F. Entry

A condemnor and its agents may enter the property for a reasonable time to make suitability studies unless good cause to the contrary is shown.

G. Offer As Prerequisite

The condemnor must offer to acquire the property at its approved offer before commencing the condemnation action.

III. COMMENCEMENT OF CONDEMNATION ACTION

If the condemnor and landowner reach an agreement, there is no need for a condemnation action. A condemnation action is only required where the parties can NOT reach an agreement. Condemnation in Probate court is a two (2) step process. In the first phase, the Probate Court must determine if the complaint should be granted. If the complaint is granted, the second phase commences. In the second phase, the amount of damages owed to the landowner must be established. The Probate Court is required to appoint three (3) persons to serve as commissioners (discussed in greater detail below). The commissioners determine the amount of damages. In essence, the commissioners can be analogized to the role of a jury in civil litigation.

A. Filing Complaint

A condemnation action is begun by filing a complaint in the Probate Court in the county in which the property is located.

B. Service of Process

When the complaint has been filed, the Probate Court must set a date for the hearing and issue notice to the owner unless notice has been waived.

C. Owner's Response

The owner may respond to the complaint, but is not required to do so unless he challenges the right to condemn, disputes the area to be acquired or to remain, or wishes to raise preliminary

objections to the condemnor's procedure.

D. No Formal Discovery Is Permitted

Land condemnation matters are supposed to be handled on an expedited basis. In furtherance of this concept, no formal discovery between opposing parties is permitted in actions pending in the Probate Court.

IV. DETERMINATION OF VALUE OF PROPERTY/DAMAGES SUSTAINED BY OWNER - PROCEDURE RELATING TO PAYMENT - APPEAL OF DECISION

Once the Probate Court has granted the relief requested in the condemnation lawsuit, the second phase of the litigation begins, to determine the amount of damages due to the landowner. The land commissioners appointed pursuant to the procedure outlined below, must hold a hearing to receive evidence relating to compensation. The commissioners will conduct a hearing in a conference room at the Probate Court. This hearing is informal. All interested parties should be afforded an opportunity to make their presentation to the commissioners in the presence of the other interested parties.

A. Appointment of Commissioners

Within 10 days after granting the complaint, the Judge of Probate must appoint 3 citizens to serve as commissioners. Commissioners must be eligible to serve as jurors in Mobile County and must be disinterested in the case. In other words, the commissioners can not have a relationship with the condemnor or the owners. The appointment is made on a rotational basis from a list prepared by the Judge of Probate.

B. Commissioners' Report Due In 20 Days

Within 20 days from their appointment, the commissioners must make a written report to the Probate Court stating the amount of damages and compensation ascertained. Within 7 days of receipt of the commissioners' report, the Probate Court must issue an order recording the report and condemning the property upon payment or deposit into Probate Court of the damages and compensation assessed by the commission.

C. Chairman Of Commission

The Probate Court will appoint one of the commissioners to serve as chairman of the commission. The Chairman is responsible for making the arrangements with the other commissioners, and advising the condemnor (or its attorney of record) about the date, time and location for the viewing of the property and the time and date of the commissioners' hearing. Upon notice of appointment, the chairman of the commission should immediately contact the other commissioners and confirm their availability to serve on the commission and ascertain dates on which the commissioners are available to conduct their hearing. **DO NOT RELY UPON VOICE MAIL MESSAGES OR MESSAGES LEFT ON ANSWERING MACHINES.** If the

chairman has not made contact with a commissioner within 3 days of notice of appointment, the chairman should contact the Clerk of the Probate Court for instruction. If a commissioner has not been contacted by the designated chairman of the commission within 3 days of notice of appointment, the commissioner should contact the Clerk of the Probate Court for instruction. Once the chairman has ascertained dates and times the commissioners are available to meet, the chairman should contact the lawyer for the condemnor and using said information, set a date for the commission's hearing. Upon setting a date for the commission hearing, the chairman should immediately contact the commissioners and advise them of the hearing date and furnish any other pertinent information. **DO NOT RELY UPON VOICE MAIL MESSAGES OR MESSAGES ON ANSWERING MACHINES AS CONSTITUTING NOTICE.** If the chairman has not made *actual* contact with a commissioner within 3 days after initiating efforts to notify the commissioner of the hearing date and time, the chairman should contact the Clerk of the Probate Court for instruction.

D. Commissioners' Hearing And Assessment Of Damages

The commissioners must hold a hearing to receive evidence relating to compensation. Upon notice of appointment, the chairman of the commission should immediately contact the other commissioners and confirm their availability to serve on the commission and ascertain dates on which the commissioners are available to conduct their hearing. **DO NOT RELY UPON VOICE MAIL MESSAGES OR MESSAGES LEFT ON ANSWERING MACHINES.** If the chairman has not made contact with a commissioner within 3 days of notice of appointment, the chairman should contact the Clerk of the Probate Court for instruction. If a commissioner has not been contacted by the designated chairman of the commission within 3 days of notice of appointment, the commissioner should contact the Clerk of the Probate Court for instruction. Once the chairman has ascertained dates and times the commissioners are available to meet, the chairman should contact the lawyer for the condemnor and using said information, set a date for the commission's hearing. Upon setting a date for the commission hearing, the chairman should immediately contact the commissioners and advise them of the hearing date and furnish any other pertinent information. **DO NOT RELY UPON VOICE MAIL MESSAGES OR MESSAGES ON ANSWERING MACHINES AS CONSTITUTING NOTICE.** If the chairman has not made contact with a commissioner within 3 days after initiating efforts to notify the commissioner of the hearing date and time, the chairman should contact the Clerk of the Probate Court for instruction.

E. Notice of Commissioners' Hearing

Notice of the hearing must be given to the parties. Once the date is set, the chairman of the commission should contact the attorney of record for the condemnor, so that said attorney can send notice of the hearing to all other interested parties. The attorney needs to give a **MINIMUM** of 3 days notice of the hearing.

F. Viewing of Property

The commissioners will physically go to the property in question and view it **prior** to their

hearing. The landowner, the landowner's legal counsel (if any), the landowner's real estate appraiser (if any), a representative of the condemning authority, the condemning authority's legal counsel, and the condemning authority's engineer and/or real estate appraiser (if any) are permitted to be present at the time the commission views the property. The viewing can only occur as scheduled with the representative of the condemning authority (usually its lawyer) and the landowner.

It is **not** appropriate for commissioners to discuss the matter with one party or one party's representatives, without the other party having notice and the opportunity to be present. There should be no discussions between commissioners and parties or their representatives about the matter, while waiting on the opposing party or its representatives, if any, to arrive for the viewing.

G. Swearing In Of Commissioners

The commissioners will be sworn in by the Judge of Probate, Chief Clerk, or designee of the Chief Clerk, before the hearing commences.

H. Format Of Commissioners' Hearings

The rule prohibiting "ex parte" communications (see comments above about viewing the property) applies to the commission hearings you conduct and participate in. You should not discuss the merits of the case with any party or the representatives or witnesses of any party until the hearing is formally commenced by the chairperson

The commission you are serving on, is practically speaking, a three (3) person jury. It is very important that each commissioner be neutral as to any party or any party's position, until all proper evidence has been submitted to the commission and the commission as a whole has the opportunity to reach a decision.

1. Chairman of the commission calls the meeting to order and introduces the other commissioners to all interested parties.

2. The condemnor or the lawyer for the condemnor presents expert testimony as to the property being taken, the estimated value of the property and whether an uneconomic remnant exists. At this time the condemnor's damage award offer is disclosed. The commissioners and the interested parties may ask questions of the testifying witnesses.

3. The Alabama Attorney General has advised the Court that evidence submitted by the parties (or their lawyers) should be evidence which is admissible under the Alabama Rules of Evidence, statute, case law or Constitutional provision. See discussion below regarding evidence that can be received by the commission.

4. The owner or lawyer for the owner presents testimony as to the property to be taken, the estimated value of the property and whether an uneconomic remnant exists.

The owner or his lawyer can comment about the condemnor's damage award offer.

5. After all evidence and testimony is obtained, all parties exit and the commissioners meet in private to determine the award to be given to the owner.

6. The condemnor (or its lawyer) prepares and furnishes a written report for the commissioners to use in reporting to the Probate Court their findings and decision as to the award.

7. The commissioners present their report to either the Judge of Probate or the Chief Clerk and are "sworn out". The oath utilized is "In the matter of [style of case], each of you have been previously sworn as commissioners, you now render unto the Court your report of money damages due to the defendant (or parties) which is based upon the evidence and testimony presented to you, that such damages are (state each parcel or tract by name or number and the amount entered in the report); so say each of you?" (Each commissioner should respond affirmatively).

8. At the time the report is submitted to the Judge of Probate or Chief Clerk, the commissioners should be prepared to advise as to how much time they have expended with regard to that particular matter.

I. Evidence That Can Be Considered

The Alabama Attorney General has advised the Probate Court that the evidence submitted by the condemnor, owner or interested party at a commissioner hearing should be evidence that is admissible under the *Alabama Rules of Evidence*, statute, case law, or Constitutional provision. If the condemnor, owner or party in interest objects to a question being posed to a witness or objects to information being furnished to the commission on the ground that such evidence is not admissible under applicable law, the chairman of the commission should recess the commission hearing and contact the Judge of Probate for a ruling on the evidentiary issue. If any commissioner has a question or concern as to whether evidence presented to the commission is legal evidence the commission can receive and consider during the commission's deliberations, the commissioner should contact the Judge of Probate.

It is difficult to succinctly outline what evidence constitutes admissible evidence in a land condemnation commissioners' hearing. Generally speaking, however, the following types of evidence is **NOT ADMISSIBLE**:

1. Hearsay evidence (what someone WHO IS NOT PRESENT AT THE HEARING told someone else). For example, the owner cannot state what some other person (lay or professional) told the owner as to the value of the owner's property. For that third person's testimony to be considered, the third person must be present and offer their opinion directly to the commission.

2. A copy of the condemnor's appraisal report, *when offered by the owner.*

3. The price or other terms and circumstances of an acquisition of comparable property, where the property was or could have been acquired in that transaction under the power of eminent domain.

4. The price at which property was optioned, offered, mortgaged or listed for purchase, sale or lease.

5. The assessed value of property for purposes of taxation.

6. Any elements of loss of value that are legally noncompensable under Alabama law.

7. The written evaluation report of the opposing party.

J. Amount Of Damages

1. "Fair Market Value"

The term "fair market value" has been defined "as the price the property would bring when offered for sale by a willing seller who is not forced to sell and which is sought by a willing buyer who is not required to buy."

2. Before And After Value

In a partial taking, the owner is entitled to the difference between the fair market value of the entire property before the taking and the fair market value of the remainder after the taking.

3. Incidental Benefits

The amount of compensation a landowner may be entitled to receive may not be reduced because of any incidental benefits which may accrue to the remaining land. However, in condemnation of lands for rights-of-way for public highways, water or sewer lines, the value of the enhancement to the remaining lands of the landowner must be considered in fixing the amount of compensation to be awarded the owner.

4. Highest and Best Use

The owner is entitled to consideration for condemnation on the basis of the highest and best use to which the property could be put, even though not presently being so used.

5. Taking

An owner is not required to surrender possession of property before the condemnor (a) pays the agreed purchase price, or (b) pays or deposits the amount awarded by the condemnation order together with interest thereon as prescribed in the order.

6. Maximum Amount Of Damages

The amount of damages awarded to the owner **cannot exceed** the value testimony received by the commission. If the owner presents no testimony regarding the value of the property, the amount of damages cannot exceed the value testimony offered by the condemnor. Under Alabama law, an owner of real property is competent to offer an opinion as to the value of the owner's property, even if the owner does not have formal training in land values. If an owner offers the owner's opinion as to the value of the owner's property, the commission has the discretion to determine how much weight to accord to said opinion as compared to other opinions offered to the commission. Likewise, the commission has the discretion to determine how much weight to accord to a value opinion of a professional person.

V. PAYMENT OF DAMAGES AND COMPENSATION - APPEAL

A. Payment Of Damages And Compensation

The condemnor may pay the damages and compensation assessed at any time within 90 days after the assessment thereof, or, in case an appeal is taken, within 60 days after the appeal is determined. If the condemnor fails to pay on a timely basis, such assessment shall cease to be binding on the owner of the lands or other interested parties and the complaint should be dismissed, with the condemnor being liable to the owner of the lands for all damages the latter may have sustained by the institution of the proceedings, including a reasonable attorney's fee for defending the same.

B. Appeal To Circuit Court

Within 30 days of the order of condemnation, any party may appeal the order to the Circuit Court for a new trial.

VI. LAND COMMISSIONER COMPENSATION

Compensation for the commissioner is based upon the time expended by the commissioner as to the particular condemnation matter. The current rate utilized is $80.00 per hour, with a $200.00 minimum fee. If the commissioners have any extraordinary expenses, they should present written documentation to support the same to the Judge of Probate or Chief Clerk of the Probate Court.

ORDER APPOINTING TEMPORARY GUARDIAN AND TEMPORARY PROTECTIVE ORDER

STATE OF ALABAMA) **PROBATE COURT OF SAID COUNTY**

_____ COUNTY)

_____) **Case No. _____**
(Alleged) Incapacitated Person

ORDER APPOINTING TEMPORARY GUARDIAN AND TEMPORARY PROTECTIVE ORDER

This cause came on to be heard this date on the petition for a temporary protective order and a temporary Guardian over the above named alleged incapacitated person as filed by _____, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act (Act No. 87-590); and

Now comes the said petitioner by and through counsel, _____, Esq., and also comes the said alleged by and through counsel, _____, Esq. the duly appointed Guardian ad Litem in this proceeding; and

Upon due consideration of the testimony and evidence this day adduced, the Court finds that (i) _____ is in need of protective arrangements; that (ii) said person has no guardian; that (iii) an emergency exists; and that (iv) the basis for a Temporary Protective Order and a Temporary Guardian has been established; and pursuant to § 26-2A-136 (b)(1):

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that _____, upon filing bond in the sum of $_____, is hereby appointed Temporary Conservator to marshall, preserve and protect the assets belonging to _____, same to be used for the maintenance and support of said _____, pending a final adjudication of the petition for the appointment of a Conservator.

It is further **ORDERED** by the Court that _____ be and is hereby appointed Temporary Guardian over _____, an incapacitated person pursuant to § 26-2A-107, *Code of Alabama, 1975,* as last amended, for a period not to exceed fifteen (15) days and that said Temporary Guardian is hereby granted all the powers and duties conferred under the above referenced Act and as set forth in the Letters of Guardianship now issued.

It is further **ORDERED** by the Court that _____ shall reside in _____ County and shall not leave the State of Alabama without prior written approval by the Court.

_____
_____, Judge of Probate

TEMPORARY PROTECTIVE ORDER

STATE OF ALABAMA : **PROBATE COURT OF SAID COUNTY**

_____ COUNTY :

_____ : **CASE NO. _____**
(Alleged) Incapacitated Person

TEMPORARY PROTECTIVE ORDER

This cause came on to be heard this date on the petition for a temporary protective order over the above estate as filed by _____, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act (Act No. 87-590); and

Now comes the said petitioner by and through counsel, _____, Esq., and also comes the said alleged by and through counsel, _____, Esq. the duly appointed Guardian ad Litem in this proceeding; and

Upon due consideration of the testimony and evidence this day adduced, the Court finds that (i) _____ is in need of protective arrangements; that (ii) said person has no guardian; that (iii) an emergency exists; and that (iv) the basis for a Temporary Protective Order has been established; and pursuant to § 26-2A-136 (b)(1):

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that _____, upon filing bond in the sum of $_____, is hereby appointed Temporary Conservator to marshall, preserve and protect the assets belonging to _____, same to be used for the maintenance and support of said _____, pending a final adjudication of the petition for the appointment of a Conservator.

It is further **ORDERED** by the Court that said petitioner report any actions taken and attach any supporting documents, evidencing said actions to this Court on.

It is further **ORDERED** by the Court that the costs of this proceeding, including a guardian ad litem fee of $_____, be taxed against said petitioner, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

_____
_____, Judge of Probate

NOTE: THIS ORDER, AS IT PERTAINS TO THE TEMPORARY CONSERVATORSHIP, IS NOT EFFECTIVE UNLESS ORDER FILING BOND IS ATTACHED.

ORDER APPOINTING TEMPORARY GUARDIAN

STATE OF ALABAMA : **PROBATE COURT OF SAID COUNTY**

_____ COUNTY :

_____ : **CASE NO. _____**
(Alleged) Incapacitated Person

ORDER APPOINTING TEMPORARY GUARDIAN

This cause came on to be heard this date on the petition for a temporary Guardian over the above named alleged incapacitated person as filed by _____, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act (Act No. 87-590); and that the powers and authority granted to this Court by Act No. 91-131 are now so exercised; and

Now comes the said petitioner by and through counsel, _____, Esq., and also comes the said alleged by and through counsel, _____, Esq. the duly appointed Guardian ad Litem in this proceeding; and

Upon due consideration of the testimony and evidence this day adduced, the Court finds that (i) _____ is in need of protective arrangements; that (ii) said person has no guardian; that (iii) an emergency exists; and that (iv) the basis for a Temporary Guardian has been established.

It is therefore, **ORDERED, ADJUDGED AND DECREED** by the Court that _____ be and is hereby appointed Temporary Guardian over _____, an incapacitated person pursuant to § 26-2A-107, *Code of Alabama*, 1975, as last amended, for a period not to exceed fifteen (15) days and that said Temporary Guardian is hereby granted all the powers and duties conferred under the above referenced Act and as set forth in the Letters of Guardianship as now issued.

It is further **ORDERED** by the Court that _____ shall reside in _____ County and shall not leave the State of Alabama without prior written approval by the Court.

It is further **ORDERED** by the Court that the costs of this proceeding, including a Guardian ad Litem fee of $_____, be taxed against said petitioner, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

_____
_____, Judge of Probate

TEMPORARY LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

TEMPORARY LETTERS OF GUARDIANSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Pursuant to Court appointment, Temporary Letters of Guardianship over the person of _____ are hereby granted to _____ for a period not to exceed fifteen (15) days from this date.

Further, it is **ORDERED** that all individuals, institutions, educational facilities, medical care providers, and others having information about the ward shall release the same to the above named Guardian upon presentation of a photocopy of this Order without specific authorization otherwise.

Witness my hand this ___ day of _____, 20___.

_____
_____, Judge of Probate

ORDER FILING BOND AND APPOINTING TEMPORARY CONSERVATOR

STATE OF ALABAMA : **PROBATE COURT OF SAID COUNTY**

_____ COUNTY :

_____ : **CASE NO. _____**

ORDER FILING BOND AND APPOINTING TEMPORARY CONSERVATOR

This day came _____ and filed bond in the sum of $_____ with _____ as surety; and it now appears that said bond is in the amount prescribed by the Court, with good and sufficient surety, which bond has been taken and approved by the Judge of this Court; and upon due consideration:

It is **ORDERED** by the Court that _____ be and is hereby appointed as Temporary Conservator over the estate of _____. Said Temporary Conservator _____ granted those powers and duties as set forth in Sections 26-2A-152 and 153, *Code of Alabama 1975*, except that sales and leases of real or personal property may not be made by the Temporary Conservator _____ without first obtaining Court approval. The said Temporary Conservator shall not enter into any settlement of any litigation or received any assets from such litigation without approval of this Court and under such conditions as the Court may require.

_____

_____, Judge of Probate

PETITION FOR LETTERS OF CONSERVATORSHIP

STATE OF ALABAMA : **PROBATE COURT OF SAID COUNTY**

_____ COUNTY : **CASE No._____**

_____, :
Alleged Incapacitated Person

PETITION FOR LETTERS OF CONSERVATORSHIP

Comes now _____, your petitioner, under oath, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act and Ala. Code § 26-2A-133 (1975), as amended, and respectfully represents under your Honor the following:

1. That _____, is _____ years of age, having been born on _____.

2. That his/her address is _____ and is currently residing at _____.

3. That your petitioner=s address is _____ and is related to the alleged as follows_____.

4. That a conservatorship should be established to manage and protect said person's assets for the following reasons: (**List physical and/or mental reasons**).

5. That the estate of said person for whom these proceedings are brought consist of the following: (**General listing of assets including possible sources of income with estimated value of each.**)

6. That your petitioner has a basis of priority for appointment as conservator as follows: (**State claim - see Section 26-2A-138**); and

7. That the following person(s) are to be notified of these proceedings pursuant to Ala. Code Sections 26-2A-134 and 103 (**If alleged is an adult -- notice required to spouse, all adult children or if none, parents, any personal representative or one who has custody and care of alleged or one adult relative residing in state if there is no spouse, adult children, parents, etc. If alleged is a minor -- notice required to parents or person having principal care and custody of minor during past 60 days**); and

Wherefore your petitioner prays that the Court will take jurisdiction over this matter, conduct hearings as may be needed and proper and will appoint your petitioner as Conservator over the Estate of _____ upon filing bond as may be required. Your petitioner

prays for such other and different relief as may be appropriate, the premises considered, and does hereby specifically invoke the Equity Authority and Jurisdiction of this Court in this matter.

_____
Petitioner

Sworn to and subscribed before me, this ____ day of _____, 20___.

_____
Notary Public

OF COUNSEL:

_____
_____
_____

ORDER APPOINTING CONSERVATOR UPON FILING BOND

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **CASE No. _____**

_____ : **DATE:_____**

ORDER

This cause came before the Court on _____, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. _____ is hereby found to be incapacitated and unable to manage his/her financial affairs.

2. The Court does further **FIND AND ADJUDGE** _____to be a mentally incompetent person. It is **ORDERED** that this ruling be entered of record in this case and that a copy of same be furnished to the _____ County Board of Registrars pursuant to *Ala. Code § 17-4-131 (1975).*

3. _____ is hereby appointed as Conservator over the assets of said incapacitated person upon first filing bond in the sum of $_____.

4. Bond due on or before _____.

5. Costs, including a GAL fee are taxed against said estate.

ORDERED AND DECREED

_____
Judge of Probate

C: Counsel of record

ORDER APPOINTING GUARDIAN AND CONSERVATOR UPON FILING BOND

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **CASE No. _____**

_____ : **DATE:_____**

ORDER

This cause came before the Court on _____, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. _____ is hereby found to be incapacitated and unable to manage his/her financial affairs.

2. The Court does further **FIND AND ADJUDGE** _____to be a mentally incompetent person. It is **ORDERED** that this ruling be entered of record in this case and that a copy of same be furnished to the _____ County Board of Registrars pursuant to *Ala. Code § 17-4-4 (1975).*

3. _____ is hereby appointed as Conservator over the assets of said incapacitated person upon first filing bond in the sum of $_____.

4. Bond due on or before _____.

5. _____ is hereby appointed as Guardian over the person of said incapacitated person, with such powers and duties as set forth in § 26-2A-78, Code of Alabama, 1975, as last amended; and as set forth in the Letters of Guardianship as now issued.

6. _____ shall reside in _____ County and shall not leave the State of Alabama without prior written approval by the Court.

7. _____, the Guardian, shall provide the following written documents to the Court on or before the stated dates:

   a. Guardian Care Plan - due _____
   b. Annual Status Report of Guardian - due _____

   Forms to use in making these reports are provided with this Order.

8. Costs, including a GAL fee and a Court Representative fee are taxed against said estate.

ORDERED AND DECREED

_____
Judge of Probate

C: Counsel of record

EXPENSE VOUCHER FOR COURT REPRESENTATIVE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF

_____ : **Case No.** _____

_____ : **Date:** _____

EXPENSE VOUCHER FOR COURT REPRESENTATIVE

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

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

TOTAL NUMBER OF HOURS _____

Court Representatives hourly rate is $125.00

MISCELLANEOUS EXPENSES: $_____
Reason:_____
_____
_____

TOTAL DUE _____

I do hereby state that the above is true and correct and that I served in the capacity as Court Representative, pursuant to appointment made by the Probate Court of _____ County, Alabama.

_____
(Signature)

_____
(Print Name)

NOTE: (1) If your time exceeds 4.0 hours or if you anticipate an objection to your fee request, attach an itemization of the time expended with a description of the service rendered. You should not Alump@ 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.

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

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF

_____ : **Case No.** _____

_____ : **Date:** _____

EXPENSE VOUCHER FOR GUARDIAN AD LITEM
ADMINISTRATOR AD LITEM OR SPECIAL ATTORNEY

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

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

TOTAL NUMBER OF HOURS _____

CUSTOMARY HOURLY RATE YOU RECEIVE FROM OTHER CLIENTS FOR SIMILAR SERVICES: $_____
(If no rate is specified a $125.00 hourly rate will be utilized)

MISCELLANEOUS EXPENSES: $_____
Reason:_____
_____
_____

TOTAL DUE _____

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 or ___ Special Attorney , pursuant to appointment made by the Probate Court of _____ County, Alabama.

Date:_____

_____
(Signature)

_____
(Print Name)

NOTE: (1) If your time exceeds 3.0 hours or if you anticipate an objection to your fee request, attach an itemization of the time expended with a description of the service rendered. You should not Alump@ 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.

NOTICE OF COURT RULING

STATE OF ALABAMA	:	**IN THE PROBATE COURT**
COUNTY OF _____	:	**DATE:_____**
	:	**NOTICE OF COURT RULING**

To: Counsel of Record

Re: The Estate of _____ (name), _____ (type);
Case No. _____

[redacted]

You are hereby advised of the following ruling(s) made by this Court relative to the above entitled estate:

1. Bond filed and approved on _____. Letters of Conservatorship issued to _____.

2. **Inventory due on or before _____ (date).**

3. **Partial settlement and accounting due _____.**

4. It is **ORDERED** that the Conservator shall not deposit with his/her legal counsel, and legal counsel shall not receive, any funds or other assets of this estate which exceed the total sum/value of $10,000 without prior approval of the Court. Any estate funds appropriately held by legal counsel shall be placed in an interest account unless said funds are to be disbursed within forty-five (45) days of receipt by legal counsel.

By:_____
Title

LETTERS OF CONSERVATORSHIP

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **Case No. _____**

LETTERS OF CONSERVATORSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Letters of Conservatorship over the Estate of _____ are hereby granted to _____ who _____ duly qualified and given bond as such Conservator _____ in accordance with law. Said Conservator _____ granted those powers and duties as set forth in Sections 26-2A-152 and 153, *Code of Alabama 1975*, **except for the Restrictions noted below**.

Restrictions:

(1) Conservator shall not distribute any monies or estate assets without prior Court approval.

(2) Conservator must immediately report to the Court the receipt of any monies or assets which were not reported in the initial inventory and/or are received while these Letters are in effect.

(3) Sales and/or leases of real or personal property may not be made by the said Conservator without first obtaining Court approval.

Witness my hand this _____ day of _____, 20___.

_____
_____, Judge of Probate

MOTION TO SELL PERSONAL PROPERTY

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
THE ESTATE OF	)	**CASE No. _____**
	)	
_____,	)	
an incapacitated person.	)	

MOTION TO SELL PERSONAL PROPERTY

COMES NOW, _____, as Conservator of the Estate of _____, an incapacitated person, and shows unto the Court as follows:

1. Conservator is the duly appointed and acting conservator of the Ward.
2. The Ward is approximately _____ years of age and presently resides at _____.
3. The Ward owns personal property located at his/her home place located at _____, Alabama.
4. Conservator has obtained an appraisal of the items in the home place from _____, a professional personal property appraiser. A true and correct copy of said appraisal report is attached hereto and marked as Exhibit "A" **OR** Conservator has attached the NADA [or the like] Report for the motor vehicle. A true and correct copy of said report is attached hereto and marked Exhibit "A" **OR** Conservator has attached a true and correct copy of the _____ Report, reflecting the value of the stocks/bonds as of the day of _____. A true and correct copy of said report is attached hereto and marked Exhibit "A" **OR** Conservator is unable to obtain an independent appraisal of the subject property because _____.
5. The estate has few assets and all of these assets need to be directed towards the Ward's care. Conservator does not believe it is in the best interest of the Estate to incur a recurring storage expense relative to the Ward's personal property.
6. The property needs to be sold for the following reason(s):

_____
_____.

7. That the Ward may keep some of the items in the home place and/or move them into the nursing home. A list of the items to be sold is attached hereto and marked Exhibit "B".

WHEREAS, Conservator petitions the Court to: (1) approve the sale of the various items of personal property for the highest and best offer; and (2) Conservator requests for such other, further and different relief to which Conservator may be entitled, the premises considered.

Dated:_____

_____
Conservator for _____
an incapacitated person.

OF COUNSEL:

_____
_____

STATE OF ALABAMA)
COUNTY OF _____)

Before me, the undersigned authority in and for said State and County, personally appeared _____, who, known to me to be the Conservator for the Estate of _____, an incapacitated person, and having first been duly sworn, did depose and say that he signed the foregoing pleading and that he is informed and believes, and upon such information and belief avers, that the matters and facts stated therein are true and correct.

Sworn to and subscribed before me on this ___ day of _____, 20___.

_____
NOTARY PUBLIC
My commission expires:_____

(AFFIX NOTARIAL SEAL)

ORDER FILING PETITION AND APPOINTING GUARDIAN AD LITEM

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

In the Matter of the Conservatorship of:

Re:

_____ Case No. _____
Incapacitated

ORDER FILING PETITION AND APPOINTING GUARDIAN AD LITEM

This day came _____ and filed a petition for _____ with the Court. It is **ORDERED** that same be filed and made a matter of record.

It is further **ORDERED** that _____, Esq. be and is hereby appointed Guardian ad Litem for the above named protected person/ward to review the pleading, the necessity for such action, confer with counsel and petitioner relative to the referenced petition and the circumstances concerning same.

It is further **ORDERED** that said Guardian ad Litem file a written report with the Court as soon as possible and no later than _____.

It is further **ORDERED** that a certified copy of the petition and this order be forwarded to the United States Veterans Administration for their record and response, if any.

Done this ____ day of _____, 20___.

_____

REPORT OF GUARDIAN AD LITEM

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

In the Matter of the Conservatorship of:

_____ Case No. _____
protected person/ward

Report of Guardian ad Litem:

I, the undersigned, acting as Guardian ad Litem for the above named protected person/ward, have reviewed the petition by the Conservator as filed with the Court and dated _____. I have further discussed said request with counsel of record and the petitioner and do hereby render my report, **which is attached hereto**.

Further, and in conclusion, please be advised that:

G In interpose no objection as to such petition and find no reason for the Court to delay in considering and issuing its ruling on the same.

G I am unable to have questions concerning the said petition resolved to my satisfaction and do hereby request that a formal hearing be conducted to address such matters.

Please be advised that I have expended _____ hours and _____ minutes in performing my duties in this matter.

Signed this _____ day of _____, 20___.

_____
Signature of Guardian ad Litem

File original with the Court and mail a copy to the Attorney of Record

PETITION FOR APPOINTMENT OF GUARDIAN

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
THE ESTATE OF	)	**CASE NUMBER _____**
_____,	)	
Alleged Incapacitated Person	)	

PETITION FOR APPOINTMENT OF GUARDIAN

COMES NOW, your Petitioner, _____, who, under oath, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act, namely Title 26, Chapter 2A, Ala. Code (1975), respectfully represents as follows:

1. _____, is a person of _____ gender presently _____ years of age, having been born on _____.

2. Said person is temporarily a resident at _____. The permanent residence address of said person is _____ _____.

3. Petitioner, whose address is _____, has the following interest in this proceeding, namely, Petitioner is the _____ of said alleged incapacitated person.

4. Said _____ is incapacitated by reason of _____. A copy of the medical report by Dr. _____ confirming the same is attached hereto as Exhibit "A".

5. A guardianship proceeding for said alleged incapacitated person should be established for the following reasons:

(a) _____ suffers from _____ and is unable to manage [his or her] personal living affairs.

(b) Said person is incapacitated and is unable to make his own medical decisions.

6. The following person(s) are to be notified of these proceedings pursuant to Ala. Code §§ 26-2A-75, 103, 134 (1975):

WHEREFORE, your Petitioner prays that this Court will appoint Petitioner as Guardian of _____, and your Petitioner prays for such other, further and different relief as may be appropriate.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

Before me, the undersigned authority in and for said state and county, personally appeared _____, who, known to me, and having first been duly sworn, did depose and say that ___ he signed the foregoing petition and that ___ he is informed and believes, and upon such information and belief avers, that the matters and facts contained therein are true and correct.

_____
Petitioner

Sworn to and subscribed before me on this ___ day of _____, 20___.

_____
NOTARY PUBLIC

My Commission Expires:_____

_____
Attorney for Petitioner

OF COUNSEL:

_____
_____
_____

PETITIONER'S NOTICE OF HEARING

PETITIONER'S NOTICE OF HEARING IN THE
PROBATE COURT OF _____ COUNTY, ALABAMA
UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

In re: The Estate of _____: Case No. _____

TO:

Please take notice that a petition/motion for _____ _____ has been filed in said Court by the Petitioner(s) named below and that the ____ day of _____, 20___ at _____ has been set for hearing on the same in the Probate Court of _____ County,_____(address) , _____, Alabama.

Attorney for Petitioner:
_____
_____
_____

Petitioner:
_____
_____
_____

ATTORNEY'S CERTIFICATE OF SERVICE

I, the undersigned, as attorney of record for said Petitioner(s), do certify that I have this date forwarded a copy of this notice with pleading attached to the party named herein by **[ ] CERTIFIED MAIL** or **[ ] REGISTERED MAIL**, properly addressed with the sufficient postage affixed. (*Proof of service on certified or registered mail (green card) shall be attached when submitting same to the Probate Court*).

_____
Signature of Attorney

Date:_____

CERTIFICATE OF SERVICE - PERSONAL SERVICE

I, the undersigned, do hereby certify that on the date noted below, I served a copy of this notice with pleading attached on _____.

Date:_____

_____
(Signature of duly appointed process server)

_____
(Print name)

_____
(Address)

ORDER APPOINTING GUARDIAN

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **CASE No. _____**

_____ : **DATE:_____**

ORDER

This cause came before the Court on _____, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. _____ is hereby found to be incapacitated.

2. The Court does further **FIND AND ADJUDGE** _____to be a mentally incompetent person. It is **ORDERED** that this ruling be entered of record in this case and that a copy of same be furnished to the _____ County Board of Registrars pursuant to *Ala. Code § 17-4-4 (1975).*

3. _____ is hereby appointed as Guardian over the person of said ward and as set forth in the Letters of Guardianship as now issued.

4. _____, the Guardian, shall provide the following written documents to the Court on or before the stated dates:

   a. Guardian Care Plan - due _____
   b. Annual Status Report of Guardian - due _____

   Forms to use in making these reports are provided with this Order.

5. Costs, including a GAL fee and a Court Representative fee are taxed against said estate.

ORDERED AND DECREED

_____
Judge of Probate

C: Counsel of record

LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

LETTERS OF GUARDIANSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Pursuant to Court appointment, Letters of Guardianship over the person of _____ are hereby granted to _____.

Further, it is **ORDERED** that all individuals, institutions, educational facilities, medical care providers, and others having information about the ward shall release same to the above Guardian upon presentation of a photocopy of this order without specific authorization otherwise.

Witness my hand this _____ day of _____, 201__.

_____
_____, Judge of Probate

NOTICE TO GUARDIAN: Should circumstances relating to your ward's health, safety, welfare or living conditions change, you are required to the court in writing within 30 days, providing details of such changes. Mail any such report to the Court at _____.

GUARDIAN CARE PLAN

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)

THE ESTATE OF) CASE NO. _____

_____,)
an incapacitated person.

GUARDIAN CARE PLAN

Introduction

A Guardian is responsible for the Ward's personal needs, such as food, shelter, medical care, transportation, social services, education and/or rehabilitation. He or she has the responsibility to ensure that the appropriate services are provided. Appropriate services may vary based on a number of factors, including, but not limited to age and health. It is essential that the Guardian gather all pertinent information about the Ward, so an accurate and complete Care Plan can be developed on behalf of the Ward.

1. Guardian's place of residence, telephone number and cellular telephone number are:_____.

2. Ward's age, current place of residence and telephone number are: _____.

A. If Ward does not reside in an institutional-type facility, does Ward own ____ or rent _____ place of residence?

B. Does Ward live alone? Yes _____ No _____
Resides with: Relative _____ Caregiver _____
Provide Name_____.

3. Needs and Functional Assessments.

A. Is Ward able to function in activities of daily living such as feeding, bathing, administration of medication, toileting, dressing, ambulation and grooming? Yes___ No____
If no, explain:_____
_____

B. Is Ward able to perform activities of daily living such as personal banking, laundry, housekeeping, shopping, arranging transportation, and coordination of medical care?
Yes ____ No ____
If no, explain:_____
_____

C. Does Ward have any behavioral problems? Yes _____ No ____
If yes, explain:_____
_____

D. Does the Ward's current placement provide a safe environment? Yes ____ No _____
If no, explain:_____
_____

4. Guardians have an on-going responsibility for the health and well-being of the Ward and should stay informed about the Ward's status and needs in order to make informed decisions that are in the best interest of the Ward. The Guardian should regularly talk with and listen carefully to the Ward.

A. Medical -- Please mark as items are completed.

1. ____ Compile complete list of all medical providers.
2. ____ Provide all medical providers with copy of Letters of Guardianship.
3. ____ Compile complete list of all medications taken by Ward.
4. ____ Confirm medical insurance coverage.
5. ____ Set up procedure for medical insurance claims.
6. ____ Establish emergency preparedness procedure.

B. Have appropriate steps been taken for Ward's food and nutritional needs?

Yes _____, explain:_____
_____.
No _____, explain:_____
_____.

5. Summarize Ward's Care Plan.

_____
_____
_____
_____
_____.

6. Review Care Plan. 90 days ___ 6 months___ 9 months___

PERJURY STATEMENT

I swear (or affirm), under penalty of perjury, that the information contained in the aforesaid report is true and correct, to the best of my information, knowledge, and belief.

DATED:_____, 20___.

_____
Signature

Printed Name:_____

Guardian for:_____

REMINDER: The Guardian must notify the Court immediately if the aforesaid contact information for the Guardian or Ward changes.

ANNUAL STATUS REPORT OF GUARDIAN

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)

THE ESTATE OF) **CASE NO. _____**

_____,)
an incapacitated Person.

ANNUAL STATUS REPORT OF GUARDIAN

☐ Guardian's place of residence, telephone number and cellular telephone number are:_____
_____.

☐ The Ward remains in need of protective services, in that the Ward continued to be physically and/or mentally incapable of protecting himself/herself and has no one able, willing and available to assume responsibility or care.

☐ This case is due **to be dismissed**, in that:

- ☐ The Ward is no longer in need of protective services, because the individual=s physical and/or mental condition has improved to the extent that the individual is capable of protecting himself/herself.
- ☐ The Ward is receiving the necessary protection from an individual such as a relative who is available, willing and able to provide protection and care.
- ☐ The whereabouts of the Ward is unknown.
- ☐ The Ward is deceased.

☐ The **current residence, telephone number and cellular telephone number** of Ward are:_____
_____.

☐ The **placement** of the Ward:

- ☐ is stable.
- ☐ is in need of change/has been changed to a more/less restricted environment because:_____
_____.

☐ The **physical condition** of the Ward:

☐ is essentially the same.

☐ has changed, in that: _____
_____.

☐ The **mental condition** of the Ward:

☐ is essentially the same.

☐ has changed, in that:_____
_____.

☐ This case should be set for **review**, in that:_____
_____.

PERJURY STATEMENT

I swear (or affirm), under penalty of perjury, that the information contained in the aforesaid report is true and correct, to the best of my information, knowledge and belief.

DATED: _____, 20___.

_____
Signature
Printed Name:_____
Guardian for:_____

REMINDER: The Guardian must notify the Court immediately if the aforesaid contact information for the Guardian or Ward changes.

COURT RULING FINAL GUARDIAN CARE PLAN AND ANNUAL GUARDIAN REPORT AND SETTING NEXT DATE DUE

STATE OF ALABAMA : **IN THE PROBATE COURT**

COUNTY OF _____ : **DATE:_____**

: **NOTICE OF COURT RULING**

To: Counsel of Record

Re: The Estate of _____ (name), _____ (type);
Case No. _____

You are hereby advised of the following ruling(s) made by this Court relative to the above entitled estate:

1. Guardian Care Plan filed.

2. Guardian Annual Report filed.

3. Next Guardian Annual report due _____ (date).

By:_____
Title

ORDER APPOINTING TEMPORARY GUARDIAN

STATE OF ALABAMA : **PROBATE COURT OF SAID COUNTY**

_____ COUNTY :

_____ : **CASE NO. _____**

Minor

ORDER APPOINTING TEMPORARY GUARDIAN

This cause came on to be heard this date on the petition for a temporary Guardian over the above named minor as filed by _____, pursuant to the Alabama Uniform Guardianship and Protective Proceedings Act (Act No. 87-590); and

Now comes the said petitioner by and through counsel, _____, Esq., and also comes the said minor by and through counsel, _____, Esq. the duly appointed Guardian ad Litem in this proceeding; and

Upon due consideration of the testimony and evidence this day adduced, the Court finds that a basis for a Temporary Guardian over said minor has been established.

It is therefore, **ORDERED, ADJUDGED AND DECREED** by the Court that _____ be and is hereby appointed Temporary Guardian over _____, a minor pursuant to § 26-2A-73(b), *Code of Alabama, 1975*, as last amended, for a period not to exceed six (6) months and that said Temporary Guardian shall have all the powers and duties conferred under the above referenced Act.

It is further **ORDERED** by the Court that the costs of this proceeding, including a Guardian ad Litem fee of $_____, be taxed against said petitioner, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

_____

_____, Judge of Probate

TEMPORARY LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

TEMPORARY LETTERS OF GUARDIANSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Pursuant to Court appointment, Temporary Letters of Guardianship over the person of _____are hereby granted to _____ for a period not to exceed six months from this date.

Further, it is **ORDERED** that all individuals, medical care providers, institutions, educational facilities, and others having information about _____ shall release same to the above named Temporary Guardian(s) upon presentation of a copy of this Order, without the specific authorization by the child's parent(s) or custodian(s);

It is further **ORDERED** that the parent(s), custodian(s), education officials, and others shall allow the above named Temporary Guardian(s) personal, written and telephonic access to _____, upon presentation of a copy of this Order, without the specific authorization by the child's parent(s) or custodian(s).

Witness my hand this ____ day of _____, 20___.

_____
_____, Judge of Probate

NOTICE TO GUARDIAN: Should circumstances relating to your ward's health, safety, welfare, or living conditions change, you are required to notify the Court in writing within 30 days, providing details of such changes. Mail any such report to the Court at _____.

ORDER APPOINTING GUARDIAN

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF) **CASE NO._____**

_____) **DATE:_____**

In Re: _____

ORDER

This cause came before the Court on _____, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. _____ is hereby found to be a minor who is in need of guardian.

2. _____ is hereby appointed as Guardian over the person of said minor and as set forth in the Letters of Guardianship as now issued.

3. Costs, including a GAL fee, are taxed against the petitioner.

ORDERED AND DECREED

_____

_____, Judge of Probate

C: Counsel of Record

LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

LETTERS OF GUARDIANSHIP
(Alabama Uniform Guardianship and Protective Proceedings Act)

Pursuant to _____ appointment, Letters of Guardianship over the person of _____ are hereby granted to _____.

Further, it is **ORDERED** that all individuals, medical care providers, institutions, educational facilities, and others having information about _____ shall release the same to the above named Guardian(s) upon presentation of a copy of this Order, without the specific authorization by the child's parent(s) or custodian(s).

It is further **ORDERED** that the parent(s), custodian(s), education officials, and others shall allow the above named Guardian(s) personal, written and telephonic access to _____, upon presentation of a copy of this Order, without the specific authorization by the child's parent(s) or custodian(s).

Witness my hand this ____ day of _____, 20___.

_____
_____, Judge of Probate

NOTICE TO GUARDIAN: Should circumstances relating to your ward's health, safety, welfare, or living conditions change, you are required to notify the Court in writing within 30 days, providing details of such changes. Mail any such report to the Court at _____.

ORDER ON GUARDIANSHIP OF MINOR PURSUANT TO PARENTAL APPOINTMENT

STATE OF ALABAMA) **PROBATE COURT OF SAID COUNTY**

_____ COUNTY)

) **CASE NO. _____**

ORDER ON GUARDIANSHIP OVER MINOR
PERSON PURSUANT TO PARENTAL APPOINTMENT

This day came _____ and filed _____ acceptance to be appointed Guardian over _____, a minor along with proof of notice as to _____ intentions to become Guardian pursuant to § 26-2A-71.

It now appears that the Court has jurisdiction; that venue is proper; that said appointment of _____ as Guardian over _____ was made by _____; that notice of intention to become Guardian has been given to the minor and to such other parties as required by law; that the appointment made has become effective this date by the filing of said acceptance and proof; and that Letters of Guardianship should therefore issue.

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the acceptance of _____ to become Guardian over _____ in accordance with § 26-2A-71 along with the proof of notice be filed and made a matter of record; and that Letters of Guardianship over _____ do forthwith issue to _____.

It is further **ORDERED** by the Court that _____ pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

_____
_____, Judge of Probate

ORDER APPOINTING CONSERVATOR OF MINOR UPON FILING BOND

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF) **CASE NO. _____**

_____) **DATE:_____**

In Re: _____

ORDER

This cause came before the Court on _____, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Under due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. _____ is hereby found to be a minor whose financial affairs are in need of management.

2. _____ is hereby appointed as Conservator over the assets of said minor upon first filing bond in the sum of $_____.

3. Costs, including a GAL fee of $_____ are taxed against said estate.

ORDERED AND DECREED

_____

_____, Judge of Probate

C: Counsel of Record

PETITION FOR LETTERS OF GUARDIANSHIP

PETITION FOR LETTERS OF GUARDIANSHIP

THE STATE OF ALABAMA **PROBATE COURT**

_____ COUNTY **_____, 20__**

To the Honorable _____, Judge of Probate

The undersigned, _____, your Petitioner, respectfully petitions the court pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT and represents unto your Honor:

That _____ is a minor, aged ___ years who was born on the ____ day of _____, ____.

That the minor child [resides in this county] [is present in the county at the commencement of these proceedings].

That [all parental rights over the minor have been terminated by prior order of the court in civil action _____ in the ____ Court of _____ County, Alabama]; [the minor's parents are deceased]; [he parental nominee _____ has failed to accept appointment]; [the minor's legal guardian does not reside in this State], now prays Your Honor that _____ be appointed Guardian of said minor _____.

_____
Petitioner

THE STATE OF ALABAMA _____, COUNTY

_____ being duly sworn, deposes and says that the facts averred in the above petition are true according to the best of _____ knowledge, information and belief.

_____
Petitioner

SWORN to and subscribed before me, this ___ day of _____, 20__.

_____
Judge of Probate

PETITION FOR LETTERS OF GUARDIANSHIP (ALTERNATIVE)

PETITION FOR LETTERS OF GUARDIANSHIP
Alternative

STATE OF ALABAMA) PROBATE COURT

_____ COUNTY) _____ 20__

To the Honorable _____, Judge of Probate:

The undersigned, _____, your Petitioner, respectfully petitions the court pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT and represents unto your Honor:

That _____ is a [minor][incapacitated person], aged ____ years who as born on the ____ day of _____, 20__.

That the [minor child][incapacitated person][resides in this county] [is present in the county at the commencement of these proceedings].

[That the petitioner has been appointed in writing by _____ in their _____, a copy of which is attached.]

[The petitioner is the (spouse, adult child, parent, relative with whom person has resided prior 6 months].

That [all parental rights over the minor have been terminated by prior order of the court in civil action _____ in the _____ Court of _____ County, Alabama]; [the minor's parents are deceased]; [the nominee _____ has failed to accept appointment]; [the legal guardian does not reside in this State],

Now prays Your Honor that _____ be appointed Guardian of said [minor][incapacitated person] _____.

_____
Petitioner

THE STATE OF ALABAMA _____ COUNTY.

_____ being duly sworn, deposes and says that the facts averred in the above petition are true according to the best of _____ knowledge, information and belief.

_____
Petitioner

Sworn to and subscribed before me, this _____ day of _____, 20___.

_____
Judge of Probate

MINOR'S NOMINATION FOR GUARDIANSHIP

MINOR'S NOMINATION FOR GUARDIANSHIP

THE STATE OF ALABAMA **PROBATE COURT**

_____ COUNTY **_____ 20____**

KNOW ALL MEN BY THESE PRESENTS, That I, _____, a minor over the age of fourteen years, born on the _____ day of _____, _____, do hereby nominate _____ as my Guardian.

I hereby respectfully request that the Probate Judge of _____ County, Alabama, make all such Orders and Decrees as may be necessary or proper to legally effectuate my guardianship.

Given under my hand this _____ day of _____, 20____.

_____
A minor, over the age of 14 years

STATE OF ALABAMA

_____ COUNTY

I, _____, a Notary Public in and for the State of Alabama [at Large], do hereby certify that _____, a minor over the age of fourteen years, whose name is signed to the foregoing nomination for guardianship, and who is know to me, acknowledged before me on this day that being informed of the contents of said consent, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____, 20___.

_____
Notary Public
My Commission Expires:
_____

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

ACCEPTANCE OF APPOINTMENT AS GUARDIAN

STATE OF ALABAMA) **PROBATE COURT**

_____ COUNTY) **_____, 20___**

TO THE HONORABLE _____, JUDGE OF PROBATE

The undersigned, _____, your petitioner, respectfully petitions the Court pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT for Letters of Guardianship over _____, a [minor] [incapacitated person], of the age of _____ years, in accordance with that certain [parental] [spousal] appointment, a copy of which is attached hereto.

Your petitioner further represents to the Court that said appointment was made by [list the circumstances and by what type instrument, will, etc., § 26-2A-71 and § 26-2A-100]; that the [residence or whereabouts] of said [minor] [incapacitated person] is _____; that the name and address of the person having the care of the [minor] [incapacitated person] or [in case of incapacitated person, the nearest adult relative residing in this state] is _____; [and if appointment is for an incapacitated person] that at least seven (7) days notice of intention to accept said appointment has been given according to law; proof of same being submitted with this instrument.

WHEREFORE your petitioner prays that the Court will take jurisdiction over this matter, file this acceptance and issue Letters of Guardianship to your petitioner over _____, a [minor] [incapacitated person]. Your petitioner prays for such other and different relief to which he/she may be entitled, the premises considered.

_____
Petitioner

STATE OF ALABAMA
_____ COUNTY

_____ being duly sworn, deposes and says that the facts averred in the above acceptance and petition, are true according to the best interest of _____ knowledge, information and belief.

_____
Petitioner

Sworn to and subscribed before me this ____ day of _____, 20____.

_____
Notary Public/Judge of Probate

PETITIONER'S NOTICE OF HEARING

PETITIONER'S NOTICE OF HEARING

THE STATE OF ALABAMA **PROBATE COURT**
_____COUNTY **_____, 20___**

In re Guardianship of _____; **Case No. _____**

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA
UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

TO HONORABLE _____, Judge of Probate

Please take notice that petitioner, _____, has filed a petition for Guardianship in said Court over, _____, a [minor] [incapacitated person] and that the ____ day of _____, 20 _____ at _____ has been set for a hearing on the same in the Probate Court of _____ County, _____, Alabama.

Done this ____ day of _____, 20 ___.

Attorney for Petitioner: Petitioner:

_____ _____

[ ] Copy of petition, motion, etc. is attached.

Service has been obtained by:

[ ] ATTORNEY'S CERTIFICATE OF SERVICE
(first class mail only)

I the undersigned as attorney of record for said petitioner, have this date forwarded a copy of this notice with pleading attached to the party named herein by first class mail, properly addressed with the sufficient postage affixed.

_____
(Signature of Attorney)

Date:_____

[ ] CERTIFICATE OF SERVICE - PERSONAL SERVICE

I the undersigned do hereby certify that on the date noted below I served a copy of this notice with pleading attached on _____.

_____
(Signature of server)

_____
(Print name)

_____
(Address)

[ ] CERTIFIED MAIL SERVICE

[ ] Service of this notice is being effected by Certified Mail in accordance with applicable law permitting the same.

_____
Signature of Attorney

GUARDIANSHIP OF A MINOR – ORDER FILING PETITION, SETTING DATE FOR HEARING & APPOINTING GUARDIAN AD LITEM

GUARDIANSHIP OF A MINOR
ORDER FILING PETITION, SETTING DATE FOR HEARING,
APPOINTING GUARDIAN AD LITEM

THE STATE OF ALABAMA **PROBATE COURT**

_____ County **_____, 20___**

This day came _____ and filed with the Court a petition to be appointed Guardian over the estate of _____. It is ORDERED by the Court that said petition be filed and set for hearing on the _____ day of _____, 20____ at _____ (a.m.) (p.m.).

It is further ORDERED by the Court that _____ a person learned in the law and practicing at the _____ Bar be and is hereby appointed as Guardian ad Litem to represent and protect the interest of the said _____ in this proceeding.

It is further ORDERED by the Court that the petitioner cause timely notice of these proceedings to issue to the appropriate parties pursuant to _____, (and in addition, to _____) and provide the Court with proof of same on or before the date of said hearing as heretofore set.

_____
Judge of Probate

A. Petitions for protective proceedings, or other relief, etc. shall be set with written order and will include the appointment of a Guardian Ad Litem as instructed.

ORDER GRANTING PETITION FOR GUARDIANSHIP

ORDER GRANTING PETITION FOR GUARDIANSHIP

THE STATE OF ALABAMA **PROBATE COURT**

_____COUNTY **_____, 20___**

This cause came on to be heard this date for the appointment of a Guardian over _____ on the petition _____ pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT; it now appears to the Court that venue and jurisdiction are proper; and that notice of the proceedings has been given to those entitled and proof of same filed; [and that the Equity powers of the Court have been invoked]; and

Now comes the said petition by and through (his/her) attorney, _____, Esq.; and also comes the said _____ by and through (his/her) Guardian al Litem, _____, Esq.; and [the Court notes for the record the presence of (name, etc.) at this hearing] OR [the Court notes for the record that (name, etc.) is not present at this hearing and finds that said person's absence is in his/her best interest]; and

Upon due consideration of the evidence adduced in this matter, the Court does find that a basis for the appointment of a Guardian has been established, that the best interest of the [minor] [incapacitated person] will be served by the following relief, and

It is therefore ORDERED, ADJUDGED AND DECREED by the Court, that the petition for the appointment of a Guardian of _____ is hereby granted; and that _____ be and is hereby appointed Guardian of _____.

It is further ORDERED by the Court that said Guardian shall have all the powers and duties conferred under Ala. Code § 26-2A-78, the above referenced act, [except the following:

(specify limitations)]

[It is further ordered by the court that the said Guardian in addition to the general powers of a Guardian herein granted, the Guardian is specially authorized the following powers and duties:

(specify additional powers)]

It is further ORDERED by the Court that the aforesaid limitations or additional powers be properly endorsed upon the face of the letters of guardianship when issued.

It is further ORDERED by the Court that said Guardian shall file written reports annually with the Court on the Condition of the ward and of the ward's estate that has been subject to the said Guardian's control, the first of which reports shall be due on the ____ day of _____,

20_____.

It is further ORDERED by the Court that the costs of this proceeding, including a Guardian ad Litem fee of $_____; be taxed against the estate of _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

_____

_____, Judge of Probate

ORDER ON GUARDIANSHIP OVER MINOR PURSUANT TO PARENTAL APPOINTMENT

STATE OF ALABAMA)
PROBATE COURT OF SAID COUNTY

_____ COUNTY)

)
CASE NO. _____

ORDER ON GUARDIANSHIP OVER MINOR PERSON PURSUANT TO PARENTAL APPOINTMENT

This day came _____ and filed _____ acceptance to be appointed Guardian over _____, a minor along with proof of notice as to _____ intentions to become Guardian pursuant to § 26-2A-71.

It now appears that the Court has jurisdiction; that venue is proper; that said appointment of _____ as Guardian over _____ was made by _____; that notice of intention to become Guardian has been given to the minor and to such other parties as required by law; that the appointment made has become effective this day by the filing of said acceptance and proof; and that Letters of Guardianship should therefore issue.

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the acceptance of _____ to become Guardian over _____ in accordance with § 26-2A-71 along with the proof of notice be filed and made a matter of record; and that Letters of Guardianship over _____ do forthwith issue to _____.

It is further **ORDERED** by the Court that _____ pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

_____
_____, Judge of Probate

PETITION FOR LETTERS OF CONSERVATORSHIP

PETITION FOR LETTERS OF CONSERVATORSHIP

THE STATE OF ALABAMA **PROBATE COURT**
_____ COUNTY _____ 20___

To the Honorable:_____, Judge of Probate:

The undersigned, _____, your Petitioner, respectfully petitions the court pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT and represents unto your Honor:

That _____ is a [minor][incapacitated person], aged _____ years who was born on the ____ day of _____, 20__.

That the [minor child][incapacitated person][resides in this county at the following address _____][is present in the county at the commencement of these proceedings].

That the petitioner is the [parent] [legal guardian][spouse][child] [relative with whom person has resided prior 6 months] of the said minor.

That the petitioner has been appointed in writing by _____ in their _____, a copy of which is attached.

That all parental rights over the minor have been terminated by prior order of the court in civil action _____ in the _____ Court of _____ County, Alabama; [the minor's parents are deceased]; [the nominee _____ has failed to accept appointment]; [the legal conservator does not reside in this State].

That the following persons are to be notified of these proceedings pursuant to Ala. Code § 26-2A-103 [list names and addresses].

That the estate of the person for whom these proceedings are brought consist primarily of [general listing of assets including possible source of income] with an estimated value of [$_____].

[That bond having been relieved by _____].

Now prays Your Honor that _____ may be appointed Conservator of the estate of aid [minor][incapacitated person] _____.

_____
Petitioner

_____
Address

THE STATE OF ALABAMA _____ COUNTY.

_____ being duly sworn, deposes and says that the facts averred in the above petition are true according to the best of _____ knowledge, information and belief.

_____
Petitioner

Sworn to and subscribed before me, this _____ day of _____, 20___.

_____
Judge of Probate

CONSERVATOR OF AN INCAPACITATED PERSON – ORDER FILING PETITION, SETTING DATE FOR HEARING, APPOINTING GUARDIAN AD LITEM, DOCTOR, AND COURT REPRESENTATIVE

CONSERVATOR OF AN INCAPACITATED PERSON
ORDER FILING PETITION, SETTING DATE FOR HEARING, APPOINTING GUARDIAN AD LITEM, DOCTOR AND COURT REPRESENTATIVE

THE STATE OF ALABAMA **PROBATE COURT**

_____ County **_____, 20____**

This day came _____ and filed with the Court a petition to be appointed Conservator over the estate of _____. It is ORDERED by the Court that said petition be filed and set for hearing on the _____ day of _____, 20____ at _____ (a.m.) (p.m.).

It is further ORDERED by the Court that _____ a person learned in the law and practicing at the _____ Bar be and is hereby appointed as Guardian ad Litem to represent and protect the interest of the said _____ in this proceeding.

It is further ORDERED by the Court that _____ be appointed to make a medical evaluation of the said _____ and render a report as to such evaluation and that _____ be appointed as an official court representative and render a report as appropriate, both appointments being made pursuant to Ala. Code § 26-2A-1 et seq.

It is further ORDERED by the Court that the petitioner cause timely notice of these proceedings to issue to the appropriate parties pursuant to _____, (and in addition, to _____) and provide the Court with proof of same on or before the date of said hearing as heretofore set.

_____
Judge of Probate

A. Petitions for protective proceedings, or other relief, etc. shall be set with written order and will include the appointment of a Guardian Ad Litem as instructed.

B. Pursuant to Sec. _____, a surety shall receive notice of all proceedings under conservatorships unless the same is waived by said surety.

ORDER FILING BOND, ISSUING LETTERS OF CONSERVATORSHIP AND REQUIRING INVENTORY TO BE FILED

ORDER FILING BOND, ISSUING LETTERS OF CONSERVATORSHIP AND REQUIRING INVENTORY TO BE FILED

THE STATE OF ALABAMA **PROBATE COURT**

_____ Country **_____, 20____**

This day came _____ and filed bond in the sum of $_____; and it now appears that bond is in the amount prescribed by the Court with good and sufficient surety, which bond has been taken and approved by the Judge of this Court; and upon due consideration:

It is ORDERED by the Court that Letters of Conservatorship over the Estate of _____ is hereby issued to _____ with the following limitations or additions endorsed thereon, viz:

It is further ORDERED by the Court that said Conservator file a complete inventory in writing and under oath of the estate subject to the conservatorship on or before _____.

_____

_____, Judge of Probate

CONSERVATOR'S BOND

CONSERVATOR'S BOND

THE STATE OF ALABAMA **PROBATE COURT**

_____ COUNTY **_____ 20__**

Know all Men by these Presents, That we, _____ of the County and State aforesaid, are held and firmly bound unto _____ Judge of Probate of said County, and his successor in office, in the penal sum of _____ Dollars, for which payment, well and truly to be made and done, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this _____ day of _____, 20__.

The Condition of the Above Obligation is such, That whereas, the above bound _____ has been appointed Conservator of the estate of _____.

Now, if the said _____ shall well and truly perform all the duties which are or may be by law required of (him/her) as such Conservator, then the above obligation to be void; otherwise to remain in full force and effect and we and each of us, hereby waive all rights of claim of exemption as to personal property we or either of us have not or may hereafter, have, under the Constitution and Laws of Alabama, and we hereby severally certify that we have property free from all encumbrance, to the full amount of the bond.

_____(L.S.)

_____(L.S.)

_____(L.S.)

_____(L.S.)

Taken, approved, and ordered to be recorded, this ___ day of _____, 20__.

_____

Judge of Probate

ORDER ISSUING LETTERS OF CONSERVATORSHIP REQUIRING INVENTORY TO BE FILED, DIRECTING TRIENNIAL SETTLEMENT

ORDER ISSUING LETTERS OF CONSERVATORSHIP REQUIRING INVENTORY TO BE FILED, DIRECTING TRIENNIAL SETTLEMENT

This day came _____ and filed bond in the sum of $_____ and it now appears that said bond is in the amount prescribed by the Court with good and sufficient surety, which bond has been taken and approved by the Judge of this Court; and upon due consideration:

It is ORDERED by the Court that Letters of Conservatorship over the Estate of _____, do forthwith issue to _____ [with the following limitations endorsed thereon, viz:]

LIST LIMITATIONS, IF ANY

It is further ORDERED by the Court that said conservator file a complete inventory in writing and under oath of the estate subject to the conservatorship on or before (date - set on the closest Friday after the expiration of 90 days)

It is further ORDERED by the Court that said conservator file partial settlements of the administration of the conservatorship at least once every three years unless otherwise directed by the Court.

It is further ORDERED that said conservator appear before this Court on _____date and render a status report on the condition of the estate subject to the conservator's possession and control.

_____
Judge of Probate

MINOR AND INCAPACITATED PERSON (ESTATE)

LETTERS OF CONSERVATORSHIP

LETTERS OF CONSERVATORSHIP

THE STATE OF ALABAMA **PROBATE COURT**

_____ COUNTY **_____ 20___**

BE IT REMEMBERED, AND MADE KNOWN TO AL WHOM IT MAY CONCERN:

That on the application of The Conservator named below to my said Court I have caused these LETTERS OF CONSERVATORSHIP to issue in favor of the said _____, Conservator in and upon the Estate, real and personal property of, _____, a minor [protected person] and, in every case which occasion may require, the said Conservator is authorized and directed to exercise the following powers and duties:

[All powers and duties conferred under Ala. Code § 26-2A-152]

[List limitations to general powers and duties]

[List additional powers and duties granted]

as the lawful Conservator of the said minor ward.

Witness my hand and official seal this date _____, 20__.

_____
Judge of Probate
_____ County, Alabama

THE STATE OF ALABAMA

_____ COUNTY

I, _____, Judge of Probate, hereby certify that the foregoing is a true and correct copy of Letters of Conservatorship issued in favor of _____ as Conservator of _____ as same appears of record in my office.

Witness my hand and official seal this date _____, 20___.

_____
Judge of Probate
_____ County, Alabama

CONSERVATOR'S SETTLEMENT NOTICE

CONSERVATOR'S SETTLEMENT NOTICE

THE STATE OF ALABAMA **PROBATE COURT**

_____COUNTY **_____, 20____**

TO:_____

Notice is hereby given that on this, the _____ day of _____, 20____, came _____ as Conservator of the Estate of _____, and filed (his/her) petition, account, and vouchers, for _____ settlement of said Estate.

It is ordered that the _____ day of _____ , 20____, be, and the same hereby is, appointed as the day for the hearing of the said petition and for the auditing and stating of said account, at which time all persons interested may appear and contest the same, if they desire to do so.

Witness my hand this ____ day of _____, 20_____.

_____
_____ Judge of Probate

THE STATE OF ALABAMA

COUNTY OF _____

Service of the above notice is hereby accepted and service of the same by the sheriff, publication or otherwise is hereby waived.

This the _____ day of _____, 20____.

_____

PETITION FOR LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP

PETITION FOR LETTERS OF GUARDIANSHIP AND CONSERVATORSHIP

STATE OF ALABAMA)
_____COUNTY)

PROBATE COURT

_____, 20___.

To the Honorable _____, Judge of Probate.

The undersigned, _____, your Petitioner, respectfully petitions the court pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT and represents unto your Honor:

That _____ is an incapacitated person, aged _____ who was born on the _____ day of _____, 20___.

That the incapacitated person [resides in this county at the following address _____][is present in the county at the commencement of these proceedings].

The Petitioner is the [Legal Guardian][spouse][child][relative with whom person has resided prior six months] of the said incapacitated person.

That the Petitioner has been appointed in writing by _____ in their _____, a copy of which is attached.

That the following persons are to be notified of these proceedings pursuant to Ala. Code § 26-2A-103 [list names and addresses].

That the estate of the person for whom these proceedings are brought consist primarily of [general listing of assets including possible source of income] with an estimated value of [$_____].

[That bond having been relieved by _____].

Now prays Your Honor that _____ be appointed Guardian and Conservator of said incapacitated person.

_____
Petitioner

_____
Address

STATE OF ALABAMA)

_____ COUNTY)

_____ being duly sworn, deposes and says that the facts averred in the above petition are true according to the best of _____ knowledge, information and belief.

_____
Petitioner

Sworn to and subscribed before me, this ____ day of _____, 20__.

_____
_____Judge of Probate

MINOR'S NOMINATION FOR GUARDIANSHIP AND CONSERVATORSHIP

MINOR'S NOMINATION FOR GUARDIANSHIP AND CONSERVATORSHIP

THE STATE OF ALABAMA **PROBATE COURT**

_____ COUNTY **_____, 20___**

KNOW ALL MEN BY THESE PRESENTS, That I, _____, a minor over the age of fourteen years, born on the _____ day of _____, _____, do hereby nominate _____ as my Guardian and Conservator.

I hereby respectfully request that the Probate Judge of _____ County, Alabama, make all such Orders and Decrees as may be necessary or proper to legally effectuate my guardianship and conservatorship.

Given under my hand this _____ day of _____, 20____.

_____
A minor, over the age of 14 years

STATE OF ALABAMA

_____ COUNTY

I, _____, a Notary Public in and for the State of Alabama [at Large], do hereby certify that _____, a minor over the age of fourteen years, whose name is signed to the foregoing nomination for guardianship and conservatorship, and who is know to me, acknowledged before me on this day that being informed of the contents of said consent, he/she executed the same voluntarily on the day the same bears date.

Given under my hand and seal this ___ day of _____, 20____.

_____
Notary Public
My Commission Expires:
_____

ORDER FILING PETITION, SETTING DATE FOR HEARING, APPOINTING GUARDIAN AD LITEM

ORDER FILING PETITION, SETTING DATE FOR HEARING, APPOINTING GUARDIAN AD LITEM

THE STATE OF ALABAMA **PROBATE COURT**

_____ County **_____ 20__**

This day came _____ and filed with the Court a petition to be appointed Guardian and Conservator over the person and estate of _____. It is ORDERED by the Court that said petition be filed and set for hearing on the ___ day of _____, 20__ at _____(a.m.)(p.m.).

It is further ORDERED by the Court that _____ a person learned in the law and practicing at the _____ Bar be and is hereby appointed as Guardian ad Litem to represent and protect the interest of the said _____ in this proceeding.

It is further ORDERED by the Court that the petitioner cause timely notice of these proceedings to issue to the appropriate parties pursuant to _____, (and in addition, to _____) and provide the Court with proof of same on or before the date of said hearing as heretofore set.

_____
Judge of Probate

A. Petitions - for protective proceedings, or other relief, etc. shall be set with written order and will include the appointment of a Guardian Ad Litem as instructed.

B. A surety shall receive notice of all proceedings of conservatorships unless waived by the surety.

ORDER GRANTING PETITION FOR GUARDIANSHIP AND CONSERVATORSHIP UPON FILING BOND

ORDER GRANTING PETITION FOR GUARDIANSHIP AND CONSERVATORSHIP UPON FILING BOND

THE STATE OF ALABAMA **PROBATE COURT**
_____ COUNTY **_____, 20___**

This cause came on to be heard this date on the petition for the appointment of a Guardian and Conservator over the person and estate of _____ as filed by _____ pursuant to the ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT; it now appears to the Court that venue and jurisdiction are proper; and that notice of the proceedings has been given to those entitled and proof of same filed; [and that the Equity powers of the Court have been invoked; and

Now comes the said petition by and through (his/her) attorney _____, Esq.; and also comes the said _____ by and through (his/her) Guardian ad Litem, _____, Esq.; and [the Court notes for the record the presence of (name, etc.) at this hearing] OR [the Court notes for the record that (name, etc.) is not present at this hearing and finds that said person's absence is in his/her best interest]; and

Upon due consideration of the evidence adduced in this matter the Court does find that a basis for the appointment of a Guardian and Conservator has been established and that the best interest of the minor will be served by the following relief; and

It is therefore ORDERED, ADJUDGED AND DECREED by the Court, that the petition for the appointment of a Guardian and Conservator over the person and estate of _____ is hereby granted; and that _____ be and is hereby appointed Guardian and Conservator over said estate upon filing bond in the sum of $_____ with good and sufficient surety to be taken and approved by the Judge of this Court.

It is further ORDERED by the Court that said Guardian and Conservator shall have all the powers and duties conferred under Ala. Code § 26-2A-78 and § 26-2A-152 the above referenced act, [except the following : limitations, viz:

(specify limitations)]

[It is further ordered by the court that the said Guardian and Conservator in addition to the general powers of a Guardian and Conservator herein granted, the Guardian and Conservator are specially authorized the following powers and duties:

(specify additional powers)]

It is further **ORDERED** by the Court that the aforesaid limitations or additional powers be properly endorsed upon the face of the letters of conservatorship when issued.

It is further **ORDERED** by the Court that said Guardian and Conservator shall file written reports annually with the Court on the Condition of the ward and of the ward's estate that has been subject to the said Guardian's and Conservator's control, the first of which reports shall be due on the ___ day of _____, 20__.

It is further ORDERED by the Court that the costs of this proceeding, including a Guardian ad Litem fee of $_____, be taxed against the estate of _____, FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.

_____

_____, Judge of Probate

NON-HEARING ORDER ESTABLISHING BLOCKED ACCOUNT (NO PETITION – JUST MONEY AND LETTER OR CIRCUIT COURT ORDER)

STATE OF ALABAMA) **PROBATE COURT OF SAID COUNTY**

_____ COUNTY)

_____) **Case No. _____**

ORDER

This cause coming on to be heard this date on the petition for a single transaction to establish a blocked account as filed by _____, pursuant to the **ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT** (*Ala. Code* § 26-2A-137 (1975) Act No. 87-590); and it now appears that the Court has jurisdiction; that venue is proper; and that notice of the proceeding has been given to those entitled and proof of same filed; and

Upon due consideration of the evidence adduced in this matter, the Court finds that said petition should be granted.

It is therefore, **ORDERED, ADJUDGED AND DECREED** by the Court that said petition is granted and that a blocked account will be established upon payment of funds into this Court, said funds are to be paid into this Court within 90 days of the date of this order.

_____

_____, Judge of Probate

PETITION FOR A SINGLE TRANSACTION PROTECTIVE ARRANGEMENT FOR THE ESTABLISHMENT OF A BLOCK ACCOUNT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

In the Matter of :

_____, : Case No. _____
A minor.

PETITION FOR A SINGLE TRANSACTION PROTECTIVE ARRANGEMENT FOR THE ESTABLISHMENT OF A BLOCK ACCOUNT (§ 26-2A-137)

To: The Honorable Judge of Probate of _____ County:

Comes now _____, and petitions the Court to authorize and direct the establishment of a blocked account for the benefit of _____, a minor. Your petitioner would respectfully show unto the Court the following:

1. _____ is a minor, ____ years of age, born on _____ in _____ (Social Security Number_____) who resides at _____ in the custody of _____.

2. Your petitioner is the _____ of said minor and resides at _____.

3. Said minor has assets in the approximate sum of $_____ as a result of _____ (describe in detail the source of such assets and the person or entity which has control of same).

4. There has been no conservatorship or the like established for said minor in this state or any other state or jurisdiction. (If this is not the case, an explanation with details should be provided to the Court).

5. The assets referred to above are not required for the maintenance and support of said minor and the placement of such assets in a blocked interest account under a protective order of the Court would be proper and in the best interest of said minor.

WHEREFORE, your Petitioner prays that the court will take jurisdiction over this matter and the parties, conduct hearings as may be necessary and grant the relief sought by authorizing and directing the referenced assets be placed in a blocked interest account under a protective order. Your petitioner prays for such other, further and different relief as may be proper, the premises considered.

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF _____)

Before me, the undersigned Notary Public, personally appeared _____, who being by me first duly sworn, did depose and say that the statements contained in the foregoing petition are true and correct to the best of his/her knowledge, information and belief.

_____
Petitioner

SWORN TO AND SUBSCRIBED
before me this ___ day of
_____, 20___.

_____
NOTARY PUBLIC
My Commission Expires:_____

_____
Attorney for Petitioner

ORDER ESTABLISHING A BLOCKED ACCOUNT

STATE OF ALABAMA) **PROBATE COURT OF SAID COUNTY**

_____ COUNTY)

_____) **CASE NO. _____**

ORDER ESTABLISHING A BLOCKED ACCOUNT

Now comes _____ and files in this Court funds in the sum of _____ due the above named minor; and

For due cause, it is **ORDERED** that the Accounts Clerk of this court shall proceed to establish an interest bearing blocked account, at _____, into which such assets will be placed.

It is further **ORDERED** that said bank shall not permit the withdrawal of said funds without specific orders of the Court. Upon the said minor attaining the age of majority, she may petition the Court to terminate the "Blocked Account" and for distribution of such funds and interest accrued.

The Accounts Clerk of this Court is hereby **DIRECTED** to forward copies of all bank agreements executed and other information to counsel of record and place additional copies in the Court's file.

A status hearing is set for _____ on the distribution of said funds.

_____

_____, Judge of Probate

AFFIDAVIT TO TERMINATE BLOCKED ACCOUNT

STATE OF ALABAMA
AFFIDAVIT TO COURT TO
COUNTY OF _____
TERMINATE BLOCKED ACCOUNT

To: _____, Judge of Probate
_____ County, Alabama

Re: Request for payment of funds held by Court

Comes now the undersigned, after first being placed under oath, and states the following: [**please print**]:

1. My name is:_____
2. My address is:_____
   _____
3. My birth date is:_____
4. I am now: _____ years of age
5. My social security number is:_____
6. I understand that certain funds are on deposit with the Probate Court of _____ County which are now due to be paid to me, having now attained the age of majority. Request for such payment is hereby made to this Court.
7. For any questions, or discussions regarding this matter, Court personnel may contact me as follows: (please provide phone numbers and/or other addresseS):_____
   _____
   _____
8. Attached to this affidavit is a copy of my driver's license or military ID. (**Note**: The notary shall affix his/her seal to said copy and attach same to this affidavit for further identification).

Signed this ____ day of _____, 20___.

_____
Signature of party

STATE OF ALABAMA)

COUNTY OF _____)

Before me the undersigned notary public, in and for said county and state, appeared _____, who being known or made known to me, and after being first duly sworn, stated under oath that he/she read the foregoing statements in this affidavit and such are true and correct to the best of his/her knowledge and belief and that he/she executed the same on the date shown.

Done this ___ day of _____, 20___.

(Seal)

_____
Notary Public

Instructions, etc. ...

1. Attach a copy of your driver's license or birth certificate or military ID or a picture ID. The copy attached must bear the seal of the above notary public.

2. Mail this affidavit to: The Probate Court of _____ County
   _____
   _____

3. Receipt of your funds: If the Court approves this request for payment, your check will be mailed to you by certified mail to the address shown in the affidavit, which should be the same as that appearing on your driver's license or military ID. It will be restricted delivery and the receipt of same must be signed for by you.

4. Questions: If you, or the notary, have any questions, please call the Accounts Clerk at _____.

ORDER TERMINATING BLOCKED ACCOUNT AND RELEASING FUNDS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF) **CASE NO. _____**

_____)

ORDER TERMINATING BLOCKED ACCOUNT AND RELEASING FUNDS

This cause is before the Court on a Petition to Terminate Blocked Account filed by _____. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence presented, the Court **FINDS, CONCLUDES AND ORDERS** as follows:

1. Petition to Terminate Blocked Account is hereby **GRANTED**.

2. _____ is hereby directed to take the following action(s):

   A. Pay the principal and accumulated interest currently being held in a blocked account at _____ in the name of _____, to **PROBATE COURT OF _____ COUNTY**.

3. The Accounts Clerk of Probate Court is directed to take the following action from the funds received from _____.

   B. Pay the funds and interest received from _____ to _____.

4. Appeal time does not apply.

ORDERED AND DECREED

_____

_____, Judge of Probate

C: Counsel of record

ORDER TO EXPEND FUNDS FROM BLOCKED ACCOUNT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF) **CASE NO. _____**

_____)

ORDER TO EXPEND FUNDS FROM BLOCKED ACCOUNT

This cause is before the Court on _____, on the Petition filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court **FINDS, CONCLUDES AND ORDERS** as follows:

1. Petition to Expend Funds from blocked account is hereby **GRANTED**.

2. _____ is hereby directed to take the following action(s):

   A. From the principal and accumulated interest currently being held in a blocked account at _____ in the name of _____, pay the sum of $_____ to **PROBATE COURT OF _____ COUNTY**.

3. The Accounts Clerk of Probate Court is directed to take the following action from the funds received from _____.

   B. Pay costs of the Court in the sum of $_____.

   C. Pay the sum of $_____ to _____.

4. Appeal time does not apply.

ORDERED AND DECREED

_____

_____, Judge of Probate

C: Counsel of record

PETITION FOR PARTIAL SETTLEMENT - CONSERVATOR

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)

THE ESTATE OF) **CASE NO._____**

_____,)
a protected person.)

PETITION FOR PARTIAL SETTLEMENT

COMES NOW Petitioner, _____ ("Petitioner"), as Conservator of the Estate of _____, a protected person ("Ward"), and says as follows:

1. Petitioner is the duly appointed and acting conservator of the estate of the Ward.

2. Petitioner says that it is appropriate to make a partial settlement and accounting of the conservatorship for the period of his/her service, namely, _____, through _____. Petitioner attaches hereto as exhibit "A" an accounting, showing all receipts and disbursements made by him/her as Conservator and said disbursements are supported by vouchers, and Petitioner's accounting is verified by his/her affidavit. Petitioner has used no part of the Ward's estate for his/her own personal use and benefit.

3. In recapitulation, Petitioner has received funds totaling $____ and has made disbursements totaling $_____ leaving a balance on hand of $_____ as of _____, 20___, represented by checking account balance of $_____ and certificates of deposit totaling $_____. A bank certificate is attached hereto as Exhibit "B" showing the bank balance as of the date indicated, which may differ from Petitioner's reported balance because of interest earned or checks issued by Petitioner but not yet cleared at the bank. There are no non-cash assets owned by the Ward, to the best of Petitioner's knowledge, information and belief, except as may be identified on the recapitulation page attached hereto as Exhibit "C".

4. Petitioner asks this Court to fix, ratify and award him/her commissions and compensation to which he/she is entitled by law, together with reimbursement of expenses, and including fees to which he/she is entitled for having provided legal services to this estate during the period of service. An invoice itemizing the total amounts requested as compensation is attached hereto as Exhibit "D".

WHEREFORE, Petitioner prays that upon the filing of this petition, the Court will appoint a day for the hearing hereof, will direct that notice be given as provided by law; that upon the hearing thereof, the Court will audit, pass and allow the account of Petitioner as conservator, that the Court will fix and allow to Petitioner compensation to which he/she is by law entitled as conservator, including commissions, fees and reimbursement of expenses; and will grant such other relief as shall be appropriate.

DATED:_____, 20___.

_____
Conservator of the Estate of _____
_____, a Minor

OF COUNSEL:

_____
_____
_____

STATE OF ALABAMA)
COUNTY OF _____)

Before me, the undersigned authority in and for said state and county, personally appeared _____, who, known to me to be the Conservator of the Estate of _____, a minor, and having been first duly sworn, did depose and say that he/she signed the foregoing instrument and that he/she is informed and believes, and upon such information and belief avers, that the matters and facts contained therein are true and correct; further, that he/she is familiar with the statement of accounting attached hereto and that the matters and facts contained in said accounting are true and correct.

_____

Sworn to and subscribed before me on this ____ day of _____, 20___.

_____
NOTARY PUBLIC
(AFFIX NOTARIAL SEAL) My Commission Expires:_____

RECAPITULATION

1. Real Property

   A. Property having a street address of _____
   _____.

   B. Property located in Township _____, Range _____, more particularly described as follows:

2. Personal Property - Cash

   A. _____ Bank Checking Account
   Account No. _____ $_____

   B. _____ Bank Savings Account
   Account No. _____ $_____

   A. _____ Bank Certificate of Deposit
   CD No. _____ $_____

   A. _____ Bank Certificate of Deposit
   CD No. _____ $_____

ANNUAL ACCOUNTING AND PETITION FOR PARTIAL SETTLEMENT BY ADMINISTRATOR - DECEASED

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)

THE ESTATE OF) **CASE NO. _____**

_____)
Deceased)

ANNUAL ACCOUNTING AND PETITION FOR PARTIAL SETTLEMENT BY ADMINISTRATOR

Comes now your Personal Representative, _____, and shows unto the court and to Your Honor as follows:

1. _____ is the duly appointed Personal Representative of the Estate of _____, acting pursuant to Letters of Administration issued by this Court on _____ and more than six (6) months have elapsed since Petitioner's appointment.

2. The persons entitled to notice of this proceeding and are the heirs at law and next of kin of the decedent are:

Name/Address	Relationship	Age	Condition of Mind
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3. Since the appointment as Personal Representative there have been receipts totaling $_____ as detailed on Schedule A attached hereto, and has made disbursements in the amount of $_____, as shown on the attached Schedule B, leaving a balance on hand in the amount of $_____.

4. All estate assets received by the Personal Representative are held in deposit in the following banks in the account numbers and with the balances as indicated:

the original bank statements for that account are attached hereto.

5. There are also ____ shares of _____ stock which the Personal Representative is in the process of having transferred into the estate for disbursement to the heirs.

6. The only non-cash asset of the estate as of the date of this report is the potential of a recovery in a pending civil litigation.

7. The Personal Representative has not used any estate assets for his/her own benefit

and all disbursements made by him/her were in the lawful discharge of his/her duties as Personal Representative.

WHEREFORE, your Petitioner prays that the Court will (1) appoint a day for the hearing of this petition and accounting and give notice thereof, as required by law; (2) appoint a Guardian ad Litem to represent the interest of any distributees who are not of legal age; (3) examine and audit Petitioner's account on the day appointed, and upon the audit of the same, pass and allow the same as stated; (4) fix and allow commissions and fees to your Petitioner as the Personal Representative and grant such other, further and different relief as he/she may be entitled to received in these proceedings.

_____
Personal Representative

STATE OF ALABAMA)

COUNTY OF _____)

Personally appeared before me, the undersigned, a Notary Public in and for said State and County, _____, who is known to me, and who being by and first duly sworn, on oath, deposes and says that he/she has read the foregoing petition and the facts contained herein, and that the allegations of fact therein are true and correct to the best of his/her knowledge, information and belief.

_____
Personal Representative

SWORN TO AND SUBSCRIBED before me this ___ day of _____, 20___.

_____
NOTARY PUBLIC, STATE AT LARGE
My Commission Expires;_____

_____
Attorney for Petitioner

MOTION TO RESTORE WARD TO COMPETENCY

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
THE ESTATE OF	)	**CASE NO. _____**
_____	)	
an incapacitated person.	)	

MOTION TO RESTORE WARD TO COMPETENCY

COMES NOW, _____, as _____ of the Estate of _____, and moves this Honorable Court to conduct such proceedings as required to restore the said _____, an incapacitated person, to competency. In support of said motion, attached as evidence, are letters/reports, from Dr. _____ and Dr. _____ for the Court to consider in this matter.

WHEREFORE, Petitioner prays that upon the filing of this petition, the Court will appoint a day for the hearing of this motion and that upon the hearing hereof, the Court will restore the said _____ to competency, and your Petitioner prays for such other, further and different relief, the premises considered.

Dated:_____, 20___.

_____
_____ of the Estate of
_____, an
incapacitated person

STATE OF ALABAMA)

COUNTY OF _____)

Before me, the undersigned authority in and for said state and county, personally appeared _____, who being by me first duly sworn, did depose and say that he/she signed the foregoing petition and that he/she is informed and believes, and upon such information and belief avers that the matters and facts contained therein are true and correct.

_____
Petitioner

SWORN TO AND SUBSCRIBED
before me this ____ day of _____, 20___.

_____
NOTARY PUBLIC
My Commission Expires:_____

_____
Attorney for Petitioner

ORDER RESTORING WARD TO COMPETENCY AND DIRECTING FINAL SETTLEMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : CASE NO. _____

_____ : DATE:_____

In Re:

ORDER RESTORING WARD TO COMPETENCY AND DIRECTING FINAL SETTLEMENT

This cause came on to be heard this date on the Motion to terminate guardianship and conservatorship as filed by _____; and

Now comes the said petitioner by and through _____, Attorney, Esq.; and also comes the said _____ by and through _____, Guardian ad Litem, Esq.; and

Upon due consideration of the evidence adduced in this matter, the Court does FIND that said _____ is due to be and is hereby restored to competency; that the petition for letters of guardianship and conservatorship be and the same are hereby dismissed; that the letters of guardianship and conservatorship heretofore issued to _____ be and the same are hereby revoked; and that the estate of _____ be and is hereby restored to the custody and management of _____.

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that _____ file in this Court on or before _____ petition and accounts for final settlement in the above entitled cause.

It is further **ORDERED** by the Court that the attorney of record, _____, Esq., is granted authority to notify any and all parties as to this ruling.

It is further **ORDERED** by the Court that the costs of this proceeding, including a Guardian ad Litem fee of $_____, be taxed against _____, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

_____

_____, Judge of Probate

DECLARATION OF LEGITIMATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF THE LEGITIMATION)
)
OF: _____)
)
BY: _____) CASE NO. _____
)
AND CHANGE OF NAME TO:)
)
_____)

DECLARATION OF LEGITIMATION

TO: _____
Judge of Probate, _____ County, Alabama

I, _____, a resident of _____ County, State of Alabama, do hereby declare that I am the father of _____, who is a (fe)male child, whose date of birth is _____, whose mother is _____, that said child was born out of wedlock in _____ County, and I hereby file this Declaration of Legitimation for the purpose of recognizing said child as my own, capable of inheriting my estate, real and personal, as if born out of wedlock. I further declare that I want said child to bear and be known by the name of _____ in place of the name given at birth.

In testimony whereof, I hereunto subscribe my name on this the ___ day of _____, 20__.

_____
Father

We, _____ and _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that _____, knowing the contents of this instrument, signed it willingly, and to the best of our knowledge, that he is over the age of nineteen and of sound mind and under no constraint or undue influence to sign said instrument.

_____ _____
Witness Address

_____ _____
Witness Address

DECLARATION OF LEGITIMATION (ALTERNATIVE)

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF THE LEGITIMATION	)	
	)	
OF: _____	)	
	)	
BY: _____	)	**CASE NO. _____**
	)	
AND CHANGE OF NAME TO:	)	
	)	
_____	)	

DECLARATION OF LEGITIMATION
(Alternative)

TO THE HONORABLE _____,
Judge of Probate, _____ County.

I, _____, a resident of _____ County, State of Alabama, do hereby declare that I am the father of _____, who is a _____child, whose birth date is _____, whose mother is _____, that said child was born out of wedlock in _____ County, and I hereby file this Declaration of Legitimation for the purpose of recognizing said child as my own, capable of inheriting my estate, real and personal, as if born in wedlock. I further declare that I want said child to bear and be known by the name of _____ in place of the name given at birth.

In Testimony Whereof, I hereunto subscribe my name on this _____ day of _____, 20__.

Witnesses:

_____ _____
(Father's Signature)
_____ Place of Birth: _____
Address

_____ _____
(Mother's Signature)
_____
Address

THE STATE OF ALABAMA

_____ COUNTY

I, _____ Judge of Probate in and for said county in said state, hereby certify that _____ whose name is signed to the foregoing declaration of legitimation, and who is known to me, acknowledged before me on this day that, being informed of the contest of the declaration of legitimation, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, 20__.

_____

(SEAL) Judge of Probate Court

Filed and recorded on the Minutes of the Probate Court of _____ County, Alabama on this the ___ day of _____, 20__.

_____

Judge of Probate Court

APPOINTMENT OF GUARDIAN AD LITEM

APPOINTMENT OF GUARDIAN AD LITEM

THE STATE OF ALABAMA

_____COUNTY **PROBATE COURT**

TO: _____

Take Notice, That by an order of this Court, this day made and entered, you were appointed to act as Guardian ad litem for _____ to represent and protect (his)(her) interests upon the legitimation petition and petition to change the name of _____ to _____.

Given under my hand this _____ day of _____, 20__.

_____
Judge of Probate

I hereby accept the appointment of Guardian ad litem for _____ to represent and protect the interests upon the hearing of the above named proceedings and hereby deny each and every allegation contained in said proceedings and demand proof thereof.

Witness my hand this _____ day of _____, 20__.

_____
Guardian ad Litem

CONSENT OF MOTHER

CONSENT OF MOTHER

IN THE MATTER OF: **IN THE PROBATE COURT OF**

_____ _____ **COUNTY, ALABAMA**

TO LEGITIMATE: _____

AND CHANGE NAME TO: **CASE NO.** _____

_____

Comes Now, _____ and shows unto the Court as follows: That she is a resident, citizen of _____ County, Alabama and of legal age and is the mother of _____ born at _____ County, Alabama on _____.

I hereby consent to the Legitimation of my child _____ by _____ and consent that said child's name be changed to _____ and waive any other or further notice thereof.

This the _____ day of _____, 20__.

_____

Subscribed and sworn to before me

this ____ day of _____, 20__.

_____
Notary Public

DECREE OF LEGITIMATION AND CHANGE OF NAME

DECREE OF LEGITIMATION AND CHANGE OF NAME

IN THE MATTER OF:
_____ **IN THE PROBATE COURT OF**

_____COUNTY, ALABAMA

TO LEGITIMATE:_____

AND CHANGE NAME TO: **CASE NO. _____**

_____

This Cause, coming for hearing is submitted on the filing in this Court "Notice of Declaration to Legitimate" by _____ seeking to legitimate _____ whose birth date is _____ and further declaring that he desires said child's name be changed to _____ and,

It Appearing to the Court that _____ the mother of said child has accepted service of the filing of said Declaration to Legitimate and has consented to same and has consented that said child's name be changed to _____ and has waived any other or further notice thereof and

It Further Appears to the Court that _____ guardian ad litem for the said child has accepted his appointment and filed an answer to the Declaration to Legitimate on behalf of the said minor child denying each and every allegation of the declaration and demanding proof.

It is Therefore Ordered by the Court upon the pleadings and proof presented ore tenus, that said Declaration to Legitimate be, and the same is hereby granted and that said child's name from this date forward shall be and is hereby changed to _____.

This the ___ day of _____, 20__.

_____
Judge of Probate
Court of _____ County, Alabama

PETITION AND DECLARATION FOR ADULT NAME CHANGE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
THE NAME CHANGE OF	)	
	)	**Case Number:_____**
_____	)	
	)	

PETITION AND DECLARATION FOR ADULT NAME CHANGE

COMES NOW, _____, as petitioner ("Petitioner"), and shows unto the Court as follows:

1. Petitioner's present true and correct legal name is _____.
2. Petitioner is a bona fide resident of _____ County, Alabama, residing at _____.
3. Petitioner is not presently a party to any judicial proceeding in any court in any jurisdiction.
4. Petitioner is not presently a defendant in any criminal proceeding.
5. Petitioner is not seeking to conceal his/her identity from anyone.
6. Petitioner is not attempting to avoid payment of any debt or judgment and is not attempting to defraud any person.
7. Petitioner has never been convicted of any felony or crime involving moral turpitude.
8. Petitioner is _____ years of age, his/her date of birth being _____.
9. Petitioner desires to change Petitioner's name because _____.
10. Petitioner requests that the Court change Petitioner=s name to _____.

WHEREFORE, Petitioner prays that the Court will grant this petition and will issue a decree changing Petitioner's name as requested.

Dated:_____, 20__.

_____
Petitioner

Petitioner's Address and Telephone Number:

_____
_____
_____

_____
Attorney for Petitioner

Address and Telephone Number:

_____
_____
_____

STATE OF ALABAMA
COUNTY OF _____

Before me, the undersigned authority, in and for said State and County, personally appeared _____, who being known to me and after being sworn by me, doth state on oath that he/she executed the aforesaid Petition and Declaration, the statements contained in the aforesaid Petition and Declaration are true and correct to the best of his/her information, knowledge and belief, and he/she executed the same voluntarily on the day the same bears date.

In witness whereof, I set my hand and notarial seal on this _____ day of _____, 20__.

_____
Notary Public
My commission expires:_____

(AFFIX NOTARY SEAL)

ORDER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **Case No. _____**

_____: **Date:_____**
Name

ORDER

This cause came before the Court on _____, 20___, on the Petition _____ filed by _____. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute, local act and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court FINDS, CONCLUDES AND ORDERS as follows:

1. The petition for change of name is **GRANTED** and that the name of _____ be and the same is hereby changed to _____.

ORDERED AND DECREED

_____
_____, Judge of Probate

C: Counsel of record

PETITION AND DECLARATION FOR MINOR NAME CHANGE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
THE NAME CHANGE OF	)	
	)	**Case Number:_____**
_____	)	
a Minor.	)	

PETITION AND DECLARATION FOR MINOR NAME CHANGE

COMES NOW, _____, as petitioner ("Petitioner"), and shows unto the Court as follows:

1. _____ is a minor ("Minor"), who is _____ of age, his/her date of birth being _____.
2. Minor is a bona fide resident of _____ County, Alabama, residing at _____.
3. Minor is not presently a party to any judicial proceeding in any court in any jurisdiction.
4. Minor is not presently a defendant in any criminal proceeding.
5. Petitioner is not seeking to conceal the Minor's identity from anyone.
6. Neither the Petitioner, nor the Minor are attempting to avoid payment of any debt or judgment and is not attempting to defraud any person.
7. Minor has never been convicted of any felony or crime involving moral turpitude.
8. Petitioner desires to change Minor's name because _____ _____.
10. Petitioner requests that the Court change Minor's name to _____.

WHEREFORE, Petitioner prays that the Court will grant this petition and will issue a decree changing Minor's name as requested.

Dated:_____, 20__.

_____
Petitioner

Petitioner's Address and Telephone Number:

_____
_____
_____

_____
Attorney for Petitioner

Address and Telephone Number:

_____
_____
_____

STATE OF ALABAMA)
COUNTY OF _____)

Before me, the undersigned authority, in and for said State and County, personally appeared _____, who being known to me and after being sworn by me, doth state on oath that he/she executed the aforesaid Petition and Declaration, the statements contained in the aforesaid Petition and Declaration are true and correct to the best of his/her information, knowledge and belief, and he/she executed the same voluntarily on the day the same bears date.

In witness whereof, I set my hand and notarial seal on this _____ day of _____, 20__.

_____
Notary Public
My commission expires:_____

(AFFIX NOTARY SEAL)

AFFIDAVIT OF UNKNOWN FATHER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF)
)
_____)
a minor.)

Case Number_____

AFFIDAVIT OF UNKNOWN FATHER

STATE OF ALABAMA)
COUNTY OF _____)

Before me, the undersigned authority, in and for said State and County, personally appeared _____, who being known to me and after being sworn by me, doth depose on oath and state as follows:

1. My name is _____.

2. I am the mother of _____, a minor ("Minor").

3. I do not know the identity of the father of the Minor.

4. The statements contained in this Affidavit are true and correct to the best of my information, knowledge and belief.

5. In verification of the truthfulness of the statements contained herein, I subscribe my signature below.

_____
Mother

Sworn to and subscribed before me on this ____ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

CONSENT TO MINOR NAME CHANGE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF	)	
	)	**Case Number_____**
_____,	)	
a minor.	)	

CONSENT TO MINOR NAME CHANGE

KNOW ALL MEN BY THESE PRESENTS that I, _____, the father/mother of _____, a minor born on _____, ____, do hereby consent to the petition of _____, to have the above said minor's name changed to _____.

I acknowledge that I am executing this document voluntarily and of my own free will. I acknowledge that I understand that if the petition is granted and the above said minor's name is changed, the changing of the minor's name will not affect any legal duties or obligations I may owe to the above said minor.

I consent to the Court making all such orders and decrees as may be necessary or proper to legally effectuate the said name change.

Dated: _____, 20___.

_____
Father/Mother

STATE OF ALABAMA	)
COUNTY OF _____	)

Before me, the undersigned authority, in and for said State and County, personally appeared _____, who being known to me and after being sworn by me, doth state on oath that he/she executed the aforesaid Consent, the statements contained in the aforesaid Consent are true and correct to the best of his/her information, knowledge and belief, and he/she executed the same voluntarily on the day the same bears date.

In witness whereof, I set my hand and notarial seal on this _____ day of _____, 20___.

_____
Notary Public
My commission expires:_____

(AFFIX NOTARY SEAL)

CONSENT OF MINOR TO NAME CHANGE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE: THE MATTER OF)
)
_____.)
(Minor Child's Current Legal Name)

CASE NO.: _____

CONSENT OF MINOR TO CHANGE NAME

I, _____, a minor, over the age of fourteen years, whose date of birth is ____/____/_____, do hereby consent to have my name changed to _____, and pray that the Court issue all such orders and decrees as may be necessary to make such name change.

Dated this _____ day of _____, _____.

_____
MINOR CHILD'S SIGNATURE

ADDRESS: _____
_____

PHONE NO.: _____

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned, a Notary Public in and for said County and State, hereby certify that _____, whose name is signed to the foregoing consent, and who is known to me, acknowledged before me on this day, and being informed of the contents of said consent, executed the same voluntarily on the day the same bears date.

Given under my hand and seal this _____ day of _____, _____.

_____
NOTARY PUBLIC
My Commission Expires: _____

ORDER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF) **Case No._____**

_____)
)

ORDER

Said matter is now properly before the Court pursuant to its jurisdiction and authority as conferred by statute and constitutional provisions; and on due consideration of the pleading and evidence, the following ORDER AND RULING is hereby issued.

1. Petition for change of name is **GRANTED**.

2. Name of _____ is changed to _____.

3. Costs are taxed to petitioner.

ORDERED AND DECREED this _____ day of _____, 20__.

_____
_____, Judge of Probate

OATH OF OFFICE

OATH OF OFFICE

I _____, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Alabama, so long as I continue a citizen thereof, and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability, So help me God.

PETITION TO PROBATE OF WILL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	
ESTATE OF	§	**CASE NO. _____**
_____,	§	
Deceased.	§	

PETITION TO PROBATE WILL

Comes now, _____,("Petitioner") and shows unto the Court and to as follows:

1. _____ ("Decedent") died in _____ County, _____ on the _____ day of _____, _____, as evidenced by the attached Certificate of Death. At the time of his/her death, the Decedent, a resident of _____ County, _____, owned personal property located in _____ County, _____ of approximately $_____ in value and owned real property located in _____ County, _____, [addresses of real property and approximate value $_____.]

2. Petitioner produces and propounds to the Court the Last Will and Testament of the Decedent. The Decedent, executed the original of the Last Will and Testament on the _____ day of _____, _____. The said Last Will and Testament was witnessed by _____ and _____(and notarized by _____ in compliance with *Ala. Code §43-8-132.)*

3. The following is a true, correct and complete list of the names, conditions, age/DOB, relationships and addresses of the Decedent's next of kin:

_____
_____
_____
_____

4. The Last Will and Testament of the Decedent names _____ as the personal representative of his/her estate.

5. The Last Will and Testament of the Decedent was never revoked by the Decedent prior to his/her death.

6. The Petitioner is over 19 years of age and is the _____, resides at _____, and is in no respect disqualified under the law from serving as personal representative(s) of the estate.

WHEREFORE, believing the estate should be immediately administered to the end that the property may be collected and preserved for those who shall appear to have a legal right or interest therein, Petitioner prays that this Court take jurisdiction of this petition; cause notice to be issued as required by law, cause such proceedings to be had and done and such proof be taken, and render such orders and decrees as will duly and legally affect the probate of, and record in this Court, the Last Will and Testament of the Decedent. Further, Petitioner prays that this Court will enter an order naming him/her as personal representative of the estate and grant Letters Testamentary on the estate to the Petitioner.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE: §

THE ESTATE OF § **Case No. _____**

_____, §

Deceased. §

WAIVER AND CONSENT

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____, the undersigned heir-at-law and next-of-kin of _____,("Decedent"), and being over the age of nineteen (19) years of age, do hereby waive notice of the filing of the Petition executed by _____, requesting Letters Testamentary upon the Estate of _____, Deceased.

The undersigned does further consent to the appointment of _____ as personal representative of the estate of Decedent.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

_____

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____

NOTARY PUBLIC

My Commission Expires:

_____

(AFFIX NOTARY STAMP)

PETITION TO PROBATE WILL AND CODICIL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION TO PROBATE WILL

Comes now, _____,("Petitioner") and shows unto the Court and to as follows:

1. _____ ("Decedent") died in _____ County, Alabama on the _____ day of _____, _____, as evidenced by the attached Certificate of Death. At the time of his/her death, the Decedent, a resident of _____ County, Alabama, owned personal property located in _____ County, Alabama of approximately $_____ in value and owned real property located in _____ County, Alabama, [addresses of real property and approximate value $_____.]

2. Petitioner produces and propounds to the Court the Last Will and Testament of _____. The Decedent, executed the original of the Last Will and Testament on the _____ day of _____, _____. The Last Will and Testament was witnessed by _____ and _____(and notarized by _____ in compliance with *Ala. Code §43-8-132.*) The Decedent also executed an original codicil to the last Will and Testament which was witnessed by _____ and _____ (and notarized by_____).

3. The following is a true, correct and complete list of the names, conditions, age/DOB, relationships and addresses of the Decedent's next of kin:

_____
_____
_____
_____
_____
_____
_____

4. The Last Will and Testament of the Decedent names _____ as the personal representative of his/her estate.

5. The Last Will and Testament and the Codicil of the Decedent was never revoked by the Decedent prior to his/her death.

6. The Petitioner is/are over 19 years of age and are/is the _____, resides at _____, and is in no respect disqualified under the law from serving as personal representative of the estate.

WHEREFORE, believing the estate should be immediately administered to the end that the property may be collected and preserved for those who shall appear to have a legal right or interest therein, Petitioner prays that this Court take jurisdiction of this petition; cause notice to be issued as required by law, cause such proceedings to be had and done and such proof be taken, and render such orders and decrees as will duly and legally affect the probate of, and record in this Court, the Last Will and Testament and the Codicil of the Decedent. Further, Petitioner prays that this Court will enter an order naming him/her as personal representative of the estate and grant Letters Testamentary on the estate to the Petitioner.

_____
Petitioner(s)

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

WAIVER AND CONSENT

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____, the undersigned heir-at-law and next-of-kin of _____,("Decedent"), and being over the age of nineteen (19) years of age, do hereby waive notice of the filing of the Petition executed by _____, requesting Letters Testamentary upon the Estate of _____, Deceased.

The undersigned does further consent to the appointment of _____ as Personal Representative of the estate of the Decedent.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

_____

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____

Notary Public
My Commission Expires: _____

(AFFIX NOTARY STAMP)

LETTERS TESTAMENTARY

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____

LETTERS TESTAMENTARY

The Will of _____ having been duly admitted to record in said county, **Letters Testamentary** are hereby granted to _____, the Personal Representative named in said will, who has complied with the requisitions of the law and is authorized to administer the estate. Subject to the priorities stated in Code of Alabama (1975, as amended) ' 43-8-76, the said Personal Representative, acting prudently for the benefit of interested persons, has all the powers, without limitation, [**EXCEPT** for the powers in numbers _____] authorized in transactions under Code of Alabama (1975, as amended) ' 43-2-843, as follows:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.
2. Receive assets from fiduciaries, or other sources.
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do either of the following:
   a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.
   b. Deliver a deed in escrow with directions that the proceeds when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent or were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.
6. Abandon personal property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the estate.

7. Vote stocks or other securities in person or by general or limited proxy.
8. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.
9. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.
10. Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.
11. Borrow money without security or with security of personal property to be repaid from the estate assets or otherwise; and advance money for the protection of the estate.
12. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, or other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien.
13. Pay taxes, assessments, and other expenses incident to the administration of the estate.
14. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
15. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term not to exceed one year.
16. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.
17. Employ necessary persons, including appraisers, attorneys, auditors (who may include certified public accountants, public accountants, or internal auditors), investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon recommendations of agents or advisors; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.
18. Prosecute or defend claims or proceedings in any jurisdiction for the protection or benefit of the estate and of the personal representative in the performance of duties of the personal representative.
19. Continue any unincorporated business or venture in which the decedent was engaged at the time of death as provided in any of the following:
    a. In the same business form for a period of not more than one year from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will.
    b. In the same business form for any additional period of time that may be approved by order of the court in a proceeding to which the persons

interested in the estate are parties.

c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate.

20. Incorporate any business or venture in which the decedent was engaged at the time of death.
21. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
22. Satisfy and settle claims and distribute the estate as provided in Title 43 of the Code of Alabama 1975.

WITNESS my hand, and dated this ___ day of _____, 20__.

_____
Judge of Probate

THE STATE OF ALABAMA
_____ COUNTY

I, the undersigned, Judge of Probate of _____ County, Alabama, hereby certify that the foregoing is a true and correct copy of the Letters Testamentary issued in the above-styled cause as appears of record in said Court. I further certify that said Letters are in full force and effect.

Given under my hand and seal of said Court, this the ____ day of _____, 20__.

_____
Judge of the Probate Court
_____ County

LETTERS TESTAMENTARY (ALTERNATIVE)

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

ESTATE OF _____

LETTERS TESTAMENTARY
(Alternative)

The Will of _____ having been duly admitted to record in said county, **Letters Testamentary** are hereby granted to _____, the Personal Representative named in said will, who has duly qualified in compliance with the requisites of the laws (bond was _____ excused), and is authorized to administer such estate in accordance with the procedures provided in ALA. CODE §§ 43-2-830, et seq., (Supp. 1993), including the powers and duties permitted in § 43-2-843 without prior court order, as further modified expressly in the will.

Witness my hand, and dated this ____day of _____, 20__.

_____
Judge of Probate

LETTERS TESTAMENTARY WITH ADDITIONAL POWERS

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____

LETTERS TESTAMENTARY
WITH ADDITIONAL POWERS

The Will of _____ having been duly admitted to record in said county, **Letters Testamentary** are hereby granted to _____, the Personal Representative named in said will, who has complied with the requisitions of the law and is authorized to administer the estate. Subject to the priorities stated in Code of Alabama (1975, as amended) § 43-8-76, the said Personal Representative, acting prudently for the benefit of interested persons, has all the powers, without limitation, [**EXCEPT** for the powers in numbers _____] authorized in transactions under Code of Alabama (1975, as amended) § 43-2-843, as follows:

1. Retain assets owned by the decedent pending distribution or liquidation including those in which the representative is personally interested or which are otherwise improper for trust investment.
2. Receive assets from fiduciaries, or other sources.
3. Perform, compromise, or refuse performance of the decedent's contracts that continue as obligations of the estate, as the personal representative may determine under the circumstances. In performing enforceable contracts by the decedent to convey or lease land, the personal representative, among other possible courses of action, may do either of the following:
   a. Execute and deliver a deed of conveyance for cash payment of all sums remaining due or the purchaser's note for the sum remaining due secured by a mortgage or deed of trust on the land.
   b. Deliver a deed in escrow with directions that the proceeds when paid in accordance with the escrow agreement, be paid to the successors of the decedent, as designated in the escrow agreement.
4. Satisfy written charitable pledges of the decedent irrespective of whether the pledges constituted binding obligations of the decedent of were properly presented as claims, if in the judgment of the personal representative the decedent would have wanted the pledges completed under the circumstances.
5. If funds are not needed to meet debts and expenses currently payable and are not immediately distributable, deposit or invest liquid assets of the estate, including moneys received from the sale of other assets, in federally insured interest-bearing accounts, readily marketable secured loan arrangements, or other prudent investments which would be reasonable for use by trustees generally.
6. Abandon personal property when, in the opinion of the personal representative, it is valueless, or is so encumbered, or is in condition that it is of no benefit to the

estate.

7. Vote stocks or other securities in person or by general or limited proxy.
8. Pay calls, assessments, and other sums chargeable or accruing against or on account of securities, unless barred by the provisions relating to claims.
9. Hold a security in the name of a nominee or in other form without disclosure of the interest of the estate but the personal representative is liable for any act of the nominee in connection with the security so held.
10. Insure the assets of the estate against damage, loss, and liability and the personal representative against liability as to third persons.
11. Borrow money without security or with security of personal property to be repaid from the estate assets or otherwise; and advance money for the protection of the estate.
12. Effect a fair and reasonable compromise with any debtor or obligor, or extend, renew, or in any manner modify the terms of any obligation owing to the estate. If the personal representative holds a mortgage, pledge, other lien upon property of another person, the personal representative may, in lieu of foreclosure, accept a conveyance or transfer of encumbered assets from the owner thereof in satisfaction of the indebtedness secured by the lien.
13. Pay taxes, assessments, and other expenses incident to the administration of the estate.
14. Sell or exercise stock subscription or conversion rights; consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise.
15. Enter for any purpose into a lease as lessor or lessee, with or without option to purchase or renew, for a term not to exceed one year.
16. Allocate items of income or expense to either estate income or principal, as permitted or provided by law.
17. Employ necessary persons, including appraisers, attorneys, auditors (who may include certified public accountants, public accountants, or internal auditors), investment advisors, or agents, even if they are associated with the personal representative, to advise or assist the personal representative in the performance of administrative duties; act without independent investigation upon recommendations of agents or advisors; and instead of acting personally, employ one or more agents to perform any act of administration, whether or not discretionary.
18. Prosecute or defend claims or proceedings in any jurisdiction for the protection or benefit of the estate and of the personal representative in the performance of duties of the personal representative.
19. Continue any unincorporated business or venture in which the decedent was engaged at the time of death as provided in any of the following:
    a. In the same business form for a period of not more than one year from the date of appointment of a general personal representative if continuation is a reasonable means of preserving the value of the business including good will.
    b. In the same business form for any additional period of time that may be

approved by order of the court in a proceeding to which the persons interested in the estate are parties.

c. Throughout the period of administration if the business is incorporated by the personal representative and if none of the probable distributees of the business who are competent adults object to its incorporation and retention in the estate.

20. Incorporate any business or venture in which the decedent was engaged at the time of death.
21. Provide for exoneration of the personal representative from personal liability in any contract entered into on behalf of the estate.
22. Satisfy and settle claims and distribute the estate as provided in Title 43 of the Code of Alabama 1975.

[The said Personal Representative is hereby further granted prior court approval, under Code of Alabama (1975, as amended) § 43-2-844, to act, on behalf of the estate, in the following transactions:

[copy all transactions enumerated in Code of Alabama (1975, as amended) § 43-2-844, or those transactions for which the Probate Judge wishes to grant prior court approval by category]

The transactions authorized herein may be restricted in the will and additional powers may be authorized for the Personal Representative.

WITNESS my hand, and dated this _____ day of _____, 20___.

_____
Judge of Probate

ORDER ADMITTING WILL PROBATE WITH LETTERS TESTAMENTARY WITH CODICIL OPTION

IN THE PROBATE COURT_____ COUNTY, ALABAMA

IN RE:)
)
ESTATE OF)
)
_____,)
Deceased.

CASE NO. _____

ORDER

Petition to probate last will and testament dated _____ [and codicil dated _____] of the above named decedent is hereby **GRANTED** this date. It is **ORDERED** that Letters Testamentary under the last will and testament of _____, deceased, do forthwith issue to _____, as prayed.

It is further **ORDERED** that the Personal Representative(s) shall not deposit with their legal counsel, and legal counsel shall not receive, any funds or other assets of this estate which exceed the total sum/value of $10,000 without prior approval of the Court. Any estate funds appropriately held by legal counsel shall be placed in an interest account unless said funds are to be disbursed with forty-five (45) days of receipt by legal counsel.

The Personal Representative(s) is/are **ORDERED** to report to the Court if any litigation involving a wrongful death or personal injury claim is commenced in another court. If same is reported, the Personal Representative(s) shall file with this Court a petition to determine the heirs of the decedent.

The Personal Representative(s) is **ORDERED** to notify the Alabama Medicaid Agency of their appointment as Personal Representative(s) of this estate.

The Personal Representative(s) is/are **ORDERED** to publish the attached notice of their appointment in a newspaper in general circulation in _____ County once a week for three (3) consecutive weeks and to furnish proof of same to the Court within sixty (60) days of the date of this Order.

It is further **ORDERED** by the Court that the said Petitioner pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

DATED this ____ day of _____, 20___.

_____

_____, Judge of Probate

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

IN RE:
ESTATE OF
_____,

DECEASED

LETTERS TESTAMENTARY

The Will [and Codicil] of _____, ("Deceased"), having been duly admitted to record in said county, Letters Testamentary are hereby granted to _____, the Personal Representative(s) named in said will, who has complied with the requisites of the laws and who is authorized to take upon their self the execution of such will. Except as restricted or otherwise provided by said will, the Personal Representative(s) is/are authorized to administer the estate in accordance with the powers and duties set out pursuant to *Ala. Code* §§43-2-830, et seq. (1975). Unless otherwise provided by the will, the powers and duties of said Personal Representative(s) specifically include, but are not limited to, gathering and retaining estate assets, paying taxes, fees, and expenses, including court costs, incident to the administration of the estate. Any and all financial institutions are **ORDERED** to provide the Personal Representative(s) with all information regarding any payment on death accounts in the name of the Deceased. These funds may be subject to the payment of debts and should not be expended prior to the conclusion of the applicable six-month claims period and without prior Court approval.

DATED this_____ day of _____, 20___.

_____

_____, **Judge of Probate**

_____

NOTICE OF ESTATE ADMINISTRATION

PROBATE COURT OF _____ COUNTY ALABAMA

Estate of _____, Deceased

Case No. _____

Take notice that Letters Testamentary have been granted to the below named party on the ____ day of _____, 20___ by the **HONORABLE** _____, Judge of Probate of _____ County Probate Court, Alabama and that all parties having claims against said estate should file the same with the Probate Court of said county within the time allowed by law, or they will be barred.

_____ as
Personal Representative under the
last will and testament of
_____ , Deceased

Attorney of Record:
_____
_____
_____
_____

To Counsel/Petitioner: Please have the above publication notice run once a week for three (3) consecutive weeks and file proof of the publication with the Court

Name of Newspaper: The above publication shall run as a Legal Notice. Mail proof of publication along with any bill for costs to the attorney of record or petitioner named above

STATE OF ALABAMA	§	**PROBATE COURT OF _____ COUNTY**
	§	
		CASE NO. _____
	§	
_____ COUNTY	§	**CERTIFICATE**

I, _____, Judge of the Probate Court in and for said County and State do hereby certify that the within instrument of writing, has this day in said Court, and before me as the Judge thereof, been duly proved, pursuant to §43-3-132, *Code of Alabama 1975*, as amended, which Section provides for self-proving wills, to be the genuine last will and testament of _____, deceased, and that said will, together with the acknowledgment of the Testator and affidavit of the witnesses thereof, have been recorded in my office in Book of Wills No _____ and on page _____.

IN WITNESS of all which I have hereunto set my hand and the Seal of the said Court, this ____ day of _____, 20____.

_____

_____, **Judge of Probate**

PETITION TO PROBATE LOST WILL WITH CODICIL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION TO PROBATE WILL

Comes now, _____,("Petitioner" and shows unto the Court and to as follows:

1. _____ ("Decedent") died in _____ County, Alabama on the _____ day of _____, _____, as evidenced by the attached Certificate of Death. At the time of his/her death, the Decedent, a resident of _____ County, Alabama, owned personal property located in _____ County, Alabama of approximately $_____ in value and owned real property located in _____ County, Alabama, _____
_____
_____

2. Petitioner(s) produces and propounds to the Court a true, accurate and exact copy of the Last Will and Testament of the Decedent. The Decedent, executed the original of said Last Will and Testament on the _____ day of _____, _____. The said Last Will and Testament was witnessed by _____ and _____ (and notarized by _____ in compliance with *Ala. Code §43-8-132.*)

3. The following is a true, correct and complete list of the names, conditions, age/ DOB, relationships and addresses of the Decedent's next of kin:
_____
_____
_____
_____

4. The Last Will and Testament of the Decedent names _____ as the personal representative of his/her Estate.

5. The Last Will and Testament of the Decedent was never revoked by the Decedent prior to his/her death.

6. The Petitioner is over 19 years of age and are/is the _____(relationship to Decedent), resides at _____ (address), and is in no respect disqualified under the law from serving as personal representative of the estate.

WHEREFORE, believing the estate should be immediately administered to the end that the property may be collected and preserved for those who shall appear to have a legal right or interest therein, Petitioner prays that this Court take jurisdiction of this Petition; cause notice to be issued as required by law, cause such proceedings to be had and done and such proof be taken, and render such orders and decrees as will duly and legally affect the probate of, and record in this Court, the said copy of the Last Will and Testament of the Decedent. Further, Petitioner prays that this Court will enter an order naming him/her as the personal representative of the estate and grant Letters Testamentary on the estate to the Petitioner.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

WAIVER AND CONSENT

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____, the undersigned heir-at-law and next-of-kin of _____,("Decedent"), and being over the age of nineteen (19) years of age, do hereby waive notice of the filing of the Petition executed by _____, requesting Letters Testamentary upon the Estate of _____, Deceased.

The undersigned does further consent to the appointment of _____ as Personal Representative of the estate of the Deceased.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

_____

TATE OF ALABAMA

OUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, ho acknowledged before me on this day, that being informed of the contents of said document ecuted the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

ORDER ADMITTING LOST WILL TO PROBATE WITH LETTERS TESTAMENTARY

IN THE PROBATE COURT OF _____COUNTY

IN RE:)
) **CASE NO. _____**
ESTATE OF)
_____)

, **Deceased.**

ORDER

This matter came before the Court on _____ on the Petition to Admit a Lost Will filed by _____ on _____ ("Decedent"); and it appears to the Court that notice of the petition and of the date set to consider the same has been given in all respects according to law in such matters; and

The Court finds from the testimony of _____, of which a Note of Evidence has been filed in this cause, and such other evidence this day adduced (i)_____ did publish an instrument in writing duly executed pursuant to the laws of this state and witnessed as their last will and testament pursuant to the laws of this state; (ii) that said instrument has now been lost or destroyed; (iii) that the Decedent did not during their lifetime revoke said instrument; and (iv) that the contents of the said instrument have been established and are set forth in order, viz:

It is therefore **ORDERED, ADJUDGED AND DECREED** by the Court that the foregoing be and the same is hereby declared to be duly proven as the last will and testament of the Decedent, and as such, admitted to probate and ordered to be recorded, together with all other papers on file relating to this proceeding.

It is further **ORDERED** that the Personal Representative shall not deposit with their legal counsel, and legal counsel shall not receive, any funds or other assets of this estate which exceed the total sum/value of $10,000 without prior approval of the Court. Any estate funds appropriately held by legal counsel shall be placed in an interest account unless said funds are to be disbursed within forty-five (45) days of receipt by legal counsel.

It is further **ORDERED** by the Court that Letters Testamentary under the last will and testament of _____, deceased, do forth with issue to _____, as prayed.

The Personal Representative is **ORDERED** to report to the Court if any litigation involving a wrongful death or personal injury claim is commenced in another court. If same is reported, the Personal Representative shall file with this Court a petition to determine the heirs of the Deceased.

The Personal Representative is **ORDERED** to notify the Alabama Medicaid Agency of their appointment as Personal Representative of this estate.

The Personal Representative is **ORDERED** to publish the attached notice of their appointment in a newspaper in general circulation in _____ County once a week for three (3) consecutive weeks and to furnish proof of same to the Court within sixty (60) days of the date of this Order.

It is further **ORDERED** by the Court that the said Petitioner pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

DATED this _____ day of_____, 20__.

_____

_____, **Judge of Probate**

THE STATE OF _____

COUNTY OF _____

IN RE:

ESTATE OF

_____,

DECEASED.

COURT OF PROBATE

CASE NO. _____

LETTERS TESTAMENTARY

The Will of _____ , deceased, having been duly admitted to record in said county, Letters Testamentary are hereby granted to _____, the Personal Representative named in said will, who has complied with the requisitions of the laws and has authorized to take upon their self the execution of such will. Unless otherwise provided by the will, the powers and duties of the Personal Representative(s) specifically include, but are not limited to, gathering and retaining estate assets, paying taxes, fees, and expenses, including court costs, incident to the administration of the estate. Any and all financial institutions are **ORDERED** to provide the Personal Representative(s) with all information regarding any payment on death accounts in the name of the deceased. Said funds may be subject to the payment of debts and should not be expended prior to the conclusion of the applicable six-month claims period and without prior Court approval.

DATED this ____ day of _____, 20____.

_____

_____, **Judge of Probate**

NOTICE OF ESTATE ADMINISTRATION

PROBATE COURT OF _____ COUNTY, ALABAMA

Estate of _____

Case No. _____

Take notice that Letters Testamentary have been granted to the below named party on the ____ day of _____, 20____ by _____, Judge of Probate of _____ County Probate Court, Alabama and that all parties having claims against said estate should file the same with the Probate Court of said county within the time allowed by law, or they will be barred.

_____ as Personal
Representative of the Estate of
_____,Deceased

Attorney of Record:
_____
_____
_____
_____

To Counsel/Petitioner: Please have the above publication notice run once a week for three (3) consecutive weeks and file proof of the publication with the Court

Name of Newspaper: The above publication shall run as a Legal Notice. Mail proof of publication along with any bill for costs to the attorney of record or petitioner named above

PETITION TO PROBATE WILL WITH LETTERS ANNEXED

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION TO PROBATE WILL

Comes now, _____,("Petitioner") and shows unto the Court as follows:

1. _____("Decedent") died in _____ County, Alabama on the _____ day of _____, _____, as evidenced by the attached Certificate of Death. At the time of his/her death the Decedent a resident of Mobile County, Alabama, owned personal property located in Mobile County, Alabama of approximately $_____ in value and owned real property located in Mobile County, Alabama, valued at approximately $_____.

2. Petitioner produces and propounds to the Court herewith the Last Will and Testament of the Decedent. The Decedent, executed the original of said Last Will and Testament on the _____ day of _____. _____. The Last Will and Testament was witnessed by _____ and _____[and notarized by _____.]

3. The following is a true, correct and complete list of the names, conditions, relationships and addresses of the Decedent's next of kin:

_____

_____

_____

_____

4. The Last Will and Testament of the Decedent names _____ as personal representative [and _____ as successor personal representative,] and Petitioner further shows unto the Court that _____ is [now deceased, having died since the execution of the Will that _____ has filed a renunciation]. Petitioner is in no respect disqualified from serving as administrator with the will annexed.

5. The Last Will and Testament of the Decedent was never revoked by the Decedent prior to his/her death.

6. Petitioner is over 19 years of age and is in no respect disqualified under the law from serving as personal representative of the estate.

WHEREFORE, believing the estate should be immediately administered to the end that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, Petitioner prays that the Court take jurisdiction of this Petition; cause notice to be issued as required by law, cause such proceedings to be had and done and such proof be taken, and render such orders and decrees as will duly and legally affect the probate of, and record in this Court, the said Last Will and Testament of the Decedent. Further, Petitioner prays that the Court will enter an order naming him/her as Administrator with the Will Annexed of the estate and grant Letters of Administration on the Annexed Will on the estate to Petitioner.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Signature of Attorney

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	
ESTATE OF	§	**CASE NO.**_____
_____,	§	
Deceased.	§	

WAIVER AND CONSENT

KNOW ALL PERSONS BY THESE PRESENTS, that I, _____, the undersigned heir-at-law and next-of-kin of _____, Deceased, and being over the age of nineteen (19) years of age, do hereby waive notice of the filing of the Petition executed by _____, requesting Letters of Administration on the Annexed Will upon the Estate of _____, Deceased.

The undersigned does further consent to the appointment of _____ as Personal Representative of the Estate of _____.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this _____ day of _____, _____.

_____

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

ORDER GRANTING LETTERS WILL ANNEXED WITH LETTERS

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	)	
ESTATE OF	)	**CASE NO. _____**
_____,	)	
Deceased.	)	

ORDER

Petition to probate the last will and testament dated _____, of the above named decedent is hereby **GRANTED** this date. Bond in the amount of $_____ is hereby taken and approved. It is **ORDERED** that Letters of Administration on the Annexed Will of _____, deceased, do forthwith issue to _____ ,("Personal Representative"), as prayed.

It is further **ORDERED** that the Personal Representative shall not deposit with their legal counsel, and legal counsel shall not receive, any funds or other assets of this estate which exceed the total sum/value of $10,000 without prior approval of the Court. Any estate funds appropriately held by legal counsel shall be placed in an interest account unless said funds are to be disbursed within forty-five (45) days of receipt by legal counsel.

The Personal Representative is **ORDERED** to report to the Court if any litigation involving a wrongful death or personal injury claim is commenced in another court. If same is reported, the Personal Representative shall file with this Court a petition to determine the heirs of the decedent.

The Personal Representative is **ORDERED** to notify the Alabama Medicaid Agency of their appointment as Personal Representative of this estate.

The Personal Representative is **ORDERED** to publish the attached notice of their appointment in a newspaper in general circulation in Mobile County once a week for three (3) consecutive weeks and file proof of same with the Court within sixty (60) days of the date of this Order.

It is further **ORDERED** by the Court that the said Petitioner pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE**.

Inventory due _____.

Annual partial settlement and accounting due _____

DATED this ____ day of _____, 20___.

_____

_____, Judge of Probate

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

RE: _____, DECEASED

LETTERS OF ADMINISTRATION ON THE ANNEXED WILL

Letters of Administration on the Annexed Will of _____, deceased, are hereby granted to _____, who has duly qualified and given bond as such Personal Representative and is authorized to administer such estate with authority to take actions as set forth in §43-2-843, *Code of Alabama 1975*. The powers and duties of said Personal Representative specifically include, but are not limited to, gathering and retaining estate assets, preparing an inventory of estate assets, paying taxes, uncontested claims, fees, and expenses, including court costs, incident to the administration of the estate. Any and all financial institutions are **ORDERED** to provide the Personal Representative(s) with all information regarding any payment on death accounts in the name of the deceased. Said funds may be subject to the payment of debts and should not be expended prior to the conclusion of the applicable six-month claims period and without prior Court approval. The authority of the Personal Representative is restricted as follows:

Restrictions:
(1) With the exception of wrongful death matters, the Personal Representative must obtain approval of any litigation settlement and shall not distribute any monies or estate assets to heirs, legatees, and/or beneficiaries resulting from litigation or settlement of litigation without prior Court approval.
(2) Personal Representative must immediately report to the Court the receipt of any monies or assets which were not reported in the initial inventory and/or are received while these Letters are in effect.
(3) Personal Representative shall not sell, mortgage, or lease real or personal property of the estate without prior Court approval.

DATED this ____ day of _____, 20___.

_____

_____, **Judge of Probate**

NOTICE OF ESTATE ADMINISTRATION

PROBATE COURT OF _____ COUNTY, ALABAMA

Estate of _____

Case No. _____

Take notice that Letters of Administration on the Annexed Will have been granted to the below named party on the ____ day of _____, 20___, by _____, Judge of Probate of _____ County Probate Court, Alabama and that all parties having claims against said estate should file the same with the Probate Court of said county within the time allowed by law, or they will be barred.

_____, as Administrator CTA under the last will and testament of _____, Deceased

Attorney of Record: _____

_____

_____

_____

To Counsel/Petitioner: Please have the above publication notice run once a week for three (3) consecutive weeks and file proof of the publication with the Court.

Insert Name of Newspaper: The above publication shall run as a Legal Notice. Mail proof of publication along with any bill for costs to the attorney of record or petitioner named above.

ORDER GRANTING ANCILLARY WITH LETTERS

IN THE PROBATE COURT _____ COUNTY, ALABAMA

IN RE:)
) **CASE NO. _____**
ESTATE OF)
)
_____,)
Deceased.)

ORDER

Petition to probate last will and testament dated _____ of the above named decedent is hereby **GRANTED** this date.

It is **ORDERED** that Ancillary Letters Testamentary under the last will and testament of _____, deceased, do forthwith issue to _____, as prayed.

It is further **ORDERED** that the Personal Representative shall not deposit with their legal counsel, and legal counsel shall not receive, any funds or other assets of this estate which exceed the total sum/value of $10,000 without prior approval of the Court. Any estate funds appropriately held by legal counsel shall be placed in an interest account unless said funds are to be disbursed with forty-five (45) days of receipt by legal counsel.

The Personal Representative is **ORDERED** to report to the Court if any litigation involving a wrongful death or personal injury claim is commenced in another court. If same is reported, the Personal Representative shall file with this Court a petition to determine the heirs of the decedent.

The Personal Representative is **DIRECTED** to notify the Alabama Medicaid Agency of their appointment in this cause and to furnish proof of same to the Court.

The Personal Representative is **ORDERED** to publish the attached notice of their appointment in a newspaper in general circulation in _____ County once a week for three (3) consecutive weeks and to furnish proof of same to the Court within sixty (60) days of the date of this Order.

It is further **ORDERED** by the Court that the said Petitioner pay the costs of this proceeding, **FOR THE RECOVERY OF WHICH LET EXECUTION ISSUE.**

DATED this ___ day of _____, 20___.

_____

_____, **Judge of Probate**

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

ANCILLARY LETTERS TESTAMENTARY

RE: _____, DECEASED

The Will of _____, deceased, having been duly admitted to record in said county, Ancillary Letters Testamentary are hereby granted to _____, the Personal Representative named in said will, who has complied with the requisites of the laws and who is authorized to take upon their self the execution of such will. Except as restricted or otherwise provided by said will, the Personal Representative is authorized to administer the estate in accordance with the powers and duties set out pursuant to Ala. Code §§43-2-830, et seq. (1975). Unless otherwise provided by the will, the powers and duties of said Personal Representative specifically include, but are not limited to, gathering and retaining estate assets, paying taxes, fees, and expenses, including court costs, incident to the administration of the estate. Any and all financial institutions are **ORDERED** to provide the Personal Representatives(s) with all information regarding any payment on death accounts in the name of the deceased. Said funds may be subject to the payment of debts and should not be expended prior to the six-month claims period and without prior Court approval.

DATED this ____ day of _____, 20____.

_____

_____, **Judge of Probate**

_____

NOTICE OF ESTATE

ADMINISTRATION

PROBATE COURT OF _____ COUNTY, ALABAMA

Estate of _____

Case No. _____

Take notice that Ancillary Letters Testamentary have been granted to the below named party on the ____ day of _____, 20____ by _____, Judge of Probate of _____ County Probate Court, Alabama and that all parties having claims against said estate should file the same with the Probate Court of said county within the time allowed by law, or they will be barred.

_____ as Personal Representative under the last will and testament of_____, deceased

Attorney of Record: _____
_____
_____
_____

To Counsel/Petitioner: Please have the above publication notice run once a week for three (3) consecutive weeks and file proof of the publication with the Court

Insert Name of Newspaper: The above publication shall run as a Legal Notice. Mail proof of publication along with any bill for costs to the attorney of record or petitioner named above

STATE OF ALABAMA	§	**PROBATE COURT OF SAID COUNTY**
	§	**CASE NO. _____**
_____ COUNTY	§	**CERTIFICATE**
	§	

I, _____, Judge of the Probate Court in and for said County and State do hereby certify that the within instrument of writing, has this day in said Court, and before me as the Judge thereof, been duly proven by proper testimony to be the genuine Last Will and Testament of _____, deceased, Case No. _____ and that said Will, together with said proof thereof, have been recorded in my office in Book of Wills No _____ and on page _____.

GIVEN under my hand and official seal this _____ day of _____, _____.

_____

_____, Judge of Probate

ORDER GRANTING LETTERS TESTAMENTARY

THE STATE OF ALABAMA **COURT OF PROBATE**

COUNTY OF _____ **CASE NO. _____**

RE: ESTATE OF _____, DECEASED

ORDER

Petition to probate last will and testament of the above named decedent has been endorsed "Granted" this date. Letters are issued as follows:

LETTERS TESTAMENTARY

The Will of _____, deceased, having been duly admitted to record in said county, Letters Testamentary are hereby granted to _____ (executor's name), the Personal (Representative or Representatives) named in said will, who (has or have) complied with the requisitions of the laws and (is or are) authorized to take upon (himself or themselves) the execution of such will.

Ordered this ____ day of _____, 20___.

_____

_____, Judge of Probate

PETITION TO PROBATE FOREIGN WILL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
	§	
Deceased.		

PETITION FOR PROBATE OF FOREIGN WILL

Comes now, _____, ("Petitioner(s)") respectfully represents and show unto the Court that _____ ("Decedent") who was a resident of _____, died in _____ on the _____ day of _____, _____, leaving a Last Will and Testament which was duly admitted to probate in the state of _____ on the ____ day of _____, _____, and your Petitioner was duly appointed as personal representative of the Estate of _____, Deceased; that attached hereto and made a part hereof are a Certified copy of the Order Admitting Will to Probate and a Certified Copy of said Will, both being duly authenticated by the Judge and the _____, as provided by §43-8-175, *Code of Alabama 1975*, and as provided by 28 U.S.C.A. §1738.

The Decedent, at the time of her death, owned real property in _____ County, Alabama, or an interest therein, and the Will of the Decedent is entitled to be admitted to probate and record in the Probate Court of _____ County, Alabama, as a foreign Will, for the purpose of establishing title and ownership of real property in the State of Alabama.

WHEREFORE, Petitioner prays that this Honorable Court will take jurisdiction of these proceedings and will make and enter an order or decree admitting the Last Will and Testament of the Decedent, to probate and record in the Probate Court of _____.

County, Alabama; and Petitioner prays for such other, further, or different relief as she may be entitled, the premises considered.

_____

Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____

Notary Public

My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____

Attorney for Petitioner

NOTICE TO WITNESS TO PROBATE WILL

NOTICE TO WITNESS TO PROBATE WILL

THE STATE OF ALABAMA)

_____ COUNTY)

PROBATE COURT

To any Sheriff of the State of Alabama:

You are hereby commanded to summon _____ to appear in and before the Probate Court of said County, on the ____ day of _____, 20__, to give evidence in a certain matter now pending in said Court, wherein _____ has filed for Probate an instrument purporting to be the will of _____ deceased.

You shall not omit this, under the penalty prescribed by law. Herein fail not, and have you then and there this writ at the office of the Judge of said Court.

Witness, _____, Judge of said Court at office, this ____ day of _____, 20___.

_____
Judge of Probate.

Ala. Code § 43-8-191 (1975)

PROOF OF WILL

PROOF OF WILL

THE STATE OF ALABAMA _____ COUNTY

PROBATE COURT

_____, 20___

In the Matter of the Estate of _____, Deceased.

Present, _____, Judge of Probate.

Before me, _____, Judge of Probate, in and for said County, personally appeared in open Court _____ who, having been by me first duly sworn and examined, did depose and say on oath, that as a subscribing witness to the instrument of writing now shown to him/her and which purports to be the Last Will and Testament of _____, deceased, late an inhabitant of this County, that said _____ signed and executed said instrument on the day the same bears date, and declared the same to be ____ Last Will and Testament, and that affiant set his/her signature thereto on the day the same bears date as a subscribing witness to the same in the presence of said testator and that the other witness subscribed his name as a witness in his/her presence and in the presence of said testator. That said _____ was of sound mind and disposing memory, and in the opinion of the deponent fully capable of making a Will at the time the same was so made as aforesaid. Affiant further states that said testator was on the day of the said date of said Will over the age of 18 years.

_____(L.S.)
_____(L.S.)

Sworn to and subscribed before me this ____ day of _____, 20__.

_____
Judge of Probate

PROOF OF WILL FOR SELF-PROVING WILL

PROOF OF WILL FOR SELF PROVING WILL

THE STATE OF ALABAMA)
_____ COUNTY)

PROBATE COURT

_____, 20___

In the Matter of the Estate of _____, Deceased.

Present, Honorable _____, Judge of Probate.

Pursuant to Ala. Code § 43-8-132 (1975, as amended 1984) proof of proper execution of the Will and Codicil by the decedent by actual testimony of a witness thereto is not required due to the Will and Codicil being self-proving pursuant to the provisions of said Section.

Sworn to and subscribed before me this ____ day of _____, 20___.

_____
Judge of Probate

Ala. Code § 43-8-132 (1975, as amended)

AFFIDAVIT OF LEGATEES

AFFIDAVIT OF LEGATEES

STATE OF ALABAMA) **IN THE PROBATE COURT OF**
_____COUNTY, ALABAMA

COUNTY OF)

IN THE MATTER OF THE ESTATE OF _____, DECEASED

Before me, _____, a Notary Public in and for said County, in said State, personally appeared _____ and _____ to me personally known and who being by me first duly sworn and on this oath does depose and say:

1. That they are over nineteen years of age and were named as legatees in the Last Will and Testament of _____, who departed this life on the ____ day of _____ 20___.

2. That said Last Will and Testament was duly proved and allowed for Probate under a Decree of the Probate Court of _____ County, Alabama, on the ___ day of _____, 20___.

3. That _____ was appointed as Personal Representative of Estate of _____, deceased, under a Decree of said Court on the ____ day of _____, 20___.

4. That all personal property and assets of said Estate received and remaining in the hands of said Personal Representative, after paying all debts filed or due from said Estate, has been delivered to said legatees _____ receipt of which is hereby acknowledged, and release of The _____ has been executed and file, and We, _____ _____, do hereby consent to the discharge of said Personal Representative.

This the ____ day of _____, 20___.

_____

_____

Subscribed and sworn to before me on this the ___ day of _____, 20__.

_____

ORDER FIXING DAY FOR HEARING ON PROBATE OF WILL AND APPOINTMENT OF GUARDIAN AD LITEM

ORDER FIXING DAY FOR HEARING ON PROBATE OF WILL AND APPOINTMENT OF GUARDIAN AD LITEM

THE STATE OF ALABAMA _____ COUNTY

PROBATE COURT

In the Matter of the Application of_____

To Admit to Probate an Instrument Purporting to be the Last Will and Testament of _____, Deceased.

This day came _____ and filed his petition in writing and under oath, praying for an order of this Court, admitting to probate an instrument purporting to be the Last Will and Testament of _____, deceased.

It is Ordered, Adjudged and Decreed by the Court that the ____ day of _____, 20___, be, and the same hereby is fixed by the Court as the day and time for the hearing on the said petition.

It is Further Ordered, Adjudged and Decreed by the Court that notice be issued and served upon _____

_____

_____

the widow and next of kin, of the filing of the said application and of the day and time fixed by the Court for the hearing thereon.

It is Further Ordered, Adjudged and Decreed by the Court that _____, a practicing Attorney at Law, be, and he hereby is appointed by the Court as Guardian Ad Litem to represent and defend the interest of

_____

_____

the minors interested in the said proceedings, on the said hearing.

Witness my hand this the ____ day of _____, 20___.

_____

Judge of Probate

MOTION TO APPOINT COMMISSIONER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITIONER'S MOTION TO APPOINT COMMISSIONER AND ISSUE INTERROGATORIES TO PROVE WILL

Comes now _____ ("Petitioner") and requests the Court to enter an Order appointing a Commissioner and issuing interrogatories for the proof of the Last Will and Testament of _____("Decedent") as follows:

1. The name and address of a subscribing witness to the Last Will and Testament of the Decedent: _____
_____
_____
_____

2. The name and address of a Notary Public in and for the State of _____, qualified to take said witness's testimony, for the proof of said Last Will and Testament:

_____
_____
_____
_____

Dated, _____

_____
Petitioner

ORDER AND LETTER APPOINTING COMMISSIONER

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITIONER'S MOTION TO APPOINT COMMISSIONER AND ISSUE INTERROGATORIES TO PROVE WILL

Comes now _____ ("Petitioner") and requests the Court to enter an Order appointing a Commissioner and issuing interrogatories for the proof of the Last Will and Testament of _____("Decedent") as follows:

1. The name and address of a subscribing witness to the Last Will and Testament of the Decedent: _____
_____
_____
_____

2. The name and address of a Notary Public in and for the State of _____, qualified to take said witness's testimony, for the proof of said Last Will and Testament:

_____
_____
_____
_____

Dated, _____

_____
Petitioner

STATE OF ALABAMA	)	**PROBATE COURT OF SAID COUNTY**
	)	**CASE NO. _____**
_____ COUNTY	)	**CERTIFICATE**
_____,	)	
Deceased.	)	

ORDER

On motion of the attorney of record, it is **ORDERED** by the Court that a commission forthwith issue to _____ authorizing and empowering them to take the depositions of _____, witnesses on behalf of petitioner in the above-styled cause.

It is further **ORDERED** by the Court that consideration of the petition to probate lost last will and testament and issue letters testamentary heretofore filed in the above entitled cause be and the same is hereby continued to _____.

_____
_____, Judge of Probate

Copy mailed to attorney(s) of
record - Probate Court,
_____County, Alabama

STATE OF ALABAMA	)	**PROBATE COURT OF SAID COUNTY**
_____ COUNTY	)	
_____,	)	**CASE NO. _____**
Deceased.	)	

COMMISSION TO TAKE DEPOSITION

To: _____
_____
_____
_____

KNOW YE, that I, in confidence of your prudence and fidelity, do hereby appoint you, and by these presents do give you, full power and authority to take the depositions of _____, witnesses in a cause pending in the said Court, entitled as appears in the caption above, and therefore I command you at such time and place as you may appoint, you do cause the witnesses, _____,to come before you and then and there examine the witnesses under oath, on the interrogatories herein. And that you do take such examination, and reduce the same into writing in the areas as provided and return the same closed up under your seal to the said Probate Court, with all convenient speed, so that the same may be read in evidence on the trial of the said cause.

DATED this ____ day of _____, 20___.

_____, **Judge of Probate**

By _____
Chief Clerk

Witnesses:
Enter Names and Adddresses

_____
_____
_____
_____
_____
_____

INTERROGATORIES TO SUBSCRIBING WITNESS

STATE OF ALABAMA	)	**PROBATE COURT OF SAID COUNTY**
_____ COUNTY	)	
ESTATE OF	)	**CASE NO. _____**
_____,	)	
Deceased.		

INTERROGATORIES TO _____
(F/K/A _____)

1. State your full name and address.
ANSWER:
_____
_____
_____

2. State the date, month and year of your birth.
ANSWER:
_____

3. Are you familiar with the instrument attached (certified copy of the will of the decedent)?
ANSWER:
_____

4. Do you know_____, an attesting witness to the instrument purporting to be the last will and testament of the Decedent, now deceased?
ANSWER:
_____

5. Are you familiar with the handwriting of_____, an attesting witness to the instrument purporting to be the last will and testament of the decedent?
ANSWER:
_____

6. Is _____, one of the attesting witnesses to the instrument purporting to be the last will and testament of the Decedent, now deceased
ANSWER:
_____

7. Were you ever in possession of the original will of the Decedent?
ANSWER:
_____

8. If yes, please explain the location of said will and any circumstances relating to its whereabouts. ANSWER:
_____
_____
_____
_____

9. Are you aware of any other wills or codicils executed by the Decedent after the date of said instrument
ANSWER:
_____

10. To your knowledge, did the Decedent revoke the said will?
ANSWER:
_____

11. Is the Decedent now deceased?
ANSWER:
_____

_____
Signature of Deponent/Witness

SWORN AND SUBSCRIBED to before me on the

_____day of _____, 20____.

_____
Signature of Commissioner

Place of Deposition: _____

Time of Deposition: _____

* * * * * * * * * *

CERTIFICATE OF COMMISSIONER

Having executed the commission of the Probate Judge of _____County, Alabama in the matter heretofore named, I hereby transmit the answers to the foregoing interrogatories as a true and complete account of the testimony received by me from the said deponent/witness on the date shown.

Witness my hand this _____ day of _____, 20____.

_____
Commissioner

NOTE: Please return all documents to the Probate Court of _____County,

_____
_____
_____
_____

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

RECEIPT

RE:

Received from Probate Court of _____ County, the following:

Certified Copy of the Instrument in writing purporting to be the last will and testament of _____, deceased;

Commission as issued to _____to take the depositions of_____.

DATED this _____ day of _____, 20___.

Received by:

_____

Date:_____

MOTION TO PRODUCE WILL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO._____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

MOTION TO PRODUCE LAST WILL AND TESTAMENT

Comes now _____, ("Petitioner"), and respectfully represents and shows that _____,("Decedent"), late resident and inhabitant of the County of _____, State of Alabama, departed this life on _____, leaving a Last Will and Testament.

Petitioner would further state that the Last Will and Testament was written by attorney _____ and the Petitioner's attorney has requested a copy of the Last Will and Testament [from this attorney's office numerous times and so far he/she has failed to produce said Will **or** that the Last Will and Testament is in possession of _____ who has failed to produce the Last Will and Testament despite numerous requests by the Petitioner.]

WHEREFORE, the premises considered, Petitioner prays that this Court will order, ordering _____ to produce the Last Will and Testament of _____, or show cause why (s)he should not be held in contempt of this Court or for such other sanction that may seem proper.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

PETITION FOR AUTHORITY TO OPEN SAFETY DEPOSIT BOX

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION FOR AUTHORITY TO OPEN SAFE DEPOSIT BOX

Comes now _____, ("Petitioner"), does hereby file this petition for authority to open _____'s safe deposit box and as grounds therefore would state as follows:

1. _____ ("Decedent") passed away on _____.

(S)he was a resident of _____ County, Alabama. A copy of his/her death certificate is attached hereto and marked Exhibit A.

2. The Petitioner is the decedent's next of kin and heir at law.

3. Upon information received, Petitioner believes that the decedent had a deposit box in _____ Bank located in _____ County, Alabama.

4. At this time, Petitioner is not aware of what may be in the safe deposit box, but is of the belief that the safe deposit box may contain an original last will and testament of the Decedent. However, (s)he seeks the authority from this Court to open said safe deposit box for the sole purpose of searching for a will and making an inventory of the contents.

5. Petitioner has attempted to gain access to the safe deposit box. However, since it is solely in the Decedent's name, the Bank will not allow Petitioner access without an order from this Court.

6. Petitioner requests this Court to authorize the Petitioner or their attorney or both to have access to the safe deposit box to search for the Will and inventory the contents of the safe deposit box. Further, that this Court order _____ Bank to allow access to that safe deposit box for the purpose of searching for the Will and making an inventory of its contents.

WHEREFORE, Petitioner requests this Court to authorize Petitioner or their attorney or both to have access to the safe deposit box to search for the Will and inventory the contents of the safe deposit box. Further, that this Court order _____ Bank to open and allow access to that safe deposit box for the purpose of searching for the Will and making an inventory of its contents, and for such other, further and different relief, the premises considered.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

NOTICE OF APPOINTMENT TO BE PUBLISHED BY PERSONAL REPRESENTATIVE

NOTICE OF APPOINTMENT TO BE PUBLISHED BY PERSONAL REPRESENTATIVE

ESTATE OF	)	**PROBATE COURT**
	)	
_____	)	**OF _____ COUNTY**
Deceased		

Letters _____ of said deceased having been granted to _____, Personal Representative on the ___ day of _____, 20___, by the Honorable _____, Judge of Probate Court of _____ County, notice is hereby given that all persons having claims against said estate are hereby required to present the same within time allowed by law or the same will be barred.

_____

TO _____

Publisher of _____

Please publish the above notice three successive weeks in said newspaper.

_____

RENUNCIATION OF APPOINTMENT AS PERSONAL REPRESENTATIVE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
DECEASED.	§	

RENUNCIATION AND DECLINATION OF APPOINTMENT

Comes now _____ and renounces his/her/its appointment as personal representative named in the Last Will and Testament of _____ and declines to serve as such personal representative.

_____

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

PETITION TO CONTEST WILL

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	
ESTATE OF	§	**CASE NO. _____**
_____,	§	
Deceased.	§	

COMPLAINT CONTESTING WILL

Comes now _____ ("Contestant"), and hereby contests the purported Last Will and Testament of the above decedent heretofore presented,dated _____, showing unto the Court as follows:

1. [Set out with specificity the facts contesting the will, whether it be fraud, undue influence, lack of testamentary capacity, not executed in the mode and manner prescribed by law, misrepresentation, etc.]

WHEREFORE, Contestant requests the Court to set this matter down for hearing to determine whether said Will is the Last Will and Testament of the above decedent. Contestant prays for such other, further and different relief as may be proper, the premises considered.

_____
Contestant

_____
Attorney for Contestant

[OPTIONAL -JURY TRIAL IS HEREBY REQUESTED]

PRE-TRIAL ORDER WILL CONTEST

PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:)
CASE NO. _____
ESTATE OF)
_____,)
Deceased.)
)

ORDER

This cause came before the Court on _____ for a _____ on the matters referenced above. Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. After consultation with counsel of record and in order to expedite pre-trial and trial procedures it is **ORDERED** as follows:

1. The cause shall be set for trial on _____ at _____, _____ _____.

2. All discovery in this cause shall be completed on or before _____ **(30 days prior)**. All parties are under a duty to supplement responses with respect to discovery as provided by Rule 26(e)(3) of the *Alabama Rules of Civil Procedure*.

3. The triable issue(s) in this cause identified at this time (is) are:

   a) _____

4. _____, as Will Contestant, is hereby **DIRECTED**, on or before _____, to cause service to issue to any and all heirs of the Decedent and issue(s) of any deceased heir, if any, in this matter with: (a) summons and notice of trial, (b) copy of the Objection/Contest of the Will filed by _____, and (c) a copy of this Order, in accordance with Rule 4 of the *Alabama Rules of Civil Procedure*. _____, is **DIRECTED** to file proof of service with the Court on or before _____, Failure on the part of _____, to cause service to all heirs timely may result in the imposition of sanctions, dismissal of a party's pending matter, and/or the granting of the relief requested by the opposing party.

5. All parties in interest must affirmatively identify, in writing, if they are a proponent or a contestant. If they fail or refuse to do so, they shall be deemed to be a contestant.

6. Will Contestant(s) who are not successful in their contest at trial could be liable for attorney fees of the Will Proponent.

7. Each party shall furnish all documents, exhibits and physical evidence, or copies thereof, expected to be used at trial during their case in chief (but not rebuttal) to the other parties on or before _____, **(3 weeks prior)**. The same shall then be considered **authenticated** and will be considered admissible into evidence **without further proof on authenticity grounds**, unless written objections to any such documents or exhibits be made to the Court on or before _____, **(10 days prior)**, specifying the grounds for objection and evidence in opposition to the authenticity of the proposed document, exhibit or physical evidence.

8. Unless previously obtained by discovery, each party will furnish to all other parties the names, addresses and qualification of all expert witnesses expected to testify, together with a brief summary of their opinions, on or before _____, **(3 weeks prior)**. Opposing parties may make written objection to the qualification to the Court on or before _____, **(10 days prior)**, stating therein the specific objection and evidence in support thereof.

9. Unless previously obtained by discovery, each party will furnish to all parties the names and address of all witnesses expected to testify at trial in their case in chief (not rebuttal witnesses) on or before _____, **(3 weeks prior).** Opposing parties may make written objections to the Court on or before _____, **(10 days prior)** stating therein the specific objection and evidence in support thereof.

10. Documents, exhibits or physical evidence not timely exhibited to other parties prior to trial as specified herein, may not be offered in evidence at the trial unless the ends of justice so require.

11. The parties shall file with the Clerk of the Court on or before _____, **(2 weeks prior)**, subpoenas and/or subpoenas duces tecum for trial with copies of said requests to be served on all other counsel.

12. Documents, exhibits, or physical evidence to be offered by parties during the course of their case in chief (but not rebuttal) shall be filed/presented to the Court Reporter for marking into evidence on _____, **(2 days prior),** along with an exhibit list and witness list.

13. The Court has a variety of technology equipment available for attorneys and parties to use during court proceedings. In order to utilize the equipment, please contact the Court at _____ or by email at _____ on or before _____, **(2 days prior)**.

14. The *Alabama Rules of Civil Procedure* shall apply, with the Court exercising its Constitutional, statutory, and equity jurisdiction (see Rule 1, *Alabama Rules of Civil Procedure*).

15. The Court will reconsider any portion of this Order upon **timely** application of any Party.

16. Any additional parties in interest shall be added no later than thirty (30) days from the date of this Order.

17. If requested by the parties, a mediator shall be appointed. If a mediator is appointed, the *Alabama Civil Court Mediation Rules* and the *Alabama Code of Ethics for Mediators* shall apply as appropriate.

18. The Clerk of the Court shall forward a copy of this Order to legal counsel of record by enotice.

DATED this ____ day of _____, 20____.

_____

_____, **Judge of Probate**

ORDER SETTING PRE-TRIAL CONFERENCE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **CASE NO. _____**

_____Estate name : **_____(today's date)**

_____ (Estate type)

In Re: **_____(1st Pleading)**
_____(2nd Pleading)
_____(3rd Pleading)
_____(4th Pleading)

ORDER

For due cause shown, it is ORDERED by the Court that the _____(1st Pleading), _____(2nd Pleading), _____ (3rd Pleading), and _____(4th Pleading) be and _____(is/are) hereby set for a Pre-Trial Conference in the above entitled cause on the _____day of _____, 20___year, at _____ _ m. at _____.

The Pre-Trial Conference is held for Attorneys and Pro-Se parties only.

It is further ORDERED by the Court that a copy of this Order be forwarded to _____ (attorneys), by First Class Mail.

_____
_____, Judge of Probate

CASE WORKSHEET: PRE-TRIAL CONFERENCE

CASE WORKSHEET
Pre Trial Conference

Case No.

Date Set: ,

Cause: Matter:

Cause: Matter:

Cause: Matter:

Cause: Matter:

All parties present for Pre Trial Conference 9 Yes 9 No

Notes for Pre-Trial Order:

Discovery Deadline:_____ Trial Date:_____

Mediator: 9 Yes 9 No

Mediator to be appointed:_____

Notes:

COURT ORDER FOR DISCOVERY

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN THE MATTER OF : **_____(today's date)**

_____ : **CASE NO. _____**
(Estate Name)

_____ :
(Estate Type)

ORDER

This cause came before the Court on ____, _____, 20__, for a pretrial conference on the _____(1st Petition) filed by _____ (1st filed by) and the _____ (2nd Petition) filed by _____ (2nd filed by). Appearances were as noted in the record. After consultation with counsel of record and in order to expedite pre-trial and trial procedures it is **ORDERED** as follows:

1. All discovery in this cause shall be completed on or before _____ (D is D/L). All parties are under a duty to supplement responses with respect to discovery as provided by Rule 26(e)(3) of the *Alabama Rules of Civil Procedure*.

2. This cause shall be set for trial on _____ (Trial date) at _____ (Trial time) in _____.

3. Any additional parties in interest shall be added no later than thirty (30) days from the date of this order.

4. The triable _____(issue/issues) in this cause identified at this time ____(is/are):

5. Each party shall furnish all documents, exhibits and physical evidence, or copies thereof, expected to be used at trial to the other parties on or before _____ (Exh Info due). The same shall then be considered authenticated and will be considered admissible into evidence without further proof on authenticity grounds, unless written objections to any such documents or exhibits be made to the Court on or before _____ (Obj due), specifying the grounds for objection and evidence in opposition to the authenticity of the proposed document, exhibit or physical evidence.

6. Documents, exhibits or physical evidence not timely exhibited to other parties prior to trial as specified herein, may not be offered in evidence at the trial unless the ends of justice so require.

7. Documents, exhibits, or physical evidence so admitted hereunder shall be presented

to the Court Reporter for marking into evidence on _____ (Ct Reptr due), along with an exhibit list.

8. Unless previously obtained by discovery, each party will furnish to all other parties the names, addresses and qualification of all expert witnesses expected to testify, together with a brief summary of their opinions, on or before ____ (Exh Info due). Opposing parties may make written objection to the qualification to the Court on or before _____ (Obj due) stating therein the specific objection and evidence in support thereof.

9. The *Alabama Rules of Civil Procedure* shall apply, with the Court exercising its Constitutional, statutory, and equity jurisdiction (see Rule 1, *Alabama Rules of Civil Procedure*).

10. The parties shall submit to the Clerk of the Court timely requests in writing for any subpoenas and/or subpoenas duces tecum with copies of said requests to be served on all other counsel.

11. The Court will reconsider any portion of this Order upon timely application of any party.

12. INSERT ANY ADDITIONAL PROVISIONS.

13. A copy of this Order shall be forwarded by United States First Class Mail to _____ (Attorneys).

_____
Judge of Probate

ORDER DISMISSING PROBATE OF WILL AND DEPOSITING

PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:)

ESTATE OF) **CASE NO. _____**

_____,)

Deceased.)

ORDER

This cause came before the Court on hearing held on _____, on the Petition to Probate Will filed by _____("Petitioner"). Appearances were noted in the record. The Petitioner was not present [or has failed to _____]. This cause is now properly before the Court pursuant to statute and Constitutional provisions. On due consideration of the pleading and argument presented, the Court **FINDS**, **CONCLUDES** and **ORDERS** as follows:

1. It now appears that Petitioner has failed and/or refused to appear [or has failed to____].

2. Accordingly, the Petition to Probate filed by the Petitioner is **DISMISSED WITHOUT PREJUDICE** for lack of prosecution.

3. The instrument purporting to be the Last Will and Testament dated _____, of Deceased is hereby deposited with this Court in compliance with *Ala. Code* § 43-8-270 (1965).

4. Costs are taxed against the Petitioner, **FOR WHICH LET EXECUTION ISSUE**.

5. The Clerk of the Court shall forward a copy of this Order to all legal counsel of record by _____ and any *pro se* parties by United States Mail.

DATED this ____ day of _____, _____

_____

_____, **Judge of Probate**

MOTION TO CONSTRUE WILL & FOR INSTRUCTION

IN THE PROBATE COURT OF _____COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

MOTION TO CONSTRUE LAST WILL AND TESTAMENT OF _____, DECEASED AND FOR INSTRUCTIONS

Comes now _____ ("Petitioner") the personal representative of the Last Will and Testament of _____("Decedent") and files this petition to construe the Will of Decedent and for instructions, as follows:

1. That on the _____ day of _____, _____, the Last Will and Testament of _____ ("Will") was admitted to probate in the Probate Court of _____ County, Alabama, and that Petitioner was issued Letters Testamentary as provided in the Will on the _____ day of _____, _____.

2. _____
_____
_____

WHEREFORE, Petitioner prays that, upon a hearing, the court will determine the matters outlined above and enter an order _____. Petitioner invokes the equity jurisdiction of the Court and further prays for such other, further and different relief to which (s)he may be entitled, the premises considered.

_____
Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Petitioner

INVENTORY OF ESTATE

PROBATE COURT OF _____ COUNTY
Inventory of Estate

IN RE:
ESTATE OF _____, Deceased. **CASE NO. _____**

Please complete Parts I, II and III of this form and deliver to the Probate Court of _____ County. As Personal Representative, Alabama Law requires you to file an inventory listing all assets which are subject to administration within 45 days after issuance of letters. If you come into possession of additional assets after your initial inventory is filed, you must file an updated amended inventory. If you have any questions, please contact your Attorney. This form **MUST** be signed by you, the personal representative, **and** notarized. Estimated value of property is **required.**

NOTE: If this form is insufficient to list all information, you may attach additional pages)

PART I. REAL PROPERTY SCHEDULE

Description/Address	Estimated Value

PART II. PERSONAL PROPERTY

Description	Estimated Value

PART III.

BANK ACCOUNT INFORMATION

1. Attach to the inventory a copy of the bank documentation reflecting the establishment of estate bank account(s) and submit same, include any additional accounts in which the Decedent had an interest including any POD or multi-party accounts.
2. Please list below the account(s) which have been opened by you to administer Estate funds and the current balances in each.
3. Also include Certificates of Deposit and any other investments made by you to administer the Estate.

Name and Address of Bank	Account Number	Balance

Please list all sources of income.

Income	Source	Frequency/Amount

Certification

I, the undersigned personal representative, do hereby affirm that the information provided above is true and correct to the best of my knowledge and belief.

_____
Personal Representative

Subscribed and sworn to before me this

_____, day of_____, 20_____.

_____

_____

Notary Public
(Attach Seal Below)

OBJECTION TO ESTATE CLAIM

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

OBJECTION TO ESTATE CLAIM

Comes now _____, the Personal Representative for the Estate of _____, ("Decedent"), and files his/her objection to the Estate Claim filed on behalf of _____, relative to account number _____ and/or recorded in RP Book _____, Page ____.

_____
Personal Representative

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ___ day of _____, 20___.

_____
Notary Public
My Commission Expires:_____

(AFFIX NOTARY SEAL)

_____
Attorney for Personal Representative

PETITION TO REMOVE PERSONAL REPRESENTATIVE

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE: §

CASE NO. _____

ESTATE OF §

_____, §

Deceased. §

PETITION TO REMOVE _____ AS PERSONAL REPRESENTATIVE

Comes now _____ ("Petitioner") and requests this Court to issue an order removing _____ as personal representative of the Estate of _____, showing unto the Court as follows:

1. That letters testamentary were issued by this Court on _____ appointing _____ as personal representative of the Estate of _____, Deceased.

2. _____
_____
_____
_____

WHEREFORE, the premises considered, Petitioner prays this Court will issue an order removing _____ as personal representative of the Estate of _____, Deceased. Petitioner further prays for such other, further and different relief to which he/she may be entitled, the premises considered.

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____

Notary Public
My Commission Expires:

_____

(AFFIX NOTARY STAMP)

_____

Attorney for Petitioner

PETITION FOR EXEMPTIONS – ALLOWANCES PRIOR TO ADMINISTRATION

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE: §

CASE NO. _____

ESTATE OF §

_____, §

Deceased.

§

PETITION FOR EXEMPTIONS AND ALLOWANCES PRIOR TO ADMINISTRATION

Comes now _____ ("Petitioner"), and states the following:

1. That _____ ("Decedent") died testate/intestate in _____County, Alabama on _____. Attached hereto is a copy of the Decedent's death certificate.

2. That more than sixty (60) days have elapsed since the date of death of said decedent and no administration upon the estate has been granted.

3. That the decedent left an estate of certain assets as more particularly set forth as follows, which in the opinion of your Petitioner, does not exceed in value the sum of $_____: _____
_____
_____

4. The Petitioner is the _____ of the Decedent. The next of kin of the Decedent are as follows: _____
_____
_____
_____

5. That your Petitioner seeks certain exemptions and allowances and proceedings to be set apart, the same to the surviving spouse and/or children of Decedent in accordance with [*§43-8-110, §43-8-111* and/or *§43-8-112, Code of Alabama 1975.*]

WHEREFORE Petitioner prays that the Court will take jurisdiction over this matter and award exemptions and allowanced due those entitled. Petitioner prays for such other and different relief as may be appropriate, the premises considered. Petitioner respectfully invokes the equity jurisdiction of the Court.

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____
Notary Public
My Commission Expires:

_____
(AFFIX NOTARY STAMP)

_____
Attorney for Petitioner

PETITION FOR EXEMPTIONS & ALLOWANCES

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION FOR FOR EXEMPTIONS AND ALLOWANCES

Comes now _____("Petitioner") and sets forth as follows:

1. Petitioner is a ☐surviving spouse or ☐children, if no surviving spouse of _____, makes this claim for their statutory exemptions as follows:

(A) A homestead allowance pursuant to *Ala. Code* §43-8-110;
(B) Exempt property allowance pursuant to *Ala. Code* §43-8-111;
(C) A reasonable family allowance *Ala. Code* §43-8-113.

2. Petitioner, at the time of _____'s death, was domiciled in this state, and would be entitled to the above exemptions.

WHEREFORE, Petitioner prays that this Court authorize the Estate of _____ to pay these exemptions directly to his/her ☐surviving spouse or ☐children, _____.

_____

_____, Petitioner

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____
Notary Public
My Commission Expires:
_____
(AFFIX NOTARY STAMP)

_____
Attorney for Petitioner

ORDER GRANTING EXEMPTIONS AND ALLOWANCES

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	)	
ESTATE OF	)	**CASE NO. _____**
_____,	)	
Deceased.	)	

ORDER

This cause is before the Court on the Petition for Exemptions and Allowances as filed by _____ ("Petitioner") and _____ of the Deceased. No hearing or appearance is necessary. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon consideration of the pleading and evidence adduced, the Court **FINDS**, **CONCLUDES** and **ORDERS** as follows:

1. The Petition for Exemptions and/or Allowances is **GRANTED**.

2. The following exemptions and allowances are hereby set apart to [name of spouse/ children] as requested:

   a. A homestead allowance pursuant to *Ala. Code* § 43-8-110 (1975); and

   b. A personal property exemption pursuant to *Ala. Code* § 43-8-111 (1975); and

   c. A family allowance pursuant to *Ala. Code* § 43-8-112 (1975).

3. The maximum distribution is not to exceed the amount allowed by *Ala. Code* § 43-8-116 (1975).

4. The costs of this proceeding are taxed against said estate.

5. The Clerk of the Court shall forward a copy of this Order to all legal counsel by Electronic Mail or United States First Class Mail and all pro se parties by United States First Class Mail.

DATED this ____ day of _____, 20___.

_____

_____, **Judge of Probate**

PETITION FOR PARTIAL SETTLEMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:

CASE NO. _____

ESTATE OF §

§

_____, §

§

Deceased. §

PETITION FOR PARTIAL SETTLEMENT

COMES NOW Petitioner, _____ ("Petitioner"), as personal representative of the estate of _____, Deceased ("Decedent"), and says as follows:

1. Petitioner is the duly appointed and acting personal representative of the estate of Decedent.

2. On _____ Letter of _____ were granted to Petitioner. More than six (6) months have now elapsed since Letters of _____ were issued to Petitioner.

3. Petitioner states that the names and addresses of the persons entitled to notice of the hearing on this Petition are stated on Exhibit "A" attached hereto and incorporated by reference.

4. Petitioner says that it is appropriate to make a partial settlement and account of the administration of the Decedent's estate for the period of his/her service, namely, _____ through _____. Petitioner attaches hereto as Exhibit "B" his/her account, showing all receipts and disbursements made by him/her as personal representative and said disbursements are supported by vouchers, and Petitioner's accounting is verified by his/her affidavit. Petitioner has used no part of the Decedent's estate for his/her own personal use and benefit.

5. In recapitulation, Petitioner has received funds totaling $_____ and has made disbursements totaling $_____, leaving a balance on hand of $_____ as of _____, represented by checking account balance of $_____ and certificates of deposit totaling $_____. A bank statement is attached hereto as Exhibit "C" showing the bank balance as of the date indicated, which may differ from Petitioner's reported balance because of interest earned or checks issued by Petitioner but not yet cleared at the bank. There are no non-cash assets owned by the Decedent's estate, to the vast of Petitioner's knowledge, information and belief, except as may be identified on the recapitulation page attached hereto as Exhibit "D".

6. Petitioner asks this Court to fix, ratify and award him/her commissions and compensation to which he/she is entitled by law, together with reimbursement of expenses, and including fees to which he/she is entitled for having provided legal services to this estate during the period of service. An invoice itemizing the total amounts requested as compensation is attached here to as Exhibit "E".

WHEREFORE, Petitioner prays that upon the filing of this petition, the Court will appoint a day for the hearing hereof, will direct that notice be given as provided by law; that upon the hearing hereof, that the Court will audit, pass and allow the account of Petitioner as personal prepresentative, that the Court will fix and allow to Petitioner compensation to which he/she is by law entitled as personal representative, includeing commissions, fees and reimbursement of expense; and will grant such other relief as shall be appropriate.

DATED: _____

_____

Petitioner

STATE OF ALABAMA

COUNTY OF _____

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the____day of _____, 20____.

_____

Notary Public

My Commission expires:

_____

(AFFIX NOTARY SEAL)

_____

Attorney of Petitioner

Accounting Sheet Probate Court of _____ County Case No. _____ Page ___ of ___

DATE	CK NO	SOURCE (RECEIPT OR DISBURESEMENT)	INCOME	EXPENSE	BALANCE
******	******	Page Totals →			

Accounting Sheet Probate Court of _____ County Case No. _____ Page ___ of ___

RECAP

Balance last accounting (if applicable)	$_____	
Total of all receipts	$_____	
Total of all disbursemets	$_____	
Balance on hand	$_____	Balance on hand must reconcile with bank statement

Comments on accounting and requests for reimbursements, if any:

NOTICE: ATTACH ORIGINAL CHECKS, VOUCHERS AND BANK STATEMENTS TO SUPPORT ENTRIES

Accounting Sheet Probate Court of _____ County Case No. _____ Page ___ of ___

OTHER ASSETS HELD

(list below all other non-cash assets held, description, location and estimated values)

DESCRIPTION OF ASSET	LOCATION	VALUE

ORDER GRANTING PARTIAL SETTLEMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	)	**CASE NO. _____**
	)	
ESTATE OF	)	
	)	
_____,		
Deceased.	**ORDER**	

This cause came before the Court on _____ on the Petition for Partial Settlement filed by _____ ("Personal Representative"). Appearances were noted in the record. This cause is properly before the Court pursuant to its jurisdiction and authority as conferred by statute and Constitutional provisions. Upon due consideration of the evidence and argument presented, the Court **FINDS, CONCLUDES AND ORDERS** as follows:

1. Petition for Partial Settlement is **GRANTED**; accounts are passed and allowed; accounting worksheet filed.

2. Costs are **TAXED** against Estate.

3. Next Partial Accounting and Settlement is due_____.

4. Clerk of Court will forward a copy of this Order to all legal counsel of record by electronic notice or U.S. Mail and to all *Pro Se* parties by U.S. First Class Mail.

DATED this ____ day of _____, _____.

_____

_____, Judge of Probate

PETITION FOR SALE OF REAL PROPERTY

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION FOR SALE OF REAL PROPERTY

Comes now, _____ ("Petitioner") and shows unto the Court as follows:

1. Petitioner is the duly appointed and acting personal representative of the Estate of _____ ("Decedent") having received letters from this Court on the ____ day of _____, _____.

2. Decedent's heirs-at-law are:

_____

_____

_____

_____

The heirs are all of sound mind and over 19 years of age. *(If not, state and provide details)*

3. Among the assets of the Estate is real property located in _____County, Alabama, more particularly described as: _____

_____

4. A sale of the said real property is necessary for _____ and in order ☐ to make equitable distribution among the heirs or ☐ for the payments of debts. In Petitioner's opinion, the property will bring the best price at a private sale.

5. The heirs at law and next of kin [have executed a written consent to this petition

attached as Exhibit A *[or will be served with a copy of this petition.]*

WHEREFORE, Petitioner prays that the court will enter its order authorizing and approving a private sale by him/her of the above described real property; and Petitioner requests such other, further, and different relief as he/she may be entitled to receive, the premises considered.

DATED: _____

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____ whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____
Notary Public
My Commission Expires:

_____

(AFFIX NOTARY STAMP)

_____
Petitioner

_____
Attorney for Petitioner

PETITION FOR FINAL SETTLEMENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:	§	**CASE NO. _____**
ESTATE OF	§	
_____,	§	
Deceased.	§	

PETITION FOR FINAL SETTLEMENT

Comes now, _____ ("Petitioner") and shows unto the Court as follows:

1._____ is the duly appointed and acting Personal Representative of the Estate of _____ ("Decedent") having received Letters Testamentary from this Court on the ____ day of _____, ____.

2. The following named persons are the parties entitled to notice of this proceeding and or are legatees or heirs of the Decedent.

_____

_____

3. In accordance with *Ala. Code* §43-2-60, et seq., the Petitioner gave notice of his/her appointment, the name of the decedent, the date on which his/her letters were issued, by what court in what county, and that all persons having claims against the estate must present their claims within the time allowed by law, else the same would be barred. The notice was given by publication once a week in a newspaper of general circulation in _____ County, Alabama, more than six months prior hereto, and by first class mail more than thirty (30) days prior hereto. Petitioner further states that all outstanding bills and creditors of Decedent have been paid; and that, after the exercise of due diligence and upon diligent inquiry, he/she is unable to determine any other creditors of Decedent, other than those who were paid and discharged after the filing of the petition, and respectfully shows unto the court as follows:

4. That no claims have been filed against the decedent or his/her estate and there are no unpaid legal debts or charges against the estate, except court costs, if any, incurred in this final settlement. Petitioner further shows that he/she has not used any of the estate funds for his/her own personal use.

5. The Petitoner was [or was not] serving under bond. _____ was the surety. All bond premiums have been paid, and a waiver by the surety is attached hereto.

6. The Petitioner did not use any of the assets of the estate for his/her own benefit and all disbursements made by him/her were in the lawful discharge of his/her duties as personal representative.

7. Attached hereto and made a part hereto are Waivers of Notice and Consents executed by the legatees, accepting service of notice of the petition for final settlement, waiving all further notice, and acknowledging receipt in full of all property that they as such legatees are entitled to receive.

WHEREFORE, Petitioner prays that this Court will (1) approve this final settlement; (2) discharge the Petitioner and the surety on his/her bond, and, (3) fix and allow commissions and fees to the Petitioner and to the attorney for the Petitioner, and Petitioner prays for such other, further and different relief to which he/she may be entitled to receive, the premises considered.

_____

Petitioner

STATE OF ALABAMA)

COUNTY OF _____)

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand this the ____ day of _____, 20____.

_____
Notary Public
My Commission Expires: _____

(AFFIX NOTARY SEAL)

_____
_____

_____
Attorney for Petitioner

ORDER GRANTING FINAL SETTLEMENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:)
CASE NO. _____
ESTATE OF)
_____,)
Deceased.)

ORDER

This cause came before the Court on _____, on Petition for Final Settlement filed by _____ ("Personal Representative"). Appearances were noted in the record. This cause is properly before the Court pursuant to jurisdiction conferred by statute and Constitutional provisions. On due consideration of the evidence and argument presented, the Court **FINDS**, **CONCLUDES** and **ORDERS** as follows:

1. The Petition for Final Settlement is **GRANTED**. Accounts passed and allowed. Worksheet filed.

2. The balance on hand, if any, shall be distributed in accordance with the Last Will and Testament of the Decedent.

3. Report of compliance due within thirty (30) days of the date of this Order.

4. Costs are taxed against the estate, **FOR WHICH LET EXECUTION ISSUE**.

5. The Personal Representative and Surety shall be discharged upon report of compliance.

6. The Clerk of the Court shall forward a copy of this Order to all legal counsel of record by enotice or First Class Mail and any *pro se* parties in interest by United States First Class Mail.

DATED this _____ day of _____, _____

_____
_____, **Judge of Probate**

PETITION FOR FINAL CONSENT SETTLEMENT

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:

	§	
	§	**CASE NO. _____**
ESTATE OF	§	
	§	
_____,	§	

Deceased.

PETITION FOR FINAL CONSENT SETTLEMENT

Comes now, _____ ("Petitioner") and shows unto the Court as follows:

1. _____ is the duly appointed and acting Personal Representative of the Estate of _____ ("Decedent")having received Letters Testamentary from this Court on the _____ day of _____, _____.

2. The following named persons are the parties entitled to notice of this proceeding and are the legatees of the Decedent.

_____

_____

3. In accordance with §43-2-60, et seq. Code of Alabama, the Personal Representative gave notice of his/her appointment, the name of the decedent, the date on which his/her letters were issued, by what court in what county, and that all persons having claims against the estate must present their claims within the time allowed by law, else the same would be barred. Said notice was given by publication once a week in a newspaper of general circulation in _____ County, Alabama, more than six months prior hereto, and by first class mail more than thirty (30) days prior hereto.

4. Petitioner further states that all outstanding bills and creditors of Decedent have been paid; and that, after the exercise of due diligence and upon diligent inquiry, he is unable to determine any other creditors of Decedent, other than those who were paid and discharged. That no claims have been filed against Decedent or his/her estate and there are no unpaid legal debts or charges against the estate, except court costs, if any, incurred in this final settlement.

5. Petitioner further shows that he/she has not used any of the estate funds for his/her own personal use.

6. The Personal Representative was [was not] serving under bond. _____ was the surety. All bond premiums have been paid, and a waiver by the surety is attached hereto.

7. The Personal Representative did not use any of the assets of the estate for his/her own benefit and all disbursements made by him/her were in the lawful discharge of his/her duties as personal representative.

8. Attached hereto and made a part hereto are Waivers of Notice and Consents executed by the legatees, accepting service of notice of the petition for final settlement, waiving all further notice, and acknowledging receipt in full of all property that they as such legatees are entitled to receive.

WHEREFORE, Petitioner prays that this Court will discharge the Personal Representative [and the surety on his/her bond] and Petitioner prays for such other, further and different relief to which he/she may be entitled to receive, the premises considered.

_____
Petitioner

STATE OF ALABAMA)

COUNTY OF_____)

I, the undersigned authority, in and for said County and State, hereby certify that _____whose name(s) is/are signed to the foregoing and who is/are known to me, who acknowledged before me on this day, that being informed of the contents of said document executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this _____ day of _____, _____.

_____
Notary Public
My Commission Expires: _____

(AFFIX NOTARY STAMP)

_____

_____

_____
Attorney for Personal Representative

PETITION FOR CONSENT SETTLEMENT AND DISCHARGE OF PERSONAL REPRESENTATIVE

PETITION FOR CONSENT SETTLEMENT AND DISCHARGE OF PERSONAL REPRESENTATIVE
(Under Title 43-2-506, Code of Alabama, as amended)

STATE OF ALABAMA)
COUNTY OF _____)

IN THE PROBATE COURT OF
_____ COUNTY, ALABAMA

IN THE MATTER OF THE ESTATE OF _____, DECEASED.

TO THE HONORABLE _____, JUDGE OF SAID COUNTY:

Comes your Petitioner, _____, and respectfully shows unto this Honorable Court the following facts as basis for final settlement of said Estate and for the discharge of your Petitioner as Personal Representative of said Estate:

(1) That your Petitioner was appointed as Personal Representative of said Estate and Letters of Testamentary were granted to (him)(her) by an order and decree of this Honorable Court on the ____ day of _____, 20__.

(2) That more than six (6) months have expired from the date that the first notice was given of the appointment of Personal Representative of said Estate to the date of the filing of this petition.

(3) That all debts filed or due from said Estate have been paid in full.

(4) That all of the personal property and assets belonging to said Estate remaining in the hands of your Petitioner, as Personal Representative of said Estate, have been paid and turned over to the legatees of said Estate, namely _____, _____, _____, who constitutes the only legatees named in the Last Will and Testament of _____, deceased.

(5) That the legatees have signed an Affidavit disclosing that they are over 19 years of age and that all of the personal property and assets remaining in the hands of the Personal Representative have been paid and turned over to them and that they consent that said Estate be finally settled and that the Personal Representative be discharged. Said Affidavit is attached hereto and made a part hereof the same as if fully set forth herein.

THEREFORE, THE PREMISES considered your Petitioner prays that upon hearing of this petition, that your Honor will make an Order and enter a Decree discharging your Petitioner, as Personal Representative of said Estate.

This Petition is filed under Authority of Title 43-2-506 _____ Code of Alabama, as amended.

This the ___ day of _____, 20___.

_____
As Personal Representative of the Estate
of _____, Deceased

STATE OF ALABAMA)
_____ COUNTY)

Before me, a Notary Public, in and for said County in said State, personally appeared _____, who being duly sworn, deposes and says that he/she has read the foregoing petition and that the averments contained therein are true and correct to his/her best knowledge, information and belief.

_____
Affiant

Sworn to and subscribed before me this ___ day of _____, 20___.

_____
Notary Public

ORDER GRANTING FINAL CONSENT SETTLEMENT

PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE:

ESTATE OF

_____,
Deceased.

) **CASE NO. _____**
)
)
)

ORDER

This cause came before the Court on Petition for Final Consent Settlement filed by _____ ("Personal Representative"). This cause is properly before the Court pursuant to jurisdiction conferred by statute and Constitutional provisions. On due consideration of the evidence and argument presented, the Court **FINDS, CONCLUDES** and **ORDERS** as follows:

1. The Petition for Final Consent Settlement is **GRANTED**. Accounts passed and allowed. Worksheet filed.

2. The balance on hand, if any, shall be distributed in accordance with the Last Will and Testament of the Decedent.

3. Report of compliance due within thirty (30) days of the date of this Order.

4. Costs are taxed against the estate, **FOR WHICH LET EXECUTION ISSUE**.

5. The Personal Representative [and Surety] shall be discharged upon report of compliance.

6. The Clerk of the Court shall forward a copy of this Order to all legal counsel of record by enotice or First Class Mail and any *pro se* parties in interest by United States First Class Mail.

DATED this _____ day of _____, _____

_____
_____, **Judge of Probate**

ORDER OF DISCHARGE OF PERSONAL REPRESENTATIVE

ORDER OF DISCHARGE OF PERSONAL REPRESENTATIVE

IN THE MATTER OF THE ESTATE OF _____ DECEASED)

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

WHEREAS, _____, Personal Representative of the Estate of _____ deceased, has filed (his)(her) petition in this Court for discharge as Personal Representative of said Estate, as provided under Title 43-2-506 and _____.

Upon examination of the allegations set forth in the petition and the Affidavit of _____ and _____ and release of _____ the legatees named in the Last Will and Testament of _____ deceased, the conduct of said Estate and the conduct of the Personal Representative, the Court is of the opinion and is satisfied that the Personal Representative has discharged (his)(her) trust faithfully and honestly, and _____.

That more than six (6) months have expired since Letters Testamentary were granted to _____ as Personal Representative of said Estate, and _____.

That all debts filed against or due from said Estate have been paid in full and that all personal property and assets belonging to said Estate remaining in the hands of said Personal Representative have been paid and turned over to _____ and _____ and _____ the legatees of said Estate.

NOW THEREFORE, it is Ordered, Adjudged and Decreed that _____ as Personal Representative is hereby released from all liability as such Personal Representative and is discharged as Personal Representative of the Estate of _____ deceased.

This the ___ day of _____, 20__.

_____
Judge of the Probate Court
Of _____ County, Alabama

SUMMONS

State of Alabama	SUMMONS -PROBATE-	CASE NO.

IN THE PROBATE COURT OF _____ COUNTY, ALABAMA

IN RE: ESTATE OF

_____

NOTICE TO: _____
(Name and Address of Party To Be Served)

THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE CONTESTANT(S) OR ATTORNEY(S) OF THE CONTESTANT(S), _____
[Name(s) of Attorney(s)]

WHOSE ADDRESS(ES) IS/ARE:

_____

_____
[Address(es) of Contestant(s) or Attorney(s)]

THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN _____ DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU.

TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:

You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Party.

Service by certified mail of this Summons is initiated upon the written request of _____
[Name(s)]

pursuant to the Alabama Rules of Civil Procedure.

_____ _____ By: _____
(Date) *(Signature of Clerk)* *(Name)*

Certified Mail is hereby requested. _____
(Contestant's/Attorney's Signature)

RETURN ON SERVICE

Return receipt of certified mail received in this office on _____.
(Date)

I certify that I personally delivered a copy of this Summons and Complaint or other document to

_____ in _____ County,
(Name of Person Served) *(Name of County)*

Alabama on _____.
(Date)

_____ _____
(Server's Signature) *(Address of Server)*

_____ _____
(Type of Process Server)

_____ _____
(Server's Printed Name) *(Phone Number of Server)*

APPENDIX

CANONS OF JUDICIAL ETHICS

Compliance with the Canons of Judicial Ethics

C. Probate Judge. Probate judges in Alabama are charged with many administrative and executive duties not judicial in nature. However, when a probate judge performs judicial duties then applicable canons should be followed. A probate judge is not expected to comply with the following:

5B(2), 5E and G, 6C, and 7.

In lieu of the provisions of 3A(5), the following shall be applicable to probate judges:

A probate judge should dispose promptly of the business of the court, being ever mindful of matters taken under submission.

In lieu of the provisions of 3B, the following shall be applicable to probate judges:

It is desirable that a probate judge should diligently discharge his administrative responsibilities, facilitate the performance of the administrative responsibilities of other judges and court officials, require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him, initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the probate judge has personal knowledge, and not approve compensation for appointees beyond the fair value of services rendered.

A probate judge should consider himself the conservator of all estates under his jurisdiction.

GLOSSARY OF TERMS

Note: **The terms in this glossary are generally descriptive of their use in probate court. Please see the appropriate statutes in the Alabama Code for a more precise meaning of these terms.**

"Advancement" - money or property given by a parent to his child or, sometimes, presumptive heir, or expended by the former for the latter=s benefit, by way of anticipation of the share which the child will inherit in the parent=s estate and intended to be deducted therefrom. It is the latter circumstance which differentiates in advancement from a gift or a loan.

"Ala. Code" - stands for the Code of Alabama, the 'official' name of the laws of our state.

"Alabama Law Institute" - an organization created by act of the Legislature in 1967 and became the Law Revision Division of the Legislative Services Agency in 2017. The purpose of the Institute is to clarify and simplify the laws of Alabama, to revise laws that are out-of-date and to fill in gaps in the law where there exists legal confusion. For more information about the Institute, please visit http://www.lsa.state.al.us/ali/ali.aspx.

"Beneficiary" - as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer.

"Bond" - is a financial security provided to the court by the personal representative and/or a bonding company to ensure that the personal representative of the estate faithfully does the job of the personal representative.

"Claim" - is a claim against the estate of the decedent, including those for debts of the decedent that arise before or after the death of the decedent.

"Claimant" - is the person or entity making a claim against the decedent's estate.

"Codicil" - is an amendment to a will.

"Creditor" - is a person or entity to whom a debt is owed by the decedent.

"Decedent" - is the person who has died and whose will is being probated or whose estate is being administered.

"Deed" - is a document that conveys title to real property from one owner to another.

"Descendant" - is the child, grandchild, great-grandchild, etc. of a decedent.

"Devise" - when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

"Devisee" - any person in a will to receive a devise.

"Distributee" - any person who is entitled to receive property of a decedent from the decedent's estate.

"Domicile" - is a person's usual and permanent place of abode. Evidence of domicile includes registering to vote, using the address as a permanent place, etc. It is the place a person intends to return to, even when currently residing elsewhere. Domicile is important when determining the venue of the case.

"Estate" - includes the property of the decedent whose affairs are subject to the probate court's jurisdiction.

"Ex-Parte Communication" - is a prohibited communication between the court and one party without the consent of, or notice to, another party who would be adversely affected by the communication.

"Executor" - is a person appointed by a testator to carry out the directions and request in the testator's will and to dispose of the property according to the testator's wishes after the testator's death. In Alabama an executor is called a Personal Representative.

"Fiduciary" - is a person or entity, who acts primarily for another's benefit in matters connected with that duty. A fiduciary is held to the highest degree of good faith in performing his or her duties. A personal representative is a fiduciary.

"Filing Fee" - the fee required for filing a case with the probate court.

"Guardian" - a person who has qualified as a guardian of a minor or incompetent person pursuant to testamentary or court appointment but excludes one who is a guardian ad litem.

"Guardian ad Litem" - an attorney appointed to represent, prosecute or defend an action on behalf of a party incapacitated.

"Heirs" - those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to inherit the property of a decedent.

"Interested Person" - any person having an enforceable right or claim, which may be affected by the proceeding, and may include heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent which may be affected by the proceeding. AInterested person@ also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. The meaning of "interested person" as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.
"Intestate" - means having died without a valid will.

"Issue" - is all descendants, of all generations, of a deceased person.

"Jurisdiction" - is the authority for a court to act on a matter. Probate courts are of "limited jurisdiction," and only have the authority to act over certain proceedings.

"Minor" - a person who is under 19 years of age.

"Nonresident Decedent" - a decedent who was domiciled in another jurisdiction at the time of his death.

"Notarization" - is the attestation by a Notary Public that a document was signed under oath and that the person whose signature appears on the document is that person. Notaries in the State of Alabama are appointed and commissioned by the probate judges of the various counties. *See* Sections 36-20-70 through 75 for further information on notarial acts. Certain documents filed in a probate case must be notarized before being accepted by the court for filing.

"Notice" - or "giving notice" is a written "announcement" to persons entitled to know what has transpired or will transpire in a case.

"Organization" - a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal entity.

"Parent" - under estate law "parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under Chapter 8 of Title 43 by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

"Person" - an individual, a corporation, an organization, or other legal entity.

"Personal Property" - is all the property that is not land, real estate or real property. Some examples are bank accounts, stocks, bonds,

insurance policies, pension plans, jewelry, furniture and motor vehicles.

"Personal Representative" - is a person who administers the estate of the decedent by giving notice of his/her appointment, paying claims of the estate and then distributing the estate according to the will. This term includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

"Petition" - is a written document filed with the probate court asking the court to exercise the court's authority in a legal matter.

"Petitioner" - is the person who presents a petition to the probate court to begin a legal action. For example, a person petitions to be appointed a personal representative.

"Pleading" - is a legal document filed with the court. Pleadings and papers filed in the court include a caption or heading that identifies the state, county, and name of the court; the names of the parties; and a title describing the type of paperwork being submitted.

"Power of Attorney" - is a signed document that authorizes another person on someone's behalf. A power of attorney terminates upon the incompetency of the person who granted the power of attorney unless it is a durable power of attorney.

"*Pro se*" - is the Latin phrase for acting without an attorney.

"Probate" - technically is the court procedure by which a will is proved to be valid or invalid. Common usage of this term now means all matters relating to the administration of an estate, including estates with wills and intestate estates.

"Real Property" - includes land, houses, farms, leases, oil, gas, mineral, water and timber rights.

"Revoked or Revocation" - when used in the context of wills and administration, refers to a will or other document that the decedent has canceled. If a will is revoked, it has no effect.

"Seal" - means a notary seal or stamp, seal of the court, etc., which proves the authenticity of a document.

"Statute of Limitation" - is a law that sets a time limit for starting a case.

"Testator" - is someone making, or who has made, a will, or someone who dies leaving a valid will.

"Trust" - is an entity set up during a person's lifetime through a written trust agreement. Trust assets are held for the beneficiary by another person, the trustee.

"Unrevoked" - when used in the context of wills and administration, refers to a will or other document that has not been invalidated or canceled.

"Venue" - is the place where the case should be filed.

"Will" - is a document that provides for the distribution of the assets of a person's estate upon death. A will also typically designates a personal representative and can appoint a guardian for minor children. Certain formalities must be followed when executing the will in order for the will to be considered valid.

"Witnesses" - when used in the context of wills and administrations, refers to persons attesting to having watch a testator sign his/her will.

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