Training Manual for Guardians ad Litem Appointed Pursuant to Alabama Code § 26-2A-52



Prepared by the Alabama Law Institute

and the Alabama Probate Judges Association

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INTRODUCTION AND ACKNOWLEDGEMENTS

INTRODUCTION

The Alabama Uniform Guardianship and Protective Proceedings Act ("AUGPPA"), enacted in 1987, forms the statutory basis under which the person and property of incapacitated persons are protected. Although the AUGPPA has been amended numerous times since its initial enactment, Act 2026-488 made the most significant changes to the AUGPPA since 1987. Among other revisions, the 2026 act amended Ala. Code § 26-2A-52 to provide guidance to guardians ad litem with respect to their duties and responsibilities to the court and to respondents whose interests they represent. The amended statute also provides that "[b]efore being appointed by the court every guardian ad litem shall successfully complete a training program prepared or approved by the Alabama Probate Judges Association and the Alabama Law Institute."

This manual is the result of that statutory mandate and is a resource for guardians ad litem appointed by probate courts in Alabama to represent the interests of persons allegedly needing a guardian, conservator or other protective relief under the AUGPPA.

The manual is structured in five parts. The first part is a general overview of guardianships and conservatorships in probate court, with attention also given to the Alabama Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act (Ala. Code § 26-2B-1 et seq.), which governs, inter alia, transfers of guardianships and conservatorships between states, and the Alabama Uniform Veterans' Guardianship Act (Ala. § 26-9-1 et seq.).

The second part is the *Standards with Comments for Guardians ad Litem under the Alabama Uniform Guardianship and Protective Proceedings Act*. The standards, authored and adopted by the Supreme Court of Alabama's Commission on Adult Guardianships and Conservatorships, are an important distillation of the essential duties, responsibilities and ethical constraints of a guardian ad litem serving under the AUGPPA.

Part three is an overview in PowerPoint form of the role of the guardian ad litem in guardianships, conservatorships and other protective proceedings in probate court. It is adapted from material prepared by the Alabama Law Institute for the benefit of the Alabama Probate Judges Association.

The fourth part is an overview in PowerPoint form of the major changes to the AUGPPA ushered in by Act 2026-488. It is also adapted from material prepared by the Alabama Law Institute for the benefit of the Alabama Probate Judges Association.

The fifth part is Act 2026-488 as enacted, with additions and deletions to current statutes highlighted, and with new statutes set forth therein.

Although the AUGPPA is the primary statute with which guardians ad litem must be familiar, there are other statutes and rules that are relevant to GAL practice under the AUGPPA though not, strictly speaking, a part of the AUGPPA. These include: (a) Ala. Code § 26-2-2 and § 26-2-3 related to removal of proceedings from probate to circuit court; (b) Ala. Code § 26-2B-1 et seq., the Alabama Uniform Adult Guardianship and Protective Proceeding Jurisdiction Act; (c) Ala. Code § 26-5-1 et seq. relating to the settlement of accounts of conservators; and (d) Alabama Rules of Civil Procedure Rules 4 through 5, which now govern service in proceedings under the AUGPPA except where specified.

This manual is written as a guide. It provides an overview and a compilation of best practices, notes, statutes, constitutional provisions, rules and cases which we believe will be helpful to lawyers serving as guardians ad litem in AUGPPA proceedings in probate court. **The practitioner is reminded to read the statutes, rules and cases referenced herein and not to rely solely on the digested material in this manual. Additionally, this manual should not be cited as authority in any filing before any court.**

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ACKNOWLEDGEMENTS

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Rep. David Faulkner and Sen. Arthur Orr for their sponsorship and advocacy of Act 2026-488. Without their diligent effort, this manual would not exist.

The Guardianship Committee of the Alabama Law Institute for its tireless work, beginning in 2019, in crafting the proposed legislation that ultimately became Act 2026-488. In particular, we thank Hon. Michael F. Bolin and Vincent J. Schilleci, who served as Co-Chairs of the committee during the final years of the project, and Steven A. Benefield, who led the committee during its first years of work.

Prof. John C. Craft of the Thomas Goode Jones School of Law for his role not only on the ALI Guardianship Committee but also for his leadership of the Supreme Court of Alabama's Commission on Adult Guardianships and Conservatorships, which, among other important work in this area, authored and adopted the *Standards with Comments for Guardians ad Litem under the Alabama Uniform Guardianship and Protective Proceedings Act* that form the backbone of this manual.

The members of the Supreme Court of Alabama's Commission on Adult Guardianships and Conservatorships for their diligence in creating the aforementioned *Standards*.

The Alabama Probate Judges Association Officers, Directors, Education Committee, and the numerous probate judges, past and present, who have served on both the ALI and AOC committees named herein and who have provided invaluable wisdom and feedback, to say nothing of countless hours of time, all in the interest of improving Alabama law in this area.

Finally, the team at the Alabama Law Institute, Jackson M. Colburn, Jill C. Kjar and Haley N. Wyatt for their work not only on this manual but in advancing the mission of ALI.

OVERVIEW OF GUARDIANSHIPS AND CONSERVATORSHIPS IN PROBATE COURT

OVERVIEW OF GUARDIANSHIPS AND CONSERVATORSHIPS IN PROBATE COURT[1]

I. GUARDIANSHIPS

The Alabama Uniform Guardianship and Protective Proceedings Act ("AUGPPA") was passed in 1987 and became effective January 1, 1988. Under the AUGPPA, responsibility of care for the person is under the guardianship provisions, and the responsibility for the care of a person's property ("estate" as used in this context refers not to a decedent's estate but to the property of a living person) is under the conservator provisions. Ala. Code §§ 26-2A-1 through 26-2A-160. A guardian is generally responsible for food, clothing, medical, and shelter issues relating to a minor or incapacitated adult.

In a proceeding to establish a guardianship, the person alleged to be in need of a guardian is referred to as the "respondent." Ala. Code § 26-2A-20(22).

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.[2]

b. Appointment of Guardian ad litem. At any point in a proceeding, a court may appoint a guardian ad litem, who must be an attorney, to represent the interest of the respondent if the court determines that representation of the interest otherwise would be inadequate. Ala. Code § 26-2A-52. The duties and responsibilities of a guardian ad litem in a proceeding under the AUGPPA are defined in the statute. 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 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).

c. Removal to Circuit Court.[3] A guardianship proceeding may be removed from probate court to circuit court at any time prior to final settlement by any person granted

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[1] Adapted from Handbook for Alabama Judges of Probate 11th Ed.

[2] Guardians appointed prior to January 1, 1988 have all of the same powers as guardians and conservators under the AUGPPA. Ala. Code § 26-2A-8.

[3] Under Ala. Code § 26-2-2(b), added to the Code by Act 2026-488, removal and remand of a protective proceeding commenced on or after January 1, 2027 is available only in counties where the probate court

that power by statute. Ala. Code § 26-2-2. For proceedings commenced prior to January 1, 2027, those persons are 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(a). For proceedings commenced on or after January 1, 2027, Ala. Code § 26-2-2(b) enumerates a more extensive list of persons entitled to remove the proceeding, as well as the procedure for removal. Under proper circumstances, the circuit court may remand the case back to the probate court.[4]

d. 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.

e. Testimony. Generally, witness testimony must be taken in open court. Ala. R. Civ. P. 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).

f. 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 an 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.

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does not have equity jurisdiction—i.e., removal is not available in those counties where the probate court has equity jurisdiction concurrent with the circuit court.

[4] Note that for proceedings commenced prior to January 1, 2027, there is no statutory provision for remand in counties where the probate court does not have equity jurisdiction; instead, remand is only available under certain circumstances in those counties where the judge of probate is required to be learned in the law. Ala. Code § 26-2-3. These provisions do not apply to any proceeding commenced after January 1, 2027.

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.

g. Guardians of Adult 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). The alleged incapacitated person is the *respondent* in a proceeding. Ala. Code § 26-2A-20(22).

1. Appointment. A guardian for an unmarried, adult 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. ***Venue.*** Venue is proper in the place where the respondent resides or is present at the time of the commencement of the proceedings. And, if the respondent 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.

3. ***Procedure and Notice.*** Any interested person may petition for the appointment of a limited or general guardian. The court shall appoint an attorney to represent the respondent unless he or she already has counsel, which may be granted the powers and duties of a guardian ad litem. Ala. Code § 26-2A-102.

The general aspects of the proceeding are covered under Ala. Code §§ 26-2A-102. Notice is covered under Ala. Code §§ 26-2A-50 and 26-2A-102[5]. Notice must be served personally on the respondent, who may not waive notice. Further, a guardian ad litem may not accept notice for the respondent.

4. 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.

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[5] Note that the service and notice rules differ for proceedings commenced on or after January 1, 2027. Careful reference should be made both to who is entitled to notice and how that notice must be given, depending on the commencement date of the proceeding.

h. Emergency and Temporary Guardian.[6]

1. New framework for appointment of emergency and temporary guardians. Ala. Code § 26-2A-107.1 (applicable to all proceedings on or after January 1, 2027) provides a new statutory framework for the appointment of a guardian (emergency or temporary) prior to a final determination on the merits of the petition for appointment of a guardian. The new framework is similar in concept to both the Uniform act model statute and to Ala. R. Civ. P. 65 governing temporary restraining orders and preliminary injunctions. An emergency guardian is a very short term appointment (not exceeding 10 days) intended to address immediate issues, while a temporary guardian is a longer appointment, not exceeding 60 days, but renewable, intended to provide necessary relief and protection pending a final determination on the merits. Neither emergency or temporary relief is, in and of itself, a definitive determination of incapacity.

The petitioner can request emergency or temporary relief or the court can grant in its own discretion. Court must find that emergency or temporary relief is "likely to prevent substantial harm to the adult's physical health, safety or welfare" Ala. Code § 26-2A-107.1.
The court must find there is reason to believe that basis exists for appointment of a guardian or other protective relief. If no GAL has been appointed for the respondent, the court shall immediately appoint one. Court shall provide notice of hearing, except as provided below, no later than 5 days before time set for hearing to (1) the respondent, (2) the GAL and any attorney for respondent, and (3) any other person court determines.

2. Emergency Guardian. Nevertheless, the court can appoint an emergency guardian or grant other emergency relief **without notice (ex parte)**. The court may grant *ex parte* relief **if and only if** the court finds from an affidavit or testimony "that the adult's physical health, safety or welfare will be substantially harmed" **before** a hearing with notice on the appointment can be held.

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[6] Ala. Code § 26-2A-107 (repealed after January 1, 2027) provided that 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. 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 was not effectively performing his or her duties, the court could appoint a temporary guardian for a period not to exceed six months. Ala. Code § 26-2A-107.

An appointment of an emergency guardian may not extend for more than 10 days. If court grants emergency relief without notice to the respondent, then, within 48 hours, notice of the emergency appointment/relief must be given to respondent, GAL, attorney and any other party determined by court. A hearing must be held on appropriateness of the emergency relief within 10 days. Notice of the hearing must be given to persons above at least 5 days before hearing. After hearing, court can: (1) appoint a temporary guardian or grant other temporary relief; (2) terminate the emergency relief without further relief granted; or (3) grant such other relief as may be proper.

3. Temporary Guardian. Upon hearing with at least 5 days notice to the respondent, GAL, any attorney for respondent, and any other party the court determines, the court may appoint a temporary guardian or grant other temporary relief if the court finds that such relief is "likely to prevent substantial harm to the adult's physical health, safety or welfare." Appointment of a temporary guardian may not exceed 60 days. However, the initial grant of temporary relief may be extended once without a hearing if court finds that conditions for relief continue and it is in respondent's best interest. After one extension of temporary relief, the court must hold a hearing with notice of at least 5 days to extend further, and the court must find good cause to do so. Temporary relief may be extended by hearing more than once to permit parties to conduct discovery, gather evidence, obtain medical evaluations and the like—but the goal is to get to a hearing on the merits of the permanent petition as quickly/efficiently as possible.

Granting emergency or temporary relief is not a determination that a basis exists for appointment of a permanent guardian or granting of other permanent protective relief. The court may remove an emergency or temporary guardian at any time. The court may require an emergency or temporary guardian to make any report the court requires. The County Sheriff cannot be appointed emergency or temporary guardian without consenting to the appointment.

i. 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.

j. 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.

II. CONSERVATOR OF PROPERTY

a. In General. The AUGPPA distinguishes between a guardian of the person and a conservator of the estate (property) of a minor or incapacitated person.[7]

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. Appointment of Guardian ad litem. At any point in a proceeding, a court may appoint a guardian ad litem, who must be an attorney, to represent the interest of the respondent if the court determines that representation of the interest otherwise would be inadequate. Ala. Code § 26-2A-52. The duties and responsibilities of a guardian ad litem in a proceeding under the AUGPPA are defined in the statute. 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 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).

c. Removal to Circuit Court.[8] A conservatorship proceeding may be removed from probate court to circuit court at any time prior to final settlement by any person granted that power by statute. Ala. Code § 26-2-2. For proceedings commenced prior to January 1, 2027, those persons are 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(a). For proceedings commenced on or after January 1, 2027, Ala. Code § 26-2-2(b) enumerates a more extensive list of persons entitled to remove the proceeding, as well as the procedure for removal. Under proper circumstances, the circuit court may remand the case back to the probate court.[9]

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[7] 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.

[8] Under Ala. Code § 26-2-2(b), added to the Code by Act 2026-488, removal and remand of a protective proceeding commenced on or after January 1, 2027 is available only in counties where the probate court does not have equity jurisdiction—i.e., removal is not available in those counties where the probate court has equity jurisdiction concurrent with the circuit court.

[9] Note that for proceedings commenced prior to January 1, 2027, there is no statutory provision for remand in counties where the probate court does not have equity jurisdiction; instead, remand is only available under certain circumstances in those counties where the judge of probate is required to be learned in the law. Ala. Code § 26-2-3. These provisions do not apply to any proceeding commenced after January 1, 2027.

d. Venue. Venue is proper where the respondent resides or, if the respondent is not a resident, in any county where property of the respondent is located. Ala. Code § 26-2A-132.

e. Petition, Notice and Hearing. The petition must furnish the court with certain information which is in the statute. Ala. Code § 26-2A-133. The procedure for a hearing on a petition to appoint a conservator or for other protective relief is set out in Ala. Code § 26-2A-135. Notice is now governed by Ala. Code § 26-2A-50 and 134, as amended by Act 2026-488.

Generally, notice in a proceeding for a conservatorship or other such protective relief will follow the provisions of Ala. Code § 26-2A-103 that apply to guardianship proceedings.[10] 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 must be served as provided in Ala. Code § 26-2A-50. 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.

f. 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).

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[10] Note that the service and notice rules differ for proceedings commenced on or after January 1, 2027. Careful reference should be made both to who is entitled to notice and how that notice must be given, depending on the commencement date of the proceeding.

g. Emergency and Temporary Conservators or Protective Relief.[11]

1. New framework for appointment of emergency and temporary conservators or other temporary protective relief. Ala. Code § 26-2A-136.1 (applicable to all proceedings on or after January 1, 2027) provides a new statutory framework for the appointment of a conservator (emergency or temporary) or other emergency or temporary relief prior to a final determination on the merits of the petition for permanent appointment of a conservator. The new framework is similar in concept to both the Uniform act model statute and to Ala. R. Civ. P. 65 governing temporary restraining orders and preliminary injunctions. An emergency conservator is a very short-term appointment (not exceeding 10 days) intended to address immediate issues, while a temporary conservator is a longer appointment, not exceeding 60 days, but renewable, intended to provide necessary relief and protection pending a final determination on the merits. Neither emergency or temporary relief is, in and of itself, a definitive determination of incapacity.

The petitioner can request emergency or temporary relief or the court can grant in its own discretion. Court must find that emergency or temporary relief is "likely to prevent substantial and irreparable harm to the person's property or financial interests." Ala. Code § 26-2A-136.1. The court must find there is reason to believe that basis exists for appointment of a conservator or other protective relief. If no GAL has been appointed for the respondent, the court shall immediately appoint one. Court shall provide notice of hearing, except as provided below, no later than 5 days before time set for hearing to (1) the respondent, (2) the GAL and any attorney for respondent, and (3) any other person court determines.

2. Emergency Conservator. Nevertheless, the court can appoint an emergency conservator or grant other emergency relief **without notice (ex parte)**. The court may grant *ex parte* relief **if and only if** the court finds from an affidavit or testimony "that the respondent's property or financial interests will be substantially and irreparably harmed" **before** a hearing with notice on the appointment can be held.

An appointment of an emergency conservator or other emergency

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[11] For proceedings commenced prior to January 1, 2027, Ala. Code § 26-2A-136(b)(1) formerly provided that "[w]hile a petition for appointment of a conservator or other protective order is pending and after preliminary hearing and without notice, the court may preserve and apply the property of the person to be protected as may be required for the support of the person or dependents of the person. This provision was eliminated for proceedings commenced on or after January 1, 2027 in favor of the statutory relief provided in Ala. Code § 26-2A-136.1.

protective relief may not extend for more than 10 days. If court grants emergency relief without notice to the respondent, then, within 48 hours, notice of the emergency appointment/relief must be given to respondent, GAL, attorney and any other party determined by court. A hearing must be held on appropriateness of the emergency relief within 10 days. Notice of the hearing must be given to the persons above at least 5 days before hearing. After hearing, court can: (1) appoint a temporary conservator or grant other temporary relief; (2) terminate the emergency relief without further relief granted; or (3) grant such other relief as may be proper.

3. Temporary Conservator. Upon hearing with at least 5 days notice to the respondent, GAL, any attorney for respondent, and any other party the court determines, the court may appoint a temporary conservator or grant other temporary relief if the court finds that such relief is "likely to prevent substantial and irreparable harm to the person's property or financial interests." Appointment of a temporary conservator or other temporary protective relief may not exceed 60 days. However, the initial grant of temporary relief may be extended once without a hearing if court finds that conditions for relief continue and it is in respondent's best interest. After one extension of temporary relief, the court must hold a hearing with notice of at least 5 days to extend further, and the court must find good cause to do so. Temporary relief may be extended by hearing more than once to permit parties to conduct discovery, gather evidence, obtain medical evaluations and the like—but the goal is to get to a hearing on the merits of the permanent petition as quickly/efficiently as possible.

Granting emergency or temporary relief is not a determination that a basis exists for appointment of a permanent conservator or granting of other permanent protective relief. The court may remove an emergency or temporary conservator at any time. An emergency or temporary conservator must be bonded and must make a settlement of its accounts just as a permanent conservator is required to do. The County Sheriff cannot be appointed emergency or temporary conservator without consenting to the appointment.

h. 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).

*i. **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.

*j. **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.

*k. **Compensation.*** Conservators, attorneys, and others are entitled to reasonable compensation from the estate for the services they have rendered. Ala. Code § 26-2A-142.

*l. **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.

*m. **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.

*n. **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.

*o. **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.

p. 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, Ala. Code § 26-2A-153 (Distributive Duties and Powers of a Conservator) and § 26-2A-154 (Enlargement or Limitation of Powers of a Conservator) should also be referred to.

q. 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.

r. 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.

III. ALABAMA UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

The Alabama Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (Ala. Code §§ 26-2B-101 through 26-2B-503) determines which state has jurisdiction over interstate adult guardianship cases. Ala. Code §§ 26-2B-101 through 26-2B-503. It is discussed in detail in part III. Briefly, the jurisdiction act: provides for communication between courts of different states; provides that an Alabama court can decline to exercise jurisdiction if the Alabama court acquired jurisdiction based on unjustifiable conduct or may decline jurisdiction if the Alabama court determines that another state is a more appropriate forum; provides for a transfer of a guardianship or conservatorship to another state from Alabama; and provides for a transfer of a guardianship or conservatorship from another state to Alabama. Ala. Code § 26-2B-302.

a. 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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.

g. 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.

h. 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.

i. 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.

j. 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.

k. 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.

l. 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.

m. 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.

STANDARDS WITH COMMENTS FOR GUARDIANS AD LITEM UNDER THE ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Standards with Comments for Guardians ad Litem under the Alabama Uniform Guardianship and Protective Proceedings Act

Adopted by the Supreme Court of Alabama's Commission on Adult Guardianships and Conservatorships

September 11, 2026

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Preface

A court may appoint an attorney as guardian ad litem (often referred to as "GAL") at any point in a proceeding under the Alabama Uniform Guardianship and Protective Proceedings Act ("AUGPPA").[1] In some types of proceedings, the appointment of a guardian ad litem is required.[2] Effective January 1, 2027, the specific duties of a guardian ad litem are delineated in Ala. Code § 26-2A-52(b). Further, a court "may include additional duties or instructions for the guardian ad litem in its order of appointment."[3]

A guardian ad litem is to represent the interests of a respondent.[4] The respondent may be a minor or an adult. The role of a GAL is different from an "attorney for the respondent." An attorney for the respondent is a lawyer who provides legal services for the respondent and who owes the same duties of loyalty, confidentiality, and competent representation to the respondent as to any client. These standards are intended to provide guidance to court-appointed guardians ad litem only. Effective January 1, 2027, every guardian ad litem being appointed under the AUGPPA must have successfully completed a training program prepared or approved by the Alabama Probate Judges Association and the Alabama Law Institute.[5]

A guardian ad litem represents the interests of a respondent during the proceeding ("for the lawsuit"). Unless otherwise provided by court order, a GAL's duties terminate when the court has issued a final order or judgment and the time for appeal has expired, or if an appeal was filed, after the final adjudication of the appeal.[6]

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[1] Ala. Code § 26-2A-52(a).
[2] Ala. Code § 26-2A-102(b) (guardianship for an incapacitated adult, unless the respondent is represented by counsel); Ala. Code § 26-2A-102(e) (custodial guardianship for an intellectually disabled adult); Ala. Code § 26-2A-107.1(b)(1) (temporary or emergency guardianship for an adult); Ala. Code 26-2A-114(6)(b.) (petition to compel visitation with an incapacitated person); Ala. Code § 26-2A-135(b) (conservatorship for an adult, unless the respondent is represented by counsel); Ala. Code § 26-2A-136.1(b)(1) (temporary or emergency conservatorship for an adult).
[3] Ala. Code § 26-2A-52(c).
[4] Ala. Code § 26-2A-52(a).
[5] Ala. Code § 26-2A-52(e).
[6] Ala. Code § 26-2A-52(e).

Key Definitions

Conservator. A person who is appointed by a court to manage the estate of a protected person and includes a limited conservator described in Section 26-2A-148(a).[7]

Guardian. A person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointment and includes a limited guardian as described in Sections 26-2A-78(e) and 26-2A-105(c), but excludes one who is merely a guardian ad litem.[8]

Incapacitated Person. Any person 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.[9]

Minor. A person who is under 19 years of age and has not otherwise had the disabilities of minority removed.[10]

Minor Ward. A minor for whom a guardian has been appointed solely because of minority.[11]

Protected Person. A minor or other person for whom a conservator has been appointed or other protective order has been made as provided in Sections 26-2A-136 and 26-2A-137.[12]

Respondent. An individual for whom: (i) a petition requests the court to enter a protective order to appoint a guardian or conservator; (ii) a protective arrangement is sought; or (iii) any emergency or temporary guardian, conservator, or other relief is requested.[13]

Ward. A person for whom a guardian is appointed.[14]

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[7] Ala. Code § 26-2A-20(2).
[8] Ala. Code § 26-2A-20(7). A guardian is "of the person" and is responsible for the ward's or minor ward's health, support, education, or maintenance. *See* Ala. Code §§ 26-2A-78(a) (minor ward) and 26-2A-108(a) (incapacitated person).
[9] Ala. Code § 26-2A-20(8). "Incapacitated Person" is used only in the context of adult guardianship proceedings.
[10] Ala. Code § 26-2A-20(11).
[11] Ala. Code § 26-2A-20(12).
[12] Ala. Code § 26-2A-20(20).
[13] Ala. Code § 26-2A-20(22).
[14] Ala. Code § 26-2A-20(24).

Standards

Standard 1.0: Best Interests Standard

"The primary responsibility of a guardian ad litem is to protect the best interests of the respondent."[15] In making a report and recommendation to a court, a GAL "shall be an advocate for the best interests of the respondent."[16] A guardian ad litem also has a duty to make "reasonable efforts to ascertain the respondent's wishes."[17] Therefore, a guardian ad litem "should consider, but is not bound by, the wishes of the respondent" in making a recommendation.[18]

Comment:

A guardian ad litem is an officer of the court. As such, a guardian ad litem must exercise independent judgment. The guardian ad litem should maintain objectivity and recommend only what is in the best interests of the respondent. Although not bound by the respondent's preferences, a guardian ad litem may make a recommendation that both satisfies the respondent's wishes and is in his or her best interests.

Standard 2.0: Conflicts of Interest

A guardian ad litem must "[a]void conflicts of interest, impropriety, and self-dealing."[19] "If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests."[20]

Comment:

A conflict of interest would arise if the guardian ad litem's ability to exercise independent judgment is materially limited by the lawyer's responsibilities to a client, a third person, or by the lawyer's own interests.[21] A conflict could interfere with the GAL's consideration of alternatives or foreclose reasonable courses of action for the respondent.[22] If unsure about a particular situation, a GAL may contact the Alabama State Bar for an informal, confidential ethics opinion.

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[15] Ala. Code § 26-2A-52(b).
[16] Ala. Code § 26-2A-52(b)(6).
[17] Ala. Code § 26-2A-52(b)(2)e.
[18] Ala. Code § 26-2A-52(b)(6).
[19] Ala. Code § 26-2A-52(b)(8).
[20] Ala. Code § 26-2A-52(a).
[21] *See* Ala. R. Pro. Conduct 1.7(b).
[22] *Id.* at cmt.

Standard 3.0: Confidentiality and Privilege

There is no attorney-client relationship between a guardian ad litem and the respondent; thus, a guardian ad litem does not owe a duty of confidentiality to the respondent. However, a GAL should exercise discretion in disclosing information only to the extent necessitated by his or her duties as guardian ad litem.

Comment:

While an attorney for the respondent is an advocate for the respondent's goals (the objectives of the representation), a guardian ad litem represents the best interests of the respondent. A guardian ad litem serves at the discretion of the judge to play an intermediate role.[23] The GAL acts as an independent fact finder, investigator, reporter, and evaluator as to what furthers the respondent's best interests, and may be called to testify.[24] Given the guardian ad litem's role as reporter to the court, "attorney-client privilege does not extend to conversations between the guardian ad litem and the [respondent]."[25]

Standard 4.0: GAL Involvement in Court Proceedings

A guardian ad litem must "attend all court hearings and file all necessary pleadings to facilitate the best interests of the respondent."[26]

Comment:

A guardian ad litem must be prepared to participate fully in the proceedings, which may include:

- filing pleadings, petitions, motions, responses, or objections;
- attending case management, pretrial, or other conferences;
- engaging in discovery and depositions;
- issuing subpoenas;
- participating in negotiations;
- attending hearings;
- examining or cross-examining witness;
- offering testimony.

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[23] Jacqueline M. Valdespino & Laura W. Morgan, *Guardians ad Litem: Confidentiality and Privilege*, 33 J. Am. Acad. Matrimonial Law 520 (2021) (available at https://presnellonprivileges.com/wp-content/uploads/2021/12/Guardian-Ad-Litem.pdf).
[24] *Id.* at 520-21.
[25] *Id.* at 524-25.
[26] Ala. Code § 26-2A-52(b)(7).

The guardian ad litem's participation must always relate to and facilitate the best interests of the respondent. It should not be used to interpose delays or needlessly increase the cost of the proceeding.

Standard 5.0: Need for Guardianship or Conservatorship

A guardian ad litem should be well-versed in the standards for appointment of a guardian or conservator for a minor or an adult.

Comment:

Minor Guardianship

The standard for the appointment of a guardian for a minor is whether the appointment would be in the best interest of the minor.[27] If the minor is 14 or more years of age, the court must appoint a person nominated by the minor unless the court finds the appointment contrary to the best interest of the minor.[28]

Adult Guardianship

In the appointment of a guardian for an alleged incapacitated adult, the court must first determine whether "the person for whom a guardian is sought is incapacitated."[29] Additionally, the court must determine that "the appointment is necessary or desirable as a means of providing continuing care and supervision of the person of the incapacitated person."[30]

Whether an adult is "incapacitated" for guardianship purposes depends on a two-part test. First, the adult must be "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."[31] Second, the impairment must be to the extent that the adult lacks sufficient understanding or capacity to make or communicate responsible decisions.[32]

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[27] Ala. Code § 26-2A-76.
[28] *Id.*
[29] Ala. Code § 26-2A-105(b).
[30] *Id.*
[31] Ala. Code § 26-2A-20(8).
[32] *Id.*

Adult "Custodial" Guardianship

The custodial parent(s) or an adult custodial sibling of an adult child/sibling who is incapacitated by reason of an intellectual disability may file a request to be appointed guardian of his or her adult child/sibling.[33] In a custodial guardianship proceeding, in addition to finding the adult incapacitated by reason of an intellectual disability, the court must determine that the appointment is needed "in order to continue performing custodial and other parental responsibilities or family responsibilities" for the person.[34]

Minor Conservatorship

A court may appoint a conservator for a minor if the court determines:

1) The minor owns funds or property requiring management or protection that cannot otherwise be provided; or
2) The minor has or may have business affairs that may be jeopardized or prevented by minority; or
3) Funds are needed for health, support, education, or maintenance of the minor and that protection is necessary or desirable to obtain or provide funds.[35]

Adult Conservatorship

A court may appoint a conservator for an adult if the court determines:

1) For such reasons as mental illness, mental deficiency, physical illness or disability, physical or mental infirmities accompanying advanced age, chronic use of drugs, chronic intoxication, confinement, detention by a foreign power, or disappearance;
2) The adult is unable to manage property and business affairs effectively; and
    a. The adult has property that will be wasted or dissipated unless property management is provided; or
    b. Funds are needed for the health, support, education, or maintenance of the adult or of those entitled to the adult's support and that protection is necessary or desirable to obtain or provide the funds.[36]

Temporary or Emergency Adult Guardianship

A court may appoint a temporary or emergency guardian for an adult if the court finds:

1) The appointment is likely to prevent substantial harm to the adult's physical health, safety, or welfare; and

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[33] Ala. Code § 26-2A-102(e).
[34] *Id.*
[35] Ala. Code § 26-2A-130(b).
[36] Ala. Code § 26-2A-130(c).

2) No other person appears to have the authority and the willingness to act in the circumstances; and
3) There is reason to believe that a basis for appointment of a guardian under Section 26-2A-102 exists.[37]

A court may appoint an emergency guardian for an adult, without providing notice to the adult respondent and others, only if the court finds from an affidavit or testimony that the adult's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held.[38]

Temporary or Emergency Adult Conservatorship

A court may appoint a temporary or emergency conservator for an adult if the court finds:

1) The appointment of a temporary or emergency conservator, or the granting of other temporary or emergency relief, is likely to prevent substantial and irreparable harm to the adult's property or financial interests; and
2) No other person appears to have the authority and willingness to act in the circumstances; and
3) There is reason to believe that a basis for appointment of a conservator or other protective order under Section 26-2A-130 exists.[39]

A court may appoint an emergency conservator or grant other emergency relief, without providing notice to the adult respondent and others, only if the court finds from an affidavit or testimony that the adult's property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held.[40]

Standard 6.0: Investigation

A guardian ad litem must "[c]onduct a thorough and independent investigation."[41] During the investigation, a GAL should obtain and review relevant documents[42] and conduct interviews.[43]

Comment:

A guardian ad litem has a duty to provide factual information to the court. The GAL should look beyond the petition and investigate the underlying allegations made in the petition for guardianship or conservatorship. "In order to evaluate

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[37] Ala. Code § 26-2A-107.1(a).
[38] Ala. Code § 26-2A-107.1(d)(1)
[39] Ala. Code § 26-2A-136.1(a).
[40] Ala. Code § 26-2A-136.1(d)(1).
[41] Ala. Code § 26-2A-52(b)(2).
[42] Ala. Code § 26-2A-52(b)(2)a.
[43] Ala. Code § 26-2A-52(b)(2)b. & c. *See also* Standard 7.0 and Standard 8.0.

properly the merits of a petition seeking appointment of a guardian, the court should have access to information regarding the respondent other than as provided by the petitioner and associated counsel."[44] A thorough investigation includes:

- gathering basic demographic information about the respondent—name(s), date of birth, residence(s), and family members;
- investigating the respondent's circumstances, especially living arrangements;
- determining whether the respondent has previously appointed an agent under power of attorney, proxy under healthcare directive, trustee, representative payee, or other fiduciary;
- gathering information related to the respondent's physical and mental abilities and limitations;
- assessing the respondent's ability to communicate decisions;
- gathering evidence of the respondent's ability to make responsible decisions about their person (for guardianships);
- gathering evidence of the respondent's ability to manage their property and business affairs effectively (for conservatorships); and
- investigating the qualifications of any proposed guardian/conservator.

The investigation typically starts with obtaining and reviewing all relevant pleadings and notices. Additionally, a guardian ad litem may need to obtain and review the respondent's records in other court proceedings, related investigations (adult/child protective services, law enforcement), medical and mental health records, financial and property records, educational records, estate planning documents, and government benefit documents. As it relates to the proposed guardian/conservator, the GAL should search for criminal and civil court records which may implicate the person's qualifications to serve.

Standard 7.0: Interviewing the Parties and Others

A guardian ad litem must interview the petitioner—the person who appears to have caused the petition to be filed.[45] The GAL should interview anyone, other than the petitioner, who is nominated to serve as guardian or conservator.[46] A guardian ad litem should also interview others who have information relevant to the allegations made in the petition and knowledge of the respondent's circumstances.

Comment:

The interviews usually start with the petitioner. If the petitioner is represented by counsel, the GAL should obtain permission from petitioner's counsel

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[44] Ala. Code § 26-2A-102 cmt.
[45] Ala. Code § 26-2A-52(b)(2)b.
[46] *Id.*

prior to meeting and interviewing the petitioner; the same would be true for any represented party. In addition to the core areas of investigation identified in Standard 6.0, a guardian ad litem should inquire into the petitioner's concerns and reasons for seeking guardianship or conservatorship.

The petitioner is likely to be seeking appointment as the respondent's guardian or conservator. If the petitioner is nominating someone else to serve as guardian or conservator, the GAL should interview that person. For the prospective guardian or conservator, a guardian ad litem should inquire into the person's plan for:

- making decisions for the respondent;
- managing the respondent's physical and mental healthcare;
- providing for the housing and basic needs of the respondent;
- seeking support or services for the respondent;
- ensuring the respondent's physical safety;
- securing the respondent's finances and property; and
- managing the respondent's conservatorship estate.

A guardian ad litem may also need to interview other people who have information relevant to the investigation (see Standard 6.0). Those may include: family members, friends, neighbors, physicians, nurses, psychiatrists, social workers, caregivers, advisors, banks, and financial institutions.

Standard 8.0: Interviewing the Respondent

A guardian ad litem must "meet with the respondent prior to court hearings and when apprised of emergencies or significant events impacting the respondent."[47] The GAL should "explain, in terms understandable to the respondent, what is expected to happen before, during, and after each court hearing."[48] When meeting with the respondent, a GAL should "interview" the respondent, if practicable.[49] Prior to a final hearing on the appointment of a guardian or conservator, and at other times as necessary, the guardian ad litem should visit the present dwelling of the respondent.[50]

Comment:

A guardian ad litem should "meet with" and "interview" the respondent. Meeting with the respondent entails having eyes on the respondent. At a minimum, a guardian ad litem must meet with the respondent at the respondent's

[47] Ala. Code § 26-2A-52(b)(1)a.
[48] Ala. Code § 26-2A-52(b)(1)b.
[49] Ala. Code § 26-2A-52(b)(2)c.
[50] Ala. Code § 26-2A-52(b)(2)d.

present dwelling prior to the final hearing. Some respondents may not be able to communicate, even with technological assistance or other support. For example, an adult respondent may be in a comatose state, or a minor respondent may be a newborn. Therefore, a guardian ad litem should "interview" the respondent to the extent the person is able to communicate.

The guardian ad litem is entitled to meet with the respondent privately. The presence of others may significantly interfere with the GAL's ability to conduct an independent investigation. If the respondent is represented by counsel, the guardian ad litem should obtain permission from respondent's counsel prior to meeting and interviewing the respondent.

During the meeting, the guardian ad litem should:

- explain, in terms understandable to the respondent, 1) the court process and role of the guardian ad litem and 2) what is expected to happen before, during, and after each court hearing;
- inform an adult respondent of their due process rights (see Standard 9.0);
- observe the respondent's condition, surroundings, and responses; and
- ascertain the respondent's thoughts and wishes concerning the proceedings and the proposed guardian/conservator.

Standard 9.0: Due Process Rights

Unless the respondent is represented by counsel, a guardian ad litem must inform an alleged incapacitated adult respondent of his or her due process rights.[51] Those rights include the right to be present at the hearing, to be represented by counsel, to present evidence and cross-examine witnesses, and to demand a trial by jury.[52] Further, an alleged incapacitated adult is entitled to notice of the hearing on the appointment of a guardian,[53] temporary guardian or emergency guardian,[54] and any hearing on a petition for an order subsequent to appointment of a guardian,[55] by process server.[56] Notice of the hearing on the appointment of a conservator or other protective order,[57] temporary conservator or emergency conservator,[58] and any

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[51] Ala. Code § 26-2A-52(b)(3).

[52] *Id.* The respondent's due process rights, including notice and service, may be waived by the court in a "custodial" guardianship proceeding. Ala. Code § 26-2A-102(e).

[53] Ala. Code § 26-2A-103(a)(1).

[54] Ala. Code § 26-2A-107.1(b)(2). The court may appoint an emergency guardian without notice to the adult only if the court finds from an affidavit or testimony that the adult's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. Ala. Code § 26-2A-107.1(d)(1).

[55] Ala. Code § 26-2A-103(b).

[56] Ala. Code § 26-2A-103(c); Ala. Code § 26-2A-50(b)2).

[57] Ala. Code § 26-2A-134(a).

[58] Ala. Code § 26-2A-136.1(b)(2). The court may appoint an emergency conservator without notice to the adult only if the court finds from an affidavit or testimony that the adult's property or financial

hearing on a petition for an order subsequent to appointment of a conservator or other protective order[59] must be given in the same manner, by personal service.[60]

Comment:

An alleged incapacitated person may not waive notice.[61] Nor may a guardian ad litem accept service of process for the respondent.[62]

Standard 10.0: Less-Restrictive Alternatives and Supports

In adult guardianship and conservatorship proceedings, a court should make appointive and other orders "only to the extent necessitated by the [incapacitated or protected] person's mental and adaptive limitations [and/or] other conditions warranting the procedure."[63] The intent is to encourage the development of maximum self-reliance and independence of the adult.[64] Likewise, a guardian ad litem has a duty to identify less-restrictive alternatives to guardianship or conservatorship.[65] A GAL must "advocate for the result that is the least restrictive in type, duration, and scope and consistent with the alleged incapacitated adult respondent's best interests."[66] Additionally, a guardian ad litem should advocate for appropriate services for the respondent.[67]

Comment:

The statutes are replete with authority encouraging the use of less-restrictive alternatives to guardianship or conservatorship. Especially when an adult respondent is not represented by their own counsel, the court will rely on the guardian ad litem to identify and recommend less-restrictive alternatives consistent with the respondent's best interests. Below is a list of potential less-restrictive alternatives.

- No guardianship and/or conservatorship.[68]

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interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held. Ala. Code § 26-2A-136.1(d)(1).

[59] Ala. Code § 26-2A-134(b).

[60] Ala. Code § 26-2A-134(a). Publication notice is allowable in conservatorship proceedings if the respondent has disappeared or is otherwise situated so as to make personal service impracticable. Ala. Code § 26-2A-134(a)(1).

[61] Ala. Code § 26-2A-103(d).

[62] *See* Ala. R. Civ. P. 4(c).

[63] Ala. Code § 26-2A-105(a) (adult guardianships) and Ala. Code § 26-2A-136(a) (conservatorships).

[64] *Id.*

[65] Ala. Code § 26-2A-52(b)(2)f.

[66] Ala. Code § 26-2A-52(b)(5).

[67] Ala. Code § 26-2A-52(b)(4).

[68] "[T]he guardian ad litem is obligated to represent the interests of the potential ward and should oppose the guardianship and/or conservatorship if that is in the best interests of the potential ward."

- Supported Decision-Making Agreement[69]
- Appointment of a Social Security Administration representative payee
- Appointment of a Veterans Affairs (VA) fiduciary
- Financial Power of Attorney[70]
- Trust
- Healthcare Power of Attorney[71]
- Advance Directive for Healthcare[72]
- Limited Guardianship[73]
- Single-Transaction Conservatorship[74]

A guardian ad litem should weigh the use of a less-restrictive alternative against potential challenges presented by the alternative or prospective supporters. Eligibility, cost, timing, location, and risk to public benefits of the alternative should be considered. Further, the GAL's investigation may have uncovered concerns about the respondent's supporters, including the risk of undue influence, abuse, neglect, or exploitation, the supporter's lack of understanding of the respondent's medical/mental health needs, the supporter's lack of stability or cognitive limitations, and disputes with family members. Guardians ad litem are encouraged to use the American Bar Association Commission on Law and Aging's resource titled "PRACTICAL Tool for Lawyers: Steps in Supporting Decision-Making"[75] in evaluating less-restrictive alternatives.

Standard 11.0: Report and Recommendation to the Court

A guardian ad litem must submit a report and recommendation in writing to the court.[76]

Comment:

The guardian ad litem's report and recommendation should first be responsive to any duties or instructions provided in the court order appointing the GAL. "The court may include additional duties or instructions for the guardian ad

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On Guard: Making Sensible Decisions About Guardianship, Ala. Disabilities Advoc. Program, https://alabamaguardianship.org/wp-content/uploads/2023/02/On-Guard-Making-sensible-decisions.pdf (last visited Aug. 31, 2026).

[69] Ala. Code § 26-1B-1 et seq.

[70] Ala. Code § 26-1A-101 et seq.

[71] Ala. Code § 26-1A-404.

[72] Ala. Code § 22-8A-1 et seq.

[73] Ala. Code § 26-2A-105(c).

[74] Ala. Code § 26-2A-137.

[75] https://www.americanbar.org/content/dam/aba/administrative/law_aging/PRACTICALGuide.pdf

[76] Ala. Code § 26-2A-52(b)(6).

litem in its order of appointment."[77] Some probate courts have local rules regarding the requirements and deadlines for the report and recommendation. Unless otherwise directed, the report and recommendation should be filed prior to the final hearing.

The report should include the findings of the guardian ad litem's investigation and interviews (see Standard 6.0, Standard 7.0, and Standard 8.0). If the GAL has been able to ascertain the respondent's wishes (see Standard 1.0), those should be included in the report. The findings should also cover the GAL's identification and evaluation of any less-restrictive alternatives to guardianship or conservatorship (see Standard 10.0).

The guardian ad litem's recommendation should be based on the evidence presented and consistent with the respondent's best interests. A GAL may make recommendations regarding 1) the need for guardianship or conservatorship (see Standard 5.0), 2) who to appoint as guardian or conservator, 3) whether the relief being requested should be granted, 4) whether the court should consider a less-restrictive alternative, and 5) other issues in the best interests of the respondent.

Standard 12.0: Fees

A guardian ad litem in a guardianship or conservatorship proceeding is entitled to reasonable compensation from the estate of the ward or protected person.[78] Except when the petitioner is related by blood or marriage to the ward or protected person, if the assets of the estate are not sufficient to provide reasonable compensation to the GAL, the court may tax the costs to the petitioner.[79]

Comment:

The assessment of a guardian ad litem's fee is a matter within the sound discretion of the trial/probate court. In determining the reasonableness of a guardian ad litem's fee, the court should consider factors such as:

(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;

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[77] Ala. Code § 26-2A-52(c).
[78] Ala. Code § 26-2A-142(a)(b).
[79] Ala. Code § 26-2A-142(c).

(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.[80]

The court must ensure the record contains sufficient evidence to support the GAL fee awarded. If appealed for abuse of discretion, the reviewing court must be able to "discern from the record *what factors* the court considered in deciding the attorney's fees."[81] Therefore, a guardian ad litem should keep and submit itemized bills setting forth the tasks conducted and amount due for each task.[82] Otherwise, the matter may be remanded for an evidentiary hearing on the matter of fees.[83]

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[80] T.C.M. v. W.L.K., 248 So. 3d 1, 8-9 (Ala. Civ. App. 2017) (citing Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988)).
[81] Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 749 (Ala. 1988).
[82] Lester v. Lester, 378 So. 3d 555, 568 (Ala. Civ. App. 2022) (affirming award a GAL fees).
[83] Van Schaack v. AmSouth Bank, N.A., 530 So. 2d 740, 750 (Ala. 1988) (remanding when the record disclosed no evidence regarding the GAL's services other than his presence at the hearing on final settlement and asking a witness several questions).

GUARDIANS AD LITEM IN GUARDIANSHIPS, CONSERVATORSHIPS AND PROTECTIVE PROCEEDINGS

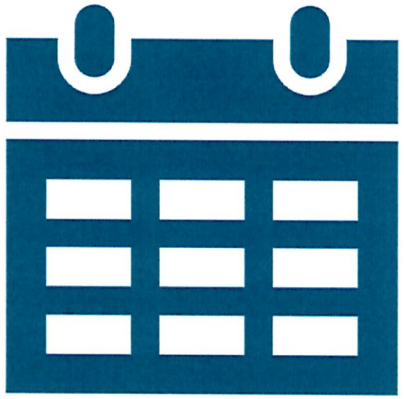


Guardians ad Litem in Guardianships, Conservatorships and Protective Proceedings

Alabama Probate Judges Association
Alabama Law Institute

Act 2026-488 amended Ala. Code § 26-2A-52

- Prior to 2026 amendment, Ala. Code 26-2A-52 provided no guidance as to the duties and responsibilities of a guardian ad litem appointed by a Court in a proceeding under the Alabama Uniform Guardianship and Protective Proceedings Act (AUGPPA).
- Amended statute establishes clear duties and responsibilities to Court and to Respondent (person alleged to be incapacitated).
- Amended statute mandates training for GALs appointed to represent Respondents in a proceeding under AUGPPA.



EFFECTIVE DATE OF AMENDED GAL STATUTE: JANUARY 1, 2027

Appointment of Guardians ad Litem under Ala. Code § 26-2A-52

- Court shall appoint a GAL for a Respondent in all guardianship, conservatorship and protective proceedings under Title 26 if Court determines that Respondent is not adequately represented. (See also ARCP 17(c)).
- GAL MUST have completed approved APJA/ALI GAL training prior to appointment.
- GAL must be an attorney in good standing with ASB.
- GAL may represent more than one person in a proceeding if there is no conflict of interest.

Duties and Responsibilities of Guardians ad Litem under Ala. Code § 26-2A-52

- Primary responsibility of a GAL is to represent and protect the best interests of the Respondent.
- GAL shall attend all hearings and file all necessary pleadings to facilitate best interests of Respondent.

Duties under Ala. Code § 26-2A-52

- Duties include:
  - Meet with Respondent prior to hearings and when apprised of emergencies or significant events.
  - Explain to Respondent what is happening before, during and after hearings.
  - Advocate for appropriate services.
  - Advocate for least restrictive relief that is consistent with best interests.

Duties under Ala. Code § 26-2A-52

- Inform Respondent of rights (unless Respondent is represented by separate counsel):
  - Right to be present at hearing.
  - Right to be represented by counsel.
  - Right to present evidence and to cross-examine witnesses.
  - Right to demand a jury trial as to capacity.

Duties under Ala. Code § 26-2A-52

- Conduct a thorough and independent investigation:
  - Obtain and review all relevant documents.
  - Interview petitioner and any person nominated to serve as guardian or conservator.
  - Interview Respondent if practicable.
  - Visit dwelling place of Respondent.
  - Make reasonable effort to ascertain Respondent's wishes.
  - Identify less restrictive alternatives to guardianship or conservatorship.

Duties under Ala. Code § 26-2A-52

- Submit a written report and recommendation.
  - Advocate for best interests of the Respondent.
  - Consider, but shall not be bound by, wishes of the Respondent.

Duties under Ala. Code § 26-2A-52

- Court may include additional duties or instructions in its order appointing GAL.

Ethics Considerations for GAL

- GAL is an Officer of the Court and in general is bound by same professional and ethical duties as any other attorney.
- GAL must avoid conflicts of interest, impropriety and self-dealing.
- GAL may not communicate *ex parte* with Court.

Ethics Considerations for GAL

- ARPC 1.4: Communicate with *client*.
  - Failure to communicate is most common complaint received by State Bar.
- ARPC 1.8: Prohibited Transactions.
  - No sexual conduct or relations with Respondent or representative of Respondent.

Ethics Considerations for GAL: Confidentiality and Privilege

- GAL is appointed to represent and advocate for best interests of Respondent, but GAL is NOT the Respondent's attorney in traditional sense.
- GAL communication with Respondent is **not** privileged or confidential.
- However, GAL should exercise discretion in disclosing information only to extent necessary to represent best interests of Respondent.

Ethics Considerations for GAL

- GAL should disclose role in proceeding to persons GAL interviews.
- GAL should disclose to persons interviewed that communication is not privileged or confidential.

How is GAL Compensated?

- Unlike commitment proceedings in probate court, there is no set mechanism or state fund to compensate GALs in proceedings under § 26-2A-1 et seq.
- Rule 17(d) of the Alabama Rules of Civil Procedure governs:
- "In all cases in which a guardian ad litem is required, the court must ascertain a reasonable fee or compensation to be allowed and paid to such guardian ad litem for services rendered in such cause, to be taxed as a part of the costs in such action, and which is to be paid when collected as other costs in the action, to such guardian ad litem."
- GAL fees are taxed as costs of the proceeding. The court has discretion in how to tax those costs.

How is GAL Compensated?

- If the estate of a Respondent who is determined to be incapacitated is sufficient, court will generally tax costs, including reasonable GAL fee, against the estate of the Respondent.
- DHR will pay reasonable compensation of GAL in proceedings brought by DHR if Respondent's estate is insufficient to pay GAL.
- Court may order petitioner to pay GAL fees and other court costs if proceeding does not result in finding of incapacity (guardianship, conservatorship, other protective relief).
- Court should require GAL to keep records of time and expenses just as the attorney would for any other client and be prepared to submit those for review (with redaction as appropriate).

When Do GAL's Duties End?

- Unless otherwise provided by Court Order, GAL's duties in a proceeding terminate:
  - When the Court has issued a final order/judgment and the time for appeal has expired without appeal, or
  - If an appeal was filed, after final adjudication of the appeal.
- Under ordinary circumstances, no ongoing duty to communicate with or check on Respondent.
- Court may direct otherwise.
- Court may reappoint GAL for partial or final settlements, to review annual reports, or the like.

Mandatory Training of Guardians ad Litem

- Beginning January 1, 2027, all GALs appointed in proceedings under Title 26-2A-1 et seq. must have "successfully completed a training program prepared or approved by the Alabama Probate Judges Association and the Alabama Law Institute." 26-2A-52(e).
- Training manual prepared and approved by APJA and ALI has been distributed to all probate courts for use in training GALs.
- Each Probate Judge has oversight of training in his or her county.
- Manual prepared by APJA/ALI must be incorporated into training but does not have to be only material used or covered.
- When attorney successfully completes training, Probate Judge will issue a certificate to attorney, dated and signed by Probate Judge.
- Certificate issued by any Probate Judge shall be sufficient to permit attorney to be appointed in any probate court in Alabama.

County-specific Practice Aspects GALs Should Know

- Typical process in that county's probate court
- Additional expectations of a GAL in that county's probate court
- GAL compensation—how it works in that county's probate court

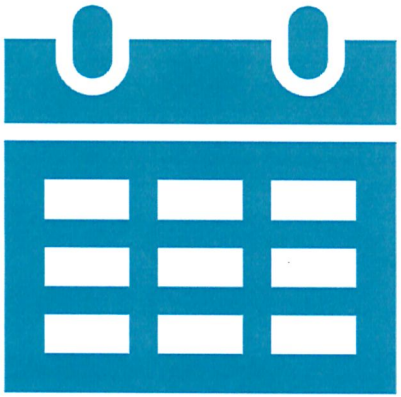
OVERVIEW OF 2026 AMENDMENTS TO ALABAMA UNIFORM GUARDIANSHIP AND PROTECTIVE PROCEEDINGS ACT

Overview of 2026 Amendments to Alabama Uniform Guardianship and Protective Proceedings Act

Alabama Probate Judges Association
Alabama Law Institute

Act 2026-488 in Context

- The Alabama Uniform Guardianship and Protective Proceedings Act was enacted in 1987. AUGPPA subsequently has been amended several times—1988, 1991, 2000, 2006, 2010, 2015, 2016, 2017.
- Drafted by the ALI standing Guardianship Committee, which has been reviewing and working on revisions to the Alabama Uniform Guardianship and Protective Proceedings Act since 2019.
- **Nineteen** current or former **Probate Judges** served on the ALI Committee. In addition, representatives of DHR, the AARP, county conservators, and seasoned practitioners in this subject matter were represented on the committee.



EFFECTIVE DATE: JANUARY 1, 2027

Five Major Issues Addressed by Amendments

- Removal and Remand of G&C Matters in "Non-Equity" Counties
- Notice Requirements
- Guardian ad Litem: duties, responsibilities, training
- Court Representative: duties, qualifications, discretion to waive appointment
- Relief prior to evidentiary hearing and determination of incapacity (Emergency and Temporary Relief/Appointments)

REMOVAL AND REMAND OF AUGPPA PROCEEDINGS IN NON-EQUITY COUNTIES

What? Where?

- Amends Section 26-2-2
- Removal occurs when a matter is "removed" from probate court to circuit court.
- After removal, the circuit court has jurisdiction over the matter.
- Party wishing to remove files a **Notice of Removal** in the circuit court, with a copy filed in the probate court from which the matter is being removed.
- Removal of a matter is not available in any county in which the probate court has equity jurisdiction concurrent with the circuit court over G&C matters.

Who may remove a G&C matter?

- Guardian of the Respondent, including a Temporary or Emergency Guardian
- Conservator of the Respondent, including a Temporary or Emergency Conservator
- The Respondent (alleged incapacitated person), prior to a determination of incapacity
- GAL or Attorney for the Respondent
- Agent under a Facially Valid Durable POA
- Facility in which Respondent resides or is admitted as a patient
- Spouse of Respondent
- Next friend of Respondent
- DHR
- Any person entitled to support out of the estate of the Respondent

When?

- A matter may be removed "at any time before the probate court has taken steps toward a final settlement."
- Once removed, it remains in circuit court until final settlement or REMAND to probate court.
- Circuit court may remand under certain circumstances.
- A matter that has been remanded to probate court may be removed again.

How?

- Notice of Removal **filed in the circuit court** that contains all of the following:
  - A description of the nature of the proceeding
  - Whether a jury trial is demanded under section 26-2A-35
  - The removing party's interest in the proceeding
  - The name of all interested persons in the proceeding—copy of the Notice of Removal must be delivered to all
- After filing Notice of Removal in circuit court:
  - File COPY with Clerk of probate court
  - Send copy to all interested parties
- Probate court delivers a copy of the record of proceeding to circuit court

What pt. 2?

- THE CIRCUIT COURT SHALL HAVE JURISDICTION OF A REMOVED PROCEEDING UPON FILING OF THE NOTICE OF REMOVAL—NO HEARING OR ORDER OF REMOVAL NECESSARY
- Probate court shall not take any further action upon receiving copy of Notice of Removal except to deliver a copy of the record to the circuit clerk.
- Circuit court is not deprived of jurisdiction due to:
  - Omission or incorrect statement of any required information
  - Failure of probate court to deliver copy of record

NOTICE IN PROCEEDINGS UNDER AUGPPA

NOTICE

- Amends Sections 26-2A-50, 26-2A-103 and 26-2A-134.
- Overall goal is to make it easier to comply with notice requirements.
- Brings probate court notice into conformity with methods provided in Ala. R. Civ. P.—process server, mail, commercial carrier.
- Eliminates the requirement of in person service on spouse, adult children and parents of the Respondent. Under emergency/temporary rules (discussed later), reduces persons to whom notice must be given.
- Provides for notice by publication when person cannot be located or avoids service.

26-2A-50: Notice Generally

- Required notice is to be given in the manner provided for service of summons in the Alabama Rules of Civil Procedure, except as follows:
  - If by certified mail or commercial carrier, at least **14** days before time set for hearing.
  - If by process server, by delivery to the person being notified at least **10** days before time set for hearing.
  - If by publication when address or identity cannot be known or ascertained with reasonable diligence, by publication for three consecutive weeks ending 10 days before time set for hearing.
- Court for good cause shown may provide for a different method or time of giving notice.
- Proof of service must be made not later than the hearing.

26-2A-103: Notice in Guardianship Proceeding

- For a non-emergency hearing, notice shall be given to:
- Respondent—PERSONALLY—CANNOT WAIVE, GAL/Attorney cannot accept
- Spouse if any
- Adult children, or, if none, any living parent
- Any person serving as guardian or conservator or who has care and custody of the Respondent
- If no spouse, adult child, or living parent, at least one nearest adult relative in state
- Any other person directed by court
- Notice of hearing on a petition for an order subsequent to appointment of guardian to be given to Respondent, guardian, any other person directed by court.
- Persons entitled to notice besides respondent may be served as provided in ARCP.

26-2A-134: Notice in Conservatorship or Request for Other Protective Order

- Generally same as 26-2A-103
- If Respondent cannot be located or service is impossible, notice may be made by publication.

Ala. R. Civ. P. 4 and 5 set out rules for service

Purpose of rules is to ensure DUE PROCESS is provided to all parties in a proceeding.

DUE PROCESS = Notice and an Opportunity to be heard

Rule 4 Process: General and miscellaneous provisions

- Rule 4 is the touchstone for how notice is given to parties in a civil proceeding.
- 2013 amendment to Ala. R. Civ. P. provided that the rules are applicable to probate courts "so far as the application is appropriate and except as otherwise provided by statutes."
- Act 2026-488 explicitly provides that notice shall be given as provided in Ala. R. Civ. P., with the changes to time provided in the Act and with certain exceptions (such as that a respondent must always be served personally).

Rule 4(a) Summons or other process

- (1) Upon filing of complaint or other document required to be served in the manner of an original complaint, clerk shall issue summons or other process for service upon each respondent/defendant.
- (2) Form of summons/service of process: (1) signed by clerk; (2) identify court; (3) identify parties; (4) be directed to party being served; (5) identify name and address of petitioner and petitioner's attorney; (6) state time for respondent to respond or appear.
- (3) Copy of pleading must be served with the summons or service of process.
- (4) When reading Ala. R. Civ. P. in probate context, plaintiff = petitioner (party seeking issuance of process), defendant = respondent/any party upon whom service of process is sought
- (5) Party seeking issuance of service of process SHALL furnish clerk with instructions for how to serve AND furnish sufficient copies.

Rule 4(c) Upon whom process served

- Individual (not a minor): leave copy with individual or with person of suitable age at individual's usual place of abode or with agent authorized to receive process.
- Minor: parent or guardian or person having care of the minor; if over 16 years of age, also serve minor personally.
- Incompetent not confined: serve the individual and individual's guardian or if none, person who cares for individual or with whom individual resides.
- Incompetent confined: serve superintendent or similar officer of institution where confined; (note also must serve individual personally under Ala. Code § 26-2A-103 and 134)
- Incarcerated person: serve the individual.
- Corporations, State, Local Governments and other Governmental Entities also covered.

Rule 4(e) Service Refused

- If service of process is refused, and certified mail receipt is returned or process server affidavit is returned stating that service is refused, clerk shall serve by ordinary mail.
- Service complete when mailed.

Rule 4(i) Methods of Service

- Methods of service of process include the following:
- (1) Delivery by process server
  - (A) Sheriff or constable
  - (B) Designated person (private process server)
- (2) Certified Mail
- (3) Commercial Carrier
  - (A) If initiated by clerk, must be carrier approved by Admin. Director of Courts
  - (B) If attorney or party initiates, can use any commercial carrier
  - CAVEAT—Refusal of service rule 4(e) does NOT APPLY if service by commercial carrier is refused.

Rule 5 Service and filing of pleadings and other papers

- Companion rule to Ala. R. Civ. P. Rule 4; applies to pleadings, motions, orders, notices and other filed papers, after the original petition (complaint) and any documents to be served in the manner of an original complaint

Rule 5(a) Service: When required

- General rule: serve every filing and order on every party.

Rule 5(b) Same: How made

- If party is represented by counsel, serve on counsel.
- If not, serve on party.
- How to serve:
  - By regular mail—complete when mailed (i.e. starts time for response)
  - By hand delivery to counsel (party if pro se) or office of counsel
  - ~~By e-filing* in state court.~~
    - E-filing will not constitute effective service in probate court even if there is an e-file system; not addressed in rules, not mandatory to participate.

Rule 5(d) Filing: Certificate of service

- All papers after complaint (petition) required to be served upon a party, together with a certificate of service, shall be filed with the court either before service or within a reasonable time thereafter.
- Discovery is typically not filed; notice of service of discovery is filed instead.
- Certificate of service should list names, addresses, dates, method of service, and paper served.

Rule 5(e) Filing with the court defined

- Filing of papers with the court is made by filing with the clerk of the court.
- Judge may permit filing of papers to be filed with the judge.
- E-filing permitted in counties with electronic filing.
- Email and fax are not permitted for filing.

COURT REPRESENTATIVES

26-2A-54: COURT REPRESENTATIVES

- "[T]he court shall appoint a court representative unless the court determines that the appointment is not likely to aid the curt or would add unnecessary expense to the proceeding."
- Appointment is discretionary, but waiving appointment must be based on the circumstances of the matter.
- Court reps are to have training or experience in the type of abilities, limitations and needs alleged in the petition.
- Must not have a personal interest in the matter
- Court reps shall:
  - Independently evaluate the petition
  - Interview Respondent, proposed guardian or conservator
  - Explain the petition to the Respondent
  - Ascertain the Respondent's views about the petition
  - Visit dwelling, if relevant
  - Obtain medical and other information
- File a report with the court, unless waived by the court for good cause shown.

EMERGENCY AND TEMPORARY RELIEF

26-2A-107.1 and 26-2A-136.1: New Statutes

- There are **TWO** categories of potential relief prior to a final determination on the merits: **Emergency** and **Temporary**
- 26-2A-107.1 applies to emergency and temporary guardianships
- 26-2A-136.1 applies to emergency and temporary conservatorship or other protective relief
- **EMERGENCY relief cannot extend past 10 days**
- **TEMPORARY relief can be up to 60 days** and is **renewable** 1x without a hearing and more than 1x upon hearing

Emergency Relief: How it Works

- Petitioner can request emergency relief or court can grant in its own discretion.
- Court must find that emergency relief is "likely to prevent substantial harm to the adult's physical health, safety or welfare" (107.1) or is "likely to prevent substantial and irreparable harm to the person's property or financial interest" (136.1).
- There is reason to believe that basis exists for appointment of a guardian/conservator or other protective relief.
- If no GAL appointed, court shall immediately appoint one.
- Court shall provide notice of hearing, except as provided below, no later than 5 days before time set for hearing to (1) Respondent, (2) GAL and attorney for Respondent, (3) any other person court determines.
- BUT: Court can appoint emergency guardian/conservator or grant other emergency relief WITHOUT NOTICE (ex parte) IF and ONLY IF the court finds from an affidavit or testimony "that the adult's physical health, safety or welfare will be substantially harmed" (107.1) or "that the respondent's property or financial interests will be substantially and irreparably harmed" **before** a hearing with notice on the appointment can be held.
- **10 DAYS is the duration of any EMERGENCY RELIEF.**

Emergency Relief: What Happens Next

- If court grants emergency relief without notice to the Respondent, then:
  - Within 48 hours, notice of emergency relief must be given to Respondent, GAL, attorney and any other party determined by court
  - Hearing **must be held** on appropriateness of emergency relief within **10 days**
  - Notice of hearing must be given to persons above at least 5 days before hearing
- After hearing, court can:
  - Appoint a temporary guardian/conservator or grant other temporary relief
  - Terminate emergency relief without further relief granted
  - Grant such other relief as may be proper

Temporary Relief: How it Works

- If no GAL, immediately appoint one.
- Upon hearing with at least 5 days notice to Respondent, GAL, any attorney for Respondent, and any other party the court determines, the court may appoint a TEMPORARY guardian/conservator or grant other TEMPORARY relief if the court finds that such relief is "likely to prevent substantial harm to the adult's physical health, safety or welfare" (107.1) or is "likely to prevent substantial and irreparable harm to the person's property or financial interest" (136.1) AND
- There is reason to believe that basis exists for appointment of a guardian/conservator or other protective relief
- TEMPORARY RELIEF may not exceed 60 days.

Temporary Relief: What Happens Next

- Initial grant of temporary relief may be extended ONCE without a hearing if court finds that conditions for relief continue and it is in Respondent's best interest.
- After one extension of temporary relief, court must hold a hearing with notice of at least 5 days to extend further, must find good cause to do so.
- Temporary relief may be extended by hearing more than once to permit parties to conduct discovery, gather evidence, obtain medical evaluations and the like—but the goal is to get to a hearing on the merits of the permanent petition as quickly/efficiently as possible.
-

Other Important Points on 107.1 and 136.1

- Granting emergency or temporary relief is not a determination that a basis exists for appointment of a permanent guardian/conservator or granting of other permanent protective relief.
- Court may remove an emergency or temporary guardian or conservator at any time.
- Court may require an emergency or temporary guardian or conservator to make any report the court requires.
- Emergency or temporary conservator must be bonded just like a permanent conservator.
- County Sheriff cannot be appointed emergency or temporary guardian or conservator without consenting to the appointment.

ACT 2026-488

(2026 AMENDMENTS TO ALA. CODE TITLE 26)

ACT #2026-488

HB249

DGC49NN-3

By Representative Faulkner

RFD: Judiciary

First Read: 15-Jan-26



HB249 Enrolled

Enrolled, An Act,

Relating to guardianships and conservatorships; to amend Sections 26-2-2, 26-2-3, 26-2A-20 26-2A-50, 26-2A-52, 26-2A-103, 26-2A-134, and 26-2A-136, Code of Alabama 1975, and to add Sections 26-2A-54, 26-2A-107.1, and 26-2A-136.1 to the Code of Alabama 1975; to further provide procedures and requirements relating to the removal of proceedings involving guardianships or conservatorships from probate court to the circuit court; to further provide for notice requirements for petitions involving a guardianship, conservatorship, or protective proceeding; to require guardians ad litem to undergo training before appointment in a case involving a guardianship, conservatorship, or protective proceeding; to specify the duties of such a guardian ad litem; to require the court to appoint a court representative in proceedings involving a guardianship or protective order, with exceptions; to provide for the duties and responsibilities of a court representative; to provide for the appointment of temporary or emergency guardians in certain circumstances to prevent harm to an adult's physical health, safety, or welfare; to provide for the appointment of temporary or emergency conservators or other temporary or emergency relief in certain circumstances to prevent harm to an adult's property or financial interests; to allow the court to penalize attorneys or parties who improperly petition for temporary or emergency guardians or conservators; to revise the authority of a court to preserve and apply the property of a person who is the subject of an

ongoing protective order proceeding; to repeal Section 26-2A-107, Code of Alabama 1975, relating to emergency orders for a temporary guardian; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 26-2-2, 26-2-3, 26-2A-20, 26-2A-50, 26-2A-52, 26-2A-103, 26-2A-134, and 26-2A-136 are amended to read as follows:

"§26-2-2

(a) For all guardianships, conservatorships, and other protective proceedings commencing before January 1, 2027, the ~~The~~ administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court, at any time before the final settlement thereof by the guardian or conservator of any such guardianship or conservatorship or guardian ad litem or next friend of such ward or anyone entitled to support out of the estate of such ward without assigning any special equity, and an order of removal must be made by the court or judge upon the filing of a sworn petition by any such guardian or conservator or guardian ad litem or next friend for the ward or such person entitled to support out of the estate of such ward, reciting in what capacity the petitioner acts and that in the opinion of the petitioner such guardianship or conservatorship can be better administered in the circuit court than in the probate court.

(b) The following shall apply to all guardianships,

conservatorships, and other protective proceedings commenced on or after January 1, 2027:

(1)a. Except for a proceeding pending in a probate court in a county where the probate court or judge of probate exercises equity jurisdiction concurrent with that of the circuit court, a proceeding in a probate court under this chapter or Chapter 2A may be removed to the circuit court for the county where the proceeding in probate court is pending at any time before the probate court has taken steps toward a final settlement.

b. Removal under this subdivision may be done by any of the following parties:

1. The guardian, including any emergency or temporary guardian appointed by a court of competent jurisdiction and any guardian appointed in another jurisdiction for the person who is the subject of the proceeding.

2. The conservator, including any emergency or temporary conservator appointed by a court of competent jurisdiction and any conservator appointed in another jurisdiction for the person who is the subject of the proceeding.

3. The alleged incapacitated person, prior to a determination of incapacity.

4. The guardian ad litem or attorney for the person who is the subject of the proceeding.

5. An agent acting under a facially valid durable power of attorney executed prior to the commencement of any such proceeding by the person who is the subject of the proceeding.

6. Any facility, including, but not limited to, a hospital as defined in Section 22-21-20, in which the person who is the subject of the proceeding resides or has been admitted as a patient.

7. The next friend of the person who is the subject of the proceeding.

8. The Department of Human Resources.

9. Any person entitled to support out of the estate of the person who is the subject of the proceeding.

10. The spouse of the person who is the subject of the proceeding.

(2) 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:

a. A description of the nature of the proceeding being removed.

b. Whether a jury trial is demanded under Section 26-2A-35.

c. The removing party's interest in the proceeding being removed.

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

(3) 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 parties listed in the

notice. Upon receiving a copy of the notice of removal, the probate court may not take 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.

(4) The circuit court shall have jurisdiction of a removed proceeding upon filing of the notice of removal with the circuit clerk. None of the following may deprive the circuit court of jurisdiction to hear and decide the removed proceeding:

a. The omission of any information required to be included in the notice of removal.

b. An incorrect statement of any information required to be included in the notice of removal.

c. The failure of the probate court to deliver a copy of the record of proceedings in that court.

(5) If a necessary party to the proceedings does not receive notice of the proceedings as required by law before the notice of removal is filed, the removing party shall cause notice of the proceeding to be issued to the necessary party as provided in the Alabama Rules of Civil Procedure or as otherwise provided by law.

(6) The circuit court may remand a proceeding removed under this section to the probate court if the circuit court finds any of the following:

a. The removal was sought for purpose of improper delay.

b. The removal did not comply with applicable law.

c. Judgment on all contested matters pending before the circuit court is final and: (i) the time for an appeal expired without the filing of an appeal; or (ii) if an appeal was filed, there is a final adjudication of the appeal.

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

(7) 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. The probate court shall proceed with the proceeding in accordance with the circuit court's order.

(8) 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 served by process issued by the probate court or otherwise.

(9) Neither remand nor anything else shall prevent the subsequent removal of a proceeding to the circuit court under this section."

"§26-2-3

(a) In any county where the judge of probate is required to be learned in the law, the administration or conduct of any guardianship or conservatorship of a minor or incapacitated person may be removed from the probate court to the circuit court pursuant to Section 26-2-2 at any time before a proceeding for final settlement ~~thereof~~ is commenced in probate court by the guardian or conservator of the

guardianship or conservatorship or guardian ad litem or next friend of a ward or anyone entitled to support out of the estate of the ward without assigning any special equity. The circuit court shall remand the administration of a guardianship or conservatorship transferred pursuant to this section to the probate court if the circuit court finds that the removal was sought for the purpose of improper delay or did not comply with applicable law. The circuit court may remand the administration of a guardianship or conservatorship pursuant to this section to the probate court if the circuit court finds that any of the following apply:

(1) The circuit court has issued a final order or judgment on all contested matters pending before the circuit court in the administration of the guardianship or conservatorship and the time for an appeal of the order or judgment has expired without an appeal being filed or, if an appeal was filed, after the final adjudication of the appeal.

(2) All interested parties or their representatives request the administration of the guardianship or conservatorship be remanded to probate court.

(b) Nothing in subsection (a) shall prevent the administration of a guardianship or conservatorship from being removed again to the circuit court pursuant to Section 26-2-2 after the administration has been remanded to the probate court as provided above.

(c) This section shall not apply to any guardianship, conservatorship, or other protective proceeding commenced on or after January 1, 2027."

"§26-2A-20

For the purposes of ~~As used in~~ this chapter, the following terms ~~shall~~ have the following meanings~~, respectively, unless the context clearly indicates otherwise~~:

(1) CLAIMS. ~~In respect of~~ With respect to a protected person, ~~includes~~ the liabilities of the protected person, whether arising in contract, tort, or otherwise, and liabilities of the estate which arise at or after the appointment of a conservator, including expenses of administration.

(2) CONSERVATOR. A person who is appointed by a court to manage the estate of a protected person ~~and~~. The term includes a limited conservator described in Section 26-2A-148(a).

(3) COURT. A probate court of this state.

(4) COURT REPRESENTATIVE. A person appointed in a guardianship or protective proceeding who: (i) is trained in law, nursing, or social work~~,~~; (ii) is an officer, employee, or special appointee of the court~~,~~; (iii) and has no personal interest in the proceeding.

(5) DISABILITY. Cause for a protective order as described in Section 26-2A-130.

(6) ESTATE. ~~Includes the~~ The property of the person whose affairs are subject to this chapter.

(7) GUARDIAN. A person who has qualified as a guardian of a minor or incapacitated person pursuant to parental or spousal nomination or court appointment ~~and~~. The term includes a limited guardian as described in Sections 26-2A-78(e) and

26-2A-105(c), but excludes ~~one~~ a person who is merely a guardian ad litem.

(8) INCAPACITATED PERSON. Any person 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.

(9) LEASE. Includes an oil, gas, or other mineral lease.

(10) LETTERS. ~~Includes letters~~ Letters of guardianships and letters of conservatorship.

(11) MINOR. A person who is under 19 years of age and has not otherwise had the disabilities of minority removed.

(12) MINOR WARD. A minor for whom a guardian has been appointed solely because of minority.

(13) ~~(12)~~ MORTGAGE. Any conveyance, agreement, or arrangement in which property is used as collateral.

(14) ~~(13)~~ ORGANIZATION. ~~Includes a~~ A corporation, business trust, estate, trust, partnership, association, two or more persons having a joint or common interest, government, governmental subdivision or agency, or any other legal entity.

(15) ~~(14)~~ PARENT. ~~Includes any~~ Any person entitled to take, or who would be entitled to take if the child died without a will, as a parent by intestate succession from the child whose relationship is in question ~~and~~. The term excludes any person who is only a stepparent, foster parent, or

grandparent.

(16) ~~(15)~~ PERSON. An individual or an organization, unless the context otherwise requires.

(17) ~~(16)~~ PETITION. A written request to the court for an order after notice.

(18) ~~(17)~~ PROCEEDING. ~~Includes action~~ Action at law and suit in equity.

(19) ~~(18)~~ PROPERTY. ~~Includes both~~ Both real and personal property, or any interest therein, and ~~means~~ anything that may be the subject of ownership.

(20) ~~(19)~~ PROTECTED PERSON. A minor or other person for whom a conservator has been appointed or other protective order has been made as provided in Sections 26-2A-136 and 26-2A-137.

(21) ~~(20)~~ PROTECTIVE PROCEEDING. A proceeding under ~~the provisions of~~ Division 3 of Article 2~~, Division 3~~.

(22) RESPONDENT. An individual for whom: (i) a petition requests the court to enter a protective order to appoint a guardian or conservator; (ii) a protective arrangement is sought; or (iii) any emergency or temporary guardian, conservator, or other relief is requested.

(23) ~~(21)~~ SECURITY. ~~Includes any~~ Any note~~,~~; stock~~,~~; treasury stock~~,~~; bond, debenture~~,~~; evidence of indebtedness~~,~~; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease~~,~~; collateral trust certificate, transferable share~~,~~; voting trust certificate or, in general, any interest or instrument commonly known as a security, or

any certificate of interest or participation~~,~~; any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase any of the foregoing.

(24) ~~(22)~~ WARD. A person for whom a guardian has been appointed. ~~A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.~~"

"§26-2A-50

(a) If notice of a hearing on any petition is required, other than a notice meeting specific notice requirements otherwise provided under Sections 26-2A-103, 26-2A-107.1, 26-2A-134, and 26-2A-136.1, the petitioner shall cause notice of the time and place of the hearing of any petition to be given to the person to be notified or to the attorney if the person has appeared by attorney or requested that notice be sent to an attorney.

(b) Notice ~~must~~ shall be given by service in the manner provided for service of summons in the Alabama Rules of Civil Procedure, except as follows:

(1) If by certified mail or commercial carrier, ~~By mailing a copy of~~ the notice shall be sent at least 14 days before the time set for the hearing ~~by certified, registered, or ordinary first-class mail~~ and addressed to the person being notified using the post office address given in the request for notice, if any, or to the person's office or place of residence, if known~~:~~.

(2) If by process server, by ~~By~~ delivering ~~a copy thereof~~ the notice to the person being notified ~~personally~~ at

least ~~14~~ 10 days before the time set for the hearing~~; or~~.

(3) If by publication when the address or identity of any person is not known and cannot be ascertained with reasonable diligence, by publishing a copy of the notice~~,~~ at least once a week for three consecutive weeks~~, a copy of the notice~~ in a newspaper having general circulation in the county in which the hearing is to be held, the last publication of which ~~is to~~ shall be at least 10 days before the time set for the hearing.

(c) The court for good cause shown may provide for a different method or time of giving notice for any hearing.

(d) Proof of the giving of notice must be made not later than the hearing and filed in the proceeding."

"§26-2A-52

(a) At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a ~~minor or other person~~ respondent 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.

(b) The primary responsibility of a guardian ad litem is to protect the best interests of the respondent. The duties of a guardian ad litem include the following:

(1)a. Meet with the respondent prior to court hearings and when apprised of emergencies or significant events impacting the respondent.

b. Explain, in terms understandable to the respondent, what is expected to happen before, during, and after each

court hearing.

(2) Conduct a thorough and independent investigation. Unless otherwise directed by the court, the investigation shall include the following:

a. Obtaining and reviewing relevant documents.

b. Interviewing the person who appears to have caused the petition to be filed and any other person who is nominated to serve as guardian or conservator.

c. Interviewing the respondent, if practicable.

d. Prior to a final hearing on the appointment of a guardian or conservator, and at other times as necessary, visiting the present dwelling of the respondent.

e. Making reasonable efforts to ascertain the respondent's wishes.

f. Identifying less-restrictive alternatives to guardianship or conservatorship.

(3) Unless represented by counsel, inform an alleged incapacitated adult respondent of the respondent's right to be present at the hearing, to be represented by counsel, to prevent evidence and cross-examine witnesses, and to demand a trial by jury.

(4) Advocate for appropriate services for the respondent.

(5) Advocate for the result that is the least restrictive in type, duration, and scope and consistent with an alleged incapacitated adult respondent's best interests.

(6) Submit a report and recommendation in writing to the court. In making the report, the guardian ad litem shall

be an advocate for the best interests of the respondent. The guardian ad litem should consider, but is not bound by, the wishes of the respondent.

(7) Attend all court hearings and file all necessary pleadings to facilitate the best interests of the respondent.

(8) Avoid conflicts of interest, impropriety, and self-dealing.

(c) The court may include additional duties or instructions for the guardian ad litem in its order of appointment.

(d) Unless otherwise provided by court order, a guardian ad litem's duties in a proceeding terminate: (i) when the court has issued a final order or judgment and the time for an appeal of the order or judgment has expired without an appeal being filed; or (ii) if an appeal was filed, after the final adjudication of the appeal.

(e) Before being appointed by the court, every guardian ad litem appointed under this chapter shall successfully complete a training program prepared or approved by the Alabama Probate Judges Association and the Alabama Law Institute."

"§26-2A-103

(a) Except as provided in Section 26-2A-107.1, in~~In~~ a proceeding for the appointment of a guardian of an incapacitated person~~, and, if notice is required in a proceeding for appointment of a temporary guardian~~, notice of hearing ~~must~~ shall be given to each of the following:

(1) The ~~person alleged to be incapacitated~~ respondent,

~~her or his spouse (if any)~~ the respondent's spouse, if any, and adult children, or if none, parents~~;~~.

(2) Any person who is serving as guardian~~,~~ or conservator~~,~~ or who has the care and custody of the ~~person alleged to be incapacitated;~~ respondent.

(3) In case no other person is notified under ~~paragraph~~ subdivision (1), at least one of the nearest adult relatives residing in this state, if any can be found~~; and~~.

(4) Any other person as directed by the court.

(b) Notice of hearing on a petition for an order subsequent to appointment of a guardian must be given to the ~~ward~~ respondent, the guardian, and any other person as ordered by the court.

(c) Notice must be served ~~personally~~ on the ~~alleged incapacitated person~~ respondent as provided in Section 26-2A-50(b)(2). Notices to other persons as required by subsection ~~(a)(1) must~~ (a) or (b) shall 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 Section 26-2A-50.

(d) The ~~person alleged to be incapacitated~~ respondent may not waive notice."

"§26-2A-134

(a) On a petition for appointment of a conservator or other protective order, the requirements for notice described in Section 26-2A-103 apply, ~~but (i) if~~ except that:

(1) If the ~~person to be protected~~ respondent has disappeared or is otherwise situated so as to make personal

service of notice impracticable, notice to the ~~person must~~ respondent shall be given by publication as provided in Section 26-2A-50~~, and (ii) if~~; and

(2) If the ~~person to be protected~~ respondent is a minor, the provisions of Section 26-2A-75 also apply.

(b) Notice, as described in Section 26-2A-103, of any hearing on a petition for an order subsequent to appointment of a conservator or other protective order must be given to the ~~protected person~~ respondent, any conservator of the ~~protected person's~~ respondent's estate, and any other person as ordered by the court."

"§26-2A-136

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

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

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

~~(2)~~ After hearing and upon determining that a basis for an appointment or other protective order exists with respect

to a minor without other disability, the court has all those powers over the estate and business affairs of the minor which are or may be necessary for the best interest of the minor and members of minor's immediate family.

(2) ~~(3)~~ After hearing and upon determining that a basis for an appointment or other protective order exists with respect to a person for reasons other than minority, the court, for the benefit of the person and members of the person's immediate family, has all the powers over the estate and business affairs which the person could exercise if present and not under disability, except the power to make a will. Subject to subsection (c), those ~~powers~~ include, but are not limited to, the powers to do the following: ~~power to make~~

a. Make gifts ~~; to convey~~.

b. Convey or release contingent and expectant interests in property, including marital property rights and any right of survivorship incident to joint tenancy or tenancy by the entirety ~~; to exercise~~.

c. Exercise or release powers held by the protected person as trustee, personal representative, custodian for minors, conservator, or donee of a power of appointment ~~; to enter~~.

d. Enter into contracts ~~; to create~~.

e. Create revocable or irrevocable trusts of property of the estate which may extend beyond the disability or life of the protected person ~~; to exercise~~.

f. Exercise options of the protected person to purchase securities or other property ~~; to exercise~~.

g. Exercise rights to elect options and change beneficiaries under insurance and annuity policies and to surrender the policies for their cash value~~; to exercise~~.

h. Exercise any right to an elective share in the state of the person's deceased spouse and to renounce or disclaim any interest by testate or intestate succession or by inter vivos transfer.

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

(1) To exercise or release powers of appointments of which the protected person is done~~;~~.

(2) To renounce or disclaim interests~~;~~.

(3) To make gifts in trust or otherwise exceeding in the aggregate 20 percent of the year's income of the estate~~;~~ ~~and~~.

(4) To change beneficiaries under insurance and annuity policies.

(d) Except for the disability necessitating the appointment, a determination that a basis for appointment of a conservator or other protective order exists has no effect otherwise on the capacity of the protected person. A conservator has all the powers granted by this section, unless specifically limited by the court. A protected person does not have or possess powers granted to the conservator."

Section 2. Sections 26-2A-54, 26-2A-107.1, and 26-2A-136.1 are added to the Code of Alabama 1975, to read as follows:

§26-2A-54

(a) In any proceeding under this article, the court shall appoint a court representative unless the court determines that the appointment is not likely to aid the court or would add unnecessary expense to the proceeding. At any time after the order is entered, the court may appoint a court representative if the court determines that the appointment would aid the court.

(b) Each court representative shall have training or experience in the type of abilities, limitations, and needs alleged in the petition, and have no personal interest in the proceedings. An appointed court representative shall be an officer, employee, or special appointee of the court.

(c) A court representative appointed under subsection (a) shall do all of the following, unless otherwise directed or limited by the court:

(1) Independently evaluate the petition and the allegations made in the petition.

(2) Interview the respondent in person and do both of the following in a manner that the respondent is best able to understand:

a. Explain to the respondent the substance of the petition and the nature, purpose, and effect of the proceeding.

b. Determine the respondent's views about the relief

sought by the petitioner.,

(3) Interview the petitioner and proposed guardian or conservator, if any.

(4) If relevant to the proceedings, visit the respondent's present dwelling and any dwelling in which the court representative reasonably believes the respondent will live if the relief sought is granted.

(5) Obtain information from any physician or other person known to have treated, advised, or assessed the respondent's relevant physical or mental condition.

(6) File a report of the court representative's findings in a record with the court, unless waived by the court for good cause shown.

(d) The court may use the service of any public or charitable agency as an additional court representative to evaluate the condition of the respondent and to make appropriate recommendations to the court.

§26-2A-107.1

(a) Either at the court's discretion after a petition has been filed under this division or on petition by a person interested in the adult's welfare, including, but not limited to, a hospital as defined in Section 22-21-20, the court may appoint a temporary guardian or emergency guardian for an adult if the court finds all of the following:

(1) The appointment of a temporary guardian or emergency guardian is likely to prevent substantial harm to the adult's physical health, safety, or welfare.

(2) No other person appears to have the authority and

the willingness to act in the circumstances.

(3) There is reason to believe that a basis for appointment of a guardian under Section 26-2A-102 exists.

(b)(1) Immediately upon the filing of a petition for appointment of a temporary guardian or emergency guardian of an adult and if a guardian ad litem has not been appointed to represent the respondent, the court shall appoint a guardian ad litem to represent the respondent in the proceeding.

(2) Except as otherwise provided in subsection (d), the court shall provide notice of the date, time, and place of a hearing on a petition for appointment of a temporary guardian or emergency guardian of an adult no later than five days before the time set for the hearing to all of the following parties:

a. The respondent.

b. The respondent's guardian ad litem and attorney.

c. Any other person that the court determines is an appropriate party to the hearing.

(c)(1) The duration of authority of a temporary guardian for an adult may not exceed 60 days. A temporary guardian may exercise only the powers specified in the order of appointment.

(2) Prior to the expiration of the duration of authority granted to a temporary guardian for an adult under subdivision (1), the duration of authority of a temporary guardian for an adult may be extended for a second term of not more than 60 days without a hearing, provided that the court finds both of the following:

a. The conditions for appointment of a temporary guardian in subsection (a) continue.

b. It is in the best interest of the respondent to continue the appointment.

(3) Prior to the expiration of the second or any subsequent term of the duration of authority granted to a temporary guardian under subdivision (2), the authority of a temporary guardian for an adult may be extended for a third or subsequent term of not more than 60 days upon hearing and upon the court finding that there is good cause to extend the temporary appointment. Notice of the date, time, and place of the hearing to extend the temporary appointment shall be given in accordance with the requirements of subsection (b).

(d)(1) The court may appoint an emergency guardian for an adult without providing notice to the adult, the adult's guardian ad litem, or any attorney for the adult only if the court finds from an affidavit or testimony that the adult's physical health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held.

(2) The duration of authority of an emergency guardian for an adult may not exceed 10 days. The emergency guardian may exercise only the powers specified in the order of appointment.

(3) If the court appoints an emergency guardian without giving notice under subsection (b), the court must do each of the following:

a. Give notice of the appointment of the emergency

guardian no later than 48 hours after the appointment to:

1. The respondent;

2. The respondent's guardian ad litem and attorney, if any; and

3. Any other person that the court determines is an appropriate party to the hearing.

b. Hold a hearing on the appropriateness of the emergency appointment no later than 10 days after the appointment, with notice of the date, time, and place of the hearing given at least five days before the time set for the hearing to those persons listed in paragraph a.

(4) At the conclusion of the hearing on the emergency appointment, the court may do any of the following:

a. Appoint a temporary guardian for the adult.

b. Terminate the emergency guardianship without appointment of a temporary guardian.

c. Grant such other relief as may be proper.

(e) The appointment of a temporary guardian or emergency guardian under this section is not a determination that a basis exists for appointment of a guardian under Section 26-2A-102.

(f) The court may remove a temporary guardian or emergency guardian appointed under this section at any time.

(g) The court may order a temporary guardian or emergency guardian to file a written report, the contents of which may be determined by the court. A temporary guardian or emergency guardian shall make any report the court requires.

(h) No county sheriff shall be appointed as a temporary

guardian or emergency guardian pursuant to this section unless the county sheriff consents and accepts the appointment as temporary guardian or emergency guardian.

§26-2A-136.1

(a) Either at the court's discretion after a petition has been filed under this division or on petition under this division by a person interested in the adult's welfare, including, but not limited to, a hospital as defined in Section 22-21-20, the court may appoint a temporary conservator or emergency conservator for the person or grant such other temporary or emergency relief as may be appropriate, including an order to preserve and apply property of the person as required for support of the person or any person who is in fact dependent on the person, if the court finds all of the following:

(1) The appointment of a temporary conservator or emergency conservator or granting of other temporary or emergency relief is likely to prevent substantial and irreparable harm to the person's property or financial interests.

(2) No other person appears to have the authority and the willingness to act in the circumstances.

(3) There is reason to believe that a basis for appointment of a conservator or other protective order under Section 26-2A-130 exists.

(b)(1) Immediately upon the filing of a petition for appointment of a temporary conservator or emergency conservator or other temporary or emergency relief and if a

guardian ad litem has not been appointed to represent the respondent, the court shall appoint a guardian ad litem to represent the respondent in the proceeding.

(2) Except as otherwise provided in subsection (d), the court shall provide notice of the date, time, and place of a hearing on a petition under this section at least five days before the time set for the hearing to all of the following parties:

a. The respondent.

b. The respondent's guardian ad litem and attorney, if any.

c. Any other person that the court determines is an appropriate party to the hearing.

(c) The duration of authority of a temporary conservator and the duration of any other temporary relief ordered under this section may not exceed 60 days. The temporary conservator may exercise only the powers specified in the order of appointment.

(2) Prior to the expiration of the duration of authority granted to a temporary conservator or the expiration of the duration of any other temporary relief under subdivision (1), the duration of authority of a temporary conservator or the duration of any other temporary relief may be extended for a second term of not more than 60 days without a hearing, provided that the court finds both of the following:

a. The conditions for appointment of a temporary conservator or for the granting of any other temporary relief

under subsection (a) continue.

b. It is in the interest of the respondent to continue the appointment of a temporary conservator or granting of temporary relief.

(3) Prior to the expiration of the second or any subsequent term of the duration of authority granted to a temporary conservator or the duration of any other temporary relief under subdivision (2), the authority of a temporary conservator or any other temporary relief may be extended for a third or subsequent term of not more than 60 days upon hearing and upon the court finding that there is good cause to extend the temporary appointment or granting of temporary relief. Notice of the date, time, and place of the hearing to extend the temporary appointment or other temporary relief shall be given in accordance with the requirements established in subsection (b).

(d)(1) The court may appoint an emergency conservator or grant other emergency relief without providing notice to the respondent, the respondent's guardian ad litem, or any attorney for the respondent only if the court finds from an affidavit or testimony that the respondent's property or financial interests will be substantially and irreparably harmed before a hearing with notice on the appointment can be held.

(2) The duration of authority of an emergency conservator may not exceed 10 days. The emergency conservator may exercise only the powers specified in the order of appointment. The duration of any other emergency relief may

not exceed 10 days.

(3) If the court appoints an emergency conservator or grants other emergency relief without giving notice under subsection (b), the court must do each of the following:

a. Give notice of the appointment of the emergency conservator or the granting of emergency relief not later than 48 hours after the appointment to:

1. The respondent;

2. The respondent's guardian ad litem and attorney, if any; and

3. Any other person that the court determines is an appropriate party to the hearing.

b. Hold a hearing on the appropriateness of the emergency appointment or granting of emergency relief not later than 10 days after the appointment is made or the emergency relief is granted, with notice of the date, time, and place of the hearing given at least five days before the time set for the hearing to those persons listed in paragraph a.

(4) At the conclusion of the hearing on the emergency appointment or granting of emergency relief, the court may do any of the following:

a. Appoint a temporary conservator for the adult.

b. Terminate the emergency conservatorship or other emergency relief without further appointment or relief.

c. Grant such other relief as may be proper.

(e) The appointment of a temporary conservator or emergency conservator under this section is not a

determination that a basis exists for appointment of a conservator or other protective order under Section 26-2A-130.

(f) The court may remove a temporary conservator or emergency conservator appointed under this section at any time.

(g) The court may order a temporary conservator or emergency conservator to file a written report, the contents of which may be determined by the court. A temporary conservator or emergency conservator shall make any report the court requires.

(h) No county sheriff shall be appointed as a temporary conservator or emergency conservator pursuant to this section unless the county sheriff consents and accepts the appointment as temporary conservator or emergency conservator.

(i) The requirements of Section 26-2A-139 shall apply to any individual appointed as a temporary conservator or emergency conservator under this section.

(j) This section shall apply to all conservatorships and other protective proceedings commenced on or after January 1, 2027.

Section 3. Section 26-2A-107, Code of Alabama 1975, relating to the emergency appointment of temporary guardians, is repealed.

Section 4. This act shall become effective on January 1, 2027.

Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in and was passed by the House 24-Feb-26, as amended.

John Treadwell
Clerk

Senate	07-Apr-26	Amended and Passed
House	07-Apr-26	Concurred in Senate Amendment

APPROVED 4-14-2026

TIME 3:25 pm

Kay Ivey
GOVERNOR

Alabama Secretary Of State

Act Num....: 2026-488
Bill Num...: H-249

Recv'd 04/15/26 09:11amKCW

SPONSOR

Faulkner

CO-SPONSORS

HOUSE ACTION

I HEREBY CERTIFY THAT THE RESOLUTION AS REQUIRED IN SECTION C OF ACT NO. 81-889 WAS ADOPTED AND IS ATTACHED TO THE BILL, H.B. 249

YEAS 99 NAYS 0

JOHN TREADWELL, Clerk

I HEREBY CERTIFY THAT THE NOTICE & PROOF IS ATTACHED TO THE BILL, H.B. _____ AS REQUIRED IN THE GENERAL ACTS OF ALABAMA, 1975 ACT NO. 919.

JOHN TREADWELL, Clerk

CONFERENCE COMMITTEE

House Conferees _____

_____

_____

SENATE ACTION

DATE: [illegible] 2021

RD 1 RFD [illegible]

This Bill was referred to the Standing Committee of the Senate on

3rd

and was acted upon by such Committee in session and is by order of the Committee returned therefrom with a favorable report w/amend(s)_____ w/sub_____ by a vote of yeas 11 nays 0 abstain 0 this 3rd day of March 2020

[illegible], Chair

DATE: [illegible] 2020

RF [illegible] RD 2 CAL

DATE: 20___

RE-REFERRED ☐ RE-COMMITTED ☐

Committee _____

I hereby certify that the Resolution as required in Section C of Act No. 81-889 was adopted and is attached to the Bill, HB _____.

YEAS _____ NAYS _____

PATRICK HARRIS,
Secretary

FURTHER SENATE ACTION (OVER)