

PROBATE COURT OF MOBILE COUNTY, ALABAMA

APPOINTED LAWYER SEMINAR

November 4, 2015

Courtroom 1—Mobile County Probate Court, Mobile, AL

10:00 a.m.	Opening Remarks - Welcome	Don Davis Judge of Probate
10:05 a.m.	Ethical Considerations for Guardians Ad Litem (30 minutes)	Robert E. Lusk, Jr., Esq.
10:35 a.m.	Duties of Guardians Ad Litem, Administrators Ad Litem and Court Representatives (20 minutes)	C. Mark Erwin, Esq.
10:55 a.m.	BREAK (10 minutes)	
11:05 a.m.	Practical Tips for Guardians Ad Litem, Administrators Ad Litem and Court Representatives (30 minutes)	Annette M. Carwie, Esq. Jeff N. Gale, Esq. C. Zack Moore, Esq.
11:35 a.m.	Court's Expectations of Appointed Lawyers (25 minutes)	Don Davis Judge of Probate
12:00 noon	LUNCH BREAK	
1:30 p.m.	Key Points Concerning Mental Illness That Lawyers Should Know Relating To Involuntary Commitment Cases (45 minutes)	Severin Grenoble, M.D. Praveen Narahari, M.D.
2:15 p.m.	Qualification and Examination of a Medical Expert Witness (20 minutes)	Brenda J. Pierce, Esq. D. Brian Murphy, Esq. Charles M. Smith, M.D.
2: 35 p.m.	BREAK (10 minutes)	
2:45 p.m.	Legal Points Lawyers Should Consider In Mental Health Involuntary Commitment Cases (20 minutes)	Lee L. Hale, Sr., Esq.
3:05 p.m.	Practical Tips for Guardians ad Litem and Petitioner's Lawyers in Mental Health Involuntary Commitment Cases (30 minutes)	Ginger Poynter, Esq. Steven Sciple, Esq.
3:35 p.m.	Compensation for Appointed Lawyers in Mental Health Involuntary Commitment Cases (25 minutes)	Stacie E. Vitello, Esq.
4:00 p.m.	The Volunteer Guardianship Program's Role in Mobile Co. (20 minutes)	Darla Dean
4:20 p.m.	Questions and Answers - Closing	Don Davis Judge of Probate

DON DAVIS
Judge of Probate
Mobile County, Alabama

Education

Graduated from the University of South Alabama in 1978 with a Bachelor of Arts degree in political science.

Graduated from Cumberland School of Law of Samford University in 1981.

Legal Career

Started legal career with the firm of McDermott, Slepian, Windom & Reed in 1981. In 1986 this firm merged with the Sirote & Permutt law firm that has offices in Birmingham, Montgomery and Huntsville. Remained with the Sirote & Permutt law firm until January 2001, when became the Judge of Probate of Mobile County, Alabama.

From mid-1988 until November 2000, Davis served as General Conservator for Mobile County by order of Mobile County Judge of Probate Lionel W. "Red" Noonan.

Judicial Career

Elected to serve as Mobile County's Judge of Probate in November 2000 to succeed the retiring Judge Noonan. Davis was the first Republican elected to serve as Mobile County's Judge of Probate since Reconstruction. Davis was also the youngest person elected to serve as Mobile County's judge of Probate (was 43 years old when elected). Re-elected in 2006 and 2012 without opposition.

Professional Associations

Member of the Alabama State Bar
Member of the American Bar Association
Member of the Paul Brock Chapter of the Inns of Court
Member of the Alabama Probate Judges Association
Member of the National College of Probate Judges

Professional Awards

Recipient of the Mobile Bar Association's Liberty Bell Award in 2003
Recipient of the Outstanding Mobile County Judge Award by the South Alabama Volunteer Lawyers Program in 2012

Judge Davis is a member of many civic and charitable organizations and has served in various leadership positions in many of these organizations during his adult life.

Judge Davis is married to Dr. Beth Davis, who is a dentist in Mobile. The Davises have two adult children.

Robert E. Lusk, Jr.
Lusk Law Firm, LLC
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Mobile, Alabama 36606
251-471-8017

Robert received his undergraduate degree from Auburn University at Montgomery and his law degree from The University of Alabama School of Law. He has been a member of the Alabama State Bar since 1987. Robert retired from the Alabama State Bar in February 2013 after serving as Assistant General Counsel since 1995. Prior to joining the Bar's staff, he served as Chief Counsel/Deputy District Attorney for Montgomery County, as Assistant Attorney General for the State of Alabama; and as Law Clerk to Circuit Judge H. Randall Thomas.

Robert currently practices with Lusk Law Firm, LLC. His practice areas include family law, adoption, probate, and representation of lawyers, law firms, judges, and other professionals in the area of ethics, professional responsibility, and licensure. Robert is admitted to practice before the U.S. District Courts in Alabama, as well as the U.S. Court of Appeals for the 11th Circuit. Robert's experience includes serving as the Alabama State Bar staff liaison to the Alabama State Bar Client Security Fund Committee and the staff liaison and professional responsibility advisor to the Alabama State Bar's Family Law Section. He also served on the Alabama Child Custody Laws Revision Task Force, Task Force on Legal Education, Task Force on Admissions, Task Force on Client Security Fund, and Committee on Rules and Disciplinary Enforcement. Currently, Mr. Lusk is serving on the Alabama Law Institute Committee on Family Law and is Chair of the Supreme Court Committee on Rules of Procedure for Collaborative Law.

Appointment of Guardian Ad Litem/Appointment of Advocate

Ethical Considerations for the Guardian Ad Litem

Probate Court of Mobile County
Appointed Lawyer Training
Mobile, Alabama
August 28, 2014

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OVERVIEW

The Role of the Guardian Ad Litem

The role of guardian ad litem is ill defined. However, the role and responsibilities of a guardian ad litem are not currently addressed by statute or rule. Alabama case law provides little guidance. It has been said that the guardian ad litem is an advocate for their ward and the role of the guardian ad litem in the adjudicatory process is not different from that of any other advocate. *Formal Opinion of the Disciplinary Commission of the Alabama State Bar*, RO 00-02, citing, *Ala. Code* §15-12-21 (Michie, 1995 Repl. Vol.), and *S.D. v. R.D.*, 628 So. 2d 817 (Ala. Civ. App. 1993). In the context of advocacy the foregoing statement is true. However, in the overall context, the role and responsibilities of a guardian ad litem are much more complex. The general rule is that “[a] guardian ad litem or next friend is always subject to the supervision and control of the court, and he may act only in accordance with instructions of the court.” *Stone v. Gulf American Fire & Cas. Co.*, 554 So.2d 346, 361 (Ala. 1989), quoting 43 C.J.S. *Infants* §234, p. 610 (1978). The supervisory role of the court includes not merely the power to appoint a guardian ad litem, but the power and responsibility to see to it that the ward is effectively represented by the guardian ad litem. The guardian ad litem functions as a friend of the court, assigned by the court to investigate and evaluate the facts and circumstances, and to formulate opinions and recommendations for the court, exercising independent professional judgment with the paramount goal to determine, protect, promote, and advocate the best interests of the ward.

Generally, the guardian ad litem has the same ethical responsibilities as any other lawyer. The role of the guardian ad litem has been characterized as advocate, mediator, investigator, protector, promoter, caretaker, and facilitator. The traditional role of a lawyer is that of an advisor, advocate, negotiator, and intermediary. A lawyer must “abide by the client’s decisions concerning the objectives of the representation.” Rule 1.2(a), Alabama Rules of Professional Conduct. In many cases a guardian ad litem’s opinions, recommendations, or judgments may not coincide with the preferences or directives of the ward. This often presents a difficult ethical dilemma and burdens the guardian ad litem with the additional, and often overwhelming, responsibility to exercise judgment and make decisions for the ward/impaired-client that lawyers in an ordinary lawyer-client relationship do not have to make.

The combination of the roles of lawyer-as-advocate and lawyer-as-guardian ad litem is problematic. Often lawyers with the least training and experience are awarded the incomparable responsibility of serving as a guardian ad litem. A guardian ad litem cannot be effective unless they understand their role and responsibilities. Resolving the legal, ethical, social and moral dilemmas presented by the duality of lawyer-advocate and lawyer-guardian is key to effective representation and avoidance of legal and ethical problems.

The New Juvenile Code is Instructive

Guardian ad litem - “A licensed attorney appointed by a juvenile court to protect the best interests of an individual without being bound by the expressed wishes of that individual.” Ala. Code § 12-15-102(10).

Child's attorney - "A licensed attorney who provides legal services for a child, or for a minor in a mental commitment proceeding, and who owes the same duties of undivided loyalty, confidentiality, and competent representation to the child or minor as is due an adult client." Ala. Code § 12-15-102(5)

A child's attorney is bound by the child's decisions concerning the objectives of the representation. Rule 1.2(a), Alabama Rules of Professional Conduct. However, a child's guardian ad litem is not bound by the child's expressed interests, but must act to protect the best interests of the child. Thus, the guardian ad litem is saddled with the additional, and often overwhelming, responsibility to exercise judgment and make decisions for the child-client that lawyers in an ordinary lawyer-client relationship do not have to make.

In defining the rights of child in dependency and termination of parental rights proceedings, *The Juvenile Justice Act* sets out minimal duties and responsibilities for the child's guardian ad litem. Ala. Code § 12-15-304(b), provides:

"(a) In all dependency and termination of parental rights proceedings, the juvenile court shall appoint a guardian ad litem for a child who is a party to the proceedings and whose primary responsibility shall be to protect the best interests of the child.

"(b) The duties of the guardian ad litem include, but shall not be limited to, the following:

"(1) Irrespective of the age of the child, meet with the child prior to juvenile court hearings and when apprised of emergencies or significant events impacting the child. In addition, the guardian ad litem shall explain, in terms understandable to the child, what is expected to happen before, during, and after each juvenile court hearing.

"(2) Conduct a thorough and independent investigation.

“(3) Advocate for appropriate services for the child and the family.

“(4) Attend all juvenile court hearings scheduled by the juvenile court and file all necessary pleadings to facilitate the best interests of the child.

“(c) Before being appointed by the juvenile court, every guardian ad litem appointed in juvenile dependency or termination of parental rights cases shall receive training appropriate to their role.

“(d) Nothing in this section shall prohibit the juvenile court from appointing trained volunteers in addition to guardians ad litem in promoting the best interests of the child.

“(e) A guardian ad litem may be appointed to protect the best interests of more than one child of the same parent. A guardian ad litem also may be appointed to protect the best interests of both a minor (or otherwise incapacitated) parent and the child.”

Comment

“This subsection will mandate that guardians ad litem be appointed to represent children in all dependency and termination of parental rights cases and clarify that the responsibility of a guardian ad litem is to protect the best interests of the child, as required by federal and state law. See 42 U.S.C. § 5106a(b)(2)(A)(~~viii~~) (sic) (B)(~~xiii~~)(providing that in order to receive federal funding for child abuse and neglect prevention and treatment programs, a State must provide a certification by the chief executive officer that the State has “provisions and procedures requiring that in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, . . . , shall be appointed to represent the child in such proceedings . . . (II) to make recommendations to the court concerning the best interests of the child”); Ala. Code § 26-14-11 (2007) (“In every case involving an abused or neglected child which results in a judicial proceeding, an attorney shall be appointed to represent the child in such proceedings. Such attorney will represent the rights, interests, welfare and well-being of the child, and serve as guardian ad litem for said child.”).

“This subsection was added to provide some minimum duties for guardians ad litem, based on standards promulgated by the American Bar Association. See American Bar Association, *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases* (1996), at Stds. C-1, C-2, C-3, C-4, and D-1.

“As required by federal law, this subsection will provide that guardians ad litem representing children must receive training appropriate to their role. See 42 U.S.C. § 5106a(b)(2)(A)(~~xiii~~)(sic)(B)(~~xiii~~) (requiring, as a condition of eligibility for

federal funding, that “in every case involving an abused or neglected child which results in a judicial proceeding, a guardian ad litem, who has received training appropriate to the role, and who may be an attorney or a court appointed special advocate who has received training appropriate to that role (or both), shall be appointed to represent the child in such proceedings”).

“This subsection will confirm that a juvenile court may appoint trained volunteers, such as Court Appointed Special Advocates (“CASAs”), to assist a guardian ad litem in promoting the best interests of a child.

“This subsection will clarify that a single guardian ad litem (“GAL”) may be appointed to protect the best interests of more than one child of the same parent. A single GAL may also be appointed to protect the best interests of both a minor (or otherwise incapacitated) parent as well as his or her child.”

GENERAL DUTIES

- Independent Investigation
 - Court file
 - Applicable law
 - Agency records
 - Law enforcement records
 - School records
 - Medical records
 - Mental health records
 - Financial records
 - Assets/Liabilities
 - Other collateral sources
 - In-person interviews
 - Child/Ward
 - Parents or guardian/Family members
 - Other relatives
 - Other third parties with relevant knowledge

- Determine Best Interests
 - Advocate the Ward's best interests
 - Maintain objectivity
 - Maintain independence

- Document
 - Time
 - Expenses
 - Contacts
 - Interviews
 - Opinions and recommendations

- Be Present

- Be Prompt

- Communicate
 - Nature of the proceedings
 - Role and responsibilities
 - Legal rights
 - Confidentiality and privilege
 - Contact information
 - Child/Ward
 - Parent or Guardian
 - Other Attorneys
 - Court

- Advocate
 - Immediate needs and services
 - Ward's best interests
 - Future needs and services

SPECIAL SITUATIONS

Loyalty and Confidentiality v. Best Interests

Q: What is the guardian ad litem's ethical responsibility when duties of loyalty and confidentiality collide with the best interests of the child?

A: The Alabama Rules of Professional Conduct recognize that there are times when a lawyer's duties of loyalty and confidentiality collide with the best interests of the client.

Rule 1.14, Ala. R. Prof. C., provides:

“(a) When a client's ability to make adequately considered decisions in connection with the representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

“(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken, and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator, or guardian.

“(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent necessary to protect the client’s interest.

“Comment to Rule 1.14

“The normal client-lawyer relationship is based on the assumption that the client, when properly advised and assisted, is capable of making decisions about important matters. When the client is a minor or suffers from diminished mental capacity, however, maintaining the ordinary client-lawyer relationship may not be possible in all respects. In particular, a severely incapacitated person may have no power to make legally binding decisions. Nevertheless, a client with diminished capacity often has the ability to understand, deliberate upon, and reach conclusions about matters affecting the client’s own well-being. Furthermore, to an increasing extent, the law recognizes intermediate degrees of competence. For example, children as young as 5 or 6 years of age, and certainly those of 10 or 12, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody. So also, it is recognized that some persons of advanced age can be quite capable of handling routine financial matters while needing special legal protection concerning major transactions. The fact that a client suffers diminished capacity does not lessen the lawyer’s obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should, as far as possible, accord the represented person the status of client, particularly in maintaining communication. The client may wish to have family members or other persons participate in discussions with the lawyer. When necessary to assist in the representation, the presence of such persons generally does not affect the applicability of the attorney-client evidentiary privilege. Nevertheless, the lawyer must keep the client’s interests foremost and, except for protective action authorized under paragraph (b), must look to the client, and not the client’s family members, to make decisions on the client’s behalf. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. In matters involving a minor, whether the lawyer should look to the parents as natural guardians may depend on the type of proceeding or matter in which the lawyer is representing the minor. If the lawyer represents the guardian as distinct from the ward and is aware that the guardian is acting adversely to the ward’s interest, the lawyer may have an obligation to prevent the guardian’s misconduct. See Rule 1.2(d).

“Taking Protective Action

“If a lawyer reasonably believes that a client is at risk of substantial physical, financial, or other harm unless action is taken and that a normal client-lawyer

relationship cannot be maintained as provided in paragraph (a) because the client lacks sufficient capacity to communicate or to make adequately considered decisions in connection with the representation, then paragraph (b) permits the lawyer to take protective measures deemed necessary. Such measure could include: consulting with the client's family members, using a reconsideration period to permit clarification or improvement of circumstances using voluntary surrogate decision-making tools such as valid durable powers of attorney or consulting with support groups, professional services, adult-protective agencies, or other individuals or entities that have the ability to protect the client. In taking any protective action, the lawyer should be guided by such factors as the wishes and values of the client to the extent known, the client's best interests, and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections. In determining the extent of the client's diminished capacity, the lawyer should consider and balance such factors as: the client's ability to articulate reasoning leading to a decision; variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client. In appropriate circumstances, the lawyer may seek guidance from an appropriate diagnostician. If a legal representative has not been appointed, the lawyer should consider whether appointment of a guardian ad litem or conservator or the entry of another protective order is necessary to serve the client's best interests. Thus, if a client with diminished capacity has substantial property that should be sold for the client's benefit, effective completion of the transaction may require appointment of a legal representative. In addition, rules of procedure in litigation sometimes provide that minors or persons with diminished capacity must be represented by a guardian or next friend if they do not have a general guardian. Whether the appointment of a legal representative is justified under the circumstances is a matter entrusted to the professional judgment of the lawyer. In considering alternatives, however, the lawyer should be aware of any law that requires the lawyer to advocate the least restrictive action on behalf of the client.

"Disclosure of Client's Condition

"Information relating to the representation is protected by Rule 1.6. Therefore, unless authorized to do so, the lawyer may not disclose such information. When taking protective action pursuant to paragraph (b) of this rule, the lawyer is impliedly authorized to make the necessary disclosures, even when the client directs the lawyer to the contrary. Nevertheless, given the risks of disclosure, paragraph (c) limits what the lawyer may disclose in consulting with other individuals or entities or seeking the appointment of a legal representative. At the very least, the lawyer should determine whether it is likely that the person or entity consulted with will act adversely to the client's interests before discussing matters related to the client.

“Emergency Legal Assistance

“In an emergency where the health, safety, or financial interest of a person with seriously diminished capacity is threatened with imminent and irreparable harm, a lawyer may take legal action on behalf of such a person even though the person is unable to establish a client-lawyer relationship or to make or express considered judgments about the matter, when the person or another acting in good faith on that person's behalf has consulted with the lawyer. Even in such an emergency, however, the lawyer should not act unless the lawyer reasonably believes that the person has no other lawyer, agent, or other representative available. The lawyer should take legal action on behalf of the person only to the extent reasonably necessary to maintain the status quo or otherwise to avoid imminent and irreparable harm. A lawyer who undertakes to represent a person in such an exigent situation has the same duties under these Rules as the lawyer with respect to a client. A lawyer who acts on behalf of a person with seriously diminished capacity in an emergency should keep the confidences of the person as with any client, disclosing them only to the extent necessary to accomplish the intended protective action. The lawyer should disclose to any tribunal involved and to any other counsel involved the nature of his or her relationship with the person. The lawyer should take steps to regularize the relationship or implement other protective solutions as soon as possible.”

Guardian Ad Litem's Role and Responsibilities

M.R.J. v. D.R.B., 34 So.3d 1287 (Ala.Civ.App. 2009) (Juvenile Court exceeded its discretion in awarding the guardian ad litem sole discretion in determining the mother's visitation. The trial court order provided: “Mother is awarded liberal visitation, which shall be established by the guardian ad litem and submitted to the court in writing for inclusion in the file.” “A guardian ad litem is an attorney entitled to argue his or her client's case to the court as is any other attorney, but he or she is not delegated any special authority of the court. *K.D.H. v. T.L.H.*, 3 So.3d 894, 899-900 (Ala.Civ.App. 2008))

Pratt v. Pratt, 56 So.3d 638 (Ala.Civ.App. 2010) (Court's order granting discretion over supervised visitation to Guardian ad litem and visitation supervisor is error)

Client Objectives or Best Interests?

Q: Lawyer was appointed as counsel for minor, not guardian ad litem. The minor has been charged with DUI, possession of marijuana and possession of drug paraphernalia. There are jurisdictional problems and fatal errors in the charging documents. The DUI was dismissed because of the errors. However, the prosecutor has offered a 90 day suspended sentence, six month license suspension on the marijuana and drug paraphernalia charges. The minor does not want to accept the plea offer and want a trial. Lawyer wants to make sure he is clear on

his role to advocate what his client desires, rather than what he thought or others thought might be in the best interest of his client.

- A: Under the new juvenile justice act, if he was appointed as defense counsel, as opposed to guardian ad litem, then he was responsible to pursue the objectives of his client.

Duty to Act in Other Proceedings

- Q: What is my duty in a dependency case as the GAL? Child was conceived by two seventeen year olds. Prior to birth of the child father is killed in a car accident and the family receives either life insurance and/or a cash settlement. A trust is established for the child. The grandparents petitioned to be administrators of the estate in the probate court, but nothing has progressed from that point in probate court. Due to various circumstances, DHR filed a dependency petition on behalf of the child and the child's mother since she is also a minor. Child is adjudicated dependent and DHR is given custody. The grandparents apparently have some authority or access to the trust and I have received information that they are "running through" the money. They are not parties to the dependency case but hired a lawyer, supposedly with money taken from the trust, and have filed a petition for custody. My question is since I am not the GAL in the probate court matter, do I have a duty, responsibility, or even jurisdiction to protect the child's trust account or is this DHR's responsibility as the custodian or the probate court's job to appoint a GAL in their matter? Am I liable or responsible in some way, if the grandparents blow all the money in the trust?

- A: As guardian ad litem for the child you have a duty to act to protect the best interests of the child. If you have information that indicates that funds held in trust for the benefit of the child are being misappropriated, then you may take protective action, which might include, but need not be limited to, notifying the appropriate court; notifying counsel for DHR; or filing an action with the appropriate court to request an accounting and an order to protect the financial interests of your client.

Communication With Your Client

- Q: Lawyer is the guardian ad litem in a case. The lawyer for the mother has instructed Lawyer that he cannot meet with his client (the child) without the mother and the lawyer for the mother present.
- A: Lawyer has been appointed to represent the child, as guardian ad litem. Lawyer is entitled to meet with his client in private without the presence of others. If the child's mother and mother's lawyer does not cooperate, then file motion with the court asking for assistance.

Communication With Party Represented by Counsel

Q: What are the ethical responsibilities of a guardian ad litem who takes an active role in investigating a matter where that investigation necessarily includes interviewing a party represented by counsel?

A: Rule 4.2(a), Alabama Rules of Professional Conduct, provides:

“In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.”

A guardian ad litem may not communicate with a “person the lawyer knows to be represented” by a lawyer without that lawyer’s consent. However, communications merely incidental to the representation that do not concern any substantive matter, such as scheduling, transportation, or notice, etc. would not violate this rule.

Communication With an Unrepresented Party

Q: What if the party is not represented by counsel?

A: Rule 4.2 prohibits communication with a person represented by counsel. If the person is not represented by counsel, then the guardian ad litem may communicate with the unrepresented party about the subject of the representation, subject to the provisions of Rule 4.3.

Rule 4.3(a), Ala. R. Prof. C., provides:

“In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.”

If the role of the guardian ad litem is unclear to lawyers and judges, then the role of the guardian ad litem will easily be misunderstood by a layperson. A guardian ad litem should explain his dual role as an advocate for the ward and as a protector or guardian of the best interests of the ward. A guardian ad litem should also explain that information provided to the guardian ad litem will not be considered confidential, i.e., the guardian ad litem only owes a duty of confidentiality and loyalty to the ward.

Communication With a Non-Party

Q: What about communications with persons (non-parties)?

A: Unlike the ABA Model Rules of Professional Conduct, the Alabama rule uses the term "party" rather than "person." There is an argument that Rule 4.2, by its terms, does not apply to prohibit communications by a lawyer with non-parties. However, the comment to the rule provides that the rule covers any person, whether or not a party to a formal proceeding, who is represented by counsel concerning the matter. Certainly, if the person is represented by counsel, the guardian ad litem should obtain the permission of counsel before communicating with the person whether or not they are a named party. This same rationale applies to prohibit communications by a lawyer representing a party with a child represented by a guardian ad litem, even where the child is not a party to the proceedings. Communications with non-represented persons are subject to the provisions of Rule 4.3.

Ex Parte Communications With the Court

Q: Can the guardian ad litem communicate ex parte with the trial court?

A: No. An attorney who has been appointed a guardian ad litem is ethically prohibited from communicating ex parte with the trial judge concerning any substantive issue before the court. See RO-00-02.

Ex Parte R.D.N., 918 So. 2d 100 (Ala. 2005) (Guardian ad litem admitted in brief to the court that she had private conversations with the trial judge regarding her opinions and recommendations. The Court stated, the "guardian ad litem's recommendation that the child remain with the mother was not presented as evidence produced in open court and was based on information that may or may not have been properly presented to the court." Neither party had had the opportunity to examine the guardian ad litem or to present evidence in support of or contradicting her recommendation. Therefore, the court concluded that it could not say that the father's rights had not been prejudiced and held that the ex parte communication between the guardian ad litem and the trial court had violated the father's rights to procedural due process.)

M.G. v. J. T., 90 So.3d 762 (Ala. Civ. App. 2012)

Dependency proceeding. Mother was never served. Court merely reviewed the pleadings and had discussions with the Guardian ad litem.

Nature and Scope of Advice and Recommendations

Q: Is the guardian ad litem limited solely to legal analysis in representing and protecting the best interests of the ward?

A: Rule 2.1, Ala. R. Prof. C., provides:

“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client’s situation.”

This rule recognizes that a lawyer does not provide legal advice in a vacuum. Moral, economic, social, and ethical considerations affect legal questions and the application of the law. Thus, a lawyer is not limited to the provision of purely technical legal advice. However, this does not allow the guardian ad litem to ignore relevant objective facts or law. The guardian ad litem’s conduct and opinions must be rationally related to the facts and circumstances and the applicable law. The dual obligations of a guardian ad litem necessarily impose a higher degree of objectivity on a guardian ad litem than is imposed on a lawyer for a competent adult.

Guardian Ad Litem as Witness

Q: Can a guardian ad litem be called as a witness in the proceeding in which they represent the ward?

A: There is no ethical rule that prohibits a guardian ad litem from being called as a witness in a proceeding in which the guardian ad litem represents a ward. Whether the guardian ad litem may be called as a witness is a legal question subject to determination by the court. Rule 3.7, Ala. R. Prof. C., provides:

“(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness, except where:

- (1) The testimony relates to an uncontested issue;
- (2) The testimony relates to the nature and value of legal services rendered in the case; or
- (3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness, unless precluded from doing so by Rule 1.7 or Rule 1.9."

Rule 3.7 prohibits a lawyer from undertaking representation where facts exist that will make it more likely than not that the lawyer's testimony will be necessary to establish a claim or defense on behalf of the client. The rule does not prohibit a lawyer who is likely to be called as a necessary witness from representing a client in the pre-trial stages of litigation nor does it require disqualification of a lawyer who is called as a witness by the adverse party, as long as the lawyer's testimony is consistent with the client's interest.

Although jurisdictions are split regarding whether a guardian ad litem can be called as a witness, the majority view appears to be that they may be called as a witness. Testimony by guardians ad litem appears to be an accepted practice in Alabama. See e.g., *Scroggins v. Templeton*, 890 So.2d 1017 (Ala.Civ.App. 2003). Certainly, if the guardian ad litem proffers facts, conclusions and opinions in the guardian ad litem's report and recommendation, the adverse parties would be entitled to cross-examine this report and the author as they would any other report offered into evidence or considered by the court.

However, the fact that a guardian ad litem may be subject to cross-examination does not destroy lawyer-client confidentiality or attorney-client privilege. The guardian ad litem walks a fine line in this regard. When a guardian ad litem is placed in the position of advocate/witness, the better practice would be to assert client confidentiality and privilege where appropriate, obtain a ruling from the court, and then make only those disclosures reasonably necessary to comply with the court's order.

P.D. v. S.S., 67 So.3d 128 (Ala.Civ.App. 2011)

M.J.C. v. G.R.W, et al., etc., 69 So.3d 197 (Ala.Civ.App. 2011)

The Guardian Ad Litem's Report

Q: What are the ethical considerations concerning the content of the guardian ad litem's report and recommendation?

A: Rule 3.4, Ala. R. Prof. C., provides, in part:

"A lawyer shall not:

* * *

(c) Knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists; . . ."

A guardian ad litem's report necessarily contains hearsay and other evidence that would generally be inadmissible if offered through the testimony of the guardian ad litem at trial. However, guardians ad litem should be careful not to use or allow the guardian ad litem's report to be used as a vehicle for the introduction of gratuitous, patently inadmissible and highly inflammatory evidence. Prior to submission to the court, the guardian ad litem should provide a copy of the report to counsel for all parties. Upon submission of the report, the guardian ad litem subjects herself and the report to cross-examination by the parties. Additionally, the parties should be allowed the opportunity to call additional witnesses to dispute and correct alleged factual inaccuracies in the report.

The guardian ad litem's report also necessarily includes confidential and privileged information provided by the ward, disclosure of which is impliedly authorized in order to carry out the representation. However, where disclosure of confidential information is not necessary to protect the best interests of the ward or impliedly authorized, the better practice would be for the guardian ad litem not to disclose this confidential information unless and until directed to do so by the court.

M. B. v. R. P., 3 So. 3d 237 (Ala. Civ. App. 2008) (The father argued that under the authority of *Ex parte R.D.N.*, 918 So.2d 100 (Ala.2005), the guardian ad litem should not have been allowed to make a recommendation regarding the issues of dependency, custody, and visitation because the guardian ad litem was not present at the final, dispositional hearing. The guardian ad litem was present for the hearings that occurred before the final hearing on the merits. The guardian ad litem had also interviewed the parties and numerous witnesses. However, due to scheduling conflicts, the guardian ad litem was present in the courtroom for only a few minutes of the first day of the October 2007 hearing on the merits, and he missed the entire second day of the final hearing due to illness. The father pointed out to the juvenile court at the close of the hearing, the guardian ad litem had missed the presentation of the father's case and the testimony of the witnesses called to testify on behalf of the father. At the close of the final day of testimony, the juvenile court gave the parties permission to submit written arguments or letter briefs. The maternal grandparents submitted a letter brief to the juvenile court on November 6, 2007, and the father submitted his letter brief on November 7, 2007. The guardian ad litem also submitted a letter, dated November 6, 2007, to the juvenile court in which he opined that the child was dependent and in which he recommended that the maternal grandparents receive custody of the child. The guardian ad litem's recommendation states:

"As the Court is well aware, I was unable to attend all of the final hearing due to illness. I was made aware by [the maternal grandparents'] counsel that all parties stipulated to going forward with the hearing in my absence. As a result, I cannot give a recommendation based on the merits of the final hearing. However, I have been present at every other hearing conducted by this Honorable Court. I have also had many opportunities to

meet with the parties and their attorneys in this matter. I have also conducted my own investigation regarding the best interests of the minor child. I believe I have obtained enough knowledge of this matter to make a recommendation to this Court."

In this case, as in *Ex parte R.D.N.*, the guardian ad litem apparently formed his opinion before the case was presented at trial. In *Ex parte R.D.N.*, our supreme court found that the trial court's reliance on the guardian ad litem's recommendation, which was not based on any consideration of the evidence presented at the final hearing, resulted in a deprivation of the father's "right to contest the accuracy, substance, impartiality, and quality of the guardian ad litem's recommendation." *Ex parte R.D.N.*, 918 So.2d at 105. On the authority of *Ex parte R.D.N.*, supra, we must similarly conclude that the juvenile court erred in considering the recommendation of the guardian ad litem when the guardian ad litem was not present at, and therefore could not consider the evidence presented at, the final hearing.)

Conflicts of Interest

Q: Lawyer is the guardian ad litem in a domestic relations case, which involves three children and has been ongoing for about three years. The case was recently set for review. Lawyer has since accepted employment as a part-time Assistant District Attorney and has recently been assigned to prosecute a criminal case against the mother. Can he prosecute that case?

A: Lawyer cannot simultaneously serve as a GAL for the three children and prosecute the mother in a criminal case.

Q: Lawyer has a contract with DHR and represents DHR on cases in juvenile court, some of which involve termination of parental rights. Lawyer's contract with DHR is not exclusive and, therefore, Lawyer represents other parties in juvenile court. There is presently pending a TPR case, in which DHR is represented by another part-time contract lawyer. Lawyer has been appointed to serve as guardian ad litem. Can Lawyer serve as a guardian ad litem in cases in which DHR is a party when lawyer simultaneously represents DHR in other similar, but unrelated matters?

A: No. Rule 1.7(a), Alabama Rules of Professional Conduct, prohibits a lawyer from representing a client if that representation of the client will be directly adverse to another current client. A part-time lawyer attorney representing the interests of DHR would be prohibited from simultaneously representing any other client whose interests are adverse to DHR. A lawyer engaging in the simultaneous representation of DHR and a ward is presented with a situation that is fraught with conflict. Initially engaging in this dual representation presents a situation where, over the course of the representation, the lawyer may be required to make recommendations to the court that are adverse to DHR.

- Q: Lawyer represents County DHR on a routine basis and recently represented County DHR in a termination of parental rights case. In the subsequent adoption proceeding, he has been appointed as guardian ad litem and wanted to know if that was a conflict.
- A: Yes. See Rules 1.9 and 1.11, Alabama Rules of Professional Conduct. The proposed representation in the adoption case is substantially related to the former representation of County DHR in the TPR case.
- Q: Lawyer represented a child as a guardian ad litem. She is about to graduate from high school and lawyer wants to know if it would be appropriate if he gave her a nominal graduation gift.
- A: Certainly.

C. Mark Erwin

markerwinlaw@gmail.com

Admitted to the Alabama Bar - 1998

6632 Sugar Creek Drive S.

Mobile, AL 36695

(251) 463-8333

P.O. Box 7

Mobile, AL 36601-0007

(251) 574-6115

EMPLOYMENT HISTORY:

- Mobile County Probate Court:** Chief of Staff/Chief Deputy Clerk 5/12 - Present
Administrator serving at the pleasure of the Judge of Probate assisting in the supervision of all Court staff including management of human resource issues. I assist the Chief Clerk with all aspects of daily operations of the Court's six (6) divisions.
- CME Law, L.L.C.:** Attorney - Owner 9/10 - 4/12
Solo law practice included civil and criminal work. I have also served part-time as Saraland Municipal Court Judge from 2009 to the present.
- Satterwhite & Erwin, L. L. C., Mobile AL:** Attorney - Partner 5/01 - 9/10
Founding partner of general civil litigation firm representing a broad range of clients. I served as attorney for the Mobile County Commission, the Town of Creola and the Mobile County Racing Commission. I also served by special appointment as temporary Judge of Mobile County Probate Court. Our firm represented several construction contracting companies, other small businesses as well as individuals both as plaintiffs and defendants. The firm had an active trial and appellate practice in both federal and state courts. I represented clients in the United States District Court for the Southern District of Alabama, the Eleventh Circuit Court of Appeals, the Alabama Supreme Court, the Alabama Court of Civil Appeals, Circuit and District Courts of Alabama.
- Janecky Newell, P. C., Mobile, AL:** Attorney - Associate, 3/99 - 5/01
Associate Attorney for an insurance defense law firm with offices in Mobile, Birmingham and Pensacola, FL. The firm provided litigation representation for various insurance companies, including, State Farm, Nationwide, Geico, Universal Underwriters Group, USAA and Coregis. My practice included representing the City of Daphne, the City of Fairhope, the Escambia County Sheriff's Office and Baldwin E.M.C. in pre-trial, trial and appellate litigation.

Hon. Joseph S. Johnston, Alabama Circuit Court: Judicial Law Clerk, 8/98 - 3/99
Assisted Judge Johnston with the administration of his civil docket, including, among other duties, review of all pleadings filed, drafting orders, and coordinating hearing and trial schedules.

District Attorney's Office, Mobile, AL: Legal Intern, 5/97 - 8/97
Position held between second and third year of law school involving legal research and trial preparation for Assistant District Attorneys and prosecuting cases in District Court through the use of a student practice certificate issued by the Alabama State Bar.

University of Alabama Athletic Department: Graduate Assistant, 8/96 - 5/98
Worked for the Associate Athletic Director in charge of NCAA and Southeastern Conference compliance during my second and third years of law school. I worked directly with coaches and student athletes from all sports regarding various aspects of compliance.

Baptist Medical Center, Montgomery, AL: Surgical Laser Technician, 3/90 - 12/93
Sole technician providing maintenance and repair for eight surgical laser systems utilized by the hospital operating room and out-patient surgery center. Provided assistance to surgeons from multiple specialties during surgical procedures as well as training and continuing education in laser applications for surgeons and other surgical staff members.

Children's Hospital, Birmingham, AL: Biomedical Equipment Tech., 8/89 - 3/90
Employed by the hospital's Biomedical Engineering Department to provide maintenance and repair to patient care equipment utilized throughout the facility.

EDUCATION:

University of Alabama School of Law: Juris Doctor, 1998
John A. Campbell Moot Court Board, Chairman; Bench and Bar Legal Honor Society, Member; Outstanding Oral Advocacy Award First Year Moot Court; Trial Advocacy Association.

Freed-Hardeman University, Henderson, TN: Bachelor of Arts, *cum laude*, 1995
MAJOR: Biblical Studies

University of Alabama at Birmingham: Technical Certificate, 1989
MAJOR: Biomedical Equipment Technology

Faulkner University, Montgomery, AL: MAJOR: Biomedical Program Prerequisites	Associate of Applied Science,	1988
Mobile Christian School, Mobile, AL:	High School Diploma,	1986

RELIGIOUS/PROFESSIONAL/CIVIC ASSOCIATIONS:

Leadership Mobile, 2014-15 Class
Deacon, Regency Church of Christ
County Government Education Institute Certificate in County Administration
Chairman 2004-2006, Mobile County Republican Executive Committee
Member, Alabama State Republican Executive Committee, 2000-2013
Member, Mobile Christian School Board of Trustees
Vice President, Mims Park Athletics Board of Directors, 2011-2014
Vice President, Municipal Park Baseball Board of Directors, 2004-2006
Member, Mobile Bar Association
Member, Alabama Municipal Judges Association
Member, Alabama Association of Municipal Attorneys
Member, Alabama Alumni Association – Former Member of the Mobile Chapter Board

PERSONAL:

Married since 1993 to Silvia Sargent Erwin

Children:	Emma Dixon	Age 16
	Joseph Sargent	Age 14
	Barton Daniel	Age 11

C. Mark Erwin

markerwinlaw@gmail.com

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EMPLOYMENT HISTORY:

- Mobile County Probate Court:** Chief of Staff/Chief Deputy Clerk 5/12 - Present
Administrator serving at the pleasure of the Judge of Probate assisting in the supervision of all Court staff including management of human resource issues. I assist the Chief Clerk with all aspects of daily operations of the Court's six (6) divisions.
- CME Law, L.L.C.:** Attorney - Owner 9/10 - 4/12
Solo law practice included civil and criminal work. I have also served part-time as Saraland Municipal Court Judge from 2009 to the present.
- Satterwhite & Erwin, L. L. C., Mobile AL:** Attorney - Partner 5/01 - 9/10
Founding partner of general civil litigation firm representing a broad range of clients. I served as attorney for the Mobile County Commission, the Town of Creola and the Mobile County Racing Commission. I also served by special appointment as temporary Judge of Mobile County Probate Court. Our firm represented several construction contracting companies, other small businesses as well as individuals both as plaintiffs and defendants. The firm had an active trial and appellate practice in both federal and state courts. I represented clients in the United States District Court for the Southern District of Alabama, the Eleventh Circuit Court of Appeals, the Alabama Supreme Court, the Alabama Court of Civil Appeals, Circuit and District Courts of Alabama.
- Janecky Newell, P. C., Mobile, AL:** Attorney - Associate, 3/99 - 5/01
Associate Attorney for an insurance defense law firm with offices in Mobile, Birmingham and Pensacola, FL. The firm provided litigation representation for various insurance companies, including, State Farm, Nationwide, Geico, Universal Underwriters Group, USAA and Coregis. My practice included representing the City of Daphne, the City of Fairhope, the Escambia County Sheriff's Office and Baldwin E.M.C. in pre-trial, trial and appellate litigation.

Hon. Joseph S. Johnston, Alabama Circuit Court: Judicial Law Clerk, 8/98 - 3/99
Assisted Judge Johnston with the administration of his civil docket, including, among other duties, review of all pleadings filed, drafting orders, and coordinating hearing and trial schedules.

District Attorney's Office, Mobile, AL: Legal Intern, 5/97 - 8/97
Position held between second and third year of law school involving legal research and trial preparation for Assistant District Attorneys and prosecuting cases in District Court through the use of a student practice certificate issued by the Alabama State Bar.

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Worked for the Associate Athletic Director in charge of NCAA and Southeastern Conference compliance during my second and third years of law school. I worked directly with coaches and student athletes from all sports regarding various aspects of compliance.

Baptist Medical Center, Montgomery, AL: Surgical Laser Technician, 3/90 - 12/93
Sole technician providing maintenance and repair for eight surgical laser systems utilized by the hospital operating room and out-patient surgery center. Provided assistance to surgeons from multiple specialties during surgical procedures as well as training and continuing education in laser applications for surgeons and other surgical staff members.

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Employed by the hospital's Biomedical Engineering Department to provide maintenance and repair to patient care equipment utilized throughout the facility.

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MAJOR: Biomedical Equipment Technology

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PERSONAL:

Married since 1993 to Silvia Sargent Erwin

Children:	Emma Dixon	Age 16
	Joseph Sargent	Age 14
	Barton Daniel	Age 11

Section 26-2A-136, Code of Alabama

Permissible court orders.

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

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

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

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

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

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

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

PROBATE COURT OF MOBILE COUNTY, ALABAMA

Style: KEYBOARD()
Matter: KEYBOARD()
Hearing: KEYBOARD()

Case No. KEYBOARD()
Time: KEYBOARD() Court Room KEYBOARD()

ORDER APPOINTING GUARDIAN AD LITEM

To: KEYBOARD()

Please take notice that you are hereby appointed Guardian ad Litem for ***** who is interested in the matter referenced and which comes up for hearing on the date set above. Done this KEYBOARD() day of KEYBOARD(), 20KEYBOARD().

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

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

Don Davis, Judge of Probate
By: _____

Acceptance of Appointment:

Chief Clerk

Guardian ad Litem

INFORMATION AND INSTRUCTIONS :

Note 1: Counsel of Record is: KEYBOARD()

Unless attached hereto, Counsel has been directed to furnish you with the pleading and other information necessary for you to prepare for this matter. Please contact said attorney directly and make arrangements accordingly.

Note 2: Any objection/response which you may have to the subject matter should be filed in writing with the Court and other counsel no later than five (5) days from the scheduled hearing.

Note 3: Written Report -- Must be filed at least FIVE [5] DAYS before the hearing date.

Should you interpose no objections to the granting of the relief sought, you may inform the Court by filing a written statement to that effect. You must state in your report that you have complied with the GAL list of duties and responsibilities as issued by this Court previously and have consulted with counsel and the necessary parties. **If you have no objections and said report is filed in proper form [and received prior to the hearing] your presence at the hearing will not be necessary, except 1 when your client will be in Court; 2) there will be testimony offered (GAL must check with other counsel to determine); and 3) there are no objections from other counsel or parties to be presented at the hearing.** You may fax the report to the Court and counsel provided that it is placed in the mail the same day. Further, please forward with said report your time sheet form or other time records so that a fee may be set for your services. Please advise if you have any questions regarding this procedure.

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

IN THE PROBATE COURT FOR MOBILE COUNTY, ALABAMA

In the matter of : Case No. KEYBOARD()

KEYBOARD() :
(alleged) Incapacitated person

NOTICE OF APPOINTMENT OF COURT REPRESENTATIVE

TO: KEYBOARD()
HEARING DATE: KEYBOARD()

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

1. Interview the said alleged incapacitated person.
2. Interview petitioner(s) in this cause.
3. Interview the person nominated to serve as Guardian and Conservator.
4. Visit the present place of abode of said alleged and the place at which it is proposed that said alleged will be detained or residing.
5. **A written report of your findings must be filed at least FIVE (5) DAYS before the hearing date.** Unless specifically requested by the Court or counsel, Court Representatives are not to attend hearings if their written report has been pre-filed.
6. **NOTE:** If the evidence supports a finding FOR the person being incapacitated, the Court will need to address whether said party is also mentally incompetent and should be removed from the voter records. You are to consider this additional issue and offer comments or recommendations as to same in your report. Please note the following, definition for mental incompetency being used by the Court:

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

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

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

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

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

Done and **ORDERED** this KEYBOARD() day of KEYBOARD(), 20KEYBOARD().

Don Davis, Judge of Probate

Acceptance of Appointment:

By _____
Chief Clerk

By _____
Court Representative (Sign and Return)

IN THE PROBATE COURT OF MOBILE COUNTY, ALABAMA

IN THE MATTER OF _____ :

Case No. _____

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM,
ADMINISTRATOR AD LITEM OR SPECIAL ATTORNEY**

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

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

TOTAL NUMBER OF HOURS _____

CUSTOMARY HOURLY RATE YOU RECEIVE FROM OTHER CLIENTS FOR SIMILAR SERVICES: \$ _____
(If no rate is specified a \$125.00 hourly rate will be utilized)

MISCELLANEOUS EXPENSES: \$ _____

Reason : _____

TOTAL DUE _____

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

Date: _____

(Signature)

(Print Name)

NOTE: (1) If your time exceeds 3.0 hours or if you anticipate an objection to your fee request, attach an itemization fo the time expended with a description of the service rendered. You should not "lump" your time or description of services rendered. Time should be recorded in one-tenth increments. (2) You should turn your expense voucher in at the time a written report is submitted and/or hearing if at all possible.

IN THE PROBATE COURT OF MOBILE COUNTY, ALABAMA

IN THE MATTER OF _____ :
_____ : Case No. _____
_____ : Date: _____

EXPENSE VOUCHER FOR COURT REPRESENTATIVE

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

Court Representatives hourly rate is \$125.00.

MISCELLANEOUS EXPENSES: \$ _____
Reason : _____

_____ **TOTAL DUE** _____

I do hereby state that the above is true and correct and that I served in the capacity as Court Representative, pursuant to appointment made by the Probate Court of Mobile County, Alabama.

(Signature)

(Print Name)

NOTE: (1) If your time exceeds 4.0 hours or if you anticipate an objection to your fee request, attach an itemization fo the time expended with a description of the service rendered. You should not "lump" your time or description of services rendered. Time should be recorded in one-tenth increments. (2) You should turn your expense voucher in at the time a written report is submitted and/or hearing if at all possible.

GUARDIAN AD LITEM [GAL]

I. A Guardian ad Litem:

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

II. Before the hearing the Guardian ad Litem should:

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

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

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

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

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

IV. At the hearing the Guardian ad Litem should:

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

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

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

Annette McDermott Carwie

Annette graduated from the University of Alabama with a bachelor's degree in Mathematics in 1986 and from the University of Alabama School of Law in 1989. While in law school, she was an editor of the *Alabama Law Review*, a member of the Jessup International Moot Court Team, and the Order of Barristers. She and her moot court partner, Warne Heath, won the final round of the Campbell Moot Court competition. After graduation, she joined the firm of Sirote & Permutt, P.C. and practiced litigation, focusing on creditor collections. In 1995, she joined the firm of Alford, Clausen & McDonald, LLC, and worked on litigation concerning medical malpractice defense. Since 2011, she has handled matters in the Probate Court of Mobile County including acting as Court Representative, Guardian ad Litem and Petitioner's advocate in involuntary commitment cases.

Practical Tips for Guardians ad Litem, Administrators ad Litem and Court Representatives

By Annette McDermott Carwie

Court Representatives and Guardians ad Litem

The Alabama Uniform Guardianship and Protective Proceedings Act is codified at Ala. Code §26-2A-1 *et. seq.* This Act covers the rights and responsibilities of an alleged incapacitated person or minor and their proposed guardians and conservators in a *Petition for Guardianship and Conservatorship* proceeding. Pursuant to § 26-2A-102(b), the person alleged to be incapacitated shall be interviewed by a representative sent by the Court. The court representative shall also interview the petitioner and the proposed guardian and visit the place of abode where the person alleged to be incapacitated is or will reside if the appointment is made and make a report to the Court. The following are practical tips for Court Representatives and Guardians ad Litem in these types of cases.

1. Receiving the Notice of Appointment

The case begins upon receipt of the Notice appointing you as Court Representative or Guardian ad Litem. If you are able to handle the matter and do not have a conflict with representing your client in the case, you can sign and return the Notice to the Court. Begin keeping track of your time. Calendar the hearing and make a note of the day that is 5 days prior to the hearing, because your court representative report will be due then. In most cases, you will need to contact the Petitioner's attorney to obtain contact information for the Petitioner and the Alleged Incapacitated person. It's a good idea to talk to the Petitioner's attorney first anyway, so he or she is reminded of whom has been appointed in the case and because typically he or she will be able to provide additional information that the Petitioner might not think to tell you regarding the facts of the case. As the Guardian ad litem, you should ask for permission to talk to the Petitioner, his or her client.

I like to wait until closer to the hearing date, however, to interview the Petitioner and the Alleged Incapacitated person. This is because sometimes the circumstances surrounding the Alleged Incapacitated person's living situation will change. You want to be able to give the Court the latest information regarding the Alleged Incapacitated person's health status. This will enable you to give an informed recommendation to the Court regarding whether a guardian or conservator is necessary.

2. Interviewing the Petitioner and Alleged Incapacitated Person

Once you have discussed the case with the Petitioner's attorney, you may contact the Petitioner. As a practical matter, as the Court representative, try to schedule a meeting with the Petitioner and the Alleged at the same time, at the place where the Alleged is or will be living. You can observe the relationship between the proposed Guardian and/or Conservator and the Alleged, and it will usually save time expended for interviewing both. As the Guardian ad litem, you will need to meet with your client and the proposed Guardian and/or Conservator should be able to assist you in this. However, you need to judge whether it is necessary to meet with your client and the proposed Guardian individually, if the Alleged Incapacitated person is mentally coherent and you sense that the proposed Guardian should not be present.

In my experience, the parties are more than willing to give you any information you ask for, and don't be afraid to ask for it. All of the information you gather will assist you in forming an opinion regarding whether a person needs a guardian or conservator. Information regarding assets, income, relationships with family, neighbors, friends, living conditions, medications and health status is all vital. Additionally, each case is different and there may be areas you need to inquire about that are particular to a case. If the Petitioner is a child of the Alleged, it is important to know the relationships the Alleged and the Petitioner have with other children of the Alleged. If there are minor children of the Alleged, this is an area to discuss how the children will be cared for if their parent is found to be incapacitated.

Depending on the facts of the case, there may be other individuals who need to be interviewed. Sometimes, the person who has been caring for the Alleged is from their church or outside of the family and has the most insight regarding what is best for them.

3. Drafting and filing the Report of Court Representative

I think it's a good idea to include information regarding the date of the appointment and the names of the attorneys and whom each is representing, for purposes of clarity. Then I try to give the Court a good idea of the Alleged Incapacitated person's background, such as where they grew up and if and when they married and what prior careers they may have had. This sheds light on how he or she arrived at his or her current situation. You should include other pertinent information such as how long he or she has been suffering from the alleged mental or physical disability and how he or she has managed his or her health care to date. Of course, a physician's report should always be obtained and should be discussed in your report to the Court. Sometimes, there is a health care professional such as a visiting nurse or an employee of the Department of Human Resources who has in depth knowledge of the Alleged Incapacitated person's health and well-being, and their opinion should be discussed in the report. Your thorough review of all of the facts of the case will enable you to form an opinion regarding whether the Alleged needs a guardian and/or conservator and this recommendation needs to be at the conclusion of your report.

If you believe that the Alleged Incapacitated person is in fact mentally incapacitated and in need of a guardian, the Notice of Appointment asks the Court Representative to consider whether the Alleged is also "mentally incompetent" and should be removed from the voter records. The definition for mental incompetency used by the Court is set forth in the Notice as "one whose mental faculties have become so impaired as to make him/her incapable of protecting himself/herself or properly managing

his/her property.” You should add your comments regarding whether the Alleged meets this standard at the end of your report.

As the Guardian ad Litem, you will need to recommend whether the particular motion before the Court should be granted or denied. However, as an attorney for your client, a minor or an otherwise incapacitated person, you may need to offer the Court an opinion regarding the issues at law in the case. You should be prepared to discuss the legal issues at the hearing and have formed an opinion regarding what needs to happen for your client.

4. Confidentiality and Sensitivity of the Facts of the Case

All of the cases I have been appointed to either as Court representative or Guardian ad Litem have required me to investigate the personal medical history of a person, the individual relationships he or she has with the people caring for them, financial information and to be aware of sensitive family dynamics. Needless to say, these reports should be considered highly confidential. Of course, there is an attorney client privilege for the Guardian ad Litem and the client. However, in whatever capacity I am appointed by the Court, I try to remember the sensitivity of this information. It is possible, and sometimes necessary, to file a *Motion to Seal* your report after it is filed to protect the Petitioner and/or the Alleged Incapacitated person from a negative reaction by other people, including family members, to this information.

Administrators ad Litem

Ala. Code §43-2-250 provides “when, in any proceeding in any court, the estate of a deceased person must be represented, and there is no executor or administrator of such estate, or he is interested adversely thereto, the court shall appoint an administrator ad litem of such estate for the particular proceeding, without bond.” As Administrator ad Litem, you will need to review the Last Will

and Testament, inventory, and any other pertinent documents of the original Estate necessitating the appointment of the Administrator ad Litem. You will also need to determine the heirs of the Estate you are representing. The Executor's or the Personal Representative's attorney of the original Estate should be able to provide this information or put you in contact with a family member of the decedent who was to inherit under the original will. If you determine there is a need to administer the estate of the decedent you are representing, because the decedent's estate stands to inherit under another will, you may need to suggest that a family member open an Estate. Alternately, you should consider whether Mr. Frank Kruse, General Administrator of Mobile County, should be involved. In my experience, Mr. Kruse has been an important source of help in these types of cases.

JEFFRY N. GALE, ESQ.

I am a native of Mobile, Alabama, attended McGill-Toolen High School, and The University of Alabama for both my undergraduate and law degrees. I'm a member of the MBA and Baldwin Bar Association. I've handled many appointed and retained Probate matters in Mobile and Baldwin Counties, including serving as a Court Representative, GAL and AAL. I have also handled adult commitment and recommitment cases for the Probate Court of Mobile County. I am currently employed by The Citrin Law Firm in Daphne, where my practice is focused primarily on personal injury and workers' compensation cases. I live in Fairhope, have been married over twenty years and am a father of two children. In my spare time, I'm active in youth soccer in Fairhope, sitting on the Board of Mobile Bay FC.

Practical Tips for Guardian Ad Litem

The following are some tips and points I have developed over time being appointed as a GAL in Probate Court. It is by no means an exhaustive statement of the duties and obligations of a GAL and may seem fairly basic. I do hope it will be helpful, especially for lawyers new to this work.

I. Appointment

You will receive a notice from the court appointing you as a GAL for a particular person who is a minor or is incapacitated. The notice requests you to respond by signing to accept the appointment. Look for conflicts and respond as promptly as possible. The Court has a calendar that you will receive for appointments in adult commitment matters. Remember, GAL's are only typically appointed to handle one particular matter in a case. Determine what the matter involves, recalling that you have no powers prior to or after termination of the proceedings that you have been appointed for.

Upon accepting the appointment, I create a standard Probate appointed matter file. Among other things, my file is opened with a simple lined time sheet with a heading section with blanks for indicating the style of the case, my role (GAL, Court Representative or AAL), the person(s) I represent and a column for the date, activity and indicating whether the activity is in or out of court. I use my time sheet to record my time and activities in the case. It is obviously very helpful to have this organized in one place and the entries reliably entered on a contemporaneous basis with the activities when you submit your time for a payment request.

II. Investigation

At the time that you open your file, always request a copy of the relevant filing from the attorney for the party initiating the matter. Some send it automatically, but some don't. As a practical matter, you can't start your investigation until you determine what the matter involves - - typically a petition for appointment as conservator/guardian or for partial or final settlement. You should also speak to that attorney first to quickly determine what the facts and issues are (legal and practical), the identity and relationship of the parties, and to determine if the attorney has other documents that need review (and if those documents have been filed with the Court or must be reviewed at the attorney's office). The attorney is also often the best (sometimes only) source of the information you are going to need to contact the ward and other parties involved. You will need to request permission to speak with the attorney's client (who is often the petitioner and the competent adult with whom the minor or incapacitated ward is residing). This is usually freely given.

In older cases, it is helpful to get an overview of the entire case. Look it up on the Court's website and see what has happened and who has been involved. If necessary, look at the actual file at the Clerk's office. You don't want to be caught by surprise not knowing what has occurred in the case prior to your involvement, including any orders that have been entered. You also don't want to spend time reinventing the wheel if an issue has already been decided. Having a discussion with a prior GAL and reviewing their response to similar filings, e.g., a prior partial settlement, may also be helpful.

Always make contact with the ward even if you do not think they are capable of being of assistance or adding anything to your investigation. You cannot say that you

have fulfilled your duties as a GAL without making contact with your ward. At the very least, I like to speak with them on the telephone or lay my eyes on them to know where they are even if they are completely unresponsive. In my opinion, observing them in the place where they live and surrounded by their relatives and/or caregivers is invaluable and is often the best indicator of whether there are issues below the surface of a routine petition that need to be explored. Also, such visits often allow for a dialog that can lead to better and more efficient solutions for your client.

Always review the medical records and/or treating physician letters provided. Also, speak with the nurses and staff of any facility in which the ward resides. Not only will they give you necessary medical background when applicable, but they are often the best observers of the interaction between the ward and a proposed guardian/conservator. For example, they can tell you if the petitioner has a good grasp of the needs and issues facing your ward, how often they visit, whether the relationship is smooth or contentious, whether there are other persons (good or bad) in the ward's life, where the ward came from and will be going, whether the day you visit is typical for the ward, e.g., in terms of responsiveness, appearance, communication, etc. Also, do not hesitate to attempt to speak with the treating physician(s) or request additional medical records if necessary.

In adult commitment cases, you will be provided with a records request form by the EastPointe representative in court. Complete that and request copies of all records (I would recommend certified) to be available for your review before the next hearing. Pick them up and spend some time out of court reviewing them. If you have

any questions about the records or recommendations, ask the psychiatrist or other staff before the next hearing.

Always review the accountings. Ask questions if something catches your eye. Don't be reluctant to offend by asking an attorney about their charges or expense reimbursements. Be particularly vigilant when the petitioner is not represented or where the accountings are disorganized or things are missing, e.g., bank statements for a certain time period. Look at the Court's accounting review when it is complete, especially in complex or voluminous cases.

In cases in which someone is asking to be appointed conservator or guardian over your ward, don't be reluctant to ask the hard or potentially embarrassing questions, every time. You simply must know if the person who is going to serve in that role has financial or criminal problems, such as judgments, bankruptcies or a conviction for a crime of moral turpitude. Even if they don't look like the kind of person who has these problems, you should ask about them. Also ask about employment, other sources of income, marital status, legal custody, the living arrangements of the ward in the household, sources of insurance, home ownership, transportation, where they bank and anticipate opening up a conservatorship account, their ability to make accountings and the like, to determine if this is a suitable person to act in the capacity of a conservatorship and/or guardian. A quick Alacourt check never hurts. Finally, find out who else resides in or frequently visits the same household. Is the environment one that is safe and generally suitable? If not, discuss that with the other attorney and report it to the court if the issue(s) cannot be resolved.

Finally, there will often be a number of family members and friends present when you go visit the ward, especially in a home setting. Some of these may try to recruit you to their side in the matter. Remain independent of these people and feel free to demand a private meeting with your ward if they are interfering, pressuring or you feel that the matter must be discussed confidentially.

III. Interaction with the Court

As a practical matter, unless there has been malfeasance on the part of a party, most issues in these cases are capable of being resolved amongst the parties. Speak up, however, if there is an issue that cannot be resolved. If there is a dispute, offer the Court a solution that works for the best interests of the ward. Even if you cannot offer a solution, present the issue to the Court so that the Court has an opportunity to make a decision. In some circumstances, however, there may not be any way to resolve a dispute other than through litigation. Be prepared to stand your ground and do so if necessary to protect the fundamental interests of your ward.

IV. Some last bullet point practical matters

- a. Most petitioners are family members who, while often of limited means and education, are good people who have been taking care of the ward for the ward's entire life.
- b. As a GAL, you have to balance your role as an advocate for the ward and considerations of what is in the best interests of the ward (not always what the ward may express they want). For example, you will represent elderly and incapacitated persons who express nothing but a desire to maintain control or

immediately leave the safety of a nursing home, group home or hospital when that is not in their best interests.

- c. Petitioners confuse the concepts of guardianship and conservatorship. Make sure they are asking for what they want and/or need for what they are trying to accomplish. Being appointed conservator is a much more involved matter than being appointed guardian. Also, keep in mind that a petitioner can be appointed guardian and the County Conservator is always available to handle the funds, including the often complicated Social Security and Medicaid/Medicare issues.
- d. Keep track of your court dates so that you file and/or appear on time. It is often critical that parties have their matters decided so that they can take appropriate action involving outside parties. If a matter is continued, consider whether an extension of any temporary authority is appropriate so that it does not lapse at an inopportune time for the parties involved.
- e. Determine whether your ward needs to be present in court. Most of the time they do not. Even if it is not your duty, make sure they have been served so that the hearing may go forward.
- f. Finally, be prepared to tell the Court what you have done and review any orders and decrees that are issued by the Court.

CHARLES ZACKERY MOORE

Zackery graduated from Auburn University at Montgomery with a bachelor's degree in Political Science in 2002 and from the Mississippi College School of Law In 2005. Following graduation, he clerked for Honorable Judge Truman M. Hobbs, Jr. of the Fifteenth Judicial Circuit. After his clerkship, he joined the firm of Rushton, Stakely, Johnston and Garrett, focusing on commercial real estate. In 2007, he joined the Mobile County District Attorney's Office, and worked as an assistant district attorney focused on all levels of criminal prosecution. In 2011, he began a solo legal practice concentrated on criminal defense, probate, family law, and civil law. Since 2011, he has consistently handled matters in the Probate Court of Mobile County as a Guardian ad Litem, Court Representative, Administrator ad Litem, and Petitioner's advocate in involuntary commitment cases.

**PRACTICAL TIPS FOR ACCEPTANCE OF APPOINTMENT AS
ADMINSTRATOR AD LITEMS, GUADIAN AD LITEM, OR COURT
REPRESENTATIVE**

Prepared By: Charles Zackery Moore

The tips or suggestions included within this handout have been over time and through a process of attempts, failures, and corrections. The handout is not intended to serve as a comprehensive guide to completing one's responsibilities when appointed by the Probate Court, but rather as a helpful guide for those who may be unfamiliar or new to this type of work about what considerations should be made before accepting an appointment.

Accept or Refuse an Appointment

The case will often begin with either a telephone call from a staff member of the Probate Court of Mobile County, email from a staff member of the Probate Court of Mobile County, or a Notice of Appointment mailed to your office.

When contacted by telephone, it is often an attempt to replace an existing GAL, AAL, or Court Representative who has had to withdraw from the case as the result of some professional or personal conflict. It is important to remember when receiving the telephone call to gather as much information as possible concerning the case.

The first thing that you should find out is if this telephone call pertains to an Emergency Petition for Temporary Guardian and/or Conservator. If the call does pertain to an Emergency Petition, the hearing will often times be held later that same day. Often times this means dropping everything that you are presently working on and scrambling to complete your responsibilities prior to the hearing a few hours later. Do not accept this appointment if you are unable to dedicate the immediate effort required to fulfill your

responsibilities. A good practice is to take down the information relevant to the Emergency Petition, end the telephone call, review your daily calendar for scheduled meetings, court appearances, and the urgency of any work one had scheduled to spend time on that day, then and only then, make a return call to the Probate Court of Mobile County to either accept or refuse the appointment. An immediate trip to a local hospital for a consultation with the respondent is usually necessary. Do you have time? Several telephone calls with counsel of record, case workers, family members, nursing staffs, and/or the Court may be warranted. Do you have time? You will need to provide the Court with detailed testimony about the present condition of the respondent. Do you have time to prepare a written report and/or appear in court at the hearing? Allowing oneself to get off the telephone before making a decision will lend itself to making an informed decision rather than a spontaneous decision that is later regretted.

If the telephone call or email does not pertain to an Emergency Petition, the decision to accept or refuse an appointment is similar whether the potential appointment pertains to a Guardian ad Litem, Administrator ad Litem, or Court Representative. Take the time to gather all of the relevant information about the case and check for possible conflicts that would prevent one from accepting the appointment. Conflicts may include, but are not limited to, scheduling problems, prior or present legal involvement with a party in the case, a present caseload that will not allow one to handle this appointment. A return telephone call or email with an acceptance or refusal of the appointment is sufficient for the Probate Court of Mobile County to mail a Notice of Appointment to your office.

The most common manner in which a case begins is with the receipt of a Notice

of Appointment as Guardian ad Litem, Administrator ad Litem, or Court Representative. The notice from the Court should be reviewed immediately upon receipt for possible conflicts. Assuming there are none, one may sign the appointment and return it to the Court in a timely manner. I prefer to return the signed appointment to the Court by hand, so I can request a date stamped copy for my file. This eliminates any confusion that may arise later due to a clerical error at the Court. An organized file will eliminate most possible problems.

The next step is to open a file. My file is opened with an organized sheet labeled Attorney Notes which offers a quick reference for notes, thoughts, or concerns that I have written down during my work on the case. This sheet acts as a summary and can be useful as a reference if called upon to offer testimony before the Court. The second sheet included in my file is a Time Sheet. From the moment you accept the appointment, you should begin keeping track of the time you spend working on the case. A time sheet should provide enough space for you to adequately describe the task performed, the date it was performed, and the amount of time spent on the task. The more detailed the description of the task performed, the more likely it is to be accepted by the Court as billable work should a dispute arise over billing. My time sheet has two (2) separate sections. The first section is for out of court work, and the second is for in court work. Remember, your expense voucher will ask you to distinguish between the two. Further, it is important to make detailed notes about any miscellaneous expenses that arise. These miscellaneous expenses will need to be explained in detail on your expense voucher if you expect to be compensated.

The acceptance of an appointment as GAL, AAL, or Court Representative is an

extension of your professional reputation. It commits an attorney to performing acceptable work within a given amount of time. Do not accept an appointment unless you are prepared to complete the work necessary to fulfill you're appointment as GAL, AAL, or Court Representative.

THE COURT'S EXPECTATIONS OF APPOINTED LAWYERS

DON DAVIS,
JUDGE OF PROBATE

GUARDIAN AD LITEM - MENTAL HEALTH CASES

I. A GUARDIAN AD LITEM:

- A. Is a lawyer appointed by the Court to protect a Respondent's interests in an involuntary commitment case.
- B. Is an officer of the Court.
- C. Gives no bond.
- D. Does not have charge or take possession of the Respondent's person or property.
- E. Has no powers or responsibilities prior to appointment or after the conclusion of the involuntary commitment case.

II. BEFORE THE PROBABLE CAUSE HEARING, THE GUARDIAN AD LITEM SHOULD:

- A. Examine and read the Court's file and all pleadings. Find out who is involved and what the case is about.
- B. Contact and discuss the matter with the Respondent, if practicable.
- C. Advise the Respondent of the Respondent's legal rights, if practicable.
- D. Contact the petitioner's advocate to discuss the matter and ascertain additional information.
- E. Where appropriate, research applicable law.
- F. Inspect and examine any medical records that may affect the Respondent's interests.
- G. Protect the Respondent's interests and assist the Court in solving any problems.
- H. Keep records, especially of time expended.
- I. Make specific inquiry as to the existence of any assets belonging to or in the custody of the Respondent, which will need management and protection, should the Respondent be detained or committed by the Court. Advise the Court of the same.

III. AT THE PROBABLE CAUSE HEARING, THE GUARDIAN AD LITEM SHOULD:

- A. Be present at the Courthouse at least 45 minutes before the probable cause hearing to meet with Respondent and any witnesses.
- B. If you are running late or have a matter in a different court that is going to delay you - notify the Court's Clerk's Office in advance.
- C. Know the location, condition and situation of the Respondent.
- D. Be prepared for the probable cause hearing and know how the Respondent will be affected by any action taken or decision made.
- E. Protect the Respondent's interests and legal rights.
- F. Cross examine adverse witnesses as appropriate.
- G. Be prepared to share with the Court what you have done and how you have helped the Respondent.
- H. Advise the Respondent, as appropriate.

IV. BEFORE THE MERIT HEARING, THE GUARDIAN AD LITEM SHOULD:

- A. Contact the facility at which the Respondent is located and advise them of when you plan on reviewing the Respondent's medical record(s) and what records you desire to review.
- B. Go to the facility at which the Respondent is being evaluated **on the business day preceding the merit hearing. NOTE: you may have to make an appointment in advance with the facility.**
- C. Review the Respondent's medical records (current admission and past records). Obtain copies of any medical records that cause you concern.
- D. Meet with the Respondent's evaluation team and obtain their insight and comments concerning the Respondent.
- E. Meet with the Respondent. Conduct your own assessment of the Respondent.
- F. Review with the Respondent the evaluation team's proposed treatment recommendation to the Court regarding the Respondent. Answer any questions the Respondent may have regarding the recommendation and implementation of the recommendation, if it is accepted by the Court.
- G. Satisfy yourself that the Respondent has suitable housing and food is available to the Respondent, should commitment be recommended and the Court accepts said recommendation.
- H. If you contemplate needing to refer to the Respondent's medical records at the merit hearing, notify the Court's staff to enable the appropriate equipment to be obtained for the merit hearing.

V. AT THE MERIT HEARING, THE GUARDIAN AD LITEM SHOULD:

- A. Be on time. If you are running late or have a matter in a different court that is going to delay you - notify the Court's Clerk's Office in advance.
- B. Know the location, condition and situation of the Respondent.
- C. Be prepared for the merit hearing and know how the Respondent will be affected by any action taken or decision made.
- D. Protect the Respondent's interests and legal rights.
- E. Cross examine adverse witnesses as appropriate.
- F. Be prepared to share with the Court what you have done and how you have helped the Respondent.
- G. Advise the Respondent, as appropriate.

CONTINUANCES OF MERIT HEARINGS

Alabama (and federal) law require that if commitment is ordered, such commitment for treatment be the least restrictive means of available treatment given a respondent's condition and diagnosis. An overall objective of the Court is for court-ordered treatment to be avoided whenever reasonably possible. There may be circumstances where an evaluation period of two or three weeks can result in the case being concluded with a less restrictive outcome and result, than would occur if the Court ruled on the matter six days following the probable cause hearing. There are also instances, when, given the severity of a respondent's symptoms, AHS is unable to complete its evaluation within the usual six day time period. In these types of situations, AHS may recommend that a merit hearing be continued. If a continuance recommendation is made and **ALL** legal counsel **stipulate** to the continuance of the merit hearing, the Court will continue the hearing to the next scheduled merit docket without an actual hearing being conducted. If any legal counsel objects to a continuance recommendation, the Court will conduct a hearing and determine the appropriate course of action to pursue after evidence and argument have been presented to the Court.

MISCELLANEOUS POINTS TO NOTE

At **ALL** times utilize your good judgment. Don't check your "common sense" at the door of the courtroom. If something doesn't seem correct or if you have a question - speak up - ask the appropriate question of the appropriate party.

Be sure to note the difference between "AltaPointe" (the name of the Mobile- Washington Counties' community mental health provider) and its facilities, such as EastPointe Hospital and BayPointe Hospital.

Be alert to the fact that if the Court orders an independent medical evaluation of a respondent, the medical doctor conducting said evaluation is **NOT** affiliated with AHS. Consequently, the questions legal counsel should pose to said medical doctor in order to qualify the medical doctor to offer an opinion and recommendation differ somewhat from those questions that are posed to AHS affiliated medical doctors.

If you encounter any difficulty in performing your duties and responsibilities in these cases, you should notify the Court's Clerk's Office immediately.

GUIDELINES FOR APPOINTED LAWYERS MENTAL HEALTH INVOLUNTARY COMMITMENT CASES

Core constitutional rights of a respondent come into play in mental health involuntary commitment cases. It is the intent of the involuntary commitment process to ensure that citizens with a serious mental illness receive treatment at the appropriate level and in the appropriate setting. ALL appointed lawyers have a role in protecting respondents' constitutional rights, the personal safety of respondents and the safety of the general public. ALL lawyers have an obligation to protect the integrity of the commitment process by establishing a record that will satisfy the Court in the present hearing and that will be clear if future review of a proceeding ever becomes necessary. To that end, ALL appointed lawyers should recognize and appreciate the necessity that there be a solid record of the medical basis for a medical expert's recommendation for inpatient or outpatient commitment or dismissal during merit hearings conducted before the Court.

The Court has ordered the respondent's attending physician at the Adult Evaluation Unit (or Adult Outpatient Clinic or Mobile Infirmiry Psychiatric Unit) to appear before the Court and to testify at the merit hearing before the Court.

The Court desires for the hearings to be focused on the substantive issues before the Court. However, it is necessary for there to be a solid record to justify the Court's decisions, especially if there is an appeal.

The Court offers the following guidelines to assist lawyers in accomplishing the task of having a solid record of the medical basis for a medical expert's recommendation:

- The educational and professional background of the person being proffered as an expert witness must be in the record in each case. It is permissible after a lawyer has participated in one case on a docket to stipulate to the *educational and professional background* of the proffered witness.
- ALL lawyers should share the printed resume of the attending physician with their client(s) BEFORE THE MERIT HEARING COMMENCES. Laminated copies are available for this use.
- If a lawyer's client objects to the attending physician's qualifications as an expert witness in advance of the hearing, the lawyer should ask the appropriate questions in direct examination or voir dire (by the guardian ad litem) to seek to qualify the attending physician as an expert.
- IN ALL CASES after the attending physician has been accepted as an expert witness, the following points need to be in the record:
 - ▲ The witness is a member of the respondent's evaluation team
 - ▲ The witness is familiar with the contents of AltaPointe's medical records regarding the respondent
 - ▲ The medical records are available in court for use to refresh the recollection of the attending physician if necessary
- Inquire if the witness has personal knowledge of the respondent's medical history, diagnosis and treatment. The witness should be asked on what occasions did the witness personally interact with the respondent and the occasion of each such interaction.

- If the respondent has a history of past treatment for mental illness, the witness should be asked what medical records were obtained and if said medical records were available to and utilized by the respondent's attending physician (or the witness - if the witness is a physician) and the respondent's treatment team during the evaluation process. The witness should be asked when the witness last reviewed the respondent's medical records.
- Inquire if the attending physician and/or a member of the evaluation team had interaction and/or communication with members of the respondent's family and the petitioner (if the petitioner is not a member of the respondent's family) during the course of the evaluation to obtain information and medical history relating to the respondent. If the witness didn't directly have such interaction/communication, the witness should be asked what member of the treatment team did and the date of said interaction/communication.
- If you desire to refer to the respondent's medical records at the merit hearing, said medical records be present at the merit hearing in either electronic format or hard-copy file.
- If the recommendation being offered to the Court is outpatient commitment, inquire as to where it is proposed that the respondent will reside while obtaining treatment. If it is proposed that the respondent reside with a family member, inquire if said family member was contacted regarding the proposed treatment recommendation and whether said family member agreed for the respondent to reside with the family member.
- Review the physician's notes and the nurses' notes in the respondent's current medical record, note any inconsistencies that may be apparent and inquire of the witness how such can be reconciled with the recommendation being proffered to the Court by the witness.

NOTE

1. Make copies of any portion of the respondent's medical record that cause you concern while at the AHS facility or Mobile Infirmary Medical Center.
2. Clear and convincing evidence is the evidentiary threshold for mental health commitment merit hearings. Hearsay evidence is normally not permitted unless the parties stipulate to such.
3. The Court was informed through the sworn testimony of an AHS physician assigned to EastPointe Hospital that the physicians pre-draft their entries into their patients' medical record before the activity being noted has occurred. Consequently, EastPointe Hospital's medical records do **NOT** come within the embrace of the "business records" exception to the hearsay evidence rule.
4. The AHS physician is **NOT** necessarily the custodian of AHS' medical records that are produced at the merit hearings. **If it is necessary for the medical records to be made exhibits the physician is NOT the custodian of AHS records meaning ANOTHER WITNESS from AHS will be required to admit the records and the business record exception to the Hearsay Rule must be satisfactorily addressed.**
5. While the medical records will be available to the physician and the parties during the hearing it is not absolutely necessary that the respondent's file be an exhibit to the hearing.
6. Be sure to note the difference between "AltaPointe" (the name of the Mobile- Washington Counties' community mental health provider) and its facilities, such as EastPointe Hospital and BayPointe Hospital.

Curriculum Vitae

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CONTACT INFORMATION

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EDUCATION

Undergraduate	University of Washington, Seattle, WA Economics, Summa Cum Laude, Cumulative GPA 3.98 09/1997-03/2002 B.A., 03/2002
Graduate	University of Washington School of Medicine, Seattle, WA Medicine (Honors) 08/2003-06/2008 M.D., 06/2008
Internship	University of South Alabama College of Medicine Department of Psychiatry 07/2008-06/2009
Residency	University of South Alabama College of Medicine Department of Psychiatry 07/2009-06/2012

HONORS/AWARDS

University of South Alabama College of Medicine, Department of Psychiatry, Chief Resident (2011-2012)
Alabama Psychiatric Society, Member-In-Training Representative to the American Psychiatric Association (2011-2012)
University of South Alabama College of Medicine, Department of Psychiatry, Resident Teacher of the Year Award (2011)
University of South Alabama College of Medicine, Department of Psychiatry, Resident Teacher of the Year Award (2010)
American Academy of Addiction Psychiatry, Travel Scholarship Award (2009)
University of Washington School of Medicine, Honors, 4th Year Neurology Clerkship
University of Washington School of Medicine, Honors, 4th Year Psychiatry Subinternship
University of Washington School of Medicine, Honors, 4th Year Clinical Cardiology Subinternship
University of Washington School of Medicine, Honors, 4th Year Ambulatory Surgery Clerkship
University of Washington School of Medicine, Honors, 2nd Year Brain and Behavior Course
University of Washington School of Medicine, Honors, 2nd Year CNS Pharmacology Course
University of Washington School of Medicine, Honors, 2nd Year Healthcare Economics Course
University of Washington, Chapter of Phi Beta Kappa
University of Washington, Mary Gates Research Scholar Award
University of Washington, Undergraduate Scholar Award
University of Washington, Department of Economics Scholar Award
University of Washington, NASA Space Grant Scholar Award

TEACHING EXPERIENCE

7/2013-Present

University of South Alabama College of Medicine, Student Academic Services

I am currently giving an annual lecture on anxiolytics for the second year medical students in a series of psychiatry lectures for the neuroscience curriculum.

7/2013-Present

University of South Alabama College of Medicine, Student Academic Services

I am currently giving an annual lecture on antipsychotics for the second year medical students in a series of psychiatry lectures for the neuroscience curriculum.

4/2013-Present

University of South Alabama College of Medicine, Student Academic Services

I am currently presenting an annual lecture on the psychiatric comorbidities of chronic pain to the first year medical students as part of the neuroscience curriculum.

1/2013-Present

University of South Alabama College of Medicine, Student Academic Services

I am currently facilitating a team-based-learning module on mood disorders for both the third year medical students and senior physician assistant students as part of the psychiatry clerkship curriculum.

3/2010-Present

University of South Alabama College of Medicine, Student Academic Services

I am currently giving an annual lecture on mood disorders and suicide for the second year medical students in a series of psychiatry lectures for the neuroscience curriculum. In the past, I have presented a monthly lecture on mood disorders as part of the psychiatry clerkship curriculum.

7/2011-9/2011

University of South Alabama College of Medicine, Department of Psychiatry

I served as the course director for a weekly, hour long didactic and review session for the annual Psychiatry Resident In-Training Exam (PRITE) that all US residents in psychiatry (PGY1-4) take in the fall of each academic year.

7/2010-6/2012

University of South Alabama College of Medicine, Department of Psychiatry

I presented an in-depth lecture on suicide for the first year interns in a series of lectures for the course *PGY1 Risk Assessment*.

7/2010-6/2012

University of South Alabama College of Medicine, Student Academic Services

I facilitated a team-based-learning module on substance use disorders for both the third year medical students and senior physician assistant students as part of the psychiatry clerkship curriculum.

7/2010-6/2012

University of South Alabama College of Medicine, Student Academic Services

I presented a lecture on the basics of pain medicine for both the third year medical students and senior physician assistant students as part of the psychiatry clerkship curriculum.

03/2005-06/2005

University of Washington School of Medicine, Student Academic Services

I served as a graduate teaching assistant for an introductory microbiology course offered to the first year medical students. This involved attending student lectures, lesson planning, review presentations and office hours.

RESEARCH EXPERIENCE

2009-Present

University of South Alabama Mitchell Cancer Institute

I am presently working with principle investigator Thomas W. Butler, M.D., F.A.C.P., Associate Professor of Interdisciplinary Oncology. We are designing a study that will attempt to understand better, and if possible quantify through inflammatory biomarkers, the complex relationship between cancer and depression, while receiving both adjuvant chemotherapy and antidepressant medication.

06/2004-09/2004

University of Washington School of Medicine, Division of Plastic Surgery

Between my first two years of medical school, I worked as a research laboratory assistant in an area of study focused on wound healing. I was responsible for designing experiments which included co-culture cell lines. I then characterized these cells' protein production through Western blots. I concluded my work with a research paper and presentation on this topic.

06/2000-04/2004

University of Washington, Department of Chemistry

I participated in an undergraduate physical chemistry research group studying properties of luminescence. I designed my own experiments, performed them independently and presented my results in both formal presentations and in a publication as a first author submitted to a peer reviewed journal. This opportunity greatly increased my understanding for the scientific process and the challenges of basic research.

PRESENTATIONS

Grenoble S. 50 Shades of Pain: Psychological Impact of Chronic Pain (CME talk). 2014 USA Annual Sickle Cell Regional Conference, Mobile, Alabama.

Freerksen, S., Fasano E., **Grenoble S.** Toxic Epidermal Necrolysis Caused by Lamotrigine: How to Counsel Patients About Risk (poster). American Psychiatric Association Annual Meeting, May 2014, New York City, New York.

Cobia, M., Talerico C., **Grenoble S.** Delusional Disorder: Origins, Treatment and DSM V (poster). Alabama Psychiatric Physicians Association Spring Conference, April 2014, Montgomery, Alabama.

Grenoble S. Chronic Pain & Common Psychiatric Comorbidities (CME talk); 2013 Annual Spring Conference of The Alabama Psychiatric Physicians Association, Montgomery, Alabama.

Grenoble S. Biological Depression: A Chronic Inflammatory Disease? (CME talk); 2011 Annual Spring Conference of The Alabama Psychiatry Society, Montgomery, Alabama.

Grenoble S. Prevention of Neuroleptic-Induced Acute Dystonia (poster); 2010 Annual Spring Conference of The Alabama Psychiatry Society, Montgomery, Alabama.

Grenoble S, Isik F. The Proliferative Effect of Bone Marrow Derived Stem Cells on Major Resident Skin Cells. *University of Washington School of Medicine Independent Investigative Inquiry Project*. Faculty adviser Frank Isik, M.D., Division of Plastic Surgery, University of Washington, 2007

PUBLICATION LIST IN PEER REVIEWED-JOURNALS

Grenoble S, Gouterman M, Khalil G, Callis J, Dalton L. Pressure-sensitive paint (PSP): concentration quenching of platinum and magnesium porphyrin dyes in polymeric films. *Journal of Luminescence*. 2005 May;113(1-2):33-44

Khalil G, Costin C, Crafton J, Jones G, **Grenoble S,** Gouterman M, Callis J, Dalton L. Dual-luminophor pressure-sensitive paint: I. ratio of reference to sensor giving a small temperature dependency. *Sensors and Actuators B: Chemical*. 2004 Jan;97(1):13-21

BOOK CHAPTERS

Simkin D, **Grenoble S.** Pharmacotherapies for Adolescent Substance Use Disorders. *Child and Adolescent Clinics of North America*. 2010 Jul;19(3):591-608.

Praveen Narahari, M.D.
Curriculum Vitae

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3661 Airport Blvd, Apt. 254
Mobile, AL 36608

Education

Undergraduate

06/01/1996 – 06/30/1998; S.S.N. Jr. College, Andhra University, Ongole, AP,
India. Bachelor of Science majoring in Biology, Physics and Chemistry

Medical School

01/11/1999 – 05/30/2005; Kakatiya Medical College, N.T.R. University of Health Sciences,
Warangal, AP, India.
Bachelor of Medicine & Bachelor of Surgery, M.B.B.S.

Graduate School

08/01/2005 – 04/30/2008; Eastern Kentucky University, Richmond, Kentucky.
Master of Science Degree in Community Nutrition

Postgraduate Training

07/01/2009 – 06/30/2010; Internship, Department of Psychiatry, University of South Alabama
College of Medicine, Mobile, Alabama.
07/01/2010 – 03/30/2013 ; Residency, Department of Psychiatry, University of South Alabama
College of Medicine, Mobile, Alabama.

Certification

06/01/2006 – Present: Board Certification: Medical Council of India.
08/01/2008 – Present: Education Commission for Foreign Medical Graduates (ECFMG).
05/01/2012 – Present: Suboxone/ Buprenorphine Certification.
07/01/2013 – present : Board Eligible (American board of psychiatry and neurology).

Medical Licensure

08/10/2011 – 01/31/2014: M.D. License in the State of Florida.
01/01/2010 – 12/31/2013: M.D. License in the State of Alabama.

Professional Memberships

American Psychiatric Association
Alabama Psychiatric Physicians Association
Mobile Bay Psychiatric Society
Phi Kappa Phi

Praveen Narahari

Medical Honors/Awards

- 10/19/2012:** Best Poster Presentation awarded by the Alabama Psychiatric Physicians Association (APPA); Fall Conference, Mobile, Alabama.
- 05/15/2012:** Best Poster Presentation award by the APPA; Spring Conference, Montgomery, Alabama.
- 04/01/2012:** Elected as Graduate Medical Education Committee Resident Representative for academic year 2012-2013.
- 02/25/2012:** Elected as chief resident for 2012-2013 academic year.
- 01/10/ 2011:** Distinguished Performance Award, in the Psychiatry Resident-In- Training Exam for scoring 97 percentile in neurology.
- 05/11/2010:** Best community service award, Department of Psychiatry, University of South Alabama, Mobile, AL.
- 04/2004- 04/2005:** Interns Association President, Kakatiya Medical College.

Hobbies and Interest

Playing tennis & cricket, traveling, movies, political news.

Publications/ Presentations

Manuel F. Casanova MD^{1,*}, Ayman El-Baz PhD², Eric Vanbogaert², Praveen Narahari¹, Andrew Switala¹: A Topographic Study of Minicolumnar Core Width by Lamina Comparison between Autistic Subjects and Controls: Possible Minicolumnar Disruption due to an Anatomical Element In-Common to Multiple Laminae, Brain Pathology, Volume 20, Issue 2, pages 451-458, March 2010.

M.F.Casanova, P. Narahari, A. El-Bazb, E.Vanbogaert. Minicolumnar width: Comparison Between Supragranular and Infragranular Layers, Journal of Neuroscience Methods, 2009, Volume 184 , Issue 1, Pages 19-24.

P. Narahari, K. Pensakovic, P. Lindy, L. Engeriser, Shared Psychotic Disorder, Poster Presentation, Alabama Psychiatric Physician Association Semi-Annual Conference, Montgomery, AL.

P. Narahari, L. Engeriser, S. Gatla, Neuroleptic Malignant Syndrome Atypical Presentations, Poster Presentation, Alabama Psychiatric Physician Association Semi-Annual Conference, Mobile, AL.

Praveen Narahari

Current Research Projects

10/01/2012: Prevalence of Manic or Hypo Manic Episode in Patients using CPAP (Continuous Positive Airway Pressure) Machine.

Objective of the study is to find out if there is any relationship between sleep apnea treatment and having a manic and hypomanic episode.

04/01/2012: Prevalence of Substance Abuse in Patients Receiving Medicare, Medicaid, Tri-care and other social security benefits.

Volunteer Experience

05/01/2008 – 12/30/2008; Research Assistant, Department of Psychiatry, University of Louisville, Louisville, Kentucky.

05/01/2008 – 12/30/2008; Externship in Department of Psychiatry, University of Louisville, Louisville, Kentucky.

01/01/2009 – 05/30/2009; Mental Health Worker, Our Lady of Peace – St. Mary's Healthcare, Louisville, Kentucky.

Work Experience:

1. AltaPointe Health Systems, Inc.: Staff Psychiatrist, July 1, 2013 – present.

Duties include: Admission, diagnosis, evaluation and treatment of psychiatric patients within an inpatient and outpatient setting on weekends and holidays.

2. AltaPointe Health Systems, Inc.: Relief Psychiatrist, November 2012 – present.

Duties include: Admission, diagnosis, evaluation and treatment of psychiatric patients within an inpatient and outpatient setting on weekends and holidays.

3. Lakeview Center Inc., Pensacola, FL: Relief Psychiatrist, September 2012 – present.

Duties include: Admission, diagnosis, evaluation and treatment of psychiatric patients within an inpatient and outpatient setting.

References:

William Brooks, MD., Adjunct Professor, Department of Psychiatry, University of South Alabama, Mobile, Alabama. Ph: 251-450-4359; Cell: 251-776-8037.

Luke Engeriser, MD., Adjunct Professor, Program Director, Department of Psychiatry, Ph: 251-450-4359; Cell 251-214-6802.

Sandra narker . vice- chairmen . Department of Psvchiatrv, University of South

**KEY POINTS CONCERNING MENTAL ILLNESS
THAT LAWYERS SHOULD KNOW RELATING
TO INVOLUNTARY COMMITMENT CASES**

DR. SEVERIN GRENOBLE AND
DR. PRAVEEN NARAHARI

ELEMENTS TO ADDRESS
MENTAL HEALTH COMMITMENT PROCEEDINGS

1. INPATIENT COMMITMENT

- A. Respondent is mentally ill (SMI)
- B. As a result of the mental illness, the Respondent poses a real and present threat of substantial harm to self and/or others
- C. The Respondent will, if not treated, continue to suffer mental distress and experience deterioration of the ability to function independently;
- D. The Respondent is unable to make a rational and informed decision as to whether treatment for mental illness would be desirable (INSIGHT IMPAIRED)
- * E. The proposed commitment is the least restrictive and available means of treatment available OR if no treatment is presently available, the proposed commitment is necessary to prevent harm to the Respondent and others

2. OUTPATIENT COMMITMENT

- A. Respondent is mentally ill
- B. The Respondent will, if not treated, continue to suffer mental distress and experience deterioration of the ability to function independently
- C. The Respondent is unable to make a rational and informed decision as to whether treatment for mental illness would be desirable
- D. The proposed commitment is the least restrictive and available means of treatment available

October 1, 1996

Target Population:

Persons who must rely upon public mental health services and who meet the following criteria.

Category A.

Persons who meet the diagnosis and criteria for serious mental illness in Section 1 or who meet the risk listed below in disability criteria for high section 2.

Section 1: Persons who are seriously mentally ill:

Diagnosis: Any diagnosis listed below in combination with at least two criteria from the disability category.

Schizophrenia and Other Psychotic Disorders:

295.xx	Schizophrenia
.30	Paranoid Type
.10	Disorganized type
.20	Catatonic Type
.90	Undifferentiated Type
.60	Residual Type
295.40	Schizophreniform Disorder
295.70	Schizoaffective Disorder
297.1	Delusional Disorder
298.8	Brief Psychotic Disorder
297.3	Shared Psychotic Disorder
298.9	Psychotic Disorder, NOS

Mood Disorders (Major):

296.xx	Major Depressive Disorder
.2x	Single Episode
.3x	Recurrent
296.xx	Bipolar I Disorder
.0x	Single Manic Episode
.40	Most recent Episode Hypomanic
.4x	Most Recent Episode Manic
.6x	Most Recent Episode Mixed
.5x	Most Recent Episode Depressed
.7	Most Recent Episode Unspecified
296.89	Bipolar II Disorder
296.80	Bipolar Disorder, NOS

Anxiety Disorders (Severe):

300.01	Panic Disorder Without Agoraphobia
300.21	Panic Disorder With Agoraphobia
300.22	Agoraphobia without history of Panic Disorder
300.3	Obsessive – Compulsive Disorder

Disability:

Must meet at least two criteria listed below as a result of one of the above diagnoses.

1. Is unemployed, is employed in a sheltered setting, or has markedly limited skills and poor work history.
2. Shows severe inability to establish or maintain personal social support systems.
3. Shows deficits in basic living skills.
4. Exhibits inappropriate social behavior.

Section 2: High Risk:

Must meet one of the criteria below.

1. A person who has a history of DMH/ MR supported inpatient or public residential treatment as a result of an Axis I mental illness diagnosis (excludes mental retardation and substance abuse).
2. A person who without outpatient intervention would become at imminent risk of needing inpatient hospitalization.

Category B:

An individual regardless of diagnosis shall be eligible for one intake per year and pre-hospital screening and crisis intervention as needed.

What is dual diagnosis?

Dual diagnosis is a term used to describe people with mental illness who also have problems with drugs and/or alcohol. The relationship between the two is complex, and the treatment of people with co-occurring substance abuse (or dependence) and mental illness is more complicated than the treatment of either condition alone. This is unfortunately a common situation—many people with mental illness have ongoing substance abuse problems, and many people who abuse drugs and alcohol also experience mental illness.

Certain groups of people with mental illness (e.g., males, individuals of lower socioeconomic status, military veterans and people with more general medical illnesses) are at increased risk of abusing drugs and alcohol. Recent scientific studies have suggested that nearly one-third of people with all mental illnesses and approximately one-half of people with severe mental illnesses (including bipolar disorder and schizophrenia) also experience substance abuse. Conversely, more than one-third of all alcohol abusers and more than one-half of all drug abusers are also battling mental illness.

What is the relationship between substance use and mental illness?

The relationship between mental illness and substance abuse/dependency is complex. Drugs and alcohol can be a form of *self-medication* for people with mental illness experiencing conditions such as anxiety or depression. Unfortunately, while drugs and alcohol may feel good in the moment, abuse of these substances does not treat the underlying condition and, almost without exception, makes it worse. Drugs and alcohol can worsen underlying mental illnesses during both acute intoxication and during withdrawal from a substance. Additionally, drugs and alcohol can cause a person without mental illness to experience the onset of symptoms for the first time.

Abuse of drugs and alcohol always results in a worse prognosis for a person with mental illness. Active users are less likely to follow through with their treatment plans. They are more likely to experience severe medical complications and early death. People with dual diagnosis are also at increased risk of impulsive and violent acts. Those who abuse drugs and alcohol are more likely to both attempt suicide and to die from their suicide attempts.

Individuals with dual diagnosis are less likely to achieve lasting sobriety. They may be more likely to experience severe complications of their substance abuse, to end up in legal trouble from their substance use and to become physically dependent on their substance of choice.

What treatments are available for individuals with dual diagnosis?

Treatment of individuals with dual diagnosis is also complicated. Of primary importance is addressing any life-threatening complications of intoxication. The following situations would require immediate care in a hospital: severe cases of alcohol intoxication; heart problems or stroke caused by use of amphetamines, crack, cocaine and other drugs; overdose on benzodiazapines (e.g., diazepam [valium], clonazepam [klonopin]), opiates (e.g., oxycodone, oxycontin) and other “downers.” Untreated, any of these conditions can lead to death.

Drug and alcohol withdrawal can also lead to medical emergencies requiring immediate treatment. Alcohol withdrawal can result in heart problems (e.g., arrhythmias), seizures or *delirium tremens* (an acute delirious state), all which can be potentially fatal. Benzodiazapine withdrawal can result in tremors (“shakes”), seizures and potentially death. Opiate withdrawal is not thought to be life-threatening in most cases but can be a very traumatic and painful experience.

Many people seek assistance in going through the process of stopping their drug and alcohol abuse. This may include inpatient detoxification involving admission to a hospital—either a general hospital or a detoxification facility—and treatment with the appropriate medications to avoid serious complications of acute drug and alcohol withdrawal.

Multiple scientific studies have shown that psychiatric treatments are more effective in people who are not actively abusing drugs and alcohol. Many options exist for people who are newly sober or who are trying to avoid relapse on drugs and alcohol. These can include inpatient rehabilitation centers or supportive housing. Some people find therapy to be a helpful part of maintaining their sobriety. This can include individual therapy (e.g., cognitive behavioral therapy) as well as self-help groups such as Alcoholics Anonymous, Narcotics Anonymous or Smart Recovery.

Certain medications to help maintain sobriety have been safely tested in multiple studies. For alcoholism, available medications include disulfiram (*Antabuse*), acamprosate (*Campral*) and naltrexone (*Revia*). For opiate abuse, available medications include naltrexone (*Revia*, *Vivitrol*), methadone and buprenorphine (*Subutex*, *Suboxone*). Given how complicated these choices may be, it is necessary for any individual with dual diagnosis and their loved ones to discuss medication management strategies with their doctors.

Families, friends and others can be most helpful in providing empathic and non-judgmental support of their loved one. This can be critically important as a significant majority of people will relapse into drug and alcohol abuse at some point in their lives, even if they are eventually able to achieve long-lasting sobriety. With this support, the proper medical treatment and effective psychosocial treatments, many people with dual diagnosis will be able to actively participate in their journey to recovery.

Reviewed by Ken Duckworth, M.D., and Jacob L. Freedman, M.D., January 2013

What is schizophrenia?

Schizophrenia is a serious mental illness that interferes with a person's ability to think clearly, manage emotions, make decisions and relate to others. Research has linked schizophrenia to changes in brain chemistry and structure. Like diabetes, schizophrenia is a complex, long-term medical illness that affects everybody differently. The course of the illness is unique for each person.

How is schizophrenia diagnosed?

There is no single laboratory or brain imaging test for schizophrenia. Treatment professionals must rule out multiple factors such as brain tumors, possible medical conditions and other psychiatric diagnoses, such as bipolar disorder.

Individuals with schizophrenia have two or more of the following symptoms occurring persistently. However, delusions or hallucinations alone can often be enough to lead to a diagnosis of schizophrenia.

Positive symptoms are also known as "psychotic" symptoms because the person has lost touch with reality in certain ways.

- Delusions or the belief in things not real or true.
- Hallucinations are hearing or seeing things that are not real.
- Disorganized speech expressed as an inability to generate a logical sequence of ideas.

Negative symptoms refer to a reduction of a capacity, such as motivation.

- Emotional flatness or lack of expressiveness.
- Inability to start and follow through with activities.
- Lack of pleasure or interest in life.

Cognitive symptoms pertain to thinking processes.

- Trouble with prioritizing tasks, memory and organizing thoughts.
- Anosognosia or "lack of insight" being unaware of having an illness.

What causes schizophrenia?

Research strongly suggests that schizophrenia involves problems with brain chemistry and structure and is thought to be caused by a combination of genetic and environmental factors, as are many other medical illnesses.

One percent of the world's population or one in every 100 people will develop the disorder in their lifetime. The most common onset is in the teens and 20s. It is uncommon for schizophrenia to be diagnosed before 12 years of age or after the age of 40.

What treatments are available?

The treatment of schizophrenia requires an all-encompassing approach that includes medication, therapy and psychosocial rehabilitation. Medication is an important aspect of symptom management. Antipsychotic medication often helps to relieve the hallucinations, delusions and, to a lesser extent, the thinking problems people can experience.

Therapy has been shown to be an effective part of a treatment plan. Cognitive behavioral therapy (CBT), which engages the person living with schizophrenia in developing proactive coping strategies for persistent symptoms, is particularly effective. Cognitive enhancement therapy works with improving cognition.

Psychosocial rehabilitation helps with the achievement of life goals often involving relationships, work and living. Most often delivered through community mental health services, it employs strategies that help people successfully live in independent housing, pursue education, find jobs and improve social interaction.

Will people with schizophrenia get better?

Long-term research demonstrates that, over time, individuals living with schizophrenia often do better in terms of coping with their symptoms, maximizing their functioning while minimizing their relapses. Recovery is possible for most people, though it is important to remember that some people have more trouble managing their symptoms.

Families who are educated about schizophrenia can offer strong support to their loved one and help reduce the likelihood of relapse. Caring for a loved one with schizophrenia can be challenging and families benefit from education and supportive programs. NAMI's Family-to-Family education program is taught by families who have first-hand experience and provides education and support nationwide through NAMI State Organizations and Affiliates.

Reviewed by Ken Duckworth, M.D., April 2013

What is schizoaffective disorder?

Schizoaffective disorder is a serious mental illness that affects about one in 100 people. Schizoaffective disorder as a diagnostic entity has features that resemble both schizophrenia and also serious mood (affective) symptoms. Many of the strategies used to treat both schizophrenia and affective conditions can be employed for this condition. These include antipsychotic and mood stabilizing medications, family involvement, psychosocial strategies, self-care peer support, psychotherapy and integrated care for co-occurring substance abuse (when appropriate).

A person who has schizoaffective disorder will experience delusions, hallucinations, other symptoms that are characteristic of schizophrenia and significant disturbances in their mood (e.g., affective symptoms). According to the *DSM-IV-TR*, people who experience more than two weeks of psychotic symptoms in the absence of severe mood disturbances—and then have symptoms of either depression or bipolar disorder—may have schizoaffective disorder. Schizoaffective disorder is thought to be between the bipolar and schizophrenia diagnoses as it has features of both.

Depressive symptoms associated with schizoaffective disorder can include—but are not limited to—hopelessness, helplessness, guilt, worthlessness, disrupted appetite, disturbed sleep, inability to concentrate, and depressed mood (with or without suicidal thoughts). Manic symptoms associated with schizoaffective disorder can include increased energy, decreased sleep (or decreased need for sleep), distractibility, fast (“pressured”) speech, and increased impulsive behaviors (e.g., sexual activities, drug and alcohol abuse or gambling).

While it is a hot-topic of debate within the mental health field, most experts believe that schizoaffective disorder is a type of chronic mental illness that has psychotic symptoms at the core and with depressive and manic symptoms as a secondary—but equally debilitating—component. Because it consists of a wide range of symptoms, some people may be inappropriately diagnosed with schizoaffective disorder. This is problematic because it can lead to unnecessary treatments, specifically medication-treatment with antipsychotics when they are *not* otherwise indicated.

People who have depression or mania as their primary mental illness may experience symptoms of psychosis (including disorganized speech, disorganized behavior, delusions, or hallucinations) during severe episodes of their mood disorder but will not have these symptoms if their mood disorder is well treated. Sometimes people with other mental illnesses including borderline personality disorder may also be incorrectly diagnosed with schizoaffective disorder. This further underscores how important it is to have regular and complete mental health assessments from one’s doctors, preferably over time so that patterns of what is happening and what works can be fully understood together.

What treatments are available?

For most people with schizoaffective disorder, treatment will be very similar to treatment of schizophrenia and will include antipsychotic medications to help address symptoms of psychosis. Finding the right type and dose of antipsychotic medication is important and requires collaboration with a doctor. In some cases, people with schizoaffective disorder will be offered treatment with long-acting-injectable (also called *LAI*, *decanoate*) formulations of antipsychotic medications. These FDA approved medications—including haloperidol (Haldol Decanoate), risperidone (Risperdal Consta), paliperidone (Invega Sustenna)—are given in the form of an intramuscular injection (“shot”) approximately once or twice each month and have been shown to decrease the rates of relapse and hospitalization.

Treatments such as cognitive behavioral therapy to target psychotic symptoms, support groups including NAMI’s Family-to-Family to increase family and community support, peer support and connection, and work-and-school rehabilitation, such as social skills training, are very helpful for people with schizoaffective disorder. Maintaining a healthy lifestyle is also of critical importance: the role of good sleep hygiene, regular exercise, and a balanced diet cannot be underestimated. Omega-3 fatty acids (commonly marketed as “Fish Oil”) are an over-the-counter supplement that some may find useful.

Symptoms of depression—in people with schizoaffective disorder—may be treated with antidepressant medications or lithium in addition to antipsychotic medications. People with bipolar symptoms may be treated with mood-stabilizers such as lithium or anti-convulsants, including valproic acid (Depakote), lamotrigine (Lamictal), and carbamazepine (Tegretol), in addition to their antipsychotic medications.

There are some studies that suggest that older (“first-generation,” “typical”) antipsychotic medications are not as effective in controlling the mood symptoms associated with schizoaffective disorder as newer (“second-generation,” “atypical”) antipsychotic medications. Newer antipsychotic medications may be less likely to cause side effects such as tardive dyskinesia but they are more likely to cause weight gain, high cholesterol, and increased blood sugars, which can lead to diabetes. Given how complicated these choices may be, it is necessary for any individual with schizoaffective disorder and their loved ones to discuss medication management strategies with their doctors.

Families, friends, and others can be most helpful in providing empathic and non-judgmental support of their loved one. With this support, the proper medications, and effective psychosocial treatments, many people with schizoaffective disorder will do well and will be able to actively participate in a recovery journey.

Reviewed by Ken Duckworth, M.D., and Jacob L. Freedman, M.D., November 2012

What is bipolar disorder?

Bipolar disorder is a chronic illness with recurring episodes of mania and depression that can last from one day to months. A manic state can be identified by feelings of extreme irritability and/or euphoria, and during an episode of mania several other symptoms can occur at the same time, such as agitation, surges of energy, reduced need for sleep, talkativeness, pleasure-seeking and increased risk-taking behavior. The other state, depression, produces feelings of extreme sadness, hopelessness and lack of energy. Not everyone's symptoms are the same and the severity of mania and depression can vary.

More than 10 million Americans have bipolar disorder. Because of its irregular patterns, bipolar disorder is often hard to diagnose. Although the illness can occur at any point in life, more than one-half of all cases begin between ages 15 to 25. Bipolar disorder affects men and women equally.

How is bipolar disorder diagnosed?

As with all types of illness, a doctor must be seen to provide a proper diagnosis. Unfortunately, there is no simple blood test or brain scan that identifies bipolar disorder. The doctor will rule out other causes such as a hyperthyroidism. If other medical conditions are not diagnosed, a mental health professional such as a psychiatrist needs to be consulted.

A psychiatrist diagnoses bipolar disorder using the *Diagnostic and Statistical Manual of Mental Disorders* (DSM), and observing a spectrum of symptoms.

Symptoms of mania can include:

- Feeling overly happy for an extended period of time.
- An abnormally increased level of irritability.
- Overconfidence or an extremely inflated self-esteem.
- Increased talkativeness.
- Decreased amount of sleep.
- Engaging in risky behavior, such as spending sprees and impulsive sex.
- Racing thoughts, jumping quickly from one idea to another.
- Easily distractible.
- Feeling agitated or "jumpy."

Symptoms of depression can include:

- Diminished capacity for pleasure or loss of interest in activities once enjoyed.
- A long period of feeling hopeless, helpless or low self-esteem.
- Decreased amount of energy, feeling constantly tired.
- Inability to concentrate and make simple decisions.

- Changes in eating, sleeping or other daily habits.
- Being agitated or slowed down in movement, speech or thought.
- Thoughts of death or suicide attempts.

The states of mania and depression can occur in distinct episodes or can switch rapidly, even multiple times in one week. A person who is experiencing a severe bipolar episode of mania or depression may also have psychotic symptoms such as hallucinations or delusions.

What are the treatments for bipolar disorder?

Recognition and diagnosis of the disorder in its earliest stages is important so effective treatment can begin. Effective treatment plans usually include medication, psychotherapy, education, self-management strategies and external supports such as family, friends and formal support groups.

Medication is effective in the stabilization and treatment of bipolar disorder. However, not everyone responds to medications in the same way, and often, multiple types of medication must be assessed in order to find the one, or ones, that are the most effective for an individual. Medications used to treat bipolar disorder often include mood-stabilizing medications, second-generation antipsychotics and standard antidepressant medications. For the most up-to-date information on use and side effects contact the U.S. Food and Drug Administration (FDA) at www.fda.gov.

Psychotherapy and other interventions are essential components in the treatment of bipolar disorder. Most useful psychotherapies generally focus on understanding the illness, learning how to cope and changing ineffective patterns of thinking. Cognitive Behavioral Therapy (CBT) is one popular example.

Family-focused therapy involves family members or friends in supportive roles. They participate by learning about the illness, and in developing and carrying out a treatment plan of the person's choosing. This is known as family-focused therapy.

What does recovery look like?

The recovery journey is unique for each individual. There are several definitions of recovery; some grounded in medical and clinical values, some in the context of community and successful living. The most important principle of recovery is this: *Recovery is a process, not an event.* The uniqueness and individual nature of recovery must be honored.

Serious mental illness impacts individuals in many challenging ways, the concept that all individuals can move towards wellness is paramount.

Reviewed by Ken Duckworth, M.D., April 2013

What is major depression?

The normal human emotion we sometimes call "depression" is a common response to a loss, failure or disappointment. Major depression is different. It is a serious emotional and biological disease that affects one's thoughts, feelings, behavior, mood and physical health. Depression is a life-long condition in which periods of wellness alternate with recurrences of illness and may require long-term treatment to keep symptoms from returning, just like any other chronic medical illness.

All age groups and all racial, ethnic and socioeconomic groups can experience major depression. Some individuals may only have one episode of depression in a lifetime, but often people have recurrent episodes. If untreated, episodes commonly last anywhere from a few months to many years. An estimated 25 million American adults are affected by major depression in a given year, but only one-half ever receive treatment.

What are the symptoms of major depression and how is it diagnosed?

Depression can be difficult to detect from the outside, but for those who experience major depression, it is disruptive in a multitude of ways. It usually causes significant changes in how a person functions in many of the following areas:

- Changes in sleep. Some people experience difficulty in falling asleep, waking up during the night or awakening earlier than desired. Other people sleep excessively or much longer than they used to.
- Changes in appetite. Weight gain or weight loss demonstrates changes in eating habits and appetite during episodes of depression.
- Poor concentration. The inability to concentrate and/or make decisions is a serious aspect of depression. During severe depression, some people find following the thread of a simple newspaper article to be extremely difficult, or making major decisions often impossible.
- Loss of energy. The loss of energy and fatigue often affects people living with depression. Mental speed and activity are usually reduced, as is the ability to perform normal daily routines.
- Lack of interest. During depression, people feel sad and lose interest in usual activities.
- Low self-esteem. During periods of depression, people dwell on memories of losses or failures and feel excessive guilt and helplessness.
- Hopelessness or guilt. The symptoms of depression often produce a strong feeling of hopelessness, or a belief that nothing will ever improve. These feelings can lead to thoughts of suicide.
- Movement changes. People may literally look "slowed down" or overly activated and agitated.

Mental healthcare professionals use the criteria for depression in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)* to develop a diagnosis.

There is a strong possibility that a depressive episode can be a part of bipolar disorder. Having a physician make the right distinction between unipolar major depression and bipolar depression is critical because treatments for these two depressive disorders differ.

What treatments are available?

There are three well-established types of treatment for major depression:

- **Medications.** Medications often effectively control the serious symptoms of depression. It often takes two to four weeks for antidepressant medications to have their full effect.
- **Psychotherapy.** Several types of psychotherapy have been shown to be effective for depression, including cognitive behavioral therapy (CBT) and interpersonal therapy (IPT). Support groups offer opportunities to share frustrations and successes, referrals to specialists and community resources, and information about what works best when trying to recover. Research has shown that mild to moderate depression can often be treated successfully with either medication or psychotherapy alone but that both together are often more helpful. Severe depression appears more likely to respond to a combination of medication and psychotherapy.
- **Electroconvulsive therapy (ECT).** ECT is a highly effective treatment for select severe depression episodes and for severe depression with psychosis. When medication and psychotherapy are not effective in treating severe symptoms (e.g., acute psychosis or thoughts of suicide) or if a person cannot take antidepressants, ECT may be considered. Memory problems can follow ECT treatments, so a careful risk-benefit assessment needs to be made for this intervention.

Other forms of treatment that may be helpful, either combined with the more traditional treatments or alone, include transcranial magnetic stimulation (TMS), aerobic exercise, and complementary and alternative medicine.

As devastating as this disease may be, it is very treatable in most people. Today the availability of treatment and understanding of depression has lessened the barriers that can prevent early detection, diagnosis and decision to seek treatment.

Reviewed by Ken Duckworth, M.D., April 2013

What is borderline personality disorder (BPD) and how is it diagnosed?

Borderline personality disorder is diagnosed by mental health professionals following a comprehensive psychiatric interview that may include talking with a person's previous clinicians, review of prior records, a medical evaluation, and when appropriate, interviews with friends and family. There is no specific single medical test (e.g., blood test) to diagnose BPD and a diagnosis is not based on a single sign or symptom.

Individuals with BPD have several of the following symptoms, detailed in the *DSM-IV-TR*:

- Marked mood swings with periods of intense depressed mood, irritability and/or anxiety lasting a few hours to a few days.
- Inappropriate, intense or uncontrollable anger.
- Impulsive behaviors that result in adverse outcomes and psychological distress, such as excessive spending, sexual encounters, substance use or shoplifting.
- Recurring suicidal threats or non-suicidal self-injurious behavior, such as cutting.
- Unstable, intense personal relationships, sometimes alternating between "all good," *idealization* and "all bad," *devaluation*.
- Persistent uncertainty about self-image, long-term goals, friendships and values.
- Chronic boredom or feelings of emptiness.
- Frantic efforts to avoid abandonment.

BPD is relatively common—about 1 in 20 or 25 individuals will live with this condition. Historically, BPD has been thought to be significantly more common in females, however recent research suggests that males may be almost as frequently affected by BPD.

What is the cause of borderline personality disorder?

The exact causes of BPD remain unknown, although the roles of both environmental and biological factors are thought to play a role. While no specific gene has been shown to directly cause BPD, a number of different genes have been identified as playing a role in its development. The brain's functioning, as seen in MRI testing, is often different in people with BPD, suggesting that there is a neurological basis. A number of hormones (including oxytocin) and signaling molecules within the brain (e.g., neurotransmitters including serotonin) have been shown to potentially play a role in BPD.

The connection between BPD and other mental illnesses is well established. People with BPD are at increased risk for anxiety disorders, depressive disorders, eating disorders, and substance abuse. BPD is often misdiagnosed and many people find they wait years to get a proper diagnosis, which leads to a better care plan.

What are the treatments for borderline personality disorder?

Psychotherapy is the cornerstone of treatment for individuals who live with BPD. Dialectical behavioral therapy (DBT) is the most well researched and effective treatment for BPD. DBT focuses on teaching *coping skills* to combat destructive urges, encourages practicing mindfulness (e.g., meditation, regulated breathing and relaxation), involves individual and group work, and is quite successful in helping people with BPD to control their symptoms.

While cognitive behavioral therapy (CBT), psychodynamic psychotherapy and certain other psychosocial treatments are useful for some people with BPD, the majority of people with this illness will find dialectical behavioral therapy (DBT) to be the most useful form of psychotherapy. Medications can be an important component to the care plan, yet it is important to know that there is no single medication treatment that can “cure” borderline personality disorder. Furthermore, no medication is specifically approved by the FDA for the treatment of BPD. Medications are however useful in treating specific symptoms in BPD. Off label use of a number of medications may help manage key symptoms, such as valproate (Depakote), that may be useful in decreasing impulsivity, omega-3 fatty acids (fish oil) that may be helpful in decreasing mood fluctuations, and naltrexone (Revia), which has helped some people decrease their urges for self-injury.

While not usually indicated for the chronic symptoms of BPD, short-term inpatient hospitalization may be necessary during times of extreme stress, impulsive behavior, or substance abuse. In other cases however, inpatient psychiatric hospitalization may be paradoxically detrimental for some people with BPD. The support of family and friends is of critical importance in the treatment of BPD as many people with this illness may isolate themselves from these relationships in times of greatest need. With the support of family and friends, involvement in ongoing treatment, and efforts to live a healthy lifestyle—regular exercise, a balanced diet and good sleeping habits—most people with BPD can expect to experience significant relief from their symptoms.

Will people with borderline personality disorder get better?

Recent research based on long-term studies of people with BPD suggests that the overwhelming majority of people will experience significant and long-lasting periods of symptom remission in the lifetime. Many people will not experience a complete recovery, but nonetheless will be able to live meaningful and productive lives. Many people will require some form of treatment—whether medications or psychotherapy—to help control their symptoms even decades after their initial diagnosis with borderline personality disorder.

Reviewed Ken Duckworth, M.D., and Jacob L. Freedman, M.D., November 2012

Mobile County Probate Court

Educational Material For Attorneys
By
Narahari , MD. & Grenoble, MD.

Psychotic disorders & psychosis

Common symptoms of psychosis

- Delusions
- Hallucinations- Auditory, Visual, Olfactory(smelling) , and Tactile (snakes/bugs crawling)
- Losing Sense of Reality
- Disorganization of Thought
- Thought Blocking
- Disorganized behavior

Major psychiatric illness which can present with psychosis

- Schizophrenia
- Major Depression with psychosis
- Bipolar Disorder with psychosis
- Schizoaffective disorder
- Dementia with psychosis
- Delirium
- Substance induced(drugs : legal or illegal)

How long the symptoms last

- It varies from patient to patient and type of illness
- Can last for one day or life long
- What is the role of Medication : can alleviate completely or subside or may not be effective at all .
- What is the role of physician as an expert : determine whether this patient is imminent risk of self harm or harming other due to his current symptoms. (That includes whether patient able to take care of him self and what kind of support system needed.)

Video of a patient with psychosis

- [https://www.youtube.com/watch?v=\]PxZYvUfOFg](https://www.youtube.com/watch?v=]PxZYvUfOFg)

What is Delusion and its types

- A delusion is a belief held with strong conviction despite superior evidence to the contrary.
- **Bizarre delusions** : A delusion that is very strange and completely implausible,(Eg : aliens have removed my brain or kept a chip in my brain.)
- **Non bizarre delusions** : A delusion that, though false, is at least possible (Eg: my partner cheatings on me , police doing surveillance on me.)

Subtypes for Delusional Disorder

Based on prominent delusional theme:

- **Erotomaniac**: belief that another person, usually of higher status, is in love with you
- **Grandiose**: belief that you have inflated worth, power, knowledge, identity, or a special relationship to a prominent person
- **Jealous**: belief that lover is unfaithful
- **Persecutory**: belief that you're being treated malevolently, e.g. cheated, conspired against, poisoned, spied on
- **Somatic**: belief that you have a physical defect or general medical condition
- **Mixed**: >1 of above themes; no 1 theme predominates
- **Unspecified**: central theme doesn't fit other types

Schizophrenia patient having delusions

- It is one of the symptoms
- Along with it patients usually have one or more additional symptoms (Eg: hallucination , disorganized thinking or behavior, negative symptoms.)
- The delusions can be bizarre or non-bizarre but most of the time bizarre.
- Patients overall social and functional capacity decreases significantly because of above symptoms.

Delusional Disorder

- Presence of 1 or more non-bizarre delusions (involve plausible situations, e.g. being followed, poisoned, infected, loved at a distance, betrayed by a lover, or having a disease) of at least 1 month's duration.
- Aside from impact of delusion(s), functioning is not markedly impaired and behavior is not obviously odd or bizarre.
- (Eg : A Married Scholl teacher thinks principal in love with her, but she continue to perform her work and home duties with out much interference.)
- (Note : Per DSM V : delusional disorder no longer required that the delusion is non bizarre.)

Personality Disorder

- characterized by enduring maladaptive patterns of behavior, cognition and inner experience, exhibited across many contexts and deviating markedly from those accepted by the individual's culture.

Prevalence

- | | | | |
|---------------|------|----------------|-------|
| • OCPD | 2% | • Avoidant | 1-2% |
| • Paranoid | 2% | • Histrionic | 2% |
| • Antisocial | 1-4% | • Borderline | 2-3% |
| • Schizoid | 1%? | • Dependent | 0.5% |
| • Schizotypal | 1% | • Narcissistic | .5-1% |

Paranoid personality d/o

- characterized by paranoia and a pervasive, long-standing suspiciousness and generalized mistrust of others.
- Ex: “ people are gossiping about me , they hate me , betray me. People are picking on me.”

Changes in DSM - V that affects probate court proceedings .

- some changes in naming and subtyping but no major changes over all .
 - Eg : Alcohol abuse and dependence now called as Alcohol use disorder (mild / moderate/ severe)
 - Dementias now called as – Nuero-cognitive disorders .
 - The DSM-IV subtypes of schizophrenia (i.e., paranoid, disorganized, catatonic, undifferentiated, and residual types) are eliminated due to their limited diagnostic stability, low reliability, and poor validity.
- No Multi Axial system and No GAF .

<http://www.dsm5.org/Documents/changes%20from%20dsm-iv-tr%20to%20dsm-5.pdf>

Questions

Thank You

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QUALIFICATION AND EXAMINATION OF MEDICAL EXPERT WITNESSES

Alabama law provides that the rules of evidence applicable in other judicial proceedings in this state shall be followed in involuntary commitment proceedings. See *Ala. Code* §§ 22-52-9, 22-52-37(a)9 (1975). As such, the key rules you should familiarize yourself with when qualifying and examining medical expert witnesses in involuntary commitment cases are Alabama Rules of Evidence 702, 703, 704 and 705.

Alabama Rule of Evidence 702 was amended in 2011 in response to the Legislature's amendment of Alabama Code § 12-21-160. The legislation amending § 12-21-160, sponsored by then Senator Ben Brooks, was meant to transition Alabama courts, with respect to admissibility of expert testimony, from the use of the *Frye* standard to the *Daubert* standard. The *Daubert* standard, put very simply, requires you to establish an expert's methodology, and show that it is sound, before their testimony may be admitted. However, when Rule 702 was amended, it specifically stated that the *Daubert* portion of the Rule does not apply to cases in the probate courts. Thus, for purposes of involuntary commitment cases, we need only look to Section (a) of Rule 702 (which was the entire 702 prior to the 2011 amendment).

Section (a) of Rule 702 states as follows: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

Case law indicates that the questions of whether an individual is qualified as an expert and whether, if so qualified, the witness can give expert opinion testimony on the subject in question, is left to the sound discretion of the trial judge.

Rule 703 (Bases of Opinion Testimony by Experts): "The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to the expert at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted. Facts or data that are otherwise inadmissible shall not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert's opinion substantially outweighs their prejudicial effect."

This rule was recently amended and became effective October 1, 2013. It now mirrors Federal Rule of Evidence 703.

Rule 704 (Opinion on Ultimate Issue): "Testimony in the form of an opinion or inference otherwise admissible is to be excluded if it embraces an ultimate issue to be decided by the trier of fact."

Expert opinions upon ultimate issues are inadmissible if the opinion involves a legal definition or conclusion but, according to the Advisory Committee, Rule 704 has not abrogated preexisting case law liberalizing the application of the ultimate issue rule.

Rule 705 (Disclosure of Facts or Data Underlying Expert Opinion): “The expert may testify in terms of opinion or inference and give reasons therefor without first testifying to the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.”

This rule allows the expert to give an opinion without the necessity of setting out the supporting facts. The general rule seems to be that because of the length of time it is not necessary to require the expert to do this. It is left to the cross-examiner to elicit whatever facts or data on which the opinion is based and the expert, if asked, must disclose such information.

A. Qualifying the Medical Expert Witness

- 1) Educational background – undergraduate, medical school, residency
- 2) Specialized training
- 3) Board certifications
- 4) Medical license
- 5) Length/description of practice
- 6) Prior expert testimony

B. Basis for Opinions

- 1) Familiarity with Respondent
- 2) Review of prior treatment, if any
- 3) Personal interaction with Respondent
- 4) Treatment of Respondent
- 5) Recommendation for further treatment

C. Opinions Regarding Commitment

- 1) Outpatient Commitment
 - a. Respondent is mentally ill

- b. Treatment is available for Respondent's mental illness
- c. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently
- d. Respondent is unable to make a rational and informed decision as to whether or not treatment for his/her mental illness would be desirable
- e. Outpatient commitment is the least restrictive and available form of treatment for Respondent's mental illness

2) Inpatient Commitment

- a. Respondent is mentally ill
- b. Respondent poses a real and present threat of substantial harm to self and/or others
- c. Treatment is available for Respondent's mental illness OR if there is no available treatment, confinement is necessary for Respondent's and the community's safety and well-being
- d. Respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently
- e. Respondent is unable to make a rational and informed decision as to whether or not treatment for his/her mental illness would be desirable
- f. Inpatient commitment is the least restrictive and available form of treatment for Respondent's mental illness

D. Cross Examination

- 1) Review of all prior medical records
- 2) Amount of personal interaction with Respondent
- 3) Exploration of other possible causes for actions described in the Petition
- 4) Basis for diagnosis/opinions
- 5) Sufficiency of treatment since probable cause hearing
- 6) Examples of less restrictive forms of treatment considered

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McGill Institute 1966
Spring Hill College 1970 (summa cum laude)
Duke Law School 1973
Northwestern University School of Law Prosecution School 1974
National Association of District Attorney's Career Prosecutor Course 1975
Toolen Institute for Parish Services (TIPS), Diploma in Lay Ministry 1990-1992

Educator

Professor at Troy State University at Bay Minette 1975-1978 in undergraduate and graduate school in Criminal Justice curriculum
Alabama Judicial College, 1979 on the newly enacted criminal code
Alabama State Bar Presentation to Annual Convention 1979 on the newly enacted criminal code
Ad Hoc Instructor with the TIPS program, Archdiocese of Mobile 1993-2006

Career

1973-1974 Hamilton, Butler, Riddick & Latour, associate
1974-1979 Asst District Attorney, Mobile County
1979-1980 Deputy Attorney General of State of Alabama
1981-1986 Special Assistant Attorney General to prosecute two massive security fraud cases which lead to conviction and incarceration of two "ministers" who defrauded numerous elderly in two separate security fraud cases in Mobile, Al.
1981 to present Private Practice of Law, Mobile, Alabama with practice initially in both criminal and civil practice but after 1995 exclusively in a broad based general civil practice in Mobile and Baldwin County, Alabama

LEGAL CONSIDERATIONS IN MENTAL HEALTH CASES

I. Duty of the Guardian Ad Litem to represent his client in a civil involuntary commitment case

This CLE presentation relates to practical pointers that you should consider when you represent a client involved in mental health cases before the Probate Court. I first became involved in these cases after Lynch v. Baxley, 386 F. Supp. 378 (M. D. Alabama 1974) when I was an Assistant District Attorney. Our office was given the responsibility of re-committing all of those who were released pursuant to the decision. Lynch v. Baxley set out the standards that relate to civil commitment, and you should be aware of these legal standards. Since the purpose of this CLE presentation is not to set out the law but to suggest points to consider in these cases, the law is not set out with one exception, the law that applies to the lawyers who represent the alleged incompetent as the Guardian Ad Litem ("GAL"):

The subject of an involuntary civil commitment proceeding has the right to the effective assistance of counsel at all significant stages of the commitment process. (Citations omitted) . Further, he has the right to be advised of his right to counsel, In re Gault, 387 U.S. at 42, 87 S.Ct. 1428, and to the appointment of counsel if indigent. (Citations omitted) Counsel must be made available far enough in advance of the final commitment hearing to ensure adequate opportunity for preparation. In order to aid counsel in the effective presentation of his client's interests, the names of the examining physicians and all others who may testify in support of the petition to commit must be made available to counsel in advance of the hearing, and he must be afforded a reasonable opportunity to inspect any documents and records pertaining to the case. . . The right to counsel is a right to representative counsel occupying a traditional adversarial role. Where state law requires or permits the appointment of a GAL, such appointment shall be deemed to satisfy the constitutional right to counsel if, but only if, the appointed guardian is a licensed attorney and occupies a truly adversary position.

A. minimum duties of the GAL

This citation from Lynch v. Baxley makes clear the minimum duties of the GAL:

- 1. adequate opportunity for preparation.**
- 2. the names of the examining physicians and all others who may testify in support of the petition to commit** must be made available to counsel in advance of the hearing,
- 3. and he must be afforded a reasonable opportunity to inspect any documents and**

records pertaining to the case. . . The right to counsel is a right to representative counsel occupying a traditional adversarial role.

B. Obtain all documents and records pertaining to the case

To perform these requirements, each GAL must first obtain all documents and records pertaining to the case. AltaPointe is the entity that provides the expert testimony and the related documents in the cases. As Lynch makes clear, “The right to counsel is a right to representative counsel occupying a traditional adversarial role.” Clearly, you cannot as a matter of law passively accept the statements or conclusions of AltaPointe or its employees. To do your duty, you must first obtain all documents that relate to the case. In fulfilling this duty, you must never assume that AltaPointe has provided you with all of the documents that relate to the case. Often, the opposite occurs. You must go over the documents with your witnesses to determine if any events occurred not reflected in the documents. This preparation will point you towards documents which were not provided to you. AltaPointe and its employees who are in charge of the records of AltaPointe do not always provide all of the documents that relate to the persons who are under their care, custody, control.

C. Examine very closely the contents of the records after you have all of the records.

After you have closely examined the records and have reviewed the records with your witnesses and feel that you have all of the records, you then should examine very closely the contents of the records. In your adversarial capacity, you must not assume that AltaPointe or its employees are correct in what they may say or represent to you in the records. Use your common sense and professional skills to examine the records closely. While you review the records, you should consider a number of topics.

1. Do the records suggest that AltaPointe omitted to do any matters that are required to meet the very high burden of proof which is “clear and convincing evidence” ?

First, did AltaPointe omit to do any matters that are required in this specific case. Stated differently, did AltaPointe let any matters fall through the cracks when it comes to your commitment case and the treatment of the Respondent in your commitment case? If additional work is required to evaluate your client, raise that issue first with AltaPointe and then with the court as this issue will go to the failure to bear the very high burden of proof of clear and convincing evidence applicable to involuntary commitment cases.

“Clear and convincing evidence” is a higher standard of persuasion than required in many other types of civil law matters. “Clear and convincing” evidence has been defined as “evidence, when weighed against evidence in opposition, will produce in the mind of the trier of fact a firm conviction as to each essential element of the claim and a high probability as to the correctness of

the conclusion. Proof by clear and convincing evidence requires a level of proof greater than a preponderance of the evidence or the substantial weight of the evidence, but less than beyond a reasonable doubt." See, Ala. Code § 6-11-20 (1975).¹ See also, Schroeder and Hoffman, Alabama Evidence §3:31 (3d Ed. 2008).

2. List each specific doctor or witness in the medical records

After you have determined that AltaPointe has provided you with all of the records and documents of the case and after you have performed the work necessary to evaluate the case against your client, you should then proceed with the identification of "the names of the examining physicians and all others who may testify in support of the petition to commit." At this time, you must examine the specific documents that relate to each of the examining physicians and all others who may testify.

3. Break down the records into files for each specific doctor or witness by cutting and pasting each relevant entry regarding that doctor or witness into a separate file for that witness.

I believe you should scan all the documents and convert them into a readable format such as Word or Word Perfect. Then you can copy and paste the relevant data entries from each of the records into a separate file for each doctor and each witness. Compiling the records into a separate witness file permits you to examine the specifics within the documents of each examining physicians and each witness who may testify in support of the petition to commit. When these notes are related to the specific witness, you can focus exactly on the facts in the records from each specific witness regarding your client. The documents and medical records set out in this format are much easier to analyze for purposes of cross examination.

4. Advanced Preparation is Required as Day of the Trial is Too Late

Obviously, to perform these tasks to fulfill your duty as GAL, you must prepare in advance of the hearing. If you wait until the last minute, you will not be able to perform these suggested tasks as you will simply not have the time. To focus on a specific file for each specific witness requires time. Thus, your ability to fulfill your duty becomes most difficult if you wait to prepare too late such as the date of the hearing.

D. Consider Closely The Business Records Exception to the Hearsay Rule

Obviously, Altapointe will attempt to introduce its records pursuant to the Business Records Exception to the Hearsay Rule Section 803(6). Since the Business Records Exception to the Hearsay Rule at 803(6), requires that the record "of acts, events, conditions, opinion or diagnoses" must be "made at or near the time" not before the event which is obvious. However,

attorneys must know that since these cases tend to follow a standard operating practice in processing the paper work that medical records can be pasted and copied from similar files or within a file to speed up the paper work process. Obviously, these records would not comply with the Business Records Exception to the Hearsay Rule. Thus, these records that are not prepared to describe a specific transaction in time cannot not be used as a basis for testimony at trial as such records do not comply with the Business Records Exception to the Hearsay Rule. At that point, if the records can be excluded from evidence, there is a strong case that you can make that the Petitioner is unable to bear the high burden of proof required in these cases of clear and convincing evidence. If the medical records cannot be offered into evidence pursuant to the Business Records Exception to the Hearsay Rule, then the attending physician's direct testimony at the merit hearings would be required to bear the high burden of proof required in these cases of clear and convincing evidence.

II. Communicate directly with the Client and Others Before the Trial Date

After the GAL closely reviews and analyzes the content of the documents relating to his client from AltaPointe, he must next communicate directly with his client. Since each client and each case is unique, the GAL must relate to the client as the circumstances permit.

A. Review with Client your analysis of the Records to Obtain Client Perspective

If permissible, the GAL must go over his analysis of the records with the client. The client could provide information which will permit the GAL to interpret various acts of the client that are reported in the records in a way consistent with the interests of the client. Perhaps the Petitioner and/or AltaPointe has misinterpreted various events or statements regarding the client which they deem relevant to involuntary commitment. If the client can provide background information which can be corroborated by other witnesses, the GAL can use this additional information and the revised interpretation of events to support the client's competency. If so, the burden of proof will pose a heavy burden for the Petitioner. Obviously, the GAL must talk with the client days before the hearing in order to be able to develop this type of evidence. The GAL must meet with the client before the day of the hearing in order to develop this potential testimony if it is available.

B. Communicate directly with the Client's Family Before the Trial Date

The petitioner's lawyer (a/ka/ "advocate") should also communicate with the petitioner before the day of the hearing. Generally speaking, if the petitioner is not a member of the Respondent's family, the Advocate should also communicate with the Respondent's family to determine if the family first agrees with the Petition and then to determine if they have and are willing to provide relevant evidence at the hearing. In many cases, the Respondent has no family relatives and if he does, they are often hostile. Obviously, the attorneys should be aware of the potentially emotional reaction of the Respondent's family and guard against provoking

emotional reactions. However, family communication is absolutely necessary.

In communicating with the Respondent's family, you should develop sufficient facts to permit you to consider various types of assessments of the Respondent. You should consider assessments such as the following: the Respondent's risk of danger to self and/or others; the Respondent's ability to accept and be compliant with the proposed treatment; the suitability of the Respondent for the proposed outpatient treatment such as Respondent's living arrangements, location of place of residence, transportation resources, financial resources, including but not limited to the issue of the Respondent's ability to afford the proposed medication and other expenses relating to his treatment.

III. Review of Records to determine if AltaPointe has conducted the proper assessments of the Respondent

Both the attorney for the Petitioner and the GAL should review closely the records that AltaPointe produces to determine if AltaPointe has conducted the proper assessments of the Respondent. In a recent case, AltaPointe prepared the Petition for Involuntary Commitment for a patient AltaPointe was actively treating. The facts set out in the Petition were not in dispute. The petition set out that two incidents involving firearms occurred, one on the campus of a private school in Mobile. Despite the undisputed evidence of incidents involving firearms, a risk assessment as to the propensity for violence and use of firearms was not conducted. This assessment is obviously required in a case such as this one, and the attorneys who represent both parties should set this fact out to the court.

IV. To Incarcerate in a Criminal/penal Facility a Mental Health Patient Who Does Not Have the Competency to Commit a Crime Is a Violation of Both Federal and State Law

To incarcerate in a criminal/penal facility a mental health patient who does not have the competency to commit a crime is a violation of both federal and state law. The GALs should be the watchdog of the Respondents to prevent these violations from occurring and should report these matters to the Court's attention when the GAL becomes aware of criminal incarceration of a known incompetent that the GAL has represented before the Court.

Lee L. Hale
501 Church St.
Mobile, AL 36602

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VIRGINIA "GINGER" POYNTER
207 CHURCH STREET • MOBILE, ALABAMA 36602
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www.gingerpoynterlaw.com

PROFILE

2003 Law school graduate with extensive trial experience. Licensed to practice in Texas and Alabama. Admitted to practice in the 5th and 11th Circuit Courts of Appeal, and the Southern District Court of Alabama. **Fluent in Spanish.**

LEGAL EXPERIENCE

Law Office of Ginger Poynter, LLC

(From 2005-2010 my law firm was named Parker & Poynter Law Firm, LLC, where I performed the same duties)

Attorney, May 2005- Present

- Specializing in Criminal Defense and Family Law
- Have tried numerous felony and misdemeanor trials (including capital murder) in Municipal, District, Circuit and Federal Courts in both Mobile and Baldwin Counties, Alabama
- Handled the Public Defender docket for the Mobile Municipal Court on numerous occasions
- Handled everything from divorce, custody, child support, & UCCJEA cases.
- Handled the Involuntary Commitment Docket in Probate Court as both the Petitioner's attorney and also as Guardian ad Litem.

United States Small Business Association

Attorney, October 2004-March 2005 (Temporary Position)

- Drafted closing documents for disaster recovery loans
- Traveled to disaster areas and represented SBA in loan closings
- In-house counsel

Travis County Attorney's Office

Assistant County Attorney, January 2003-August 2004

- Managed all aspects of criminal cases
 - Assisted lead prosecutor with all gambling cases in Travis County
 - Advised County Attorney on special assignments
-

EDUCATION

Regent School of Law

University of Texas School of Law (visiting student)

JD

- GPA 3.0
- Dean Scholarship
- Regent Law Scholarship
- 2000 Award for Best Attorney in Trial Advocacy Competition
- 2002-2003 Vice-Chairman Trial Advocacy Society

- **Elizabeth City State University**

BA/History

- GPA 3.9
- Recipient History Excellence Award (graduating history major with the highest GPA)

PROFESSIONAL ASSOCIATIONS

- Paul W. Brock Inn of Court
- James C Kent Inn of Court
- 2010-President Mobile Criminal Defense Lawyers' Association
- Former member Texas District & County Attorney Association
- Member of Alabama Criminal Defense Lawyers' Association
- Member of National Criminal Defense Lawyers' Association
- Member of Christian Legal Society
- Member of the Federalist Society

INVOLUNTARY COMMITMENT HEARING FROM THE PETITIONER ATTORNEY'S PERSPECTIVE

PROBABLE CAUSE HEARING

1. Standard of proof is lower.
2. The Court is determining whether or not PC exists to believe that the Respondent is mentally ill and should be evaluated.
3. Hearsay evidence is allowed.
4. 99% of the time, the hearings are not nor should they be adversarial.
5. We are dealing with families in crisis through no fault of their own.

DUTIES OF THE PETITIONER'S ATTORNEY

1. Meet with the Petitioner and go over the petition and get contact information.
2. Explain the procedure and attempt to validate and normalize their feelings.
3. Talk to the GAL and see if the Respondent is going to stipulate to PC
4. Conduct the hearing.
5. Prior to the Merit hearing, contact the appropriate treating facility and review the medical records.
6. Contact the Petitioner and see if they are in agreement with the recommendation

MERIT HEARING

1. Standard of proof is higher (Clear & Convincing)
2. The rules of evidence apply
3. You must qualify the expert and get around hearsay

ELEMENTS THAT MUST BE PROVEN UP

1. The Respondent is mentally ill; and
2. Because of the mental illness the person poses a real and present threat of substantial harm to himself or others; and
3. Respondent will continue to experience mental distress and deterioration of function independently if not treated; and
4. Respondent is unable to make a rational decision regarding treatment; and
5. Treatment is available for the person's mental illness; and
6. The recommendation is the least restrictive alternative available.

STEVEN SCIPLE, ESQ.

Steven D. Sciple is a graduate of Mississippi College School of Law. Prior to practicing law, Steven taught school, was a school counselor, and worked in a residential treatment facility for violent and aggressive children under thirteen. Steven's practice primarily focuses in the areas of involuntary commitments, guardianships, conservatorships, and criminal defense. Steven also does contract work for Stokes & Clinton, PC in Mobile, Alabama, focusing on subrogation and debt collection. In his spare time, Steven is a collegiate tennis official and very interested in android and legal technology.

GUARDIAN AD LITEM INVOLUNTARY COMMITMENT TIPS

Role:

§22-52-4(a) “...to represent and to protect the rights of the respondent...”

Evidentiary Standards:

Probable Cause: §22-52-8 “...finds that probable cause exists that the respondent should be detained temporarily and finds that temporary treatment would be in the best interest of the respondent...”

Merit Hearing: §22-52-10.1 “...clear and convincing evidence, that the respondent meets the criteria for involuntary commitment...”

Criteria:

Outpatient: §22-52-10.2 “... (i) the respondent is mentally ill; (ii) as a result of the mental illness the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and (iii) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.”

Inpatient: §22-52-10.4 “... (i) the respondent is mentally ill; (ii) as a result of the mental illness the respondent poses a real and present threat of substantial harm to self and/or others; (iii) the respondent will, if not treated, continue to suffer mental distress and will continue to experience deterioration of the ability to function independently; and (iv) the respondent is unable to make a rational and informed decision as to whether or not treatment for mental illness would be desirable.”

Definitions:

Mental Illness: §22-52-1.1(1) “A psychiatric disorder of thought and/or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life. Mental illness, as used herein, specifically excludes the primary diagnosis of epilepsy, mental retardation, substance abuse, including alcoholism, or a developmental disability.”

Outpatient Treatment: §22-52-1.1(5) “Treatment being provided to a person in a nonresidential setting and who is not admitted for 24-hour-a-day care.”

Inpatient Treatment: §22-52-1.1(6) “Treatment being provided to a person at a state mental health facility or a designated mental health facility which has been specifically designated by the department for inpatient treatment.”

TIPS

- KNOW THE PROCESS AND EXPLAIN THE PROCESS AND POSSIBLE OUTCOMES TO THE RESPONDENT
- NOW THAT WE GET THE PETITIONS BEFORE HAND, IF YOUR CLIENT IS IN THE HOSPITAL, TRY TO VISIT THE DAY BEFORE THE HEARING. THIS HELPS IF ON THE DAY OF THE HEARING THERE IS A MEDICAL ISSUE AND THE RESPONDENT CANNOT BE TRANSPORTED, YOU MAY BE ABLE TO WAIVE THEIR PRESENCE.
- IF THE RESPONDENT IS IN JAIL, TRY TO FIND OUT A RELEASE DATE AND/OR BOND STATUS PRIOR TO MERIT HEARING.
- BE PREPARED TO ADDRESS ANY "WEAPONS" THAT ARE MENTIONED IN THE PETITION OR HEARINGS?
- IF THE RESPONDENT HAS A DIAGNOSIS OF "SUBSTANCE ABUSE/DEPENDENCE/INDUCED...", DID THEY TEST POSITIVE UPON ADMISSION?
- IF THE POLICE ARE THE PETITIONERS, BE AWARE OF HOW TESTIMONY FROM THE RESPONDENT MAY AFFECT ANY PENDING AND/OR COMING CRIMINAL CHARGES.
- MEDICATION
 - EXPLAIN THE IMPORTANCE OF STAYING ON THE MEDICATION EVEN IF YOU ARE FEELING BETTER
 - IF IT IS INJECTABLE MEDICATION, ASK WHEN THE INJECTIONS WERE AND WHEN THE NEXT ONE IS SCHEDULED
- THOROUGHLY REVIEW THE MEDICAL RECORD.
 - REQUEST DOCTOR'S NOTES AND NURSES' NOTES
 - LOOK AT CHANGES IN THE DIAGNOSIS DURING THE EVALUATION
 - LOOK FOR PATTERNS
- REMEMBER THAT THIS IS A VERY EMOTIONAL AND PAINFUL TIME FOR THE PETITIONERS, OFTEN IT IS A FAMILY MEMBER THAT HAS STRUGGLED WITH THE RESPONDENT'S BEHAVIOR FOR A LONG TIME AND THAT THIS PROCESS IS DIFFICULT ON THE ENTIRE FAMILY.

STACIE E. VITELLO

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svitello@probate.mobilecountyal.gov
www.probate.mobilecountyal.gov (court website)

PROFESSIONAL LICENSE

Alabama State Bar, 2011

EDUCATION

University of Alabama School of Law Tuscaloosa, AL
Juris Doctor, 2011

Birmingham-Southern College Birmingham, AL
Bachelor of Arts in Political Science, Distinction in Leadership Studies, 2008

LEGAL EXPERIENCE

Probate Court of Mobile County, Alabama Mobile, AL
Judicial Division Chief, October 2013—Present

Mobile County Circuit Court Mobile, AL
Law Clerk, The Honorable Sarah Hicks Stewart, 2013

The Ladd Firm, LLC Mobile, AL
Associate Attorney, 2011–2013
Civil litigation, specializing in employment and labor law litigation in federal court.
Admitted to the Southern District of Alabama.

Pre-Law School Graduation

Alabama Law Institute Tuscaloosa, AL
Legal Research Assistant, 2010–2011

Supreme Court of Alabama Montgomery, AL
Law Clerk, The Honorable Sue Bell Cobb, Chief Justice, summer 2010

Mobile County District Attorney's Office Mobile, AL
Intern, summer 2010
Extern in Externship Program, summer 2009

Redden, Mills & Clark, LLP Birmingham, AL
Clerk, 2007–2008

MEMORANDUM

TO: ALL APPOINTED LAWYERS - MENTAL HEALTH COMMITMENT CASES

FROM: Stacie Vitello, Judicial Division Chief, Probate Court of Mobile County

RE: Voucher Forms For Time Expended - State Requirements

DATE: February 19, 2014

Friends:

Thank you very much for assisting the Probate Court as appointed lawyers in mental health involuntary commitment cases. As you may know, the Alabama State Comptroller has the authority to reject invoices submitted for payment by the Court if they determine they are not compliant with the law. The Comptroller's Office recently changed the approach it is utilizing in the payment of court costs, including (but not limited to) the fees of appointed lawyers. Unfortunately, Alabama probate courts were not notified of this more detailed approach prior to its implementation in the State Comptrollers' Office. We have had a considerable number of court cost invoices returned as a result of this.

The State now requires all appointed lawyers' time to be FULLY itemized (using 1/10 of an hour increments for time reporting) ON A CONTEMPORANEOUS BASIS AT THE TIME THE ACTIVITY OCCURS. It is no longer permissible to simply divide your time for a particular common task evenly between all of the cases assigned to you, such as for reviewing medical records or appearing in court. Moreover, invoices where the time spent per action and per date were not specified will not be accepted by the State Comptroller (*i.e.* 1.5 hours spent in court on 12/31, 1/7 and 1/14).

The Court received a memorandum from the State Comptrollers' Office with the returned invoices asking us to review the attached guidelines with all lawyers involved in these types of cases, particularly the information they highlighted. See Uniform Guidelines by the Indigent Defense Committee attached, "Activities are to be separately listed" section.

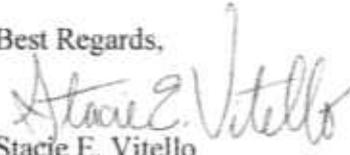
The Comptroller's Office is *closely* reviewing all invoices on a case by case basis. You may be interested in knowing that another procedure requires Judge Davis to sign a detailed certificate that states he has reviewed all of the invoices being submitted in each case and that he has made a specific determination that the submitted claim is true, correct, reasonable, necessary, and

All Appointed Lawyers - Mental Health Commitment Cases
February 19, 2014
Page 2

unpaid. Further, he is required to personally sign each such certificate. Thus, accuracy is important.

The Probate Court and Judge Davis are grateful for your help. We want to ensure the payment of the fees due to you is not delayed due to such rejections. We expect that it will take a couple of months to work through this matter. You can help us help you by promptly responding to any call you receive from the Court's staff regarding any vouchers you have submitted. Your anticipated cooperation and assistance are appreciated. If you have any questions, please do not hesitate to contact me at 574-6008 or svitello@probate.mobilecountyal.gov.

Best Regards,



Stacie E. Vitello

Judicial Division Chief
Probate Court of Mobile County

Attachment



Uniform Guidelines for Attorney Fee Declarations Recommended by the Indigent Defense Committee of the Alabama State Bar

Preface

The following guidelines were promulgated by the Indigent Defense Committee of the Alabama State Bar, and adopted by the Board of Bar Commissioners of the Alabama State Bar on November 2, 1990 to assist and guide lawyers throughout the state with respect to billing procedures in cases in which they are appointed by the court to represent persons accused of crimes who have also been determined to be indigent. It is the hope of the Alabama State Bar that these guidelines will provide guidance to lawyers and serve as a standard by which questionable conduct can be judged.

Those lawyers who follow the letter and spirit of these guidelines will be protected from charges of impropriety; those who do not will have no added protection from charges to the contrary. In short, these guidelines, though designed chiefly to aid and assist members of the bar, also stand as this association's self-policing mechanism for questionable fee practices.

The Alabama State Bar expresses its sincere appreciation to those who dedicate themselves to the representation of those who do not have the means to hire a lawyer. At the same time, it cautions anyone who attempts to take advantage either of their clients or the State of Alabama (by practices such as double billing), that abuses of this honorable system will not be tolerated.

THE ALABAMA LAWYER

Activities are to be separately listed

All activities for which compensation is claimed shall be separately listed on contemporaneous time records. In order to receive payment, activities must be listed in the appropriate spaces in the Fee Declaration Form or, if contemporaneous time records are kept in a manner that conforms to the Fee Declaration Form, the contemporaneous records themselves may be attached to the Fee Declaration Form.

Standard time reporting

All time shall be declared increments of 0.1 hour (six minutes). Counsel may bill for time spent under six minutes at a minimum rate of 0.1.

Telephone calls

The purpose, *not substance*, of telephone calls should be briefly specified, for example, "Telephone call to defendant's brother re: raising bail" or "Telephone call to defendant re: trial date."

Each call should be separately listed (on the contemporaneous time records, not on the Fee Declaration Form).

Mileage

The rate for mileage shall conform to § 36-7-22, *Code of Alabama* 1975. This rate is 25 cents per mile.

January 1992 / 55

Expenses

Certain expenses must be approved by the appointing judge prior to the time they are incurred. Section 15-12-21(d), *Code of Alabama* 1975. A general definition of expenses is impractical. Therefore, a definition is given by way of what is and what is not an expense which requires approval prior to being incurred. Counsel should file the appropriate motion in cases of uncertainty. In cases where court approval is required, counsel shall file a copy of the court's pre-trial order along with the Fee Declaration Form in order to obtain reimbursement.

The following are examples of expenses which do require approval prior to being incurred:

- A. Private investigators;
- B. Expert witnesses;
- C. Transcripts of trials or hearings not otherwise available;
- D. Interpreters;
- E. Scientific tests.

The following are examples of expenses which do not require approval prior to being incurred:

- A. Copying (limited to 25 cents per copy, except in extraordinary circumstances);
- B. Long distance telephone calls;
- C. Travel.

Opening and closing case files

Counsel may bill for this activity, but the maximum time which may be billed (for opening and closing combined) is 0.5 hour (30 minutes).

Travel time to and from court

Travel time to and from court appearances should be billed as out-of-court time, except under the following circumstances where it may not be claimed:

- A. Travel time to arraignment when counsel is not assigned a defendant prior to arraignment; and,
- B. Travel time to arraignment when counsel is not assigned a defendant prior to arraignment, but counsel fails to file a waiver of arraignment (where "waiver" is provided by local law or otherwise) without just reason. Examples of just reasons for failing to file a waiver are that the client refused to waive arraignment or that counsel could not locate client prior to arraignment, etc.

If travel time involves more than one case, it should be divided equally among the cases, e.g., if two cases are involved, one-half of the travel time should be billed to each case.

Arraignment

Only the actual time spent arraigning a defendant is compensable unless counsel is assigned a client prior to arraignment and counsel is required to wait due to circumstances beyond his control. Such waiting time may be billed as in-court time and should be noted as such on the Fee Declaration Form.

Hearings and trials of co-defendants or directly related cases

Attendance at the hearings and trials of co-

defendants or cases directly related to your clients should be billed as out-of-court time, and your attendance should be justified by an attachment to the declaration. However, in cases where a co-defendant's case has been consolidated with your case, in-court activities may be billed as in-court hours. Attendance at a trial in which a client is called as a witness against another person charged in the same or related case may be billed as in-court hours, provided that the period of time billed is for the period of client testimony only.

Preliminary hearings

An appearance at your client's preliminary hearing should be billed as in-court time even in the event you are proffered the State's witnesses for interview and the preliminary hearing is thereafter waived. However, interviewing witnesses after your client's preliminary hearing is concluded should be billed as out-of-court time. Waiting time required by circumstances beyond counsel's control may be billed as in-court time and should be noted as such on the Fee Declaration Form.

Law clerks, paralegals and associates

Time spent by qualified law clerks and paralegals working at your direction should be billed at one-half the hourly out-of-court rate, and the name of the law clerk or paralegal should be noted on the declaration. Time spent by qualified associates working at your direction should be billed at the statutory rate, provided that (a) the associate's assistance was required by circumstances beyond your control and (b) the name of the associate is noted on the declaration. An associate will not be permitted to serve as lead counsel without prior approval from the court.

Actual time records

Actual time records, notations, or memorandums shall be maintained contemporaneously.

Total billing is required

A declaration should not be filed until the case has reached conclusion, e.g., it is not permissible to file a declaration after preliminary hearing where the defendant has been bound over and been indicted.

When, however, a client fails to appear or absconds, a declaration may be filed 60 days thereafter. Similarly, if new counsel is appointed or retained, a declaration may be filed immediately. However, the continuity of counsel provided by statute is to be strictly adhered to and should be departed from only in those cases in which it is absolutely necessary to have new counsel.

Separate declarations are required in multiple charge cases

In the past, it has been the normal practice to file a separate Fee Declaration Form for each separate case number in cases involving multiple counts, defendants, and/or indictments. That was prior to joinder and consolidation under the new Temporary Rules of Criminal Procedure. These cases

should no longer be treated separately, but rather should be billed in the following manner.

All cases arising out of the same transaction shall be billed as one case. For example, if a client is charged with breaking and entering and burglary of the same dwelling, and the cases are joined, they shall be treated as one case. If, at the initiation of the proceedings, the cases were listed separately, simply list the additional case number on the Fee Declaration Form with an explanation that the cases were consolidated.

In contrast, if cases arise out of separate transactions, they may be billed individually; even if they have been consolidated, they may be billed separately.

Double billing will not be tolerated under any circumstances. Therefore, if you are billing for more than one case, be careful not to charge for the same work more than once.

Finally, though payment will be permitted for new trial motions and like proceedings, including sentencing, all such billing shall be treated as trial billing rather than post-conviction billing.



"In-court" versus "out-of-court" time

Consistent with sections VIII and X, *supra*, all

waiting time at the courthouse for a scheduled court appearance caused by circumstances beyond counsel's control may be billed as in-court time and should be noted as such on the Fee Declaration Form, i.e., that portion of the total in-court hours which reflects necessary waiting time should be specifically noted as "waiting time" on the Fee Declaration Form.



Fees collected from the client

Any fees or expense money collected from the client (or from anyone on the client's behalf) before, during, or after working the case for which the counsel has been appointed, shall be reported. All amounts received shall be deducted from the amount finally paid to the lawyer.

In the event of changed circumstances (i.e., the client becomes able to retain counsel or secures outside assistance to retain counsel), counsel shall immediately notify the court that he/she has been retained, and the appointment shall be withdrawn. Retained counsel will not be required to file a Fee Declaration Form, because no state funds will be paid.

STATEMENT OF OWNERSHIP, MANAGEMENT AND CIRCULATION			
For the year ending December 31, 1991			
1. Title of publication	2. Issue frequency	3. Issue date for circulation data below	4. Issue for circulation data below
Alabama State Bar Journal	Quarterly	October 1991	10/1991
5. Name and complete mailing address of the publisher	6. Name and complete mailing address of the editor	7. Name and complete mailing address of the business manager	8. Name and complete mailing address of the circulation manager
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102
9. Ownership	10. Extent and kind of ownership		
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11. Name and complete mailing address of the owner	12. Name and complete mailing address of the publisher		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
13. Name and complete mailing address of the printer	14. Name and complete mailing address of the distributor		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
15. Name and complete mailing address of the circulation manager	16. Name and complete mailing address of the circulation manager		
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Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
81. Name and complete mailing address of the circulation manager	82. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
83. Name and complete mailing address of the circulation manager	84. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
85. Name and complete mailing address of the circulation manager	86. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
87. Name and complete mailing address of the circulation manager	88. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
89. Name and complete mailing address of the circulation manager	90. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
91. Name and complete mailing address of the circulation manager	92. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
93. Name and complete mailing address of the circulation manager	94. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
95. Name and complete mailing address of the circulation manager	96. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
97. Name and complete mailing address of the circulation manager	98. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		
99. Name and complete mailing address of the circulation manager	100. Name and complete mailing address of the circulation manager		
Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102	Alabama State Bar, 400 South Central Expressway, Montgomery, Alabama 36102		

NOTICE

JUDICIAL AWARD OF MERIT NOMINATIONS DUE

The Board of Commissioners of the Alabama State Bar will receive nominations for the state bar Judicial Award of Merit through May 15. Nominations should be prepared and mailed to Reginald T. Hamner, Secretary, Board of Bar Commissioners, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101.

The Judicial Award of Merit was established in 1980 and the first recipients were Senior U.S. District Judge William C. Coker and retired Circuit Judge James O. Egan.

The award is not given every year. It is given only to those who have made a significant contribution to the administration of justice in Alabama. The award is presented with a certificate and a monetary award.

Nominations should be submitted to the Board of Commissioners of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101. The award is presented annually to the Board of Commissioners of the Alabama State Bar.

For more information, contact Reginald T. Hamner, Secretary, Board of Bar Commissioners, Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101.

ATTORNEY FEE DECLARATION FORMS: Save Yourself Some Time and Trouble

BY ROBERT L. CHILDREE

There are some common statewide problems that have been encountered by the Secretary of State's office in processing Attorney Fee Declaration forms. The following is a list of those and some hints on how to avoid these problems.

First and foremost, some attorneys are somewhat unfamiliar with the "Uniform Guidelines for Attorney Fee Declarations" and the sections of the code relating to indigent defense. Negligence in calculations, using incorrect forms, incorrect information and failure to include required attachments are the primary problem areas. Researching archived records for duplicates and correcting and/or returning incorrect claims are time-consuming chores and if these factors could be eliminated from our daily tasks, attorneys would receive payments more timely.

Attorney Fee Declaration Forms

Always use the correct forms for the time period of work performed. Always calculate the correct rate. The following is a rate/time period schedule to correspond with the forms:

Prior to 06/10/99	\$40 per hour in court	\$20 per hour out of court
06/10/99 to 09/30/00	\$50 per hour in court	\$30 per hour out of court
Beginning 10/01/00	\$60 per hour in court	\$40 per hour out of court

If at all possible, type forms. Do not submit sloppy, hand-scribbled, illegible forms with numerous corrections, white-outs, strike-overs, and write-overs. These are subject to being returned to the attorney.

Always enter the correct case number. If more than one case is handled at the time, type all case numbers in the case number block.

The correct county code number must be entered. Codes are listed in alphabetical order, by county, and not by automobile tag number.

The case type, such as Class C Felony, which sets the allowable dollar limits in fees that can be paid, must be indicated on

the form. Every effort should be made to mark the correct type. This is a major problem. Numerous forms continue to be received with no case type indication. Many probation hearings are indicated on the forms as "post-conviction." This is incorrect. The original charge should be indicated as the case type. Appellate work should be indicated as "Appeal."

The Social Security Number or Federal ID Number (dependent on the W-9 form signed by the attorney prior to being issued a state check) should always be indicated in the proper space.

Quite often, attorneys enter their attorney code in this space in error. For tax purposes, 1099 Forms are mailed in January under the specified SSN or FEIN.

Review forms before submitting for payment to insure that all information is entered and entered correctly. Many forms are received without the attorney's signature. Some are received without the signature of the judge.

Attorneys who print their own forms are required to use a print font that is at least as large as the state's printed form.

Attachments to the Fee Declaration

An overhead order, signed and dated by the judge, must be attached to each fee declaration in order to be paid overhead. Overhead is to be pre-approved and is paid from the date the judge signed the order. *Nunc pro tunc* orders not acceptable.

Overhead orders accompanying claims should be from the same county in which the work was performed. Failure to attach a copy of the overhead order to the fee declaration continues to be a problem. Some attorneys argue that their county has a blanket order and we should have it on file and they should not be asked to attach an order to each claim. The rule is, if an attorney is to be paid overhead, we must have an order attached.

In order to pay expert witnesses or other extraordinary expenses, a copy of the pre-approved order, along with a copy of the invoice, must be attached to the fee declaration. These items often are missing from claims received by the state.

The following three items do not require an order:

Mileage: The state rate is allowed, which is now tied to the IRS rate, currently \$.365.

Copies: Allowed \$.25 per copy

Long distance phone charges.

Itemizations should be clear and concise, with dates of service present and time reported in compliance with the guidelines. Use standard time calculations as stated in the guidelines. Do not use creative software packages that must be figured out and recalculated by the state in order to arrive at the hours reported by the attorney. This is another waste of state time.

The guidelines were written before overhead was allowed. Since overhead normally includes the items above, there should be no need to bill again for these items or delete from total overhead charged.

Miscellaneous Problems

Do not overcharge. Double and triple billing is strictly prohibited. When two or more cases are joined, bill for actual time spent in handling them together. Do not bill the same amount, separately, for each case number. For instance, the attorney handled four cases that were all joined and handled at the same time. Case numbers were JU-00-1, JU-00-2, JU-00-3 and JU-00-4, and the total time spent handling them was ten hours. One

bill for ten hours should be submitted, not four bills for ten hours each. Claims received with the appearance of double-billing or over-billing will be returned to the judge for review.

When the maximum amount allowed in fees on a case has been reached, do not continue to bill for more. An inordinate amount of time and effort is wasted by the state in having to research archived files, recalculate claims, make copies of claims in support of corrections made, reduce claims for processing, or return claims.

Do not send in duplicate billings. This is a real problem and a major waste of state time from beginning of the claim to the final return to the attorney. Please note the statements on the fee declaration which state that the attorney declares that he/she is not duplicating charges and the judge signs to the effect that he/she is of the opinion that the attorney is not duplicating charges.

It would be most helpful if attorneys would file their fee declarations in a timely manner and not wait until the end of the year to flood the system with old claims, resulting in a backlog of statewide claims for this office. We adhere to the six-year statute of limitations and encourage attorneys to file timely. Please be courteous when calling this office. Courtesy is our policy and the same is expected.

Robert L. Childree

Robert L. Childree currently serves as the comptroller for the State of Alabama

2001 Fellows Acceptances

Nominee	Date Acceptance Received
Reneau P. Almon, Montgomery.....	7/16/01
J. Tutt Barrett, Opelika.....	8/30/01
William J. Baxley, Birmingham.....	8/7/01
Jere L. Beasley, Montgomery.....	8/16/01
John L. Carroll, Montgomery.....	7/16/01
Ralph D. Cook, Birmingham.....	7/27/01
Milton C. Davis, Tuskegee.....	7/19/01
Joe C. Espy, III, Montgomery.....	7/18/01
Virginia S. Granade, Mobile.....	8/17/01
Robert B. Harwood, Jr., Tuscaloosa.....	8/9/01
S. Jack Livingston, Scottsboro.....	8/16/01
Robert L. McCurley, Jr.	8/24/01
Nina Miglionico.....	7/18/01
J. Jerry Wood.....	7/30/01

**IMPORTANT INFORMATION REGARDING VOUCHER FORMS
UTILIZED BY APPOINTED LAWYERS IN MENTAL HEALTH
COMMITMENT CASES AND REVISED MENTAL HEALTH
VOUCHER FORM**

April 14, 2014

The Revised Expense Voucher Is Due within 72 Hours of Conclusion of the Last Merit Hearing. If the voucher is NOT timely submitted, you will NOT be compensated, as a revised voucher will NOT be submitted for late submissions..

The purpose of revising the voucher is to clarify "in court" time, "out of court" time, and mileage to streamline the payment process between attorney, the Court, and the State Comptroller. It should give you clearer and larger entry spaces for your dated time records.

The Alabama Department of Finance has advised that it is utilizing the *Uniform Guidelines for Attorney Fee Declaration Recommended by the Indigent Defense Committee of the Alabama State Bar* ("Uniform Guidelines") as to mental health appointed lawyer submissions. The Uniform Guidelines were sent to you via e-mail by Stacie Vitello on February 19, 2014. They are attached to this email message.

Generally, billing begins at the appointment date. Your appointment date is on the appointment order and is usually one day before the probable cause hearing. Time should be itemized and billed in increments of 0.1 hours (six minutes).

IN COURT TIME

"In Court" time must be entered on the voucher. "In Court" time consists ONLY of the time spent waiting for the hearing to start and the hearing itself. Interviews conducted prior to the hearing should be billed as "out of court" time. Enter the length of the hearing under the date. (If it is under six minutes, bill for 0.1 hours.)

Enter the time you were waiting for Court to start ("Waiting Time"). Waiting Time may be billed as in court time and should be noted as such.

Note: The hearing times of the Guardian ad Litem and Petitioner's Attorney should ALWAYS match. These are compared by the State Comptroller and will be returned if they do not match.

Hearing time should not be divided equally among number of clients represented that day (i.e. 0.5 for each hearing). Matching times will cause fee vouchers to be returned by the State to the Court, even if they are mailed on different dates. *Time should be billed accurately and contemporaneously.*

OUT OF COURT TIME

Along with your voucher, you are required to file an itemization sheet that includes: (1) the case number, (2) the respondent's name, (3) counsel's name, and (4) itemization of time billed on out of court duties. Please do not duplicate in court time and mileage on this itemization.

Total all of your Out of Court Time listed on your attached itemization then insert that total on the voucher.

Note: It is clearer for billing if the above information is the only data on your itemized list. Also, Out of Court Time should not be the same for each client you advocated for that week. Time should be billed on a contemporaneous basis. Matching times will often cause fee vouchers to be returned, even if they are sent in on different dates (i.e. 0.5 each time medical records are reviewed). Please be accurate and bill each client as a separate paying individual.

Examples of out of court actions:

Conducting interviews before hearings (in the required 45 minutes arrival before the start of the probable cause hearing and the required 20 minutes before the merit hearings), at East Pointe, and over the phone.

Travel time to the Court. If you are traveling to Court for more than one case, you should divide it equally among your cases. See Uniform Guidelines.

Opening/closing case file (A maximum for both is 0.5 hours.)

Reviewing medical records at East Pointe or Mobile Infirmary.

MILEAGE

Please note the mileage is still recorded on the voucher.

Note: Mileage is only paid once. You may enter it on one voucher when it involves more than one case or divide it equally amongst each applicable voucher. Vouchers

that record mileage more than once will be returned by the State Comptroller.

IN THE MATTER OF
THE INVOLUNTARY COMMITMENT OF

IN THE PROBATE COURT OF
MOBILE COUNTY, ALABAMA

_____, Respondent.

Case No.: _____

Date: _____

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM
OR ATTORNEY FOR PETITIONER**

IN COURT TIME

Probable Cause hearing Date: _____

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

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

Merit hearing Date: _____

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

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

If needed: 2nd -Merit hearing Date: _____

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

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

If needed: 3rd -Merit hearing Date: _____

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

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

OUT OF COURT TIME

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

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

Mileage Expenses: _____ miles @ \$.56/mile \$ _____

Reason: _____

TOTAL REQUEST \$ _____

CERTIFICATE UNDER PENALTY OF PERJURY

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

(Signature) _____

(Printed Name) _____

(Address) _____

(Telephone): _____

Authority for rates of pay:
Ala. Code §§ 22-52-14 and 15-12-21(1975)
as amended by Ala Act 2011-678

Revised: April 24, 2014.

Pam Tisdale

From: Don Davis
Sent: Monday, April 14, 2014 5:21 PM
To: Andrew Martin; Annette Carwie; Charles Moore; David Nihart; Eucellis Sullivan; Katherine Arnold; Kristy Dugan; Lisa Bumpers; Lonnie Weaver; Marcus Foxx; Martin Poynter; Mary Stone; John Nix; Sandra Rander; Margaret Stone; Dorothy Lackeos; Carla Thomas; Steven Sciple; Ben Dickens; Ruth Alexander; N. Stewart Hanley; Richard Hinds; Rachel Mitchell; Stuart Luckie; Glenn Davidson; John Adams; Brenda Pierce; Jeffrey Gale; James T. Patterson; Derek Rose; Alison Herlihy; Virginia Poynter; D. Brian Murphy; Jonathan Mabire; Jason Gerth; James Duffy; Keava Jones; James E. Robertson, Jr.; James Ferguson
Cc: Stacie Vitello; Pam Tisdale; Grace Dubose; Joe McEarchern; Mark Erwin; Jean Powers; James Brandyburg; Randy Crane; Jerome Carter; Denise Littleton
Subject: Mental Health Appointed Lawyer Voucher Form - Appointed Lawyers Staying In Contact With The Clerk's Office - Inpatient Commitments To Facilities Located in Tuscaloosa - Review of Respondents' Medical Records Prior to Merit Hearing
Attachments: Don Davis.vcf; New Appointed Lawyer Voucher 04 14 14.pdf; mentalhealthrevisedvoucherform-04-2014.memo.doc; mentalhealthrevisedvoucherform-04-2014.memo.wpd; Ala. Lawyer Article - Appointed Lawyer Fees.pdf

Folks

We have several problems we need to discuss and address.

Appointed Lawyer Voucher Form

We have a problem regarding appointed lawyers' voucher forms in mental health commitment cases that we must promptly address and resolve. The Alabama Department of Finance, WITHOUT ADVANCE NOTICE, changed some of its practices and procedures relating to processing these vouchers in late 2013 and again in early 2014. We have been struggling with various issues relating to the vouchers and have been in communication with the State Department of Finance's chief legal counsel concerning the same.

We have revised our voucher form to streamline the process and enable you to present your time in a manner that will hopefully facilitate its ready approval by the Alabama Department of Finance. The revised voucher form is attached. Also attached is an instruction sheet Stacie Vitello and Grace DuBose have prepared to assist you as you complete the voucher form. Finally, attached is a copy of an article that appeared in the *Alabama Lawyer* several years ago regarding the payment of fees to appointed lawyers in criminal cases. These guidelines are being utilized by the Alabama Department of Finance. It is important that you comply with the same as you report your time.

Submission of Voucher Forms

The problems concerning approval of the voucher forms have been exacerbated because: (1) some of you are tardy in submitting your voucher forms and said tardiness is prompting additional submissions to the State Department of Finance; OR (2) some of you are tardy in responding to the State Department of Finance's request for additional information (usually better itemization of your time). In some instances the Clerk's Office is waiting WEEKS to obtain the information from you - despite repetitive reminder telephone calls and emails about the matter.

WE WANT TO SEE THAT ALL LAWYERS AND ENTITIES (SUCH AS THE COURT REPORTERS AND THE SHERIFF'S DEPARTMENT) INVOLVED IN THE COMMITMENT PROCESS ARE PROMPTLY PAID. We want to submit a complete court

cost bill ONCE to the State Comptroller and hopefully be finished with the matter. The Court doesn't have the staff resources to accommodate lawyers who are tardy with their time submissions. EFFECTIVE IMMEDIATELY, the EXISTING 72 hour deadline for time submissions is going to be enforced. If this presents a problem, you should contact Stacie Vitello directly to discuss. In the future, if you see in advance that you are going to have a problem with the 72 hour submission deadline, you should affirmatively contact Stacie Vitello or Grace DuBose as soon as you identify the problem. With regard to matters returned by the State Comptroller – the 72 hour deadline will also be applied from the date of the notice to you that the matter has been returned to us. We will notify you by email, telephone call and/or facsimile of the return of a matter. If additional time is needed to address the reason the matter was returned from the State Comptroller, you should affirmatively contact Stacie Vitello or Grace DuBose and advise them of the situation and how much time is needed to address whatever example exists. It is our desire to see that each of you are promptly paid for the very valuable services you provide to some of the most vulnerable persons in our community.

Contact with the Clerk's Office

Of late the Clerk's Office has encountered greater difficulty getting ahold of appointed lawyers by email or cell phone, most notably on Tuesday mornings as we are trying to commence and conduct the merit docket. Please furnish Pam Tisdale with your cell phone number and email address.

Inpatient Commitments To Facilities Located In Tuscaloosa

Please note that notwithstanding the hearing time for a merit hearing assigned to a case at the probable cause docket, it is imperative that we conduct the cases involving respondents who will (or may be) transferred to Bryce Hospital or the Mary Starke Harper Facility in Tuscaloosa at the beginning of the docket. Both of the facilities in Tuscaloosa have a cutoff time for the admission of new patients. The Sheriff's Department must get on the road ASAP on Tuesday mornings to transport these respondents to these facilities and meet the admissions deadline. The situation is also exacerbated by the lack of bed space at EastPointe Hospital and the Sheriff's Department's need to minimize overtime pay to the greatest extent possible. If you are involved in a case where the respondent is 65 years or older – plan on this case being heard at the beginning of the docket. If you are the advocate for the petitioner, be sure to inform your client of this too.

GALs Meeting With Respondents At EastPointe Hospital – Reviewing Respondents' Medical Records - Prior To Merit Hearing

The Court's staff has alerted me that some of our guardians ad litem are not going to EastPointe Hospital prior to the merit hearing(s) and reviewing their client's medical records. Secondarily, these same lawyers aren't making any effort to meet with their client (as appropriate) and review the status of the case and the recommendation of the AEU team. I fail to understand how a lawyer can adequately represent his client in a commitment case if the lawyer hasn't reviewed the medical records during the evaluation time period. Likewise, I believe a reasonable effort should be made by guardians ad litem to meet with their clients and to the extent possible explain to their client what the AEU's recommendation(s) is/are, etc. Meetings with clients are not going to be possible in every instance, but in most instances it should occur. I have instructed the Court's staff to notify me if their review of the time reports reflects the aforesaid practice continuing. If such is reported, said lawyer should expect to no longer be appointed to cases.

One Last Matter

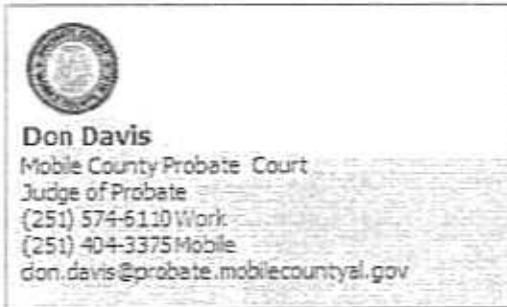
Please note that on Tuesday mornings we are exerting our BEST and FULLEST efforts to get lawyers, doctors and parties out of the courtroom as quickly as we reasonably can. During the past 6 months the number of continuance recommendations from EastPointe Hospital have increased dramatically and we are having more incidences of cases being continued for a third or fourth week. One effect of the continuances is that some lawyers don't get their assigned docket resolved within the "usual" two week time period and they have few matters on the docket. We are calling these cases as quickly as possible, so that these lawyers can be on their way. I ask your patience with us as we try to work through the merit docket.

If you have any questions concerning any of the aforesaid, please email me or telephone me or come by and see me. Thanks for your anticipated attention to these matters.

Thanks

Don Davis

Don



Stacie Vitello

From: Stacie Vitello
Sent: Wednesday, July 30, 2014 2:55 PM
To: 'awmfairhope@aol.com'; 'carwie5@comcast.net'; 'czmlaw@gmail.com';
'nihartlaw@gmail.com'; 'esullivan2007@gmail.com'; 'kba06@bellsouth.net';
'kdugan@alfordbolin.com'; 'lebumpers@aol.com'; 'lweaverlaw@yahoo.com'; 'mtfoxx3@gmail.com'; 'martin@poynterlaw.com'; 'mstone@brandyburgfirm.com';
'jnix@johnnixlawyers.com'; 'sandrander@aol.com'; 'margaret@piercestonelaw.com';
'jimrob251@gmail.com'; 'dlackeos@bellsouth.net'; 'cgmthomas@comcast.net';
'steven@sciplefirm.com'; 'ben@dickenslawpc.com'; 'alexander.ruthie@gmail.com';
'hanleylawfirm@gmail.com'; 'richardmhinds@hotmail.com';
'attorneyrgmitchell@gmail.com'; 'stuart@luckielaw.com'; 'gldlaw1203@gmail.com';
'jadams@johnadamslawfirm.com'; 'brenda@piercestonelaw.com';
'jng@galeandgale.com'; 'jpatterson@law-alabama.com'; 'droseattorney@bellsouth.net';
'alison@herlihyfamilylaw.com'; 'ginger.poynter@hotmail.com';
'brian@braswellmurphy.com'; 'jmabire@belllawfirm.net'; 'jgerth@crosbylegal.com';
'heather@gulfcoastattorneys.com'; 'jduffy3@bellsouth.net';
'kjones@kbjonesconsulting.com'
Subject: Mileage on Attorney Vouchers
Attachments: Stacie E Vitello Esq 2.vcf; Mileage Example.pdf

Dear Attorneys,

I hope you are doing well. The State Comptroller has recently contacted the Probate Court with some rejected fee vouchers. They are requiring all attorneys who submit for mileage on their fee vouchers to include the "to and from locations" (addresses), dates and miles for all trips they claim. I have attached a copy of the State's letter and a sample voucher for your convenience. Please note they are checking the mileage between the addresses for accuracy. Thank you for your patience as we all adjust to the new fiscal regulations in this area.

Best Regards,
Stacie Vitello

Stacie E. Vitello, Esq.

Judicial Division Chief
Probate Court of Mobile County

251-574-6008 Office
251-574-6005 Fax

Post Office Box 7
Mobile, Alabama 36601

www.probate.mobilecountyal.gov





STATE OF ALABAMA
Department of Finance
Office of the State Comptroller

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

Robert Bentley
Governor

Bill Newton
Acting Director of Finance

Thomas L. White, Jr., CPA
State Comptroller

Janice A. Hamm, CPA
Deputy State Comptroller

TO: Mobile County
FROM: Amanda Leger
Fiscal Management Section
DATE: July 15, 2014
RE: Mental Commitment Invoice

I am returning the above mentioned invoice(s) for the following reason(s):

Please itemize the travel for Attorney Include the "To" and "From" locations, date(s), and miles for all trip(s). Please correct and return your claim.
Thank you.

If you have any questions or need additional guidance, please contact me via e-mail at amanda.leger@comptroller.alabama.gov or by phone at (334) 242-7064.

Please return this form with your claims.

FILED JUL 18 14PM 02:20 PCTH0364

IN THE MATTER OF
 THE INVOLUNTARY COMMITMENT OF _____, Respondent.
 Case No.: _____
 Date: _____

IN THE PROBATE COURT OF
 MOBILE COUNTY, ALABAMA

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM
 OR ATTORNEY FOR PETITIONER**

IN COURT TIME

1st-Probable cause hearing Date: _____
 Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____
 Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____
 2nd -Merit hearing Date: _____
 Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____
 Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____
 If needed: 3rd-Merit hearing Date: _____
 Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____
 Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____
 If needed: 4th-Merit hearing Date: _____
 Number of hours spent in Court hearing _____ @ \$70.00/hr \$ _____
 Number of hours spent in Court waiting _____ @ \$70.00/hr \$ _____

OUT OF COURT TIME

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

Mileage Expenses: 42.8 miles @ \$0.56/mile \$ 23.97
 Reason: 6/9/14 From 123 John St. Mobile to 1400 Poplar Lane, Daphne and Back to beginning location

TOTAL REQUEST

CERTIFICATE UNDER PENALTY OF PERJURY

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

(Signature)
 (Printed Name)
 (Address)
 (Telephone)

Authority for rates of pay:
 Ala. Code §§ 22-52-14 and 15-12-21(1975)
 as amended by Ala Act 2011-573

INVOICE

"Out of Court" Itemization

RE: Name from Petition
Case No. 2014 - xxxxx

Date:	Services Performed:	Hours:
7/08/14	Opened file	.2
7/08/14	Obtained and reviewed petition	.2
7/08/14	Review of obligations of Petitioner's counsel with respect to commitment hearings and review of applicable Alabama Law with respect to commitment proceedings.	.2
7/08/14	Telephone conference with Petitioner in order to discuss petition allegations and anticipated testimony.	.3
7/09/14	Travel to Probable Cause hearing	.1
7/09/14	Meeting with Petitioner prior to Probable Cause Hearing	.1
7/09/14	Completing and transmitting medical record request form to Altapointe.	.1
7/09/14	Return from Court	.1
7/14/14	Review of medical records of ward and telephone conversation with Petitioner with respect to recommendations.	.5 .2
7/16/14	Return from Court	.1
7/16/14	Drafting and completing expense voucher, reviewing invoice and closing file.	.3

Total Hours

2.4

IN THE MATTER OF
THE INVOLUNTARY COMMITMENT OF

MOBILE COUNTY, ALABAMA

FULL NAME FROM PETITION _____, Respondent.

Case No.: 2014-XXXX

Date: AFTER CASE IS CONCLUDED

**EXPENSE VOUCHER FOR GUARDIAN AD LITEM
OR ATTORNEY FOR PETITIONER**

IN COURT TIME

Probable Cause hearing Date: 07/09/14

Number of hours spent in Court hearing .30 @ \$70.00/hr \$ 21.00
Number of hours spent in Court waiting .10 @ \$70.00/hr \$ 7.00

Merit hearing Date: 07/16/14

Number of hours spent in Court hearing .20 @ \$70.00/hr \$ 14.00
Number of hours spent in Court waiting .40 @ \$70.00/hr \$ 28.00

If needed: 2nd -Merit hearing Date: _____

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

If needed: 3rd -Merit hearing Date: _____

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

OUT OF COURT TIME

Total Number of hours spent in Out of Court legal services: 2.40 @ \$70.00/hr \$ 168.00
(A Complete itemization of out of court legal services is attached: Open file,
review medical records, interview parties, close file, etc.)

Mileage Expenses: 7 miles @ \$.56/mile \$ 3.92
Reason: _____

7/9 AND 7/16 TRAVEL TO AND FROM COURT @151 GOVERNMENT ST. MOBILE
BEGINNING AT 123 JOHN DOE STREET, DAPHNE (35 MILES SPLIT BTWN 5 CASES)

TOTAL REQUEST \$ 241.92

CERTIFICATE UNDER PENALTY OF PERJURY

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

(Signature) _____
(Printed Name) JOHN DOE
(Address) 123 JOHN DOE STREET, DAPHNE, AL
(Telephone): 251-777-7777