

# OFFICE OF THE ATTORNEY GENERAL



93-00182

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May 21, 1993

Honorable Cletus N. Youmans  
Judge of Probate  
P. O. Box 6406  
Dothan, Alabama 36302

Elections - Voter List -  
Mental Illness and  
Incompetency

Names of persons declared  
mentally ill pursuant to  
§22-52-1.1, Code, and  
persons declared incapaci-  
tated or under disability  
pursuant to §26-2A-1, Code,  
need not be reported to board  
of registrars as persons  
declared mentally incompetent  
to vote as required by  
§17-4-131, Code.

Prior opinions from this  
office which may conflict  
with this opinion are hereby  
modified by this opinion.

Dear Judge Youmans:

This modified opinion is issued after reconsideration  
by this office of your request for an opinion from the  
Attorney General.

## QUESTION

What is mentally incompetent as it  
relates to commitments under Code  
of Alabama 1975, §22-52-1, and

to guardianship-conservatorships under Code of Alabama 1975, §26-2A-1, and the removal of names from the voter registration list pursuant to Code of Alabama 1975, §§17-4-131 and -132?

#### FACTS AND ANALYSIS

Your request asks us to address the relationship between three groups of people under Alabama law:

- \* persons who are mentally ill and subject to involuntary commitment (Code of Alabama 1975, §22-52-1, et seq.);
- \* persons who are incapacitated or disabled and in need of guardianship/conservatorship (Code of Alabama 1975, §26-2A-1, et seq.); and
- \* persons who are incompetent to vote (Code of Alabama 1975, §17-4-132).

Code of Alabama 1975, §17-4-131, provides in pertinent part:

"In addition to all other duties now required by law, the judges of probate of the several counties of this state shall furnish to the board of registrars of their respective counties, once each month, a list of all residents of the county, 18 years of age or over, who have been declared mentally incompetent."

Section 17-4-132 provides in pertinent part:

"The board of registrars shall purge the registration list whenever it receives and confirms information that a person registered to vote in that county has died, become a nonresident of the state or county, been declared mentally incompetent, been con-

victed of any offense mentioned in section 182 of the Constitution since being registered or otherwise become disqualified as an elector. . . ."

A careful examination of these terms from both a legal and a clinical standpoint reveals that there are significant differences between them, and that care must be taken in assigning incompetence to mentally ill or mentally incapacitated persons.

I. CIVILLY COMMITTED MENTALLY ILL PERSONS (Code of Alabama 1975, §22-52-1, et seq.)

Any discussion of the legal status of Alabama citizens involuntarily committed due to mental illness must begin with the fact that the State is under a federal court order regarding its treatment of persons with mental illness or mental retardation. In Wyatt v. Stickney, the District Court established standards of care and treatment for persons with mental illness or mental retardation.<sup>1</sup>

In Wyatt Standard Number 3, the Court specifically addresses the issue of mental patients' right to vote:

"3. No person shall be deemed incompetent to manage his affairs, to contract, to hold professional or occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote, or to make a will solely by reason of his admission or commitment to the hospital." [Emphasis in original.]

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<sup>1</sup>See Wyatt v. Stickney, 344 F.Supp. 373 (persons with mental illness); 344 F.Supp. 378 (persons with mental retardation) (M.D. Ala. 1972).

Here, the court has rejected the idea that mental illness can be equated with mental incompetence, or that committed persons can be lumped together and denied their basic right to vote.

In an Order in Wyatt dated December 19, 1991, the court ruled that Alabama's new commitment law must still not conflict with outstanding court orders in Wyatt and in Lynch v. Baxley (copy of said order attached). Hence, any interpretation of the status of involuntarily committed persons must take into account the federal court's requirement that they not indiscriminately be denied their right to vote.

Persons who are involuntarily committed to a mental hospital vary greatly in the type of illness they suffer and in the way this illness affects their capacities. Some persons, for example, are committed to a mental hospital for illnesses which affect their perception or reasoning capacity, such as schizophrenia or paranoia. Others are involuntarily committed due to illnesses which basically affect their mood or emotions, such as depression or bipolar disorders. Hence, some mental illnesses may affect a person's judgment or reasoning in a way that would impact on their ability to cast a responsible vote; other categories of mental illness would not render a person incompetent to vote.

Alabama law recognizes this diversity in the nature of various illnesses when it defines "mental illness" as a psychiatric disorder of "thought and/or mood" which results in a significant impairment in either "judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life." (Code of Alabama 1975, §22-52-1, et seq.)

Because their illnesses vary so greatly, persons committed to mental hospitals also vary greatly in their capacities. For example, a person may be committed to a mental hospital and nevertheless be competent to write a will or to engage in a contract. Most committed patients do not have guardians or conservators, but are able to

manage their own affairs.<sup>2</sup> They are competent to handle their own property or finances, and some patients committed to mental hospitals even serve as their own payee for Social Security, SSI, and other benefits. Many committed persons are competent to get married or to divorce. Many are also competent to make decisions about their own treatment, such as whether or not to refuse medication.

In contrast to the rather broad nature of mental illness, mental incompetence is a much more narrowly defined condition. Many involuntarily committed patients are competent to manage their own affairs, including exercising their right to vote. Thus, from both a legal and a clinical standpoint, persons involuntarily committed must be viewed individually, and competence to vote must be assessed on a case-by-case basis.

## II. INCAPACITATED OR DISABLED PERSONS (Code of Alabama 1975, §26-2A-1, et seq.)

Like persons with mental illness, persons who are mentally incapacitated or disabled in need of guardianship/conservatorship also vary in their capacities. Even if a person has a guardian or conservator, this does not automatically deem them incompetent to vote.

In recognition of this wide variety among incapacitated persons the Alabama Legislature, in 1987, substantially revised Alabama's guardianship statutes to allow for "limited guardianship." Code of Alabama 1975, §26-2A-105 states:

"(a) The court shall exercise the authority conferred in this division so as to encourage the development of maximum self-

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<sup>2</sup>Involuntary commitment and the appointment of a guardian or trustee are separate legal procedures. Individuals who are involuntarily committed are considered competent to manage their own affairs unless and until they have been specifically declared incompetent through a separate legal proceeding.

reliance and independence of the incapacitated person and make appointive and other orders only to the extent necessitated by the incapacitated person's mental and adaptive limitations or other conditions warranting the procedure. . . .

"(c) The court . . . may limit the powers of a guardian otherwise conferred by this chapter and thereby create a limited guardian."

The comments to this section explain that the purpose of these provisions is "to remind an appointing court that a guardianship under this legislation should not confer more authority over the person of the ward than appears necessary to alleviate the problems caused by the ward's incapacity." (Comments to §26-2A-105).

Alabama's guardianship and conservatorship statutes recognize that incapacitated persons have a variety of needs and capacities. As the comments to §26-2A-1 point out:

"The impetus for 'limited guardianship' has been a call for more sensitive procedures and for appointments fashioned so that the authority of the protector will intrude only to the degree necessary on the liberties and prerogatives of the protected person. In short, rather than permitting an all-or-nothing status, there should be an intermediate status available to the courts through which the protected person will have personal liberties and prerogatives restricted only to the extent necessary under the circumstances. The court should be admonished to look for a least-restrictive protection approach."

These statutes require an individualized approach to making determinations regarding a person's capacity or competence to vote. The safest and fairest course for probate judges is to address, during the course of guardianship/conservatorship proceedings, the issue of whether the individual is competent to vote. Only those individuals who are demonstrated to be incapacitated in their ability to make the kinds of reasonable judgments required to cast a responsible vote should be determined incompetent and reported to the board of registrars.

CONCLUSION

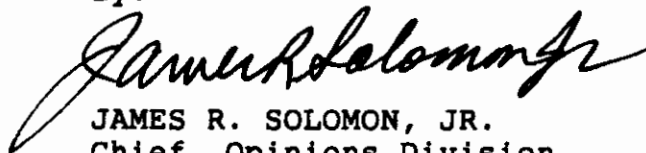
In conclusion, persons involuntarily committed and persons subject to guardianship/conservatorship proceedings vary greatly in their illness, capacity, and competence. Many of these individuals are competent to cast a responsible vote. Therefore, the competence of each mentally ill or developmentally disabled person to vote must be assessed individually during the course of guardianship/conservatorship proceedings.

Prior opinions from this office which may conflict with this opinion are hereby modified by this opinion.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

JIMMY EVANS  
Attorney General  
By:



JAMES R. SOLOMON, JR.  
Chief, Opinions Division

JÉ/RMW/kh  
Attachment

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