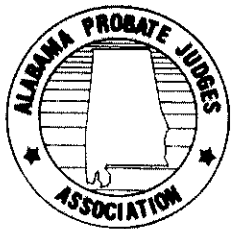


Case Law Update

Judy Shepura, Esq.
Dominick Feld Hyde, PC
Birmingham



Probate Training Conference
September 13-14, 2018
University of Alabama School of Law
Tuscaloosa, Alabama



ALABAMA PROBATE JUDGES FALL CONFERENCE
September 13, 2018

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NEW LAWS AFFECTING ALABAMA'S VULNERABLE ADULTS (2013-2017)

<u>Citation</u>	<u>Name & Effective Date</u>	<u>Summary</u>	<u>Enforcement</u>
Ala. Code §13A-6-191 through 199	Protecting Alabama's Elders Act 2013	Creates the crimes of financial exploitation of an elderly person and elder abuse and neglect in the first, second, and third degrees. Provides that a prosecution for financial exploitation of an elderly person in any degree must be commenced within seven years after the commission of the offense. Provides limited immunity for persons or entities reporting or investigating any report of abuse, neglect, or financial exploitation of an elderly person.	Now part of the Alabama Criminal Code

Ala. Act 2015-442	ABLE Act 6/10/2015	Amends Sections 16-33C-1, 16-33C-2, 16-33C-2.1, 16-33C-3, 16-33C-4, 16-33C-5, 16-33C-10, 16-33C-11, 16-33C-12, and 40-18-19, to rename the Wallace-Folsom College Savings Investment Plan the Wallace-Folsom Savings Investment Plan, to establish the Achieving a Better Life Experience Act (ABLE) Program to assist individuals and families in saving private funds for the purpose of supporting Alabama citizens with disabilities, and to provide for an income tax exemption for eligible ABLE Program participants. Revises the membership of the Savings Board, formerly known as the Alabama College Education Savings Program (ACES) Board, requires the Savings Board to develop and implement the ABLE Program, the ACES Program, and the PACT Program, and provides appropriations for Fiscal Year 2015 for development and implementation of the ABLE Program.	Ala. Act 2015-464	Amends 26-2A-107 extends temporary guardian 15-30 days 6/11/2015	Amends Section 26-2A-107, to extend the time period from 15 days to 30 days in which a temporary guardian appointed by a probate court may have authority to act on behalf of an incapacitated person.	Probate Court
Ala. Act 2015-484	Increases stty exemptions 6/11/2015	Amends Sections 6-10-2, 6-10-6, 6-10-11, 43-8-110, 43-8-111, 43-8-113, and 43-8-115, to increase exemptions available to a surviving spouse to \$15,000 for homestead and \$7,500 for personal property. Increases a debtor's individual homestead exemption to \$15,000 and an individual's personal property exemption to \$7,500. The act requires the State Treasurer to adjust these exemptions to reflect the cumulative change in the Consumer Price Index, beginning on July 1, 2017, and the end of each three-year period thereafter.	Ala. Act 2015-484	Increases stty exemptions 6/11/2015	Amends Sections 6-10-2, 6-10-6, 6-10-11, 43-8-110, 43-8-111, 43-8-113, and 43-8-115, to increase exemptions available to a surviving spouse to \$15,000 for homestead and \$7,500 for personal property. Increases a debtor's individual homestead exemption to \$15,000 and an individual's personal property exemption to \$7,500. The act requires the State Treasurer to adjust these exemptions to reflect the cumulative change in the Consumer Price Index, beginning on July 1, 2017, and the end of each three-year period thereafter.	Probate Court

Ala. Code §30-4-17

Divorce revokes beneficiary designation, etc. 9/1/2015

Civil Court

Provides for the revocation by divorce or annulment of certain documents, such as revocable inter-vivos trusts, life insurance and retirement plan beneficiary designations, transfer-on-death accounts, and other revocable dispositions to the former spouse that were established before the divorce or annulment. Provides that the interests of former spouses in property held at the time of the divorce or annulment as joint tenants with the right of survivorship are severed and their co-ownership interests become tenancies in common.

Ala. Code §
22-8A-4-1,
22-8A-3,
22-8A-7,
22-8A-8 and
22-8A-2

DNAR
6/1/2016

Amends Natural Death Act, to provide for the use of portable do not attempt resuscitation orders ("DNAR") anywhere in the state in addition to advance directives for health care, subject to the same conditions.

Criminal Court
Civil Court

Ala. Code §8-6-170
through 179

Protection of Vulnerable
Adults from Financial
Exploitation Act
7/1/2016

Requires certain qualified individuals, such as agents, investment adviser representatives, or a person serving in a supervisory or legal capacity of a broker-dealer or investment adviser, who reasonably believe that financial exploitation of a vulnerable adult has occurred or may occur to promptly notify the Department of Human Resources and the Alabama Securities Commission and provides immunity for disclosures made in good faith. Allows the disclosure of certain information to third parties related to the vulnerable adult, prohibits disclosure of certain information to third parties who are suspected of the exploitation, and provides that broker-dealers and investment advisers may delay disbursing funds from a vulnerable adult's account, with administrative and civil immunity for the delay in disbursement.

Alabama Sec. Commission
& Dept. Human Resources

Ala. Code §30-1-20	Abolishes Common Law Marriages 1/1/2017	Abolishes common-law marriages entered into on or after January 1, 2017, and specifies that common-law marriages entered into prior to that date remain valid.	Circuit Court
Ala. Code §26-2A-108(b) and 26-2A-112 through 117	Visitation for isolated ward 1/1/2017	To establish visitation procedures for relatives to visit a ward who has been isolated by the guardian. Allows the Department of Human Resources to conduct interviews and gather information regarding the requested visitation and report its findings to the court.	Probate Court and Circuit Court
Ala. Code §38-9F-1 through 38-9F-12	Elder Abuse Protection Order and Enforcement Act 8/1/2017	Provides for the issuance of elder abuse protection orders and ex parte elder abuse protection orders, authorizes certain individuals to petition for the orders, and provides penalties for violations of the orders. The act also amends Section 15-10-3, relating to arrests without warrants, to specify that a law enforcement officer may arrest a person without a warrant when the officer has reasonable cause to believe that the person violated an elder abuse protection order or has committed an act of elder abuse.	Civil Court
Ala. Code §22-8B-1	Assisted Suicide Ban Act 8/1/2017	Makes it a crime for any person to deliberately aid another person in dying and provides that if a person aids or assists another in committing suicide or dying, the personal representative or administrator of the estate of the decedent may bring an action for wrongful death. Provides that if any physician or health care provider violates the act, the appropriate licensing board shall suspend or revoke his or her license.	Criminal Court and Civil Court and Probate Court

PROTECTING ALABAMA'S ELDERS ACT

Effective August 2013 Alabama Code Sections 13A-6-191 through 13A-6-199

Initially this was codified at 38-9E-1 et seq., but then moved to the criminal code statutes.

Provides criminal penalties—both misdemeanors and felonies—for varying degrees of abuse.

Penalties from Class A felony down to Class A misdemeanor.

Abuse can be physical—intentional or reckless.

Abuse can be emotional—intentional or reckless.

Abuse can be neglect or isolation, use of restraints, deprivation of food, medication, etc.

Abuse can be financial through deception, intimidation, intimidation, undue influence with intent to deprive person of his/her property.

Applies to any person 60 years and up.

DIVORCE REVOKES APPOINTMENTS AND SOME REVOCABLE TRANSFERS

Effective September 1, 2015 Ala. Code Section 30-4-17

- Applies to divorce and annulment
- Revokes powers of appointment
- Revokes fiduciary appointments such as personal representative, trustee, conservator, agent and guardian
- Severs property held as joint tenants with right of survivorship into equal tenancies in common
- Does not apply to life insurance policies naming the ex-spouse if the ex pays premiums after the divorce/annulment

THREE OBSERVATIONS:

1. This applies to revocable transfers, instruments and appointments. Does not address irrevocable instruments.
2. §30-4-17(g)(3) recognizes federal law pre-emption for some property and requires repayment by the recipient if the transfer was pre-empted under federal law. Remember *Eglehoff v. Eglehoff*, 532 U.S. 141(2001) – Mr. and Mrs. Eglehoff divorced. It was not his first marriage. Then he died. Washington state had a law similar to 30-4-17. Relying on this state law, his children from previous marriage argued the pension and life insurance of their divorced father belonged to them, not their stepmother. Both the pension and life insurance were ERISA plans. SCOTUS reversed, holding that if it's an ERISA plan, federal law controls. Federal law says name on the document is the name of the beneficiary.
3. There is separate Alabama law addressing what happens when ex-spouse is named as agent under Power of Attorney signed since January 1, 2012. Ala. Code 26-1A-404(c)(3) – *Any authority granted to the spouse under a durable power of attorney shall be revoked if the marriage of the principal is dissolved or annulled, or if the parties are legally separated or ... [in] divorce proceedings.*

DNAR

Effective June 1, 2016

Until this law took effect, DNR and resuscitative measures were not addressed in Alabama's Termination of Life Support Procedures (aka Natural Death Act).

Effects of this new law:

- Alabama now recognizes the validity of portable Do Not Attempt Resuscitation order, to be used alongside Advance Directives for Health Care;
- Physicians may enter a DNR order that is portable from one health care facility to the next;
- Existing law is changed to include new definitions and make way for this additional directive. See Ala. Code Sections 22-8A-2 through 4 and 22-8A-7 and 8 attached;
- Can be of assistance help outside of hospitals – example – in emergencies when EMT personnel are called – tells them not to administer CPR
- Practically speaking – limited in scope – not designed to replace Advance Directive for Health Care or Power of Attorney with health care directives. Is designed to help in settings outside of hospitals in connection with CPR – not all health matters
- Different from a POLST (Physician Orders for Life Sustaining Treatment) which may do more than say “do not resuscitate”
- DNR or DNAR is physician order—is supposed to be part of the medical file and consequently, may be implemented immediately. In contrast, the Advance Directive for Health Care must first be found; it may or may not be in the file. It then must be interpreted by medical professionals before implementation.

PROTECTION OF VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION ACT

Effective July 1, 2016 Ala. Code Sections 8-6-170 through 8-6-179

- “Vulnerable adults” are those 65+, as well as others over age 18 who need protection and may be vulnerable because of health limitations.
- Financial exploitation includes taking, withholding or using a vulnerable adult’s property wrongfully or without authority, or acts or omissions by an agent under a Power of Attorney, guardian or conservator toward:
 - (1) Obtaining control or depriving an adult of his/ her own property through deception, intimidation or undue influence, or
 - (2) Conversion of the person’s property so as to deprive the person of its ownership and benefit.
- Directed to those who work in investment advisory firms, brokerage houses.
- Advisor SHALL report to Ala. Securities Commission and Dept. of Human Resources if he/she believes financial exploitation has occurred, has been attempted or is being attempted.
- Advisor MAY report the same to individuals close to the vulnerable adult, such as guardian, conservator, co-trustee, and agent under Power of Attorney or other third party designated by the vulnerable adult.
- No disclosure is allowed to anyone suspected of financial or other abuse.
- Authorizes firms to delay account disbursements if exploitation is suspected.
- Advisor, if he/she withholds a disbursement because of suspected abuse, must within 2 days notify all parties to the account (excluding any party suspected of exploitation) as well as DHR and Securities Commission.
- Any disbursement so withheld will be released within 15 days or earlier if no evidence is found. The 15 days can be extended.
- Immunizes those who act in good faith from Alabama’s civil and administrative liability.

- Records that are made available to law enforcement or Adult Protective Services are not public records.
- Just a reporting statute—does not address what happens to the suspect.
- Does not apply to banks or bank tellers.

ADDITIONS TO ALABAMA UNIFORM GUARDIANSHIP ACT

Effective January 1, 2017

They primarily relate to efforts to visit or contact an adult ward. Highlights:

- 26-2A-107.** Expands temporary (emergency) guardianship from 15 to 30 days. Authorizes court to replace appointed guardian who is not performing duties with interim guardian for up to 6 months.
- 26-2A-108(b).** Guardian has authority to limit or enforce an adult ward's right to visitation or communication with anyone including the right to receive visitors, telephone calls and personal mail.
- 26-2A-112.** Authorizes court to issue visitation orders for relatives with adult wards. Defines visitation between ward and relative as being "in person", or by telephone or electronic communication.
- 26-2A-113.** Allows a relative who has been isolated from the ward to petition the probate court to compel visitation. Hearing and notice are required unless the ward is in declining health, in which case an emergency hearing will be held. Petition can be removed to circuit court.
- 26-2A-114.** In connection with the visitation petition, the court may ask DHR or court representative to gather additional facts.
- 26-2A-115.** As part of the hearing, the court will determine whether the adult ward has capacity to make decisions concerning the visitation request.
- If the court decides the ward is competent and wants the contact with the relative, the court will order visitation.
 - If the court decides the ward is competent but does not want the contact, the court will deny the request.
 - If the court decides the ward does not have capacity to make the decision, the court will decide what is in the ward's best interest.
- The petitioner bears court costs and attorney fees.
- 26-2A-116.** Unless the court orders to the contrary, a guardian must inform relatives of the ward's hospitalization, change of residence, death and funeral arrangements

ELDER ABUSE PROTECTION ORDER AND ENFORCEMENT

Effective August 1, 2017 Alabama Code Sections 38-9F-1 through 38-9F-12

Value: Provides early intervention to stop abuse and financial exploitation without having to go to DHR Adult Protective Services
Protects elders by creating/fashioning/recognizing elder abuse protection orders and enabling law enforcement to use them

See Alabama Lawyer, January 2018 issue for excellent in-depth article on this new law by John Craft, Felicia Brooks and Emily Marshall

1. Highlights

- Elder = 60 year old
- definitions of specific abuse come from Alabama's criminal code
- Examples – Arson
 - Assault
 - Kidnapping
 - Menacing
 - Stalking
 - Unlawful imprisonment

2. The orders can be issued

- in circuit court
- in district court
- can be part of domestic relations proceeding
- does not appear that probate court may issue such orders. See PFEA form.

3. Who may ask court for such an order? (assuming elder cannot)

- guardian
- conservator
- agent under Power of Attorney
- health care proxy
- interested person

4. Process

- venue rules are liberal as to where to file
- file Petition at no cost to petitioner or elder.
- give notice to elder pursuant to ARCP
- hearing (if requested) within 10 days after service is perfected

- standard of proof – preponderance of evidence
- court may issue temporary ex parte order without notice or hearing, depending on facts
- court will grant or deny petition for temporary ex parte protection order within 3 business days of when it is filed
- temporary ex parte order stays in place until final hearing

5. Forms of Relief

- Protection order can take these forms:
 - Restraining order
 - Injunction
 - Court release from custody
 - Court order that places restrictions on someone out on bail in criminal case
 - enjoins defendant from threatening to commit acts of abuse
 - enjoins defendant from committing acts of abuse
 - enjoins defendant from harassing, stalking, annoying, contacting, or putting elder in fear, injury
 - orders defendant to stay away from elder's home, workplace or other specific locations when defendant has no legitimate reason to be there
 - removes defendant from elder's residence, regardless of ownership
 - authorizes the elder to take possession of automobile and other personal effects regardless of ownership
 - prohibits defendant from exercising control over elder's property
 - requires defendant to provide an accounting of elder's income, resources, debts and expenses
 - restrains defendant from exercising powers the defendant has been granted as agent under elder's Power of Attorney
 - requires defendant to cooperate with elder's guardian, conservator, agent under Power of Attorney
 - after notice and hearing – final order may make permanent what was in ex parte temporary order or may require restitution from defendant
 - cannot affect title to realty
 - copy of order is provided to elder, defendant and law enforcement
 - law enforcement may, based on probable cause, arrest persons for violations of temporary or permanent order – no warrant needed for arrest. Presentation of the order to law enforcement = probable cause.
 - violation of order = Class A misdemeanor

How this differs from earlier laws (much of the following analysis comes from the Alabama Lawyer article cited above).

Adult Protective Services Act of 1976 was designed to protect adults whose health or safety is in danger by investigating reports of abuse, neglect, exploitation and abuse. As result of such investigation, DHR may petition for protective services and placement for individuals. These procedures are unlikely to change.

Protecting Alabama's Elders Act, which took effect in 2013 (first law cited in the table), provides criminal penalties for elder abuse—physical, emotional and financial—for persons age 60 or older. The penalties range from Class A misdemeanor to Class A felony for physical abuse, from Class A misdemeanor to Class B felony for financial exploitation. Criminal sanctions are intended primarily to deter unlawful behavior and punish the wrongdoer.

This new act allows competent victims of abuse to seek relief for themselves. It is intended to provide early intervention to prevent further harm or exploitation. It appears in some cases to allow for quicker action/quicker relief than would be available under the older laws. Moreover, it is available in the civil courts without need to involve the criminal court system.

Attachments: 4 page form -- Petition for Elder Abuse Protection Order

3 page form -- Elder Abuse Protection Order

**PETITION FOR ELDER ABUSE
PROTECTION ORDER**

Court Case Number

IN THE CIRCUIT COURT OF _____ COUNTY, ALABAMA
(Name of County)

_____ v. _____
[Name of Plaintiff (victim)] *[Name of Defendant (person to be restrained)]*

(Name of Plaintiff filing on behalf of victim) *(Name of Victim)* *[Defendant's Address (Business or Home)]*

(Defendant's Social Security Number) *(City)* *(State)* *(Zip Code)*

(Defendant's Date of Birth)

YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE COURT MAY DISMISS THIS CASE, AND YOU MAY BE SUBJECT TO BEING CHARGED WITH PERJURY FOR KNOWINGLY PROVIDING FALSE INFORMATION.

I. ELIGIBLE PLAINTIFFS:

(Note: The word, "Plaintiff," as used in this form, describes the victim and/or the person filing on behalf of the victim):

I am 60 years of age or older and am in need of protection from elder abuse.

OR

I am filing on behalf of a person 60 years of age or older, who is in need of protection from elder abuse and lacks the physical or mental capacity to seek protection for himself or herself, and I am the person's (check all that apply): court appointed guardian (include copy of the court order of appointment); court appointed conservator (include copy of the court order of appointment); court appointed temporary guardian (include copy of the court order of appointment); agent, co-agent, or successor agent appointed under the plaintiff's validly executed power of attorney who acts within the authority of the power of attorney (include copy of the power of attorney); health care proxy appointed under the plaintiff's validly executed Advance Directive for Health Care or similar document (include document); an interested person who has the authority to petition for protective placement or other protective services under Section 38-9-6, Ala. Code 1975.

I state that the following is true and correct:

The Plaintiff is a resident of _____ County/Parish in the State of _____
(Name of County/Parish) *(Name of State)*

Are there any criminal charges against the Defendant because of abuse to the Plaintiff? YES NO

If YES, the charges were brought in _____ County/Parish, _____
(Name of County/Parish) *(Name of State)*

(Note: If there are more civil or other cases with the Defendant or more criminal charges against the Defendant, please attach additional 8" x 11" sheets of paper, if necessary, stating the case number(s), County(ies)/Parish(es), and States(s) in which these cases are being handled).

(Check one or more of the following boxes if the statement(s) apply/applies to the Plaintiff):

The Plaintiff left his or her residence to avoid further abuse or threat of abuse, and the Plaintiff is temporarily located in _____
County, Alabama. *(Name of County)*

The Defendant lives in _____ County/Parish, _____
(Name of County/Parish) *(Name of State)*

The elder abuse occurred in _____ County, Alabama.
(Name of County)

I am requesting an elder abuse protection order; a change in a current protection order; an emergency order; a change in an emergency order.

Sections 38-9F-1 to 38-9F-12, Ala. Code 1975

Original - Court Record Copy - Law Enforcement Copy - Plaintiff Copy - Defendant

PETITION FOR ELDER ABUSE
PROTECTION ORDER

Court Case Number

II. To Get a Protection Order, the Defendant Must Have Done One or More of the Following (Check all that apply):

- Threatened to confine the Plaintiff
- Made the Plaintiff afraid that the Plaintiff would be seriously injured
- Made the Plaintiff have sex by force or threat of force
- Kidnapped the Plaintiff
- Trespassed on the Plaintiff's property
- Tortured or willfully abused the Plaintiff
- Stole from the Plaintiff
- Recklessly engaged in conduct which risked serious injury to the Plaintiff
- Inflicted emotional or mental anguish on the Plaintiff
- Prevented Plaintiff from receiving mental or physical health care
- Injured the Plaintiff
- Used force to exert control over the Plaintiff's property
- Threatened to injure/hurt the Plaintiff
- Stalked the Plaintiff
- Set fire to the Plaintiff's house
- Restrained the Plaintiff
- Took away or deprived the Plaintiff of food, clothing or shelter
- Other (please specify): _____

III. Explain the Abuse That Has Happened Below (If Applicable) (Begin With the Most Recent Act. You May Add Additional 8" x 11" Sheets of Paper, If Necessary):

Date and place where the elder abuse occurred: _____

Describe how the Defendant hurt or threatened the Plaintiff or how the Plaintiff is in imminent danger of becoming a victim:

Describe how the Defendant stole from the Plaintiff:

I genuinely fear the Defendant will cause further abuse because:

IV. Legal Information (Check all that apply):

There is a current restraining or protection order against the Defendant:

YES; I don't know; NO. If YES, the County and State where it was issued: _____ County, _____ (State).
(Name of County) (Name of State)

The Defendant has a current restraining or protection order against the Plaintiff:

YES; No. If YES, the County and State where it was issued: _____ County, _____ (State).
(Name of County) (Name of State)

The Plaintiff has a court appointed guardian or conservator:

YES; I don't know; NO. If YES, the County and State where it was issued: _____ County, _____ (State).
(Name of County) (Name of State)

(Note: If there are more current restraining or protection orders against the Defendant or against the Plaintiff, please attach additional 8" x 11" sheets of paper, if necessary, stating the case number(s), County(ies)/Parish(es), and State(s) in which these Orders were issued).

Original - Court Record Copy - Law Enforcement Copy - Plaintiff Copy - Defendant

PETITION FOR ELDER ABUSE
PROTECTION ORDER

Court Case Number

V. Residence

THE DEFENDANT MAY BE REQUIRED TO MOVE FROM THE PLAINTIFF'S RESIDENCE IF THE RESIDENCE IS IN THE SOLE NAME OF THE PLAINTIFF, IF IT IS JOINTLY OWNED OR RENTED BY THE PLAINTIFF AND THE DEFENDANT.

The place where the Plaintiff lives is: Owned by: the Plaintiff; or the Defendant; or both the Plaintiff and the Defendant.
 Rented by:

VI. Emergency Relief Requested (Please Check the Boxes To Show What is Requested):

The Plaintiff is at risk of imminent potential harm, and I am asking the Court for the following for myself or the person(s) for whom I am applying:

(1) Enjoin the Defendant from threatening to commit or committing acts of elder abuse, as defined in the Elder Abuse Protection Order and Enforcement Act, against the:
 Plaintiff; and/or any designated person, to-wit: _____
(Name of Person)

(2) Restrain and enjoin the Defendant from:

Harassing; Stalking; Annoying; Telephoning; Contacting*; Communicating with: the Plaintiff; OR

Threatening or engaging in conduct that would place the following in reasonable fear of bodily injury: the Plaintiff; and/or any designated person, to wit: _____
(Name of Person)

* "Contacting" may include, but is not limited to, communicating with the victim verbally or in any written form, either in person, telephonically, electronically, or in any other manner, either directly or indirectly through a third person.

(3) Order the Defendant to stay away from: the Plaintiff's residence; place of employment; and/or any specified place frequented by the Plaintiff the Defendant has no legitimate reason to frequent, to-wit: _____
(Place)

(4) Remove and exclude the Defendant from the residence of the Plaintiff, regardless of ownership of the residence.

(5) Order possession and use of an: automobile and/or other essential personal effects regardless of ownership; and direct the appropriate law enforcement officer to accompany the Plaintiff to the residence of the Plaintiff or to other specified locations as necessary to protect the Plaintiff from abuse.

(6) Prohibit the Defendant from: transferring; concealing; encumbering; or otherwise disposing of specified property mutually owned or leased by the parties or in which the Plaintiff had an ownership interest within the last 12 months, to-wit: _____

(Please describe property).

(7) Prohibit the Defendant from transferring the funds, benefits, property, resources, belongings, or assets of the Plaintiff to any person other than the Plaintiff.

(8) Restrain the Defendant from exercising control over the funds, benefits, property, resources, belongings, or assets of the Plaintiff.

(9) Require the Defendant to provide an accounting of the disposition of the Plaintiff's income and other resources, and of the Plaintiff's debts and expenses.

(10) Restrain the Defendant from exercising any powers the Defendant has been granted as the Plaintiff's agent under power of attorney.

(11) Require the Defendant to comply with the instructions of the Plaintiff's guardian, conservator, or agent under power of attorney.

(12) Order other relief deemed necessary to provide for the safety and welfare of the: Plaintiff; and/or any designated person as follows:

(Describe).

VII. Additional relief requested for final hearing (permanent order):

In addition to the relief requested above in "VI. Emergency Relief Requested," I request the following relief for myself and/or person(s) for whom I am applying:

(13) Require the Defendant to return custody or control of the funds, benefits, property, resources, belongings, or assets to the Plaintiff.

(14) Order restitution.

(15) Prohibit the Defendant from possessing a firearm or other weapon specified by the court, except when the weapon is necessary for employment as a law enforcement officer or military personnel.

(16) Order the Defendant to pay attorney's fees and court costs.

Original - Court Record

Copy - Law Enforcement

Copy - Plaintiff

Copy - Defendant

**PETITION FOR ELDER ABUSE
PROTECTION ORDER**

Court Case Number

(17) Order other relief not requested above (describe):

Before me, the undersigned authority, personally appeared the Plaintiff or person filing on behalf of the Plaintiff, who is known to me or presented an identification card to me and who being duly sworn, deposes and says that he/she has read the foregoing Petition for Elder Abuse Protection Order and that the facts herein are true and correct.

Sworn to and subscribed before this, the _____ day of _____

(Name of Plaintiff (Please print))

(Signature of Plaintiff)

Person filing on behalf of the Plaintiff (Please print)

(Signature of Person filing on behalf of the Plaintiff)

Judge/Clerk of Court/Notary Public
(Notary: My commission expires _____)

*Business Address and Telephone Number of Judge/Clerk
of Court/Notary Public*

NOTICE TO DEFENDANT

The Defendant is advised that (1) he or she has the right to counsel at his or her own expense at the final hearing on this Petition but not counsel appointed by the court; and (2) he or she has a right to request a final hearing prior to 10 days of perfection of service of this Petition.

Original-Court Record

Copy-Law Enforcement

Copy-Plaintiff

Copy-Defendant

Order There is a separate form
for Ex Parte orders.

ELDER ABUSE PROTECTION ORDER (Elder Abuse Protection Order and Enforcement Act) §§ 38-9F-1 to 38-9F-12, Ala. Code 1975 <input type="checkbox"/> Amended Order	State of Alabama Unified Judicial System Form C-92 (Page 1 of 3) 8/17 Court Case Number: _____ (Number) In the Circuit Court of _____ County, Alabama (Name of County)
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PLAINTIFF (Victim)

First _____	Middle _____	Last _____		Date of Birth (DOB) of Plaintiff (Victim) _____
Other Designated Persons(s) [List Name(s)]: _____			Other Designated Persons(s) [List DOB(s)]: _____	

DEFENDANT Defendant's Telephone Number and Home Address: _____

First _____	Middle _____	Last _____
-------------	--------------	------------

- CAUTION: WEAPONS INVOLVED:**
 Firearm Knife Hands, Feet, Fist
 Other: _____
 Weapon Present on the Property

SEX	RACE	DOB	HEIGHT	WEIGHT
EYES	HAIR	DISTINGUISHING FEATURES		
DRIVER'S LICENSE NUMBER		STATE	EXPIRATION DATE	
VEHICLE			TAG NUMBER	

THE COURT HEREBY FINDS:

That it has jurisdiction over the parties and matter under the laws of the state and that reasonable notice and opportunity to be heard was given to the person against whom the order is sought sufficient to protect the person's right to due process. Additional findings of this Court follow on succeeding pages.

(Check all that apply):

After a hearing was held in which the Defendant: appeared (pro se or with counsel) or did not appear, the Court finds that the Plaintiff proved the allegations of elder abuse by a preponderance of the evidence and further finds that:

Service was perfected on the Defendant on _____ (date).

If the petition was filed on behalf of the victim, service was perfected on the victim on _____ (date).

The terms of this order shall be of permanent duration; OR effective until _____ (date).

THIS ORDER IS VALID AND ENFORCEABLE IN ALL COUNTIES IN THE STATE OF ALABAMA. LAW ENFORCEMENT OFFICERS MAY USE THEIR ARREST POWERS PURSUANT TO SECTION 15-10-3, ALA. CODE 1975, TO ENFORCE THE TERMS OF THE ORDER.

ONLY THE COURT CAN CHANGE THIS ORDER.

§§ 38-9F-1 to 38-9F-12, Ala. Code 1975

Original - Court Record Copy - Law Enforcement Copy - Plaintiff Copy - Defendant Copy - Probate Court (if applicable)

Judge's Initials: _____

ELDER ABUSE PROTECTION ORDER
(Elder Abuse Protection Order and Enforcement Act)
§§ 38-9F-1 to 38-9F-12, Ala. Code 1975

Amended Order

State of Alabama Unified Judicial System Form C-92 (Page 2 of 3)

8/17

Court Case Number: _____

(Number)

In the Circuit Court of _____ County, Alabama

(Name of County)

THE COURT HEREBY ORDERS THAT (Check all that apply):

(1) The Defendant is enjoined from threatening to commit or committing acts of abuse, as defined in the Elder Abuse Protection Order and Enforcement Act, against the: Plaintiff; and/or any designated person, to-wit:

(Name of Person)

(2) The Defendant is restrained and enjoined from: Harassing Stalking Annoying Telephoning Contacting Communicating with: the Plaintiff; OR

Threatening or engaging in conduct that would place the following in reasonable fear of bodily injury: the Plaintiff; and/or any designated person, to wit: _____

(Name of Person)

(3) The Defendant is ordered to stay away from: the Plaintiff's residence; place of employment; and/or any specified place frequented by the Plaintiff that the Defendant has no legitimate reason to frequent, to-wit: _____

(Place)

(4) The Defendant is removed and excluded from the residence of the Plaintiff, regardless of ownership of the residence.

(5) The Defendant is ordered to provide to the Plaintiff possession and use of an: automobile and/or other essential personal effects regardless of ownership; and the appropriate law enforcement officer, to-wit: _____ (Name) is directed to accompany the Plaintiff to the residence of the Plaintiff or other specified locations as necessary to protect the Plaintiff from abuse.

(6) The Defendant is prohibited from: transferring; concealing; encumbering; or otherwise disposing of specified property mutually owned or leased by the parties or in which the Plaintiff had an ownership interest within the last 12 months, to-wit: _____

(Please describe property).

(7) The Defendant is prohibited from transferring the funds, benefits, property, resources, belongings, or assets of the Plaintiff to any person other than the Plaintiff.

(8) The Defendant is restrained and enjoined from exercising control over the funds, benefits, property, resources, belongings, or assets of the Plaintiff.

(9) The Defendant is ordered to provide an accounting of the disposition of the Plaintiff's income and other resources, and of the Plaintiff's debts and expenses.

(10) The Defendant is restrained from exercising any powers the Defendant has been granted as the Plaintiff's agent under power of attorney.

(11) The Defendant is ordered to comply with the instructions of the Plaintiff's guardian, conservator, or agent under power of attorney.

(12) The following relief is ordered and deemed necessary to provide for the safety and welfare of the: Plaintiff; and/or any designated person, to-wit: _____ (Name of person) as follows: _____

(Describe relief)

THE COURT FURTHER ORDERS THAT (Check all that apply):

(13) The Defendant is ordered to return custody or control of the funds, benefits, property, resources, belongings, or assets to the Plaintiff.

(14) The Defendant is ordered to pay restitution in the amount of \$ _____ to the Plaintiff.

(15) The Defendant is restrained and enjoined from possessing a firearm or other weapon specified by the court, except when the weapon is necessary for employment as a law enforcement officer or military personnel.

(16) The Defendant is ordered to pay attorney's fees in the amount of \$ _____ and court costs in the amount of \$ _____.

Original - Court Record Copy - Law Enforcement Copy - Plaintiff Copy - Defendant Copy - Probate Court (if applicable)

Judge's Initials: _____

ELDER ABUSE PROTECTION ORDER
(Elder Abuse Protection Order and Enforcement Act)
§§ 38-9F-1 to 38-9F-12, Ala. Code 1975
 Amended Order

State of Alabama Unified Judicial System Form C-92 (Page 3 of 3) 8/17
Court Case Number: _____

In the Circuit Court of _____ County, Alabama
(Number)
(Name of County)

(17) Other (please specify):

(Date)

(Signature of Judge)

RETURN ON SERVICE

Return receipt(s) of certified mail received in this office on _____
[Date(s)]

I certify that I personally delivered a copy(ies) of the Elder Abuse Protection Order to _____ in
_____ County, Alabama on _____
[Name of County(ies)] [Date(s)]

(Date)

(Server's Signature)

(Type of Process Server)

(Office Address of Server)

(Office Telephone Number of Server)

Original - Court Record Copy - Law Enforcement Copy - Plaintiff Copy - Defendant Copy - Probate Court (if applicable)

Judge's Initials: _____

