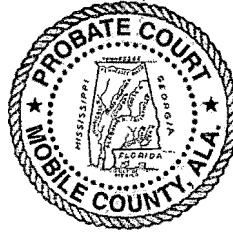


Don Davis
Judge of Probate

C. Mark Erwin
Chief Clerk/Administrator

Charles D. South II
Chief of Staff



Judicial Division - (251) 574-6001
Recording Division - (251) 574-6040
Records Division - (251) 574-6070
Elections Division - (251) 574-6080
Accounts Division - (251) 574-6101
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PROBATE COURT OF MOBILE COUNTY, ALABAMA

MEMORANDUM

TO: Presiding Circuit Judge Michael A. Youngpeter and Mobile County Circuit Court Judges

FROM: Don Davis

RE: Mobile County Probate Court's "Blocked" Account Program

DATE: October 25, 2021

All:

It has come to my attention that there is some confusion on the part of some members of the Circuit Court bench and members of the plaintiffs bar about the Mobile County Probate Court's "blocked" account program. The purpose of this memorandum is to provide information about this program and hopefully address any misunderstandings that exist.

Background

The Probate Court's policies, practices and procedures are not established in a vacuum. Typically, there is some past event(s) that occurred that prompts the Probate Court to establish a policy or procedure regarding some aspect of its operation. Such is the case in terms of the Probate Court's blocked account program.

If you will recall, I served as Mobile County's General Conservator from 1998 until 2000, prior to my election as judge of probate and I represented Bill McDermott during his tenure as General Conservator prior to him becoming a circuit judge (1995-1998). It was Judge Red Noonan's practice to require *all* funds for minors to be remitted to the General Conservator for safekeeping. The Probate Court did not directly keep these funds in any sort of fiduciary account. A reason offered to me for this practice was that Judge Noonan and his administration believed that the Alabama Public Examiners Office prohibited the Probate Court from having any of its funds in interest bearing accounts.

When I served as the General Conservator, I didn't like being required to hold small amounts of minors' monies (\$15,000 or less) because the expense of administration the corpuses of these funds incurred (notably a partial settlement every three years). I continued to have disdain for this practice when I became the judge of probate. I confirmed with the Alabama Public Examiners Office that we could hold funds in interest bearing accounts as long as the accounts were identified

to a particular person (or entity) and we had a Social Security number or EIN to utilize for the account. Upon receipt of this information we initiated the blocked account program. It has worked very well since its inception. We generally have around 300 separate accounts at any given period of time. The cumulative amount of money involve typically ranges between \$10 million and \$15 million.

Key Aspects- Blocked Account Program

The key aspects of the Probate Court's blocked account program are:

1. A separate certificate of deposit is procured in the judge of probate's name as custodian for the designated person.
2. The Social Security number of the beneficiary is utilized for IRS tax reporting purposes.
3. The certificates of deposit cannot be cashed or accessed without a written order of the Probate Court.
4. The Probate Court has a negotiated agreement with a local bank. The key points of this agreement are:
 - A. Financial institution must participate in Alabama's "SAFE" program (for entities that hold public monies)
 - B. Financial institution must have a downtown Mobile office
 - C. Financial institution must accept the Probate Court's custom bank agreement (notably - no waiver of right to a jury trial, no agreement to arbitration of disputes, etc. if a dispute arises)
 - D. Interest rate is tied to the U. S. Treasury "T-bill" rate and fluctuates depending on the economy - but normally is going to be a higher rate of interest than what banks offer to individual customers (such as special rates for a limited period of time for new customers).
 - E. No early withdrawal penalty or other penalties, service fees, etc.
 - F. No minimum amount requirement
 - G. Complimentary checks and deposit materials
 - H. An assigned bank officer with whom the Court's Financial Administrator interacts
 - I. Interest is posted to the certificates of deposit monthly and reported to the Court
5. The Probate Court bids out the blocked account program every three to four years. For many years Trustmark National Bank handled the blocked account program. Hancock-Whitney Bank currently handles the blocked account program.

6. Funds in a blocked account can be used for emergent or important matters relating to a minor, such as: payment of school tuition (primary, secondary and college), school expenses, computers and related equipment, orthodontic and other expensive dental work, and motor vehicles.
7. A parent or guardian of a minor or a older minor can initiate a request for funds held in a blocked account by writing a letter to the Probate Court. The letter doesn't have to be notarized or witnessed. I personally review all of these requests. The nature of the request and the nature of any documentation submitted in support of a request determine how the request is processed. In many instances, the requested expenditure is approved *without* the appointment of a guardian ad litem or a hearing.
8. Requests for expenditures to purchase motor vehicles usually require a hearing primarily because of the lack of information furnished to the Court and also to emphasize the rules relating to the operation of the motor vehicle upon the parent/guardian and the minor. For motor vehicle requests we require: (A) minor must have an overall "B" average for substantive course work, (B) minor must have successfully completed a drivers education class, (C) minor must be insured or inform the Probate Court how the minor will become insured, and (D) a reason must be provided why the purchase of a motor vehicle for use by the minor is thought to be in the best interest of the minor. On occasions we have authorized the purchase of a motor vehicle for a parent or guardian to utilize - if it is clearly demonstrated that such action is in the best interest of the minor.
9. Recall - motor vehicles cannot be titled in the name of a minor. Thus, in instances where a request is made to purchase a motor vehicle for use by a minor (the majority of the motor vehicle purchase requests that we receive), we have the parent or guardian to hold legal title to the motor vehicle for the benefit of the minor. To accomplish such we appoint the parent/guardian as a limited conservator for the minor. Circuit Court's do not have the jurisdiction to appoint conservators (limited or general).¹ We also confirm by order who is going to be responsible for the payment of the insurance on the motor vehicle and who will be responsible for the maintenance and upkeep of the motor vehicle. We further require the motor vehicle and the minor be insured at all times - otherwise it is not to be operated. Further, we specify that the only person(s) who can operate or use the motor vehicle are the minor (for whose benefit it is being purchased) and the limited conservator.

¹The one exception to this rule is where the Department of Human Resources petitions the Circuit Court to place an incapacitated adult in a skilled nursing care facility. While statutory authority exists for the appointment of a conservator, most Circuit Courts do not exercise this jurisdiction and the Department of Human Resources petitions the appropriate Alabama probate court for the establishment of a conservatorship. This has been the long time practice in the Mobile County Circuit Court.

10. The blocked account program is audited by the Alabama Public Examiners Office.
11. The Probate Court's case management system enables it to monitor compliance with orders of the Probate Court relating to these accounts (such as verifying that insurance coverage remains in effect for the motor vehicle - in the instance of a request to use funds for the purchase of a motor vehicle)- to the extent such is necessary. The Probate Court can also monitor when a minor is scheduled to turn 19 years of age and receive their funds.
12. Depending on the time of day and day of the week, when the request is made - we can usually make a disbursement within 48 to 72 hours of the request being submitted to the Court.
13. When a minor who has funds that are part of the Probate Court's blocked account becomes an adult, the procedure for payment of the funds by the Probate Court to the former minor are easy and do not require a hearing to be acted upon:
 - A. The former minor can physically come to the Probate Court and upon furnishing photographic proof of identity, the former minor can request in writing for the payment of the funds. At this time the former minor can indicate if they want to physically come back to the Probate Court to receive a check for the proceeds of the blocked account, or whether they want the proceeds mailed to them. The Probate Court's staff will initiate the transfer procedure at that time:
 - B. The former minor can mail a written request to the Probate Court requesting that the funds in the blocked account be remitted to them. In such instance, the former minor should provide a photocopy of a valid, current identification that contains the photograph of the former minor. Preferably, the former minor's date of birth should be reflected on the copy of the photo identification being furnished. If the former minor is requesting the proceeds through the mail service, the former minor should advise the Court as to whether the former minor desires to personally come to the Probate Court to pick up the check for the proceeds of the blocked account or have the proceeds of the blocked account mailed to the former minor at a specified address.

Legal Authority

Traditionally, Alabama probate courts are the primary court within the Alabama judicial system that protect and safeguard the assets of minors and incapacitated adults. Generally, this is demonstrated by the Alabama probate courts having original and exclusive jurisdiction² of

²See footnote number 1 above for the sole exception to this jurisdictional grant.

“protective proceedings,” such as guardianship and conservatorship cases. The protective proceeding remedies are contained in Articles 2 and 2A of Title 26 of the *Code of Alabama* (1975). The specific statutory basis for the Probate Court’s blocked account program is found in *Ala. Code* § 26-2A-137 (1975).

Other Statutes With Possible Applicability

I would note several other statutory provisions that bear on the payment of funds due to a minor.

Ala. Code § 12-17-93(3) (1975) provides circuit court clerks have authority to receive the amount of any judgment entered in the courts of which they are clerks, either before or after the issue of execution thereon.

It should be noted that while an Alabama circuit court clerk has the authority to receive the amount of any judgment entered by their court in favor of a minor, there is no other statutory direction as to what the circuit court clerk can do with said funds. And presumably, a circuit court clerk would be under the same restrictions as Alabama probate courts in terms of the establishment of interest bearing accounts and United States banking laws (notably the Social Security number of the beneficiary of the account must be furnished at the time the bank account is established).

Ala. Code § 26-2A-6 (1975) provides that if a minor has no conservator and the settlement does not exceed (a) \$5,000 if payable in a lump sum, or (b) a total of \$25,000 in payments of not more than \$3,000 per year if payable in installments, the obligated party can pay the proceeds to: (1) any person having the care and custody of the minor and with whom the minor resides, (2) a guardian of the minor, or (3) the judge of probate of the county in which the minor resides, if a resident of the State of Alabama, or, if a non-resident, to the judge of probate or like officer of the county in which the debtor or creditor resides.

This statute further requires that if a payment is made under *Ala. Code* § 26-2A-6, the obligated party must file a written notice of payment with the probate court. A person receiving such funds pursuant to this section are obligated to apply the money to the health, support, education, or maintenance of the minor, but may not pay themselves except by way of reimbursement for out-of-pocket expenses for goods and services necessary for the minor's support. A person who receives money or personal property for a minor is obligated to preserve the money and personal property, except to the extent necessary for the health, support, education, or maintenance of the minor, and any balance not so used and any personal property received for the minor must be turned over to the minor when majority is attained.

Finally, if a minor has no conservator and the amount to be paid does not exceed \$50,000,³ the obligated party may create a custodianship account and pay the proceeds to the custodian of said account for the benefit of the minor pursuant to the Alabama Uniform Transfers To Minors Act [*Ala. Code* §§ 35-5A-1 to 24 (1975)]. This Act has very specific provisions the custodian must undertake for a valid custodial account being created. See *Ala. Code* § 35-5A-10 (1975).

It should also be noted that payment of an indebtedness to any person not authorized to receive it will not operate as a satisfaction thereof and will not be binding upon a minor. See *Alabama Power Co. v. Hamilton*, 201 Ala. 62, 66, 77 So. 356, 360 (1917).

Closing Remarks

I am hopeful that this memorandum clears up any misunderstanding any of you may have concerning the Probate Court's blocked account program. If any of you have any questions concerning the aforesaid, please do not hesitate to contact me.

Thanks

Don Davis

³ *Ala. Code* § 35-5A-8 (1975) provides that a payment of an obligation may be made to an adult member of the minor's family or to a trust company *unless the property exceeds fifty thousand dollars (\$50,000) in value.*

IN THE PROBATE COURT OF MOBILE COUNTY, ALABAMA

REQUEST TO TERMINATE BLOCKED ACCOUNT

TO: Don Davis, Judge of Probate

RE: Request For Payment Of Funds Held By Court

My name is: _____

My address is: _____

My date of birth is: _____

I am now _____ years old

My social security number is _____

I hereby request payment of funds being held by the Probate Court for my benefit as I am now an adult.

For questions or discussion regarding this matter, the Probate Court's staff may contact me as follows:

Telephone: _____ Cellular Telephone: _____

Email: _____

Attached to this request is a copy of a current, valid photo-identification of me.

PERJURY STATEMENT

I swear or affirm under the penalty of perjury that the information contained in this request is true and correct to the best of my information, knowledge and believe and I understand that a government official is relying upon this request. I further acknowledge that I understand that the crime of perjury is punishable by imprisonment in the state prison or county jail for up to one (1) year and/or fines not exceeding \$6,000.00. *Ala. Code* §§ 13A-5-7 and 12, 13A-10-102 (1975).

Signature of Person Requesting Funds

Date: _____, 20____