



2012-004

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

October 21, 2011

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Honorable Robert M. Martin  
Judge of Probate  
Chilton County Probate Court  
Post Office Box 270  
Clanton, Alabama 35046

Probate Judges – Administrator Ad Litem –  
Estates – Claims

Because the estate of a deceased person is not opened upon the appointment of an administrator ad litem, there is no requirement that an estate remain open for a six-month claim period prior to closing the estate. Further, the claims filed during the time frame in which an administrator ad litem investigates a potential cause of action are not to be paid by the administrator ad litem.

Dear Judge Martin:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

Once a person is appointed as administrator ad litem of an estate, does the six-month claim period need to run prior to closing the estate?

Is the estate liable for the claims filed during the time frame in which the estate was open?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that a petition was filed requesting that the Chilton County Probate Court appoint an administrator ad

litem pursuant to section 43-2-250 of the Code of Alabama. The petition stated that the purpose for filing was to obtain medical and prescription records pursuant to a potential claim. The probate court appointed the husband as the administrator ad litem. Although no action was taken to open or probate the estate of the deceased, two claims were filed in the Chilton County Probate Court against the deceased. At this time, you inquire as to what action should be taken with respect to these claims given the fact that an administrator ad litem was appointed in this matter.

The administration of an estate “involves all that may be done legally by the administrator [or executor] in the preservation of the assets and in his dealings with creditors, distributees or legatees.” *Opinion of the Clerk* No. 32, 390 So. 2d 1040, 1041 (Ala. 1980). The administration of an estate is a single and continuous proceeding. *Id.* The probate court is a court of general and original jurisdiction with regard to the administration of estates. The administration of an estate does not commence with the filing of a petition for letters of administration or of a petition for probate of a will and for letters testamentary. Instead, the administration of an estate commences when the probate court takes action upon a petition to initiate proceedings. *Dubose v. Weaver*, 68 So. 3d 814 (Ala. 2011).

As noted above, for there to have been an administration of the current matter, the probate court would have had to have acted on a petition for either letters of testamentary or letters of administration. The Chilton County Probate Judge, however, acted on a petition to appoint an administrator ad litem pursuant to section 43-2-250 of the Code. This section states, in pertinent part, as follows:

***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, it shall be the duty of the court to appoint an administrator ad litem of such estate for the particular proceeding, without bond, whenever the facts rendering such appointment necessary shall appear in the record of such case or shall be made known to the court by the affidavit of any person interested therein.***

ALA. CODE § 43-2-250 (1991) (emphasis added).

It is appropriate to appoint an administrator ad litem when “(1) [t]he estate of the deceased person ‘must be represented,’ . . . (2) ‘[t]here is no executor or administrator of such estate, or he is interested adversely thereto[,]’

[and] (3) “[t]he facts rendering such appointment necessary shall appear in the record of such case or shall be made known.” See opinion to Honorable Don Davis, Mobile County Probate Judge, dated June 8, 2005, A.G. No. 2005-144, at 7. An administrator and an administrator ad litem serve in different fiduciary capacities and are separate and distinct parties. *Affinity Hosp., LLC, v. Williford*, 21 So. 3d 712, 716 (Ala. 2009). Moreover, courts within Alabama have recognized the appointment of an administrator ad litem as an appropriate method by which to obtain medical records where an estate is not being probated and is, thus, without representation. See, generally, *id.*

The appointment of an administrator ad litem does not “open” or commence the administration of an estate. Further, an administrator ad litem is not authorized to receive assets of the estate. As such, there is no liability on the part of an administrator ad litem with regard to filing notice of administration, resolving debts of the estate, or contacting heirs of the estate. Such a determination is supported by the fact that an administrator ad litem is not required to file a bond. Because an administrator ad litem and an administrator are distinct parties that may simultaneously exist/operate, it is the opinion of this Office that the requirements applicable to an administrator are not applicable to an administrator ad litem.

In the present matter, it is the opinion of this Office that an estate is not opened/administered in instances where an administrator ad litem is appointed. Until the estate is opened, no claims may be filed against the estate, there is no claim period, and there is no mechanism for closing an administrator ad litem position. Section 43-2-42 of the Code authorizes the probate judge to appoint certain persons therein named to open and administer an intestate estate. ALA. CODE § 43-2-42 (Supp. 2010). Once this is done, claims may be filed on the estate and settled in the usual manner as set out in sections 43-2-350 through 43-2-375. ALA. CODE §§ 43-2-350 to 43-2-354 & §§ 43-2-371 to 43-2-375 (1991).

### CONCLUSION

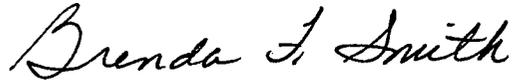
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I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

LS/MMG  
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