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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Tim Mitchell
Marshall County Probate Judge
Marshall County Courthouse
425 Gunter Avenue, Suite 110
Guntersville, Alabama 35976

Guardians – Probate Courts – Nonprofit Corporations – Conservators

Discussion of appointment of a nonprofit corporation as guardian and/or conservator of an incapacitated person.

Dear Judge Mitchell:

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

QUESTIONS

May a nonprofit corporation be appointed guardian of an incapacitated person?

If so, may the nonprofit corporation reassign the duties to successive volunteers?

May the nonprofit or its volunteers petition for the appointment of a conservator?

FACTS AND ANALYSIS

Section 26-2A-104(a) of the Code of Alabama provides that any qualified person may be appointed as guardian of an incapacitated person. Subsection (b) provides that a guardian may be appointed in

accordance with the incapacitated person's most recent nomination in a durable power of attorney. Subsection (c) also lists specific individual persons who stand in varying degrees of relationship to the ward and, thus, varying degrees of priority of appointment. Those persons include the spouse, a nominee of a spouse, an adult child, a parent, a nominee of a parent, any relative with whom the ward has lived six months prior to filing the petition, and a nominee of the person who is caring for or paying for the care of the ward. ALA. CODE § 26-2A-104 (2009). Section 26-2A-20(7) further defines "guardian" as "a person who has qualified as a guardian of a minor or incapacitated person. . . ." ALA. Code § 26-2A-20(7) (2009).

Section 26-2A-104.1(b) is the only applicable section that speaks to nonprofit corporations. The section provides specifically for the appointment of a qualified nonprofit corporation as a guardian for persons with certain developmental disabilities. The statute further provides that the corporation shall be established in perpetuity to provide a lifetime of service to those persons placed under its care. This is the only statutory provision that speaks to the appointment of an entity rather than an individual.

Section 26-2A-133 provides that the protected person or any person who is interested in the estate, affairs, or welfare of the person, including a guardian, may petition for the appointment of a conservator or other protective order. Section 26-2A-138 further provides that the court may appoint an individual or corporation to serve as a conservator. The statute further lists the following persons or entities entitled to appointment:

> (1) A conservator, guardian, or other fiduciary appointed in another jurisdiction in which the protected persons resides;
>
> (2) An individual or corporation nominated by the protected person who is 14 years or older and has sufficient mental capacity to make the nomination;
>
> (3) An attorney-in-fact under a durable power of attorney;
>
> (4) The spouse or a person nominated by the spouse;
>
> (5) An adult child;

(6) A parent or a person nominated by a parent;

(7) A relative with whom the protected person has resided six months before the filing of the petition;

(8) A person nominated by one who is caring for or paying for the care of the protected person; and

(9) A general guardian or sheriff for the county when no other fit person qualifies.

Subsection (b) further provides that such persons as designated in priorities 1, 4, 5, 6, or 7 may transfer their priority of appointment to a designated substitute.

Your questions must be addressed within the general rules of statutory construction. "'The fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. Words used in a statute must be given their natural, plain, ordinary and commonly understood meaning, and where plain language is used[,] a court is bound to interpret that language to mean exactly what it says.'" *Ex parte Master Boat Builders, Inc.*, 779 So. 2d 192, 196 (Ala. 2000), *quoting IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So. 2d 344 (Ala. 1992).

The plain language of section 26-2A-104.1(b) provides for the appointment of a nonprofit corporation to serve as a guardian for persons with certain developmental disabilities. The statute also clearly contemplates the use of multiple or successive individuals as it provides that the corporation is to be established in perpetuity. The stated goal of the statute is to provide a lifetime of service to those persons under the care of the corporation. The plain language of section 26-2A-133 is also clear that a guardian may petition for the appointment of a conservator.

CONCLUSION

Based upon these statutory provisions, it is the opinion of this Office that the probate court may appoint a nonprofit corporation as a guardian if it meets the qualifications of a nonprofit corporation as designated in section 26-2A-104.1 and only for those persons with

certain developmental disabilities. If either condition is not met, the appointment is outside the scope of the statutory authority.

If the appointment meets the requirements of a qualified corporation and is for a person with developmental disabilities, then the duties of the guardian may be assigned to any person within the corporation.

If the appointment meets the requirements of a qualified corporation and is for a person with developmental disabilities, both the nonprofit corporation and the designated volunteer may petition for the appointment of a conservator. Because both, however, fall outside those persons or entities delineated in section 26-2A-138 of the Code, neither should be appointed as the conservator of the protected person.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Kimberly J. Dobbs, Legal Division, Department of Human Resources.

Sincerely,

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By:

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