



Disability and Guardianship Project

2100 Sawtelle • Suite 204 • Los Angeles, CA 90025
(818) 230-5156 • www.spectruminstitute.org

September 25, 2017

Supreme Court of Missouri
207 W. High Street
Jefferson City, MO 65101

Administrative Docket

Re: Noncompliance of State Guardianship System with the Americans
with Disabilities Act and Section 504 of the Rehabilitation Act

To the Court:

The Missouri Constitution gives the Supreme Court two distinct roles. In its adjudicative role, this Court exercises appellate jurisdiction where it decides appeals in specific contested cases. (Art. V, Sec. 3) The constitution also gives this Court an administrative role where it has supervisory authority over all courts (Art. V., Sec 4) and through which it manages the administration of the courts (Art. V, Sec. 4.2) To fulfill this administrative role, this Court has a duty to establish rules of practice, procedure and pleading. (Art. V, Sec. 5). As creator of the Missouri Bar, this Court also has the authority to regulate the practice of law by attorneys.

Spectrum Institute is writing to this Court in its administrative capacity and is asking it to exercise its supervisory authority over the courts and over practicing attorneys. This communication is a complaint that litigants with intellectual and developmental disabilities are not receiving access to justice in adult guardianship proceedings. Systemic flaws in the guardianship system – including failures by judges and attorneys to provide these litigants with meaningful participation in their cases – have created a pattern and practice of violating the Americans with Disabilities Act. These policies and practices also violate Section 504 of the Rehabilitation Act of 1973.

Our complaint is submitted pursuant to Section 35.107 of Title II Regulations implementing the Americans with Disabilities Act. (See Enclosure.) Since the ADA has been in effect for more than 25 years and Section 504 for 43 years, and considering that the guardianship system in Missouri has probably been out of compliance with these federal laws for decades, we hope that this Court will give our complaint the prompt attention it deserves.

Spectrum Institute has been advocating for access to justice for people with intellectual and developmental disabilities in guardianship proceedings for several years. In addition to our interactions with the Civil Rights Division of the United States Department of Justice, we have worked with or reached out to the supreme courts in several states. We also focus on issues involving abuse and disability. Examples of our education and advocacy efforts can be found on the “what’s new” page of our website. (<http://disabilityandabuse.org/whats-new.htm>)

Whenever we present a complaint to a government agency, we supply legal and factual information to support our grievance. We also recommend ways in which the situation may be improved and the errors corrected. Following that pattern, we have several documents for this Court to review.

A specific commentary has been written for the benefit of this Court and for the consideration of judges, lawyers, and lay advocates in Missouri who are, or should be, concerned with protecting the rights of litigants with intellectual and developmental disabilities in adult guardianship proceedings. (Coleman, “The Supreme Court of Missouri Has a Duty to Ensure ADA Compliance in Guardianship Proceedings,” Spectrum Institute, September 22, 2017)

Two documents were prepared in connection with a presentation on disability, abuse, and guardianship at the 4th Annual Educational Summit of The Arc of Missouri. One identified specific deficiencies in the guardianship system, including systemic and systematic ADA violations. It also offered suggestions on how those flaws could be corrected. (Coleman, “Disability and Abuse: Administering Trauma-Informed Justice in Missouri Guardianship Proceedings – Facts, Findings, and Recommendations,” Spectrum Institute, September 15, 2017) Foundational to that document was an “Annotated Bibliography with Strategic Commentary.” All of these documents are submitted to this Court for its consideration.

Ensuring access to justice for people with cognitive and communication disabilities in guardianship proceedings is no easy task. Some might even think of it as “mission impossible.” But with good will and unwavering determination, it can be done. Plus, as these materials and the cited authorities contained in them explain, “meaningful access” is required by federal law. Compliance by state and local courts with the ADA is not discretionary. It is mandatory. It is not optional for the State of Missouri to supply the necessary educational materials, training programs, and financial resources to ensure meaningful access to justice for people with disabilities in these cases. It is a must.

While compliance with the ADA is not discretionary, the methods used by this Court to achieve compliance is. Several options are presented in these materials. One of them – and perhaps the best way to start the process of review – would be for this Court to authorize the Chief Justice to convene an Advisory Committee on Access to Justice in Guardianship Proceedings. This approach has been used by other supreme courts. Nevada and Pennsylvania immediately come to mind.

In closing, we know that this is probably the first time that a formal complaint has been filed with this Court about the denial of access to justice for people with disabilities in guardianship proceedings. Therefore, many of these issues may not have been thought about before, much less reviewed in a formal manner. The learning curve may be steep, but the climb is worthwhile – since the rights of thousands of adults with disabilities depend on how this Court responds to this request for action. We trust that this Court will answer the call by taking appropriate steps to ensure that guardianship respondents receive access to justice as contemplated by the ADA and Section 504.

Respectfully submitted:



Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org

cc: State Courts Administrator
The Missouri Bar
Civil Rights Division, U.S. Dept. of Justice (information only)

Americans with Disabilities Act Title II Regulations

Part 35

Nondiscrimination on the Basis of Disability in State and Local Government Services
(as amended by the final rule published on August 11, 2016)

§ 35.107 Designation of responsible employee and adoption of grievance procedures

- (a) *Designation of responsible employee.* A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.
- (b) *Complaint procedure.* A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.