



Disability and Guardianship Project
Disability and Abuse Project

555 S. Sunrise Way, Suite 205 • Palm Springs, CA 92264
(818) 230-5156 • www.spectruminstitute.org

August 16, 2018

Mr. Kevin Kish
Director, Department of Fair
Employment and Housing
2218 Kausen Drive - Suite 100
Elk Grove, CA 95758

Re: Pre-Complaint Inquiries under California Government Code Section 11135

Dear Mr. Kish:

With this letter I am transmitting to the Department of Fair Employment and Housing two pre-complaint inquiries for alleged violations of Government Code Section 11135 by the Sacramento County Superior Court.

Two administrative complaints have been filed with the superior court, per a directive on the DFEH website instructing people to file complaints with the agency that is alleged to be violating Section 11135. The complaints ask the court to correct the problems identified in them within 60 days so that it will be unnecessary for formal complaints to be filed with DFEH.

When we met in Sacramento last year to discuss the role of DFEH in protecting the rights of people with disabilities who are victims of discrimination committed by public entities, some of our conversation was focused on Section 11135. At the time, DFEH had recently been given jurisdiction to receive, investigate, and prosecute complaints for violations of that statute.

You suggested that if Spectrum Institute ever had a complaint for specific violations of Section 11135 by a state or local government entity, that we should send the complaint to you and that you would assign it to the appropriate staff member for investigation. Since DFEH procedures allow for a pre-complaint inquiry to be filed as a precursor to the filing of a formal complaint, we are taking that approach. This will give your staff ample time to review the two inquiries and supporting materials prior to us filing formal complaints, should that become necessary.

I look forward to discussing these two inquiries with the staff member assigned to review them. Also enclosed are the complaints and related materials we submitted to the superior court.

Yours truly,

Thomas F. Coleman
Legal Director



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PRE-COMPLAINT INQUIRY

Discrimination by State-operated, funded, or financially-assisted entity

The completion and submission of this Pre-Complaint Inquiry will initiate an intake interview with a Department of Fair Employment and Housing (DFEH) representative. The Pre-Complaint Inquiry is not a filed complaint. The DFEH representative will determine if a complaint can be accepted for investigation. Your submission of this document acknowledges that you have read and agree to the DFEH's Privacy Policy.

COMPLAINANT:

NAME: Spectrum Institute (for class of persons with developmental disabilities) TELEPHONE NUMBER: 818-230-5156

ADDRESS: 555 S. Sunrise Way - Suite 205 EMAIL ADDRESS: tomcoleman@spectruminstitute.org

CITY/STATE/ZIP: Palm Springs, CA 92264

Do you need an interpreter during the complaint process? No Yes If yes, indicate language _____

STATE BODY, STATE ENTITY, STATE AGENCY OR RECIPIENT OF STATE FUNDING OR FINANCIAL ASSISTANCE THAT YOU WISH TO FILE AGAINST (e.g., name of State agency or recipient of state funding or financial assistance being complained about, name of program or activity where violation occurred:

NAME: Superior Court of the State of California for the County of Sacramento TELEPHONE NUMBER: 818-230-5156

ADDRESS: 720 9th Street

CITY/STATE/ZIP: Sacramento, CA 95814

NUMBER OF EMPLOYEES: 787

1. I ALLEGE THAT I EXPERIENCED DISCRIMINATION OR DENIAL OF FULL AND EQUAL ACCESS

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age
- Ancestry
- Color
- Disability - (physical or mental)
- Ethnic Group Identification
- Genetic Information - (information about genetic tests or participation in clinical research or manifestation of disease)
- Marital Status
- Medical Condition - Including cancer or cancer related medical condition or genetic characteristics (a gene, chromosome or characteristic not presently associated with symptoms of disease)
- National Origin - Includes language use restriction and use and possession of a driver's license issued to persons unable to prove their presence in the U. S. is authorized under federal law
- Race
- Religion - Includes religious dress and grooming practices
- Sex - Gender
- Sex - Gender identity or Gender Expression
- Sex - Includes pregnancy, childbirth, breastfeeding and/or related medical conditions
- Sexual Orientation
- Other - (specify)

AS A RESULT, I WAS DENIED FULL OR EQUAL ACCESS TO THE BENEFITS OF, OR SUBJECT TO DISCRIMINATION UNDER, A PROGRAM OR ACTIVITY THAT WAS CONDUCTED, OPERATED, OR ADMINISTERED BY THE STATE OR A STATE AGENCY, OR A RECIPIENT FUNDED OR RECEIVING FINANCIAL ASSISTANCE FROM THE STATE OR A STATE AGENCY.

DATE OF MOST RECENT HARM (Month/Day/Year): April 2018 (current and ongoing)

2. Do you have an attorney who agreed to represent you in this matter? Yes No

If yes, please provide the attorney's contact information.

Attorney Name: Thomas F. Coleman

Attorney Firm Name: Thomas F. Coleman

Attorney Address: 555 S. Sunrise Way, Suite 205 City, State: Palm Springs, CA Zip: 92264

3. Briefly describe the type of program or activity and the denial of benefits or full and equal access you experienced:

This inquiry will be filed by Spectrum Institute and others on behalf of third parties -- a class of people with developmental disabilities who are not given court-appointed attorneys in conservatorship cases in the Sacramento Superior Court. The class consists of adults whose disabilities preclude them from asking for an attorney, waiving an attorney, or knowing the value of an attorney in these cases. The class includes proposed and adjudicated conservatees with disabilities. By failing to appoint an attorney to represent them in the proceedings, the Superior Court is violating the mandates of Title II of the ADA, Section 504 of the Rehabilitation Act, and Government Code Section 11135. The nature of their disabilities precludes these litigants from representing themselves in an effective manner. Without an attorney, they lack the ability to defend their rights, to investigate the facts, to test the sufficiency of the complaint and the evidence, to question the capacity assessment, to seek less restrictive alternatives, to produce evidence in support of retention of rights, to assess the qualifications of the proposed conservator, to offer an alternative choice for conservator, etc. Without an attorney they are denied effective communication with the court, court investigator, and other participants. Without an attorney, they are denied meaningful participation in their cases. The only reason they are denied an attorney is the fact that the petitioners chose to file a petition for a general conservatorship. Had a limited conservatorship petition been filed in these cases, an attorney would have been appointed. The ADA and Section 504 are federal laws that preempt the probate code. The Sacramento Superior Court is a public entity subject to Title II of the ADA. It receives federal funds and is subject to Section 504. It is state funded and subject to Section 11135. Conservatorship respondents have qualified disabilities that entitle them to protection under these laws. There is no excuse for the court failing to appoint an attorney to advocate for and defend the rights of these involuntary litigants with disabilities. The courts appoint counsel as a matter of right when a petition for limited conservatorship is filed. It is a violation of due process and equal protection (in addition to the ADA, 504, and 11135) to fail to appoint an attorney for respondents in general conservatorship proceedings -- a proceeding that poses a greater threat to liberty.

Section 11135 incorporates the ADA as a matter of state law. ADA regulations make it clear that an interested individual or organization may file a complaint to vindicate the rights of a class or third parties who are victims of discrimination. State law allows an interested person to organization to bring a pattern and practice of discrimination to the attention of the DFEH director with a request that a director's investigation be opened that the director represent the interests of the affected class.

This pre-complaint inquiry should be construed as a referral to the director for the purpose of him initiating a director's investigation into and complaint against the Superior Court for violations of the rights of persons with developmental disabilities who recently have been who are, and who will be proposed conservatees in general conservatorship proceedings in that court and who were not given court-appointed attorneys. The inquiry will be filed with DFEH if these unlawful practices are not voluntarily corrected by the superior court.



CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PRE-COMPLAINT INQUIRY

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