



Disability and Guardianship Project

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November 8, 2017

Washington Supreme Court
P.O. Box 40929
Olympia, WA 98504-0929

Administrative Docket

Re: Formal Complaint for ADA Noncompliance

To the Court:

We are writing to the Washington Supreme Court as a public entity with responsibilities under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. This complaint is being filed with the court pursuant to Section 35.107 of ADA Title II Regulations. A copy of that section is enclosed.

This court has two types of jurisdiction. One is the authority to adjudicate appeals from lower courts and process petitions involving cases and controversies in specific legal proceedings. The other is the court's administrative authority over practices and procedures in legal proceedings in state courts and over the practice of law by licensed attorneys. The legislature has enacted numerous statutes recognizing this court's administrative authority and responsibilities. A listing of some of those statutes is enclosed.

State court proceedings to establish guardianships for adults who lack decision-making capacity are governed by what we refer to as the state's guardianship system. That system was placed by the legislature under the administrative control of the judicial branch – over which the Washington Supreme Court presides. This court has plenary administrative authority to ensure that the guardianship system complies with federal due process and with the requirements of federal statutes such as the ADA and Section 504.

In March 2016, Spectrum Institute submitted a report to this court documenting and describing how various aspects of the guardianship system – particularly the legal services program in which court-appointed attorneys represent respondents – fails to provide access to justice for people with cognitive and communication disabilities who are involved in such proceedings. From what we can tell, modifications have not been made to the guardianship system since we submitted that report. As a result, we believe that the system continues to violate the ADA and Section 504 and that this court has not exercised its authority to ensure that litigants with such disabilities receive access to justice as contemplated by these federal laws.

This court should take appropriate actions to bring the legal services component of the guardianship system into compliance with federal law. The purpose of this complaint is to prompt administrative action by the court to move the system in that direction.

Although the WINGS group has been studying various aspects of the guardianship system, and has made some recommendations to the court, making the legal services component of the system ADA compliant has not been part of that group's focus. The court, therefore, may want to use other avenues to address the issues raised in this complaint and accompanying documents.

Some areas of concern include: (1) the failure of judges to appoint advocacy attorneys in all guardianship cases; (2) the failure of the judiciary to adopt ADA-compliant performance standards for such attorneys; (3) the failure of the court to adopt rules requiring court-appointed attorneys to receive training on the ADA, effective communication with people who have cognitive and communication disabilities, constitutional rights of guardianship respondents, etc.; and (4) the failure of the court and the State Bar to make complaint procedures regarding ineffective assistance of counsel and violations of rules of professional conduct accessible to people with cognitive and communication disabilities or to adopt alternative methods to minimize deficient advocacy and defense services in guardianship proceedings.

A White Paper issued by Spectrum Institute to the United States Department of Justice in 2015 provides guidance on the types of training and performance standards that would ensure compliance with federal due process and ADA requirements. (*Due Process Plus: ADA Advocacy and Training Standards for Appointed Attorneys in Adult Guardianship Cases*) A brochure about the White Paper is enclosed.

We trust that the court will place this complaint on its administrative docket and process it in accordance with procedures consistent with Section 35.107 of the ADA Title II Regulations referenced above. I would appreciate being informed where I can find more information about the grievance procedures adopted by the Supreme Court in accord with Section 35.107.

Respectfully submitted:



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cc: Civil Rights Division, United States Department of Justice (information only)

Exhibits:

Section 35.107, ADA Title II Regulations
Essay on ADA Responsibilities of the Supreme Court
List of Statutes on Jurisdiction of the Supreme Court
Essay on New ADA Rule by Office of Administrative Hearings
Dissent to WINGS Committee Report on Mandatory Counsel
Essay on historic opportunity for Washington WINGS
The Justice Gap – Executive Summary
Due Process Plus – Brochure
ABA/WINGS Action Tool – Right to and Role of Counsel