

ADA Compliance

**A Request to the California Judicial Council
to Clarify the *Sua Sponte* Obligations of
Courts to Ensure Access to Justice**

Statutes, Cases, Rules, Complaints, Reports,
and Commentaries Supporting the
Expansion of Rule 1.100

Thomas F. Coleman
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September 24, 2019

spectruminstitute.org/ada-compliance.pdf

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Additional Steps for ADA Compliance by the Judicial Branch

<http://www.spectruminstitute.org/steps/>

Judicial Access Rights under CCR, Title 17 Section 50510

<http://spectruminstitute.org/judicial-council/ada/access-to-courts.pdf>

Activities of the Disability and Guardianship Project

<http://spectruminstitute.org/guardianship/>

<http://spectruminstitute.org/library/>

<http://www.disabilityandabuse.org/whats-new.htm>



Disability and Guardianship Project

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September 24, 2019

Honorable Tani Cantil-Sakauye
Judicial Council of California
350 McAllister Street
San Francisco, CA 94102

Re: Request to Add Court Rule to Clarify the *Sua Sponte* ADA Duties of California Courts

To the Judicial Council:

On July 28, 2017, the Judicial Council adopted a grievance procedure for use “by anyone who wishes to file a complaint alleging discrimination on the basis of disability in the provision of services, activities, programs, or benefits by the Judicial Council.” The procedure was adopted in response to communications from Spectrum Institute inquiring whether the Council had a grievance procedure as required by Department of Justice regulations implementing the Americans with Disabilities Act.

Spectrum Institute believes that the Judicial Council has engaged in unlawful discrimination by indicating that the duty of courts to offer disability accommodations is dependent on a request. Rule 1.100, educational presentations by Judicial Council staff, and materials developed for attorneys, court staff, and the public all convey such an impression. For example, a recently published benchguide is conspicuously silent regarding the duties of judges when a self-represented litigant with obvious disabilities fails to make an ADA accommodation request. (“Handling Cases Involving Self-Represented Litigants,” Judicial Council (April 2019)”) There are no court rules, webpages, or educational materials clarifying that local courts do have *sua sponte* ADA duties even when no request is made. This misleading omission is causing actual and potential harm to disabled litigants.

The Judicial Council has not issued any rules or produced any materials explaining that courts do have a duty to make modifications or provide accommodations when they become aware, through sources other than a request, that a litigant has a disability that may interfere with effective communication or meaningful participation in legal proceedings. This omission adversely affects litigants with disabilities who are unable to make requests for accommodations. This is especially true for thousands of litigants with disabilities in conservatorship and mental health proceedings.

The failure of the Judicial Council to promulgate a rule and develop educational materials to inform judges, court staff, attorneys, litigants, and the public of the *sua sponte* duties of courts to provide accommodations for known disabilities that may impair meaningful participation in court proceedings – even when a request is not made – is a violation of the Judicial Council’s duties under federal and state nondiscrimination laws and regulations. Such laws include Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and Section 11135 of the California Government Code – a statute which incorporates Title II of the ADA into state law. This omission suggests that, absent an ADA request, there is no duty to accommodate. As a result, misinformed judges are not providing accommodations to thousands of litigants who need them.

Under these statutes, and cases interpreting them, the duties of courts and judicial branch agencies are not dependent upon requests from litigants with a disabilities. The duties arise when a judicial officer, employee or appointed agent of the court becomes aware that a litigant has a disability that may impair participation in a legal proceeding. This is so even if such knowledge is gained without a request being made. In conservatorship and mental health proceedings, for example, knowledge that the target of the proceeding has significant cognitive or communication disabilities is revealed when the case is first initiated. The petition and supporting materials so inform the court.

Federal judicial precedents make it abundantly clear that the ADA and Section 504 apply to any and all services provided by public entities, including state courts. These cases clarify that the duty to ensure effective communications and meaningful participation in court services is not dependent upon a request. Rule 1.100 and various Judicial Council materials suggest otherwise.

Spectrum Institute has conducted considerable research into the ADA and related federal and state statutes and their application to state judicial proceedings. We have thoroughly studied the probate conservatorship system in California, including policies and practices of the judges and court-appointed attorneys involved in these proceedings. Rather than filing a formal complaint under the available grievance procedure, we have decided to share the results of our research with the Judicial Council pursuant to an administrative request to expand the Rules of Court to fill this gap. We are attaching a compendium of reference materials that will help the Judicial Council bring the Rules of Court and judicial branch educational materials into compliance with the requirements of Section 504, the ADA, and Section 11135.

The Judicial Council has the ability to act expeditiously. The recent adoption of the ADA grievance procedure in just a few months is an example of judicial expediency. In contrast, rule changes sometimes can take years. The formulation of the new rule on qualifications and training for court-appointed conservatorship attorneys is an example of extended delay. Our request for new training requirements was made verbally to the Probate and Mental Health Advisory Committee in November 2014 and was followed by a written proposed in June 2015. It has taken nearly five years for this new rule to appear on the consent agenda of the Judicial Council's meeting today.

We are asking the Chairperson of the Judicial Council, the Executive Committee, and the Rules and Project Committee to "fast track" this request. The foundational research for a new court rule has already been done. More than 80 documents are being provided to the Council, along with appropriate commentary on how each document is relevant to this request.

We look forward to learning when corrective action will be taken by the Judicial Council.

Respectfully,



Thomas F. Coleman

Legal Director

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cc: Hon. Douglas P. Miller – Executive Committee
Hon. Harry E. Hull – Rules Committee
Hon. Kevin C. Brazile – Access and Fairness Advisory Committee
Ms. Amber Lee Barnett – Leadership Services Division

Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)

A public entity must offer accommodations for *known* physical or mental limitations. (Title II Technical Assistance Manual of DOJ)

Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs a modification. (DOJ Guidance Memo to Criminal Justice Agencies, January 2017)

Some people with disabilities are not able to make an ADA accommodation request. A public entity's duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. (*Updike v. Multnomah County* (9th Cir 2017) 930 F.3d 939)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

A request for accommodation is not necessary if a public entity has knowledge that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are obvious. (*Robertson v. Las Animas* (10th Cir. 2007) 500 F.3d 1185)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had knowledge of an individual's disability and needs but took no action. (*A.G. v. Paradise Valley* (9th Cir. 2016) 815 F.3d 1195)

The import of the ADA is that a covered entity should provide an accommodation for *known* disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127)

“If no request for an accommodation is made, the court need not provide one.”

– *Judicial Council*
2017 Brochure *



* Rule 1.100 and all Judicial Council educational materials are erroneously premised on the need for a request.

World Congress on Adult Guardianship

Seoul, Korea / October 23-26, 2018



California Judicial Branch Gains Attention at Global Forum

Thomas F. Coleman spoke at a plenary session of the World Congress on Adult Guardianship attended by more than 400 delegates from five continents. Presenters included judges, administrators, professors, and advocates from 20 nations. The forum was hosted by the Supreme Court of Korea, the Korean Ministry of Justice, and the International Guardianship Network.

Coleman focused on serious deficiencies in the conservatorship system in California and the need for the judiciary to support significant reforms to protect the rights of people with cognitive disabilities. So far, the Supreme Court and the Judicial Council have declined requests to create a task force to review deficiencies in the conservatorship system and to conduct a statewide survey of probate court practices in conservatorships.

Coleman highlighted the pending case of Theresa Jankowski, an 84 year-old woman whose rights are being violated by a judge and a court-appointed attorney in Los Angeles. With approval of the judge, the attorney is arguing in favor of a conservatorship, ignoring

Theresa's wishes, and actively promoting the denial of her rights. Coleman also focused on the refusal of the Sacramento court to appoint attorneys for many conservatorship respondents, thus requiring people with significant cognitive and communication disabilities to represent themselves in these complicated proceedings.

Coleman informed the delegates that a complaint against the Los Angeles court for violating the Americans with Disabilities Act (ADA) is pending with the United States Department of Justice. He also advised them that a separate ADA complaint is in the process of being filed against the Sacramento court with the California Department of Fair Employment and Housing – the state civil rights agency with jurisdiction to investigate, conciliate, and prosecute alleged ADA violations by public entities, including state courts.

Pursuit of Justice, a documentary film by Spectrum Institute, was also shown at the World Congress.

www.pursuitofjusticefilm.com



Disability and Guardianship Project

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September 23, 2019

Ms. Rebecca Bond
Disability Rights Section
Civil Rights Division
Department of Justice
950 Pennsylvania Avenue , NW
Washington, DC 20530

Re: Update on ADA Compliance by the State of California

Dear Ms. Bond:

The State of California is systematically violating Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act. These violations are occurring in judicial proceedings involving litigants with disabilities. The violations are particularly serious and acute with respect to seniors who have cognitive challenges and adults with intellectual and developmental disabilities involved in probate conservatorship proceedings.

We brought this problem to the attention of the DOJ in 2014 when we filed a voting rights complaint and again in 2015 when we filed a complaint involving deficient legal services that deprive people with disabilities access to justice in court proceedings. The investigation by the DOJ in the first complaint resulted in significant movement toward ADA compliance by the State of California in terms of the voting rights of conservatees. The second complaint is still under review by the DOJ.

Despite our best efforts over the past few years to inform elected officials in all three branches of government about ongoing ADA violations in the probate conservatorship system, not much has changed. Since these officials cannot claim ignorance of the problem, the failure to take corrective actions can best be described as willful indifference. While the primary source of the problem is the judicial branch, officials in the legislative and executive branches are contributing to the situation by failing to take any corrective action.

Tomorrow we are presenting the Judicial Council of California a report titled: “ADA Compliance: A Request to the California Judicial Council to Clarify the *Sua Sponte* Obligations of Courts to Ensure Access to Justice.” This report focuses on a problem more generic than the probate conservatorship system. It involves Rule 1.100 and educational materials published by the Judicial Council that misinform judicial officers and court personnel about their affirmative obligations under the ADA and Section 504. This rule and these materials indicate that unless a disabled litigant makes a specific request for an accommodation that courts have no obligation to provide one.

The rules and materials are silent as to the *sua sponte* obligations of courts to provide accommodations for known disabilities that interfere effective communication and meaningful participation in court proceedings and activities associated with such proceedings. The report asks the Judicial Council to take immediate action to amend court rules and educational materials to bring

them into compliance with federal law. Such remedial action will likely cause judges to reconsider current practices that violate the access-to-justice mandates of the ADA and Section 504.

With respect to the probate conservatorship system, we have not only alerted officials in all three branches of government about the ADA violations we have identified, both in policies and practices, but we have made practical suggestions as to what they can do to bring the State of California into compliance with federal law. Appoint qualified and competent attorneys for all conservatees and proposed conservatees. Stop requiring many of them to represent themselves as is done in some counties. Properly train court-appointed attorneys so they are equipped to provide advocacy and defense services that ensure effective communication and meaningful participation for their clients. Develop performance standards so that ADA-compliant legal representation is required rather than voluntary. Devise ways to make the benefits of the State Bar complaint procedure accessible to litigants whose cognitive disabilities preclude them from filing complaints against attorneys who violate ethics or provide ineffective representation. Cure the judicial ethics problem of having the judges who hear these cases also operate the legal services programs that supply the attorneys who appear before them in these cases. Have judges decide cases, not coach conservatorship attorneys on what actions they should take or not take in defending their clients.

While this information may help inform our pending ADA complaints with the DOJ, please do not construe this as a new complaint. This communication and the accompanying materials are for information purposes only – at least at this time. We want to give the Judicial Council, the Supreme Court, and officials in the other branches of government some time to review this new report and take corrective action regarding rule 1.100 and related educational materials.

We also want to give them a some time to respond to the more specific problem of failure to appoint attorneys for conservatees and deficient legal services when attorneys are appointed. However, the pace at which corrective action is taken for the rule 1.100 problem and the conservatorship legal services problem should be quicker than the pace at which a new rule was developed for mandatory training for court-appointed attorneys in conservatorship proceedings. We asked for remedial action in November 2014. A new rule is bring adopted tomorrow – nearly five years later. As laudable as the new training rule may be, the delay in formulating and adopting it is unacceptable.

If the Judicial Council, Supreme Court, and State Bar do not take affirmative steps to address these ADA violations with all deliberate speed, we will approach the DOJ again. However, the next time we bring these matters to your attention we will be making a formal request for your assistance. Unfortunately, since civil rights enforcement agencies in California have declined to address these systemic ADA violations by the judicial branch, it appears that federal intervention may ultimately be necessary to secure access to justice for people with disabilities in California judicial proceedings.

Respectfully,



Thomas F. Coleman

Legal Director

tomcoleman@spectruminstitute.org

cc: Governor Gavin Newsom
Chief Justice Tani Cantil-Sakauye
Assembly Speaker Anthony Rendon
Senate President Eleni Kounalakis

Reference Materials Supporting Request to the Judicial Council

Section 504 of the Rehabilitation Act of 1973

1. “Section 504 of the Rehabilitation Act of 1973: Prohibiting Discrimination Against Individuals with Disabilities in Programs or Activities Receiving Federal Assistance,” Congressional Research Service (2009)

<http://spectruminstitute.org/judicial-council/ada/01-section-504-history.pdf>

Comment: Section 504 of the Rehabilitation Act of 1973 prohibits discrimination against an otherwise qualified individual with a disability solely by reason of disability in any program or activity receiving federal financial assistance. This is the first federal statute to prohibit discrimination on the basis of disability. It is also the first federal mandate to state agencies on this topic. This report examines Section 504, recent amendments to the definition of disability, Section 504’s regulations, and Supreme Court interpretations. A 1988 amendment to the Act clarified that discrimination is prohibited throughout the entire institution if any part of the institution receives federal financial assistance. As a recipient of federal funding, the Judicial Council and the California state court system both have obligations under Section 504. The obligation to provide accommodations necessary to ensure equal access to judicial services. This obligation arises when a court has knowledge that a recipient of services has a disability that may impair meaningful participation in judicial services. This obligation is not dependent upon a request from the recipient of services. The Judicial Council should be informing judicial officers and employees of this *sua sponte* obligation under Section 504.

2. “Section 504: Frequently Asked Questions,” Website of the United States Department of Housing and Urban Development

<http://spectruminstitute.org/judicial-council/ada/02-504-faq-obvious.pdf>

Comment: The webpage poses a question as to whether a housing provider is required to provide an accommodation to a tenant if no request for such has been made. The answer is that even without a request, a provider is obligated to provide an accommodation if there is reason to believe such an accommodation is needed, or if the need for the accommodation is obvious. The same standard would apply to any service provider receiving federal funds. This would include state and local courts and judicial agencies that receive federal funds.

3. *Alexander v. Choate* (1985) 469 U.S. 287, 301

<http://spectruminstitute.org/judicial-council/ada/03-meaningful-access-504.pdf>

Comment: The United States Supreme Court has emphasized that a recipient of federal funds has a duty to provide meaningful access to the service being offered. To assure meaningful access, reasonable accommodations may have to be made. The Court did not say or imply that the recipient must request an accommodation in order to trigger a duty for the provider.

4. Compilation of “Meaningful Access” Cases

<http://spectruminstitute.org/judicial-council/ada/04-meaningful-access-504-cases.pdf>

Comment: This document contains a variety of federal cases explaining that entities that receive federal funds must provide “meaningful access” to their services. Some of the cases explain that the “meaningful access” principle applies to public entities under the ADA as well as Section 504. None of these cases suggest that “meaningful access” only applied when a request for accommodation is made by a service recipient. A discussion of the Choate case emphasizes that deliberate discrimination is not required for a violation of Section 504. Rather, the duty to provide meaningful access may be breached by “thoughtlessness,” “indifference,” or “benign neglect.” The request of Spectrum Institute to the Judicial Council is not suggesting that it has discriminatory animus toward litigants with disabilities. However, the failure to instruct judicial officers and employees, through court rules, standards of judicial administration, and educational materials regarding the *sua sponte* duties under Section 504 and the ADA appears to be the product of benign neglect.

5. Federal Funds Directed to Judicial Council Projects

<http://spectruminstitute.org/judicial-council/ada/05-federal-funding-1-judicial-council.pdf>

Comment: This page on the website of the California Courts specifies that various programs of the Judicial Council receive federal funding. Therefore, the Judicial Council and all of its programs and activities are governed by the requirements of Section 504.

6. Federal Funds Administered by the Judicial Council

<http://spectruminstitute.org/judicial-council/ada/06-federal-funding-judicial-branch.pdf>

Comment: The budget of the State of California shows that the judicial branch is the recipient of tens of millions of dollars in federal money. The Judicial Council receives some of these funds for its role in administering the judicial branch portion of the state budget.

7. Judicial Council Budget Role

<http://spectruminstitute.org/judicial-council/ada/07-judicial-council-budget-role.pdf>

Comment: Rule 10.101 specifies that the Judicial Council not only establishes budget priorities for the judicial branch, it allocates funds and resolves appeals based on such priorities and allocations. To the extent that the Judicial Council allocates federal funds to various judicial branch entities, it is not only responsible for ensuring its own Section 504 compliance but may be responsible for ensuring that the entities to whom it allocates federal funds are also in compliance with federal law.

8. Judicial Council Press Release on 2019-2020 Budget

<http://spectruminstitute.org/judicial-council/ada/08-current-budget-press-release.pdf>

Comment: A press release issued by the Judicial Council boasted that \$54 million, including \$34 million in federal funds, is used for the legal representation of children and parents in the child welfare system. Contrast this with significant numbers of vulnerable adults processed in probate

conservatorship proceedings having no counsel at all and the ineffective representation provided by many attorneys in conservatorship cases when attorneys are appointed. Disabled litigants without attorneys or with underperforming attorneys are not receiving access to justice as guaranteed by Section 504, the ADA, and Section 11135.

California Government Code Section 11135

9. Original Statute

<http://spectruminstitute.org/judicial-council/ada/09-1977-enactment-11135.pdf>

Comment: Section 11135 was added to the California Government Code in 1977. Section 11135 declares that no person shall, on the basis of physical or mental disability, be denied the benefits of or unlawfully be subjected to discrimination under any program that is funded directly by the state or receives any financial assistance from the state. Since the activities of the Judicial Council and the services offered by California courts are funded directly by the state, these entities have an obligation to provide benefits and services to people with disabilities they same as are provided to people without disabilities.

10. Current Statute

<http://spectruminstitute.org/judicial-council/ada/10-current-11135.pdf>

Comment: Various amendments were made to Section 11135 since it was enacted in 1977. For example, Assembly Bill 1077 was signed into law in 1992. The stated purpose of the bill was to conform state anti-discrimination laws with the Americans with Disabilities Act. (Assem. Off. of Research, 3d reading analysis, A.B. 1077 (Cal.1992 Reg. Sess.) as amended Jan. 29, 1992.) As a result of adding subdivision (b) to Section 11135, the requirements of the ADA and federal regulations implementing it are now part of state law. Pursuant to an amendment to Government Code Section 12930 in 2016 (SB 1442; Stats. 2016, Ch. 63), jurisdiction to enforce violations of Section 11135 was given to the Department of Fair Employment and Housing. Thus, under current law, complaints may be filed with DFEH for violations of this statute by any state entity, including ADA violations by the Judicial Council and by state courts.

11. Federal Case Law

<http://spectruminstitute.org/judicial-council/ada/11-federal-case-11135-like-ADA.pdf>

Comment: The Ninth Circuit Court of Appeals has found that Section 11135 provides the most analogous state-law claim to a federal claim for violation of Title II of the ADA. The court found that Section 11135 “provides an almost identical state-law counterpart to Title II” because it specifically incorporates Title II and implementing federal regulations. (Sharkey v. O’Neil (9th Cir. 2015) 778 F.3d 767)

12. “The State Can Intervene When Counties Fund ADA-Noncompliant Legal Services Programs,” Commentary, Spectrum Institute

<http://spectruminstitute.org/judicial-council/ada/12-11135-and-ada.pdf>

Commentary: This commentary explains that DFEH has jurisdiction to investigate and civilly prosecute violations of Section 11135 committed by state-funded agencies, including county governments that fund ADA-noncompliant legal services programs that pay court-appointed attorneys representing respondents in probate conservatorship proceedings. The reasoning of this commentary is applicable to violations by the Judicial Council or state courts. Just as state courts may be investigated and sued by the United States Department of Justice for violations of the ADA or Section 504, so too may judicial branch entities be investigated and sued by DFEH.

13. DFEH Inquiry Letter

<http://spectruminstitute.org/judicial-council/ada/13-dfeh-inquiry-letter.pdf>

Commentary: Spectrum Institute and two other organizations filed a complaint with the Sacramento County Superior Court alleging that the failure of its judicial officers to appoint attorneys to represent seriously disabled litigants in probate conservatorship proceedings denied these litigants access to justice in violation of Section 11135 as well as the ADA and Section 504. Concurrent with the filing of the complaint with the Superior Court, Spectrum Institute submitted a letter to the director of DFEH to alert him to the problem. Two pre-complaint inquiry forms were attached. We asked the director to exercise his discretion to open a director's investigation into the practices of the court. This appears to be the first time that a superior court was the object of a complaint to DFEH.

14. DFEH Inquiry Regarding Litigants with Developmental Disabilities

<http://spectruminstitute.org/judicial-council/ada/14-dfeh-pre-complaint-inquiry-developmental.pdf>

Commentary: One pre-complaint inquiry focused on the failure of the Superior Court to appoint attorneys for litigants with developmental disabilities. It argued that by allowing these cases to proceed to judgment with such litigants representing themselves, the court was violating Section 11135, the ADA, and Section 504.

15. DFEH Inquiry Regarding Litigants with Other Cognitive Disabilities

<http://spectruminstitute.org/judicial-council/ada/15-dfeh-pre-complaint-inquiry-other.pdf>

Commentary: One pre-complaint inquiry focused on the failure of the Superior Court to appoint attorneys for litigants with other types of cognitive disabilities. It argued that by allowing these cases to proceed to judgment with such litigants representing themselves, the court was violating Section 11135, the ADA, and Section 504.

16. DFEH Closure Letter

<http://spectruminstitute.org/judicial-council/ada/16-closure-letter.pdf>

Commentary: DFEH did not deny its jurisdiction in the matter. Rather, it closed the case because the director declined to exercise his discretion to open a formal investigation into the policies and practices of the superior court.

17. DFEH Appeal

<http://spectruminstitute.org/judicial-council/ada/17-dfeh-appeal.pdf>

Commentary: Spectrum Institute filed an appeal from the closure of the pre-complaint inquiries. The appeal materials fully explained the action of the court, the adverse effect on two classes of litigants, and the jurisdiction of DFEH to open a director's investigation into this systemic problem.

18. Denial of Appeal

<http://spectruminstitute.org/judicial-council/ada/18-appeal-denial.pdf>

Commentary: The Appeals Unit of DFEH reviewed the materials submitted in support of the appeal. It denied the appeal. The denial did not cite lack of authority to investigate superior court for violations of Section 11135. The denial was based on the director's decision not to exercise his discretion to take on such a significant class-based investigation based on systemic flaws in superior court policies and practices. The denial letter, and a phone conversation with the staff attorney essentially invited future complaints if they were filed by individuals in specific cases who were harmed by the superior court's actions. The Judicial Council should plan for the day when disability rights organizations and elder rights attorneys identify specific litigants who have been denied ADA rights by superior court judges and file complaints with DFEH on their behalf.

Title II of the Americans with Disabilities Act

Federal Laws, Regulations, and Guidance

19. ADA Title II Statutory Provisions

<http://spectruminstitute.org/judicial-council/ada/19-ada-title-2.pdf>

Comment: Title II prohibits any public entity, including state and local courts, from excluding someone, on the basis of his or her disability, from participation in or the benefits of any program it operates. The statute does not mention the need for a request for accommodations. The statute directs the Attorney General to develop regulations to implement Title II.

20. Title II Regulations

<http://spectruminstitute.org/judicial-council/ada/20-ada-title-2-regulations.pdf>

Comment: Regulations issued by the Attorney General to implement Title II state that: (1) denial of equal access is prohibited as specified in the statute; (2) Title II does not provide less protection to persons using public services than the protections afforded in Section 504 of the Rehabilitation Act; (3) Title II incorporates the protections of Title I and Title III that are not inconsistent with the regulations implementing Section 504; (4) a public entity shall take appropriate steps to ensure that communications with people who have disabilities are as effective as communications with others; (5) a public entity must furnish auxiliary aids and services where necessary to afford someone with a disability an equal opportunity to participate in and enjoy the benefits of a program or service offered by the public entity; (6) such auxiliary aids and services must be provided by courts to people with disabilities involved in court proceedings; (7) public entities should do a needs assessment as

soon as the need for auxiliary aids or services is first identified; and (8) a public entity has a continuing obligation to assess the auxiliary aids and services it is providing. The regulations say nothing about the need for a request for accommodations in order for these duties to attach to a public entity. The duties to ensure equal access and effective communications exist even without a request. The Department of Justice has authority to enforce the ADA in connection with the services or programs of courts. Anyone who believes that he or she or a class of individuals has been subjected to discrimination may file a complaint with the DOJ.

21. Title II Technical Assistance Manual

<http://spectruminstitute.org/judicial-council/ada/21-ada-title-2-guidance.pdf>

Comment: The Technical Assistance Manual addresses the requirements of Title II to the operations of state and local governments. Title II applies to all programs, activities, and services of state and local governments. Title II protects individuals who have a physical or mental condition that substantially limits one or more major life activities. This includes conditions that cause memory deficit, confusion, contextual difficulties, and inability to reason appropriately. [This guidance clearly indicates that respondents in conservatorship proceedings are protected by the provisions of Title II and that state courts have Title II obligations with respect to these respondents.] A public entity must reasonably modify its policies, practices, and procedures to avoid discrimination, unless doing so would fundamentally alter the nature of its service. If a public entity becomes aware that someone with a mental disability is having trouble participating in the service, the entity must take affirmative steps to remedy this problem, such as providing individualized assistance to help the person understand and participate. The manual does not authorize public entities to require a request for accommodations before taking remedial action. In fact, in the employment context, the manual clarifies that a public entity must offer accommodations for known physical or mental limitations. The duty to accommodate is triggered by knowledge of a disability and is not dependent on a request.

22. *Tennessee v. Lane* (2004) 541 U.S. 509

<http://spectruminstitute.org/judicial-council/ada/22-tennessee-v-lane.pdf>

Comment: The United States Supreme Court affirmed the authority of Congress to require state and local governments to obey the mandates of the ADA. The court noted a long history of unequal treatment of disabled persons in the administration of judicial services. The court observed that the ADA's duty to accommodate is consistent with the due process principle that, within the limits of practicability, a state must afford all individuals a "meaningful opportunity" to be heard in its courts. The court concluded that Title II's duty to accommodate people with disabilities in judicial proceedings is "a reasonable prophylactic measure, reasonably targeted to a legitimate end." (*Lane*, at p. 533.) The court spoke of a "meaningful right of access to the courts," and the "affirmative obligation" of courts to provide reasonable accommodations. (*Ibid.*)

23. Federal Court Decision

<http://spectruminstitute.org/judicial-council/ada/23-mississippi-federal-case.pdf>

Comment: A federal district court decision filed on September 3, 2019 in the Southern District of Mississippi found that the State of Mississippi was violating the ADA because of the manner in

which it was operating its mental health system. The lawsuit was initiated by the Department of Justice on behalf of the United States of America. There were no individual plaintiffs. This was not a class action. It was the federal government using its statutory authority to enforce the ADA against a state government. The district court recognized the federal government's standing to enforce the ADA without naming individual plaintiffs or filing as a class action. The court found that despite alleged good intentions of the state, and repeated claims it would improve the system, that the mental health system was in violation of federal ADA mandates. The court indicated that it would appoint a federal receiver to oversee the state system in order to bring it into compliance with federal law. The Judicial Council of California should take note of this landmark decision. The day will come when the DOJ files a federal lawsuit against a state for ongoing and systemic violations of the ADA by its adult guardianship or conservatorship system. The case is United States of America vs. State of Mississippi (No. 3:16]CV]622]CWR]FKB). California's conservatorship system is already being studied by the DOJ. In 2015, it opened a formal inquiry into federal voting rights violations within California's probate conservatorship system. A complaint regarding ADA violations by the Los Angeles Superior Court in its court-appointed counsel program (PVP) is also under review.

24. *Updike v. Multnomah County* (9th Cir 2017) 930 F.3d 939

<http://spectruminstitute.org/judicial-council/ada/24-updike-decision.pdf>

Comment: This federal decision of the Ninth Circuit Court of Appeals explains that the obligations of a public entity under Section 504 and Title II of the ADA are not dependent on a request for accommodations. The court noted that some people with disabilities are not able to make request. It observed that a public entity's duty to look into and provide reasonable accommodations may be triggered when the need for accommodation is obvious.

25. *Pierce v. District of Columbia* (D.D.C. 2015) 128 F. Supp.3d 250

<http://spectruminstitute.org/judicial-council/ada/25-pierce-decision.pdf>

Comment: This federal district court condemns, in no uncertain terms, the argument that the duty of a public entity to provide accommodations to a recipient of services is dependent upon a request. It is the knowledge of the disability and the need for an accommodation that gives rise to a legal duty, not a request. This is especially so for people who have disabilities that prevent their ability to make such a request. "In other words, the request performs a signaling function—*i.e.*, it alerts the public entity to the disabled person's need for an accommodation— and where, as here, the inmate's disability is obvious and indisputably known to the provider of services, no request is necessary." (Pierce, at p. 270)

26. *Robertson v. Las Animas* (10th Cir. 2007) 500 F.3d 1185

<http://spectruminstitute.org/judicial-council/ada/26-robertson-decision.pdf>

Comment: This federal Court of Appeals decision makes it abundantly clear that a request for accommodation is not necessary to trigger an ADA obligation, if a public entity: (1) has knowledge that a person has a disability; and (3) knows that the individual requires an accommodation of some kind in order to participate in or receive the benefits of its services. The court explained: "This knowledge may derive from an individual's request for an accommodation. In certain instances, however, this knowledge will follow from the entity's knowledge of the individual's disability and

his need for, or attempt to participate in or receive the benefits of, a certain service. That is, the entity will know of the individual's need for an accommodation because it is 'obvious.'" (Robertson, at p. 1197)

27. *Walsted v. Woodburn* (U.S.D.C. Iowa 2000) No. C99-4035-MWB

<http://spectruminstitute.org/judicial-council/ada/27-walsted-decision.pdf>

Comment: This district court decision explains that sometimes a public entity has a duty to initiate an informal, interactive process, with a person who has a disability, in order to identify the precise limitations caused by the disability and the appropriate accommodations that could overcome those limitations. The ADA is violated if the entity fails to provide accommodations for known physical or mental limitations. It is the knowledge of the disabling limitations that gives rise to this duty.

28. *Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127

<http://spectruminstitute.org/judicial-council/ada/28-brady-decision.pdf>

Comment: The federal Court of Appeals noted that in some situations people with disabilities are not in a position to request an accommodation. The import of the ADA is that a covered entity should provide an accommodation for known disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protections of the ADA. Therefore, the court ruled that an entity covered by the ADA has a duty to provide reasonable accommodations if the entity knew or reasonably should have known that the individual was disabled. (Brady, at p. 135) When a request is not made but the disability is obvious, the entity should engage in an "interactive process" to assess what accommodation would be appropriate.

29. EEOC Website

<http://spectruminstitute.org/judicial-council/ada/29-eeoc-guidance.pdf>

Comment: The Equal Employment Opportunities Commission website informs employers that they may have ADA obligations even if an employee does not request an accommodation.. The website explains: "An employer's obligation to provide reasonable accommodation applies only to known physical or mental limitations. However, this does not mean that an applicant or employee must always inform you of a disability. If a disability is obvious, e.g., the applicant uses a wheelchair, the employer "knows" of the disability even if the applicant never mentions it." Although this guidance is issued in connection with Title I of the ADA, it is consistent with the regulations, guidance, and court decisions interpreting Title II. The Judicial Council should be instructing judicial officers in California – through court rules and educational materials – that once they become aware that a litigant has limitations based on a disability, the court should initiate an "interactive process" and assess what accommodations may be necessary to maximize the potential for effective communication and meaningful participation in a court proceeding.

30. DOJ Guidance Memo

<http://spectruminstitute.org/judicial-council/ada/30-doj-guidance-memo.pdf>

Comment: In January 2017, the Department of Justice issued a guidance memo to assist state criminal justice agencies, including state courts, in fulfilling their ADA duties with respect to persons involved with the criminal justice system who have intellectual and developmental disabilities. The guidance memo explains that courts and other justice agencies must: “Make reasonable modifications in policies, practices, or procedures when necessary to avoid disability discrimination in all interactions with people with mental health disabilities or I/DD, unless the modifications would fundamentally alter the nature of the service, program, or activity. **The reasonable modification obligation applies when an agency employee knows or reasonably should know that the person has a disability and needs a modification, even where the individual has not requested a modification, such as during a crisis, when a disability may interfere with a person’s ability to articulate a request.** Since the ADA applies to all services of courts, this memo is relevant to all legal proceedings in which a person with a developmental disability is involved as a participant. This is especially relevant to conservatorship proceedings where literally every respondent has cognitive or communication disabilities that are severe enough to warrant the filing of a petition so that someone may be appointed to take control of their lives.

31. Comments on DOJ and HHS Guidance to Courts

<http://spectruminstitute.org/judicial-council/ada/31-doj-hhs-ada-guidance-to-courts.pdf>

Comment: In August 2015, the Department of Justice and the Department of Health and Human Services issued a joint memo providing guidance to court systems and related entities processing child welfare proceedings involving parents with disabilities. The memo explains how the Americans with Disabilities Act and Section 504 of the Rehabilitation Act apply to such proceedings. This document focuses on portions of the guidance memo and explains how they are relevant to conservatorship proceedings in California. The guidance explains that state court proceedings are state activities and services for purposes of Title II and Section 504. Therefore, in order to comply with these laws, it may be necessary for a court to provide an aide or other assistive services so that someone with a disability may participate fully in a court event. No where in the guidance is there any mention that a request for assistance is required in order for ADA duties to arise.

32. DOJ Letter Regarding LEP Compliance

<http://spectruminstitute.org/judicial-council/ada/32-doj-letter-lep-compliance.pdf>

Comment: The DOJ sent a letter to the Chief Justice of California and other states in 2010 to emphasize the need of state courts to take affirmative steps to ensure access to justice for people with limited English proficiency (LEP). These LEP litigants and witnesses are protected by Title VI of the Civil Rights Act of 1964. The DOJ has authority to investigate and civilly prosecute state courts that fail to adhere to the requirements of this federal law. Previously issued DOJ Guidance and technical assistance letters from the Civil Rights Division explained that court systems receiving federal financial assistance, either directly or indirectly, must provide meaningful access to LEP persons in order to comply with Title VI. The federal requirement to provide language assistance to LEP individuals applies notwithstanding conflicting state or local laws or court rules. The Supreme Court has held that failing to take reasonable steps to ensure meaningful access for LEP persons is a form of national origin discrimination prohibited by Title VI regulations. The DOJ Guidance refers to the importance of meaningful access to courts and courtrooms, without distinguishing among civil, criminal, or administrative matters. *See* DOJ Guidance, 67 Fed. Reg. at 41,462. It states that "every effort should be taken to ensure competent interpretation for LEP individuals during *all* hearings, trials, and motions."

The guidance memo noted that while Title VI and the ADA are not the same, many of the same principles apply to both laws in terms of access-to-justice duties of the courts. The DOJ guidance encourages recipients to develop and maintain a periodically-updated written plan on language assistance for LEP persons. The Judicial Council has responded affirmatively and effectively to the guidance of the DOJ with respect to its LEP duties. It has a plan to improve LEP compliance. In contrast, the Judicial Council has done virtually nothing to bring California courts into full compliance with the ADA and Section 504 in terms of access to justice for litigants with disabilities. Rule 1.100 is deficient because it fails to address the duties of courts to ensure access to justice when no request for accommodation is made but a court has knowledge that a litigant has a disability that is likely to impair meaningful participation in a court proceeding. Likewise, educational materials are silent on this important topic. If the Judicial Council exerted even half the effort for ADA compliance as it has for LEP compliance many of the problems that exist for disabled litigants in judicial proceedings would be minimized.

33. Self Evaluation Regulation

<http://spectruminstitute.org/judicial-council/ada/33-self-evaluation-regulations.pdf>

Comment: The DOJ issued a regulation requiring public entities to conduct a self evaluation of their programs and services and the effects thereof that do not or may not meet the requirements of the ADA. A similar regulation exists regarding a self evaluation under Section 504. It appears that the Judicial Council has never conducted an evaluation of the effect of Rule 1.100 and educational materials it publishes with respect to their failure to address the duties of courts to provide reasonable accommodations to litigants with known disabilities even when no request has been made for such accommodations.

34. *A.G. v. Paradise Valley United Sch. Dist. No. 69* (9th Cir. 2016) 815 F.3d 1195

<http://spectruminstitute.org/judicial-council/ada/34-ada-liability.pdf>

Comment: This document contains excerpts from the decision of the Court of Appeals. “The district court also observed that A.G.’s parents never requested some of the services she later argued the school district should have provided. We agree with this observation, but it overlooks that A.G.’s parents did not have the expertise—nor the legal duty—to determine what accommodations might allow A.G. to remain in her regular educational environment. *See* 1 Americans with Disabilities: Practice and Compliance Manual § 1:247 (2015) (‘[A] plaintiff’s failure to expressly “request” an accommodation is not fatal to a claim where the defendant otherwise had knowledge of an individual’s disability and needs but took no action.’); *Duvall*, 260 F.3d at 1136 (Section 504 ‘create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.’).” This same rationale applies to California courts when they know that a litigant has a disability that limits effective communication or meaningful participation in a proceeding and yet do not provide an accommodation, even without request, to help overcome that limitation. The Judicial Council should adopt a rule and publish educational materials that explain this legal concept to judges and court personnel.

35. DOJ Enforcement Actions Against State Courts

<http://spectruminstitute.org/judicial-council/ada/35-ada-settlements-courts.pdf>

Comment: This document published by the DOJ summarizes actions taken by the department against state courts during 1994-2004 for violations of the ADA. Someday action may be taken against the State of California for the failure of the Judicial Council to adopt a rule on the duties of courts to affirmatively, and without need for a request, to provide accommodations for known disabilities that impair effective communication and meaningful participation in legal proceedings.

36. ADA Title II Regulations Applicable to Conservatorship Proceedings

<http://spectruminstitute.org/judicial-council/ada/36-ada-title-2-regulations-excerpts.pdf>

Comment: This document summarizes the various regulations of the DOJ that apply to state court proceedings, including probate conservatorship proceedings, under Title II of the ADA. Duties of courts under these regulations are not dependent on a request for accommodation by a litigant or witness to a legal proceeding.

37. Title II Regulations Apply to All Activities of the Judicial Branch

<http://spectruminstitute.org/judicial-council/ada/37-all-programs-and-services.pdf>

Comment: DOJ regulations apply to all services and programs operated by public entities. Title II applies to anything a public entity does. Title II mandates apply to activities of judicial branch entities of state and local governments. Title II covers everything state and local governments and their agencies do. Thus, the Judicial Council's activities of issuing rules and publishing educational materials must follow the mandates of Title II and the regulations implementing it. Issuing a rule informing courts of ADA duties when requests are made, but failing to issue a rule about *sua sponte* obligations of courts when no request is made is misleading to judges, court personnel, litigants, and the public. The same is true for educational materials that refer to ADA duties when there is a request but not mentioning *sua sponte* duties. These omissions have the effect of diminishing the prospect of equal access to judicial services for those who cannot make ADA requests.

Judicial Council's ADA Actions

38. 1995 Proposal for ADA Court Rules

<http://spectruminstitute.org/judicial-council/ada/38-1995-ada-rule-proposed.pdf>

Comment: In October 1995, the Access and Fairness Advisory Committee of the Judicial Council recommended a new court rule focusing on the duties of courts to provide accommodations under the ADA when a request is made for such accommodations. The committee said that the new rule was intended to implement the requirements of the ADA. Unfortunately, by limiting the rule to the duties of courts in response to requests for accommodation, and by failing to address *the sua sponte* duties of court when no request is made, the proposed rule did not accomplish its intended purpose.

39. Rule 1.100: Current Rule

<http://spectruminstitute.org/judicial-council/ada/39-rule-1-100.pdf>

Comment: Rule 989.3 on procedures for responding to requests for disabilities first went into effect in January 1996. The rule has been amended several times since then. It is now numbered as Rule

1.100. Since its inception, the rule focuses solely on the duties of courts to respond to requests for accommodations. No court rule addresses the *sua sponte* duties of courts to provide accommodations for known disabilities that may limit effective communication or meaningful participation in court proceedings when no request is made. This omission is inconsistent with the statement in rule 1.100 that: “It is the policy of the courts of this state to ensure that persons with disabilities have equal and full access to the judicial system.” Sometimes litigants with disabilities are not able to make a request for accommodations. This is especially true for respondents in conservatorship and mental health proceedings.

40. 1997 Summary of ADA Survey by Judicial Council

<http://spectruminstitute.org/judicial-council/ada/40-1997-ada-survey-summary.pdf>

Comment: In 1997, the Judicial Council released the results of a survey of state courts regarding the experiences of judges, court personnel, attorneys, and others with respect to people with disabilities using judicial services. The survey report focused almost exclusively on mobility disabilities and communication disabilities caused by physical conditions. It was almost completely silent about the experience of people with cognitive and developmental disabilities. However, one comment was made regarding conservatorship proceedings: “A small number of speakers voiced concern that persons with disabilities were sometimes unfairly placed into conservatorship in the California courts.” The report made several recommendations: (1) ADA education for judges; (2) a system to monitor all state courts for compliance with the ADA; (3) the Administrative Office of the Courts should monitor and ensure that its own programs and services comply with the ADA; (4) Judicial council training programs for all court personnel about their duties under the ADA; (5) trainings for judges with specific learning objectives; and (6) develop a Judicial Council plan to achieve full preparedness of courts to comply with the ADA. No information has been found on the Judicial Council website or from other sources indicating that any of these actions, if they were done, included any information about the duties of courts to provide accommodations for known disabilities even if no request is made. The report made a very significant recommendation which appears not to have gained traction with the Judicial Council or with local courts: “No court should permit proceedings to begin until effective accommodations, such as communications, scheduling, and physical access is provided for persons who are interested in or affected by the proceedings.” This recommendation appears to suggest that when a judge or court personnel become aware that a litigant has a significant disability that may interfere with effective participation in the proceeding, an assessment should be done to determine why type of accommodation is necessary to solve this problem, and then provide the accommodation. This recommendation appears to have been ignored.

41. 1997 Survey Report by Access and Fairness Advisory Committee

<http://spectruminstitute.org/judicial-council/ada/41-access-survey-report-1997.pdf>

Comment: This report discussed the findings of the survey mentioned in item 40 above. Among its observations, the report noted that the lack of available interpreters was most often mentioned regarding people with hearing and cognitive disabilities. It mentioned the difficulty of people with cognitive disabilities getting information and directions. It mentioned people with mental disabilities not being able to express themselves in court. There was no mention of people with developmental disabilities and no mention of respondents in conservatorship proceedings. However, the report noted comments from survey respondents indicating that people with mental disabilities are not treated properly by court personnel. No recommendations were made in the report regarding the

provision of accommodations to persons with known disabilities even when no request is made.

42. 2005 Report of Access and Fairness Advisory Committee

<http://spectruminstitute.org/judicial-council/ada/42-2005-ada-report.pdf>

Comment: This report made suggestions to the Judicial Council based on input received from judges, staff, and ADA coordinators. The report did not mention the ADA duties of courts for known disabilities even when no request for accommodation is made.

43. 2009 Report of Access and Fairness Advisory Committee

<http://spectruminstitute.org/judicial-council/ada/43-2009-rule-changes.pdf>

Comment: This report recommended various changes to Rule 1.100. It says nothing about the needs of people with cognitive disabilities. It is silent on the duties of courts to provide accommodations for known disabilities even without a request. It simply continued the judiciary on a path assuming that accommodations need only be provided when a request is made.

44. 2015 Language Access Plan

<http://spectruminstitute.org/judicial-council/ada/44-2015-language-access-plan.pdf>

Comment: This report addresses the duties of courts to ensure access to justice for persons who have limited English proficiency (LEP). A Joint Working Group for California's Language Access Plan was convened by the Judicial Council and operated for two years. Members included judges, attorneys, and members of the public with expertise related to the mission of the workgroup. A report was issued in 2015. The workgroup's mission was to "develop a comprehensive, statewide language access plan that will provide recommendations, guidance, and a consistent statewide approach to ensure language access for all of California's limited English proficient (LEP) court users." The report quoted Chief Justice Tani Cantil-Sakayue as stating: "The Working Group is addressing one of my highest priorities for the judicial branch by looking at how we can provide full, meaningful, fair, and equal access to justice for all Californians. If individuals cannot understand what is happening in court, how to fill out legal forms, or how to find their way around the courthouse, there is no meaningful access." Unfortunately, the Chief Justice has not convened a similar workgroup to address the ADA needs of people with cognitive disabilities who to participate in court proceedings, often involuntarily such as in conservatorship proceedings. There is no plan for actions that must be taken to provide accommodations for known disabilities even when no request is made – usually because someone with a cognitive disability cannot make such a request. Securing access to justice for LEP litigants and witnesses was given such high priority that an Implementation Task Force was immediately formed to development methods to make the workgroup's recommendations become a reality. Unfortunately, thousands of litigants and witnesses with cognitive disabilities who are involved in court proceedings each year in California have never received any serious attention from the Judicial Council. The LEP states that the right of LEP court users to assistance is not dependent on a request being made to the court. "While courts should encourage an individual's self-identification as LEP, courts should not rely on that exclusively. Some LEP court users may fail to request language access services because they may misjudge the level of proficiency required to communicate in court or be afraid of discrimination or bias."

45. 2016 Judicial Council ADA Brochure

<http://spectruminstitute.org/judicial-council/ada/45-2016-ada-court-brochure.pdf>

Comment: The Judicial Council produced a brochure in 2016 titled “Disability Accommodations in California Courts.” The brochure contains 16 questions and answers, none of which address the right to an accommodation for known disabilities even when no request is made. The brochure is premised on the assumption that a request must be made in order for an accommodation to be provided. For example, in response to the question regarding who has the right to get an accommodation, the brochure answers: “Any court user with a disability can ask for an accommodation.” Question 5 says “How can I ask for an accommodation?” Question 6 says: “Where can I get a request form?” Other questions focus on when should I ask, what if I can’t ask in advance of a hearing, what happens after I submit my request form, will my request be granted, etc. It is interesting that there is no question stating: “Must the court ever provide an accommodation even when no request is made?” The brochure purports to apply to people with all types of disabilities. However, it clearly fails to address the needs of people with cognitive disabilities who may not be able to request an accommodation much less even understand the concept of accommodation. The Judicial Council can do better. It needs to revise the brochure to address situations where a court is aware of a disability but the person cannot request an accommodation. This brochure is part of a pattern of rules and educational materials that completely fail to address the needs of this class of individuals with disabilities who cannot request an accommodation.

46. Brochure for “Persons Requesting Accommodations”

<http://spectruminstitute.org/judicial-council/ada/46-another-court-brochure.pdf>

Comment: This brochure by the Judicial Council focuses on requests for accommodations. The brochure suggests that unless someone makes a request they likely will not receive one. It says: “But if you do not request an accommodation, the courts will not know that you need one and, as a practical matter, will not be able to provide one.” This statement ignores situations where the disability, and the need for accommodation, are obvious. It fails to mention the situation in speciality courts, such as those processing probate conservatorship cases, where the court is informed that a respondent has significant disabilities when the petition is filed. This is another example of educational materials that miss the mark in terms of giving accurate and complete information about the duty of courts to provide accommodations, sometimes when no request is made.

47. 2017 Judicial Council ADA Brochure

<http://spectruminstitute.org/judicial-council/ada/47-2017-court-brochure.pdf>

Comment: This brochure states that Rule 1.100 seeks to provide a workable and orderly framework for court compliance with the ADA and state laws. However, because the rule and educational materials published by the ADA focus solely on requests for accommodations, and are silent on *sua sponte* duties of courts to provide accommodations for known disabilities, even without request, the rule-making and educational services of the Judicial Council are not in compliance with the ADA. Unlike other materials that are silent on the issue of the need for a request, and merely imply that a request is needed in order to be entitled to an accommodation, this brochure comes right out and states: “**If no request for an accommodation is made, the court need not provide one.**” This is a clear misstatement of the requirements of the ADA and Section 504 and regulations implementing

them. This brochure should be amended immediately.

48. 2014 Family Law and Self Help Conference

<http://spectruminstitute.org/judicial-council/ada/48-structural-error.pdf>

Comment: Linda McCullough, Senior Attorney for the Administrative Office of the Courts, made a presentation at this conference on “Interacting and Communicating with Persons with Disabilities.” She discussed tips for interacting with persons with disabilities, and legal requirements for sign language interpreters. She mentioned Rule 1.100. She also discussed court cases involving requests for accommodations. There was no mention of *sua sponte* duties of courts to provide accommodations for known disabilities even when there is no request.

49. 2015 Presentation by Judicial Council ADA Coordinator

<http://spectruminstitute.org/judicial-council/ada/49-2015-ada-presentation.pdf>

Comment: This presentation by Linda McCullough discussed the duties of courts under the ADA and state laws regarding disability accommodation and access. There was no mention of any duty to provide an accommodation for known disabilities absent a request.

50. 2019 Benchguide: Handling Cases Involving Self Represented Litigants

<http://spectruminstitute.org/judicial-council/ada/50-2019-benchguide.pdf>

Comment: This publication of the Judicial Council advises judges on how to interact with litigants who represent themselves. This would have been an excellent opportunity to educate judges about their *sua sponte* duties to provide accommodations for known disabilities even absent a request. Such education would have been especially important for judges who have dockets where a significant number of litigants have cognitive or communication disabilities. The publication acknowledges that some litigants with disabilities may not seek an accommodation. Unfortunately, the publication offers no advice on what a judicial officer must do in such a situation in order to comply with the requirements of the ADA. What a missed opportunity. All that is said is this: “Approximately 10 percent of the state population reports having a disability that negatively impacts court participation. In addition to disabilities making physical access to the courtroom a challenge, some litigants also have auditory or visual impairments, developmental disabilities, communication disabilities or processing issues. All of these may cause challenges for self-represented litigants who may not seek ADA or other accommodations. The judicial officer must be mindful of these various disabilities in handling the calendar.”

51. Rule 1.469 on Judicial Education

<http://spectruminstitute.org/judicial-council/ada/51-judicial-education-fairness-and-access.pdf>

Comment: This court rule recommends that judges receive fairness and access education, including the topic of bias against people with disabilities. Spectrum Institute has submitted a records request to the Center for Judicial Education and Research asking for access to educational materials that focus on compliance with the ADA and access to justice for people with disabilities.

52. Standard 10.17 on Trial Court Performance Standards

<http://spectruminstitute.org/judicial-council/ada/52-judicial-standard-access-to-justice.pdf>

Comment: The stated purpose of this standard is to assist courts in internal evaluation, self-assessment, and self-improvement. An access to justice standard states that “all who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience.” This standard would be violated when a judicial officer becomes aware that a litigant has a disability that interferes with effective communication and meaningful participation and the officer fails to inquire into or provide an accommodation to address the issue. The standard says “all who appear before the court” and not “all who request an opportunity to participate fully.” Judges who failure to appoint counsel for a proposed conservatee who has obvious cognitive disabilities are clearly violating this standard. And yet, conservatees and proposed conservatees with serious cognitive disabilities are being required to represent themselves in a significant number of cases in some superior courts. A standard on equality, fairness, and integrity says that court procedures should “faithfully adhere to relevant laws, procedural rules, and established policies.” This standard is violated when judges do not, on their own motion, provide accommodations to litigants with known or obvious disabilities who need such accommodations.

53. Standard 2.10 on Determining the Need for a Language Interpreter

<http://spectruminstitute.org/judicial-council/ada/53-judicial-standard-on-interpreters.pdf>

Comment: This standard places the duty on the court to determine in a language interpreter is needed. It does not require an LEP litigant or witness to request an interpreter. An interpreter must be provided if, after examining a witness, the court concludes that the party cannot understand English well enough to participate fully in the proceedings. It is interesting that there is no standard for ADA accommodations. The Judicial Council is providing greater protections for people without disabilities who need accommodation (LEP litigants) than for people with serious cognitive disabilities (ADA litigants). Judges are given *sua sponte* duties for LEP litigants but ADA litigants only receive accommodations upon request. This disparity in treatment constituted discrimination on the basis of disability in violation of the ADA, Section 504, and Section 11135.

54. Standard 10.25 on Reasonable Accommodation for Court Personnel

<http://spectruminstitute.org/judicial-council/ada/54-judicial-standard-employees-and-ada.pdf>

Comment: This standard states that each court shall evaluate existing facilities, programs, and services available to employees to ensure that no barriers exist to prevent otherwise-qualified employees with known disabilities from performing their jobs or participating fully in court programs or activities. This places a *sua sponte* duty on courts with respect to employees with disabilities. There is no similar standard requiring courts to conduct an evaluation to ensure there are no barriers to full participation in court proceedings by litigants or witnesses with known disabilities. The standard gives preferential treatment to court employees and ignores the needs of litigants or witnesses. A new standard is necessary, particularly for speciality courts, such as courts that process conservatorship or mental health proceedings requiring an evaluation when it appears that a litigant may need an accommodation due to a known disability. This is a major omission in the Standards of Judicial Administration.

55. California Courts Webpage on the ADA

<http://spectruminstitute.org/judicial-council/ada/55-court-ada-webpage.pdf>

Comment: The California Courts website has a page about the ADA that is focused solely on requests for accommodations. It says nothing about court obligations to provide accommodations for known disabilities even without a request.

56. Judicial Council's ADA Grievance Procedure

<http://spectruminstitute.org/judicial-council/ada/56-ada-grievance-procedure.pdf>

Comment: This document contains the ADA Grievance Procedure adopted by the Judicial Council in 2017, the agenda of the meeting at which it was adopted, as well as communications from Spectrum Institute which called to the Judicial Council's attention that it was out of compliance with federal law by not having such a grievance procedure in place.

ADA and California Conservatorship Proceedings

57. What ADA Compliance Would Look Like

<http://spectruminstitute.org/judicial-council/ada/57-ada-compliance-and-conservatorships.pdf>

Comment: This commentary explores various aspects of probate conservatorship proceedings and how the ADA should be applied to such proceedings to ensure access to justice for litigants with cognitive and communication disabilities. Virtually none of these actions are currently being done by judges or attorneys in these proceedings. The entire conservatorship system is generally out of compliance with the ADA, Section 504, and Section 11135.

58. Who is Responsible under the ADA

<http://spectruminstitute.org/judicial-council/ada/58-who-is-responsible-under-ADA.pdf>

Comment: This memo was prepared for consideration by the United States Department of Justice. It suggests which state and local public entities should be investigated for violations of the ADA in connection with limited conservatorship proceedings. It explains violations of the ADA committed by court-appointed attorneys on whom litigants with cognitive disabilities rely for access to justice in these proceedings. It also explains how the failure to properly train these attorneys contributes to the ADA violations. Among the agencies identified as being responsible for these systemic and systematic violations, are: the Los Angeles Superior Court which appoints the attorneys and mandates a training program for them; the County of Los Angeles which pays for the services of the court-appointed attorneys without any quality assurance controls to ensure ADA compliance; the Judicial Council of California which was alerted to the performance deficiencies and substandard training programs; the State Bar of California which has a complaint system which is essentially inaccessible to litigants with cognitive disabilities and for which no substitute method of ensuring effective attorney performance has been adopted; the Supreme Court of California which oversees the State Bar of California; and the court-appointed attorneys themselves who are paid by government funds when their clients are indigent.

59. What Meaningful Participation by an Pro Per Litigant Would Look Like

<http://spectruminstitute.org/judicial-council/ada/59-ada-and-504-conservatorship-tasks.pdf>

Comment: This commentary explains that, in order to have effective communication and meaningful participation in a probate conservatorship proceeding without the assistance of an attorney, a respondent would have to be able to perform various tasks throughout the proceeding. This would include: reviewing the moving papers; responding to the petition and investigator's report; reviewing and responding to the capacity declaration; challenging the sufficiency of the petitioner's evidence; developing an affirmative defense; calling expert witnesses; demanding a contested hearing and jury trial; and insisting on due process. It is obvious that litigants with developmental and other cognitive disabilities would not be able to engage in these activities without appointed counsel to assist them. As a result, appointment of counsel is a necessary accommodation for these litigants. Once appointed, the accommodation service, i.e., legal representation, must be competent and complete, just as a sign language interpreter for a deaf litigant would be required to provide competent and complete communication services in order to comply with the ADA.

60. ADA Case Study: An Example of Noncompliance

<http://spectruminstitute.org/judicial-council/ada/60-ada-case-study.pdf>

Comment: This memo reviews what occurred in a specific conservatorship case in Los Angeles. There was a pattern of ADA violations throughout the proceeding, including: no ADA assessment plan at the outset; deficient performance by the appointed attorney which deprived the client of meaningful participation in available services; violations of confidentiality; and disloyalty to the client by arguing against the client's wishes thus depriving the client of effective communication with the court.

61. Another Example of ADA Violations in a Conservatorship Case

<http://spectruminstitute.org/judicial-council/ada/61-another-example-of-ada-violations.pdf>

Comment: In this case the court-appointed attorney waived the presence of the disabled client at the conservatorship hearing, without the client's consent, despite the fact that she was able and willing to drive her own car to the hearing. This was truly the denial of access to justice.

62. Disability and the Law: A Compendium of Commentaries

<http://spectruminstitute.org/judicial-council/ada/62-daily-journal-compendium.pdf>

Comment: This document contains over a dozen op-ed articles that were published in the Daily Journal legal newspaper concerning the dysfunctional probate conservatorship system in California. Many of them focus on ADA violations that permeate the conservatorship system. Some of the suggested reforms could be implemented by the Judicial Council, State Bar, and Supreme Court.

63. Voting Rights Complaint to the DOJ

<http://spectruminstitute.org/judicial-council/ada/63-voting-rights-complaint-booklet.pdf>

Comment: In July 2014, Spectrum Institute filed a complaint with the United States Department of Justice on behalf of conservatees and proposed conservatees alleging that the Los Angeles County Superior Court was stripping large numbers of these individuals of their voting rights in violation of the ADA and other federal laws. Data and legal arguments were presented in this complaint. Although the Los Angeles court was the target of the complaint, its illegal actions were based on state laws that themselves violated the Voting Rights Act and the ADA. As a result, it was likely that similar illegal practices were occurring in courts throughout the state.

64. Letter of Inquiry by the DOJ

<http://spectruminstitute.org/judicial-council/ada/64-doj-letter-voting-inquiry.pdf>

Comment: In May 2015, the DOJ sent a letter to the Secretary of State and the Chief Justice informing them that the DOJ had opened a formal investigation into possible voting rights violations against conservatees throughout the state. This investigation was noted by the Legislature which expedited an amendment to state laws to eliminate the ADA-noncompliant policies and practices that were identified in the complaint to the DOJ. New legislation was enacted, the result of which was transformative. Now, instead of 90% of conservatees losing their voting rights, 90% keep them.

65. Amendment to Voting Rights Complaint

<http://spectruminstitute.org/judicial-council/ada/65-voting-rights-amended-complaint.pdf>

Comment: In August 2016, after receiving a complaint from a conservatee that his voting rights had been taken away and he wanted to regain them, the issue of restoration of voting rights became a cause for Spectrum Institute. Not only did we assist David Rector, a former NPR producer, to regain his voting rights, we asked the DOJ to expand its investigation of voting rights disqualification procedures to include the issue of restoration for thousands of people who had unjustly had their voting rights taken away in conservatorship proceedings. The DOJ initiated communications with the Judicial Council about the issue of voting rights restoration. To our knowledge, the voting rights investigation by the DOJ has not been concluded nor has the case been closed.

66. 2015 Los Angeles Times Article on ADA Complaint

<http://spectruminstitute.org/judicial-council/ada/66-los-angeles-times-article.pdf>

Comment: On June 27, 2015, the Los Angeles Times published a story regarding a complaint filed by Spectrum Institute with the DOJ regarding ADA violations by the Los Angeles Superior Court. The complaint alleged that conservatees and proposed conservatees relied on court-appointed attorneys in order to receive meaningful participation in conservatorship cases. Without effective services of competent counsel, these individuals would not have effective communication with the court or be able to avail themselves of the various procedures to protect their rights from erroneous deprivation. The complaint alleged that the court-appointed and county-paid attorneys were not providing effective services, the court had no performance standards, the court-mandated trainings of the attorneys were deficient, and there were no monitoring mechanisms to determine if these litigants were truly receiving access to justice.

67. Daily Journal Op-Ed on 2015 ADA Complaint

<http://spectruminstitute.org/judicial-council/ada/67-deja-vu.pdf>

Comment: This commentary published in the Daily Journal Newspaper discusses why a new class-action complaint was filed with the DOJ against the Los Angeles Superior Court for violating the ADA in the manner the court has been operating the PVP legal services program. These violations may not have occurred if the Judicial Council had published materials about the *sua sponte* duties of courts to ensure that litigants with significant disabilities have effective communications and meaningful participation in court proceedings. When a court appoints an attorney to represent a litigant with serious cognitive disabilities, the court knows that the litigant is dependent on that attorney to receive all benefits that the proceeding offers. If the attorney is not trained properly or not held accountable for quality performance, it is likely that the client will be deprived of access to justice as guaranteed by the ADA.

68. Class Complaint Filed with the DOJ

<http://spectruminstitute.org/judicial-council/ada/68-class-doj-complaint.pdf>

Comment: This document is the complaint filed by Spectrum Institute with the DOJ against the Los Angeles Superior Court for violations of the ADA in the operations of the PVP legal services program operated by the court. The complaint is still under review by the DOJ. Had the Judicial Council promulgated rules and educational materials explaining the *sua sponte* duties of courts with respect to appointment, training, and monitoring of services by court-appointed attorneys representing litigants with cognitive disabilities, the ongoing violations of the ADA by the Los Angeles Superior Court may not have occurred. With proper and complete rules and educational materials in place, the likelihood of such ongoing violations would have been reduced.

69. Individual Complaint Filed with the DOJ

<http://spectruminstitute.org/judicial-council/ada/69-gregory-full-complaint.pdf>

Comment: Concurrent with the class complaint, an individual complaint was filed on behalf of Gregory Demer, a conservatee under the control and protection of the Los Angeles Superior Court. The complaint alleged that his court-appointed attorney represented Gregory in a manner that deprived him of effective communication and access to justice as required by the ADA. The deficient performance by this attorney was known by the judge who appointed her and who presided over this case. The complaint is still under review by the DOJ. Again, had appropriate rules and educational materials been published by the Judicial Council, and had the Supreme Court directed the State Bar to issue performance standards for appointed conservatorship attorneys, the likelihood of ADA violations by this court-appointed attorney would have been reduced.

70. Additional Evidence for the Class ADA Complaint

<http://spectruminstitute.org/judicial-council/ada/70-ada-commentary-pvp-2015.pdf>

Comment: This report was released in August 2015 – two months after the ADA class-action complaint was filed with the DOJ against the Los Angeles County Superior Court. It revealed the results of new research into the practices of court-appointed attorneys who represented

conservatorship respondents. The research showed a pattern and practice of ineffective assistance. A sample of cases involving a dozen attorneys revealed that these attorneys were not engaging in investigative and advocacy practices to properly defend the rights of their clients. In other words, due to deficient performance by their attorneys, clients with significant cognitive disabilities were not receiving access to justice as guaranteed by the ADA. An ADA complaint with the DOJ may have been unnecessary if: the Judicial Council had mandated proper training of these attorneys, the State Bar had only given MCLE authorization to training programs that were ADA compliant in terms of content, the Supreme Court had adopted performance standards for such attorneys as part of the Rules of Professional Conduct, and the State Bar had made modifications to its complaint program by devising ways to give the remedial and prophylactic benefits of the complaint procedure to disabled clients who cannot file complaints (such as through random audits of a sample of attorneys who represent such clients in conservatorship proceedings).

71. OP-ED: Court Legal Services Program Appears to Violate the ADA

<http://spectruminstitute.org/judicial-council/ada/71-ada-dj-commentary-2015.pdf>

Comment: This commentary appears in the Daily Journal legal newspaper two months after the ADA complaint was filed with the DOJ against the Los Angeles County Superior Court for alleged deficiencies in the PVP legal services program instituted and operated by the court.

72. Complaint to State Bar Regarding Los Angeles County Training Program

<http://spectruminstitute.org/judicial-council/ada/72-complaint-against-lacountybar.pdf>

Comment: A complaint was filed with the State Bar on October 20, 2015 alleging that the PVP training program mandated by the Los Angeles County Superior Court and operated by the Los Angeles County Bar in association with court officials violated the ADA. The violations were caused by inaccurate content, omissions of important topics, and the use of some unqualified speakers. When three high level employees of the State Bar offered to work with Spectrum Institute to address such deficiencies on a statewide policy basis, we withdrew the complaint. This turned out to be a mistake. These employees either left employment with the State Bar or moved on to other duties. As a result, the State Bar was not willing to invest time or staff resources to address the issue of deficient performance by court-appointed attorneys in conservatorship proceedings.

73. Whistle Blower Complaint

<http://spectruminstitute.org/judicial-council/ada/73-whistleblower-complaint.pdf>

Comment: In 2017, Spectrum Institute received a complaint from an employee of Alta Regional Center alerting us to facts which, if true, would constitute ongoing ADA violations by the Sacramento County Superior Court and local courts in neighboring counties. We were informed that in a considerable number of cases, adults with developmental disabilities were being required to represent themselves in conservatorship proceedings. Judges in Sacramento and other counties were not appointing attorneys to represent many Alta Regional Center clients in these proceedings. We were also informed that when attorneys were being appointed, many of them were performing in a deficient manner and were not truly advocating for their clients or defending their rights. This information prompted us to conduct an investigation into a sample of conservatorship cases in the Sacramento court.

74. ADA Complaint #1 to the Sacramento County Superior Court

<http://spectruminstitute.org/judicial-council/ada/74-sacramento-complaint-1.pdf>

Comment: On August 16, 2018, Spectrum Institute and the Arc of California filed an administrative complaint with the Sacramento County Superior Court alleging that the court was violating the ADA by failing to appoint attorneys to represent adults with developmental disabilities in a significant number of conservatorship cases. Detailed information was provided to the court showing specific instances where counsel had not been appointed. Legal materials were also submitted in support of the complaint. The court reviewed the materials and responded by denying that its actions violated the ADA.

75. ADA Complaint #2 to the Sacramento County Superior Court

<http://spectruminstitute.org/judicial-council/ada/75-sacramento-complaint-2.pdf>

Comment: On August 16, 2018, Spectrum Institute and California Advocates for Nursing Home Reform filed an administrative complaint with the Sacramento County Superior Court alleging that the court was violating the ADA by failing to appoint attorneys to represent seniors and adults of all ages with other types of cognitive disabilities in a significant number of conservatorship cases. Detailed information was provided to the court showing specific instances where counsel had not been appointed. Legal materials were also submitted in support of the complaint. The court reviewed the materials and responded by denying that its actions violated the ADA.

76. Guide for Exhibits to Sacramento Complaints

<http://spectruminstitute.org/judicial-council/ada/76-sacramento-complaint-guide-to-exhibits.pdf>

Comment: This document summarizes the exhibits submitted in support of the two complaints filed with the Sacramento County Superior Court. They include factual information about the violations as well as legal authorities supporting the ADA violation claims.

77. Exhibit G to Sacramento Complaints

<http://spectruminstitute.org/judicial-council/ada/77-sacramento-exhibit-g-known-disabilities.pdf>

Comment: This exhibit to the complaints contains commentaries and legal authorities showing why the actions and inactions of the Sacramento County Superior Court are subject to the requirements of the ADA and how those actions and inactions violate federal statutes, regulations, and judicial precedents.

ADA and Other Jurisdictions

78. Michigan: ADA Compliance Performance Measure

<http://spectruminstitute.org/judicial-council/ada/78-ada-performance-measure-michigan-courts.pdf>

Comment: The Administrative Office of the Michigan Supreme Court has broadened the Trial Court Performance Measures to include a new requirement for courts to assess their compliance with ADA

requirements. The Supreme Court is not leaving ADA compliance by local courts to chance. It has elevated the issue of ADA compliance, and thereby increased the likelihood of actual compliance, by requiring courts to assess ADA needs and the measures that have been adopted to meet those needs.

79. Washington: Excerpts from ADA Guide for Courts

<http://spectruminstitute.org/judicial-council/ada/79-washington-ada-guide.pdf>

Comment: This guidebook explains that General Rule 33 of the Washington Rules of Court dealing with ADA accommodations indicates that it may be necessary for courts to appoint counsel for civil litigants in order to ensure access to justice for people with significant disabilities. The guidebook refers readers to a guidebook for administrative hearings for additional information about how to assess the need to appoint counsel as an ADA accommodation.

80. Washington: Commentary on New Rule by Office of Administrative Hearings

<http://spectruminstitute.org/judicial-council/ada/80-washington-commentary.pdf>

Comment: This commentary commends a new rule that requires the appointment of counsel or other suitable representative as an ADA accommodation in some administrative hearings.

81. Washington: Rule on Access to OAH Services

<http://spectruminstitute.org/judicial-council/ada/81-washington-oah-sua-sponte-duties.pdf>

Comment: This new rule of the Office of Administrative Hearings places the burden on the administrative law judge to determine if a disabled party in a hearing may need appointment of counsel as an ADA accommodation. The rule states: “If, during any stage of an adjudicative proceeding, the administrative law judge or any party has a reasonable belief that an otherwise unrepresented party may be unable to meaningfully participate in the adjudicative proceeding because of a disability, with that party's consent the administrative law judge shall refer the party to the agency ADA coordinator and delay commencing or resuming the adjudicative proceeding until the accommodation request is addressed by the ADA coordinator.” Thus, it is the hearing officer who makes the request to the ADA coordinator on behalf of the disabled party. Unlike California where the Judicial Council rules and educational materials place the burden on people with disabilities to make a request for accommodation, in Washington the OAH rules require an assessment of the need for an accommodation, *sua sponte*, where a disability and correspondent need is apparent to the hearing officer.

Outreach to California State Agencies and Officials

General Reactions: Avoidance, Denial, Delay

Judicial Branch Officials:

Chief Justice of California

- Report to the Chief Justice (2018)
<http://spectruminstitute.org/steps/administrative-steps.pdf>
- Letters to the Chief Justice (13 letters / 2014-2019)
<http://spectruminstitute.org/judicial-council/ada/chief-justice-letters.pdf>

California Supreme Court

- Report on the Code of Judicial Ethics (2018)
<http://spectruminstitute.org/ethics/>
- Comment on Proposed Changes to Rules of Professional Conduct (2017)
<http://spectruminstitute.org/judicial-council/ada/supreme-court-letter-rules.pdf>
- Request for Modification of State Bar Policies under Section 504 / ADA (2015)
<http://spectruminstitute.org/judicial-council/ada/request-for-modification.pdf>
- Request for Administrative Supervision of State Bar (2015)
<http://spectruminstitute.org/judicial-council/ada/administrative-supervision.pdf>

Rules and Projects Committee, Judicial Council (7 letters / 2015-2018)

<http://spectruminstitute.org/judicial-council/ada/justice-hull-letters.pdf>

Probate and Mental Health Advisory Committee

- Meeting Presentation (2014)
<http://disabilityandabuse.org/conservatorship/judicial-council.htm>
- Proposal for Task Force on Limited Conservatorships (2014)
<http://spectruminstitute.org/judicial-council/ada/proposal-to-pmhac-committee.pdf>
- Proposals Regarding Court-Appointed Attorneys (2015)
<http://spectruminstitute.org/attorney-proposals/>
- Letters and Emails to Committee Chairperson (2014-2015)
<http://spectruminstitute.org/judicial-council/ada/judge-sugiyama-letters.pdf>

State Bar of California (2014-2018)

<http://spectruminstitute.org/judicial-council/ada/state-bar-packet.pdf>

Legislative Branch Officials

Senate Judiciary Committee

- Report to the Committee (2015)
<http://spectruminstitute.org/judicial-council/ada/report-to-senate-judiciary.pdf>
- Letters to the Committee Chair (2014-2015)
<http://spectruminstitute.org/judicial-council/ada/letters-to-senate-judiciary.pdf>
- Commentaries (2015)
<http://spectruminstitute.org/judicial-council/ada/senate-hearing-commentaries.pdf>

Assembly Judiciary Committee (2014)

<http://spectruminstitute.org/judicial-council/ada/wieckowski-letter.pdf>

Executive Branch Officials

Governor (2017)

<http://spectruminstitute.org/judicial-council/ada/gov-letter.pdf>

Lt. Governor (2017)

<http://spectruminstitute.org/judicial-council/ada/newsom-letter.pdf>

Attorney General

– Letters to Attorney General (2014-2018)

<http://spectruminstitute.org/judicial-council/ada/attorney-general-letters.pdf>

– Emails to staff attorneys (2014-2019)

<http://spectruminstitute.org/judicial-council/ada/ag-staff-emails.pdf>

DDS and HHS (2014-2017)

<http://spectruminstitute.org/judicial-council/ada/dds-contacts.pdf>

Business, Consumer Services, and Housing Agency (2017)

<http://spectruminstitute.org/judicial-council/ada/podesta-letter.pdf>

<http://spectruminstitute.org/judicial-council/ada/podesta-emails.pdf>

DFEH Director (2018)

<http://spectruminstitute.org/judicial-council/ada/kish-oct-2018.pdf>

Fair Employment and Housing Council (2018)

<http://spectruminstitute.org/judicial-council/ada/fehcn-letter.pdf>

State Council on Developmental Disabilities (2015)

<http://spectruminstitute.org/judicial-council/ada/state-council-letter.pdf>

State-Funded Advocacy Agencies

Disability Rights California (2018)

<http://spectruminstitute.org/judicial-council/ada/role-of-drc.pdf>

<http://spectruminstitute.org/judicial-council/ada/drc-email-request.pdf>

<http://www.disabilityandabuse.org/drc-optimism.pdf>

<http://spectruminstitute.org/judicial-council/ada/drc-contractual-mandates.pdf>

<http://www.disabilityandabuse.org/acl-mandates.pdf>

Outreach to the U.S. Department of Justice Regarding the ADA and California

Attorney General Letters

Eric Holder

<http://spectruminstitute.org/judicial-council/ada/holder-letter.pdf>

Loretta Lynch

<http://spectruminstitute.org/judicial-council/ada/lynch-letter.pdf>

Civil Rights Division Letters

Vanita Gupta

<http://spectruminstitute.org/judicial-council/ada/gupta-letters.pdf>

Disability Rights Section Letters

Rebecca Bond

<http://spectruminstitute.org/judicial-council/ada/bond-letter.pdf>

Elizabeth Johnson

<http://spectruminstitute.org/judicial-council/ada/johnson-letters.pdf>

ADA Complaints

Voting Rights Complaint

<http://spectruminstitute.org/judicial-council/ada/63-voting-rights-complaint-booklet.pdf>

Amendment to Voting Rights Complaint

<http://spectruminstitute.org/judicial-council/ada/65-voting-rights-amended-complaint.pdf>

Class Complaint for ADA Non-Compliant Legal Services

<http://spectruminstitute.org/judicial-council/ada/68-class-doj-complaint.pdf>

Additional Evidence for Class Complaint

<http://spectruminstitute.org/judicial-council/ada/70-ada-commentary-pvp-2015.pdf>

<http://spectruminstitute.org/judicial-council/ada/efficiency-vs-justice.pdf>

Individual Complaint for ADA Non-Compliant Legal Services

<http://spectruminstitute.org/judicial-council/ada/69-gregory-full-complaint.pdf>

Additional Evidence for Individual Complaint

<http://spectruminstitute.org/elusive/report.pdf>

Officials in Other States Are Leading the Way on Guardianship and Conservatorship Reform

Supreme Court Justices, Governors, State Attorneys General and Legislators Show Leadership that is Lacking in California

New Mexico

Governor Vows to Stop Guardianship Abuse. Governor speaks to the New Mexico Conference on Aging. – August 13, 2019 – (New Mexico) [Click here](#).

“Legislation Bolsters Guardianship Reforms” - The legislation, sponsored by Sen. Jim White, R-Albuquerque, and Rep. Daymon Ely, D-Corralles, builds on the slate of reforms enacted in 2018 that aimed at injecting transparency and accountability into New Mexico’s guardian/conservator system. – Albuquerque Journal – March 2, 2019 – (New Mexico) - <https://is.gd/Spb3gw>

“Bill aims to rewrite state guardianship law.” A bill being proposed at the Roundhouse aims to protect the state's citizens placed under court-ordered guardianship. kob.com, January 18 (New Mexico) <https://is.gd/GnclrF>

“Candidates: Address Guardianship Issue” - We at Americans Against Abusive Probate Guardianship-New Mexico (AAAPG.net) are very interested in learning how both candidates running for New Mexico governor would handle the governor’s responsibilities within the flawed guardianship system in New Mexico. – Albuquerque Journal – October 19, 2018 – (New Mexico) - <https://is.gd/R0IMFV>

Guardianship System Reforms Protect Vulnerable New Mexicans - Following the publication of an investigative reporting series published in the Albuquerque Journal in 2016 and 2017, changes have come to New Mexico’s elder guardian and conservatorship system- KSFR- August 1, 2018 – (New Mexico) - <https://is.gd/93aqXf>

“Guardianship panel recommends changes to closed system.” A committee appointed by the state Supreme Court has recommended rule changes for New Mexico courts that would allow the public into previously closed hearings involving people placed under legal guardianship or conservatorship because of their mental or physical condition. --- abqjournal.com, April 28 (New Mexico) <https://is.gd/0C03cd>

“New Mexico Supreme Court Forms Guardianship Committees.” The New Mexico Supreme Court, working with the Executive and Legislative branches, has formed a committee with representatives from all branches of state government to assist in the implementation of newly enacted legislation for improving the adult guardianship system. --- krwg.org, March 22 (New Mexico) <https://is.gd/19QtKJ>

Florida

“Gov. Desantis Vows ‘Vigorous’ Scrutiny of Guardianship Program” - The governor directed the Department of Elder Affairs, which oversees the guardianship program, to pursue the matter “vigorously.” Meanwhile, the agency is looking for a new director for its Office of Public and Private Guardians, which has direct oversight of the more than 550 guardians, public and private, who control the lives of thousands of wards deemed incapable of running their day-to-day affairs. – ABC Action News – July 24, 2019 – (Florida) - <https://is.gd/T6tRoE>

“Lee Clerk of Court: Help us Uncover Guardianship Fraud” - Our Probate office audits more than 1,500 guardianship cases annually. If we suspect or detect fraud, waste or financial mismanagement, our Inspector General Department conducts enhanced guardianship audits and refers alleged criminal activities to the State Attorney’s Office for further investigation and possible prosecution. – News- Press – January 15, 2019 – (Florida) - <https://is.gd/WsalGw>

Michigan

“Officials Look to Reduce 'Perfect Crime of 21st Century’” - Nessel is conducting the statewide tour to suggest new laws to address the increasing financial, physical and emotional abuse on older people from family members, duplicitous friends or the Probate Court system. The new laws would emanate from the Michigan Elder Abuse Task Force Nessel created in March, less than three months after taking office. – The Voice – July 23, 2019 – (Michigan) - <https://is.gd/ZqW0o>

“Michigan AG 'Looking Into' Concerns About State's Adult Guardianship System” - In a joint statement, Michigan Supreme Court Chief Justice Bridget M. McCormack and Macomb Circuit and Probate Courts Chief Judge James M. Biernat Jr. said that after a guardianship ruling made by Macomb Probate Judge Kathryn George was called into question, the Michigan Supreme Court will be working with Attorney General Dana Nessel. – Detroit Free Press – May 31, 2019 – (Michigan) - <https://is.gd/wspUgm28>

“Elder Abuse Group Expected to Address Guardianships, Financial Fraud, Family Rights” - A statewide task force will address the legal, social and judicial shortfalls that have in some part allowed for the abuse of roughly 73,000 older adults in Michigan. – The Detroit News – March 25, 2019- (Michigan)- <https://is.gd/DIyhne>

Oklahoma

“New Law Creates Volunteer Guardians for Incapacitated Veterans” - Senate Bill 931, which creates the Veterans Volunteer Guardianship Act, was signed by Gov. Kevin Stitt. The bill was authored by state Sen. Paul Rosino, R-Oklahoma City, a retired Navy master chief petty officer with 25 years of service, according to his Senate webpage. -Enid News & Eagle – April 8, 2019 – (Oklahoma) - <https://is.gd/CDrLGD>

Pennsylvania

“Report: PA Taking Steps to Eliminate Elder Abuse” The court’s Advisory Council on Elder Justice in the Courts released its latest progress report, outlining efforts the judiciary is taking to combat elder abuse. The report highlights several efforts, including the development and implementation of a Guardianship Tracking System to give courts the ability to better monitor guardianships through a uniform statewide process. – The Sentinel – January 29, 2019 – (Pennsylvania) <https://is.gd/RNOXLh>

Kentucky

New laws protect aging Kentuckians also reduce confusion- The first updated law amends KRS 210.290 and KRS Chapter 387 which detail guardianship proceedings. The objective of guardianship proceedings is to preserve individual dignity, respect, and independence of the aging and disabled Kentuckians who can no longer make certain decisions. – Insider Louisville – January 13, 2019 – (Kentucky) - <https://is.gd/csz0cz>

Utah

“Disability Law Center, ACLU Reach Settlement to Strengthen Legal Representation for Guardianship Hearings in Utah” - Last month, the Disability Law Center, the American Civil Liberties Union of Utah, the American Civil Liberties Union Disability Rights Program, and Latham & Watkins, LLP reached a positive settlement with the state of Utah to expand and strengthen legal protections for adults with disabilities involved in guardianship hearings in Utah with their parents. – The Independent – December 19, 2018 – (Utah) - <https://is.gd/In0WMD>

Tennessee

“The Tennessee Supported Decision-Making Agreement Act: What’s it all about?”- The sponsor of this legislation in the Senate, Becky Massey, described the SDMA as a “less-restrictive alternative” to a Power of Attorney or Conservatorship.” (Senate Judiciary Committee 1/30/18). Essentially, the bill allows a disabled person to appoint a supporter. That supporter can collect confidential information, explain all the information that the disabled person needs to make a decision, and communicate the disabled person’s decision, among other things. Jackson Sun- June 1, 2018 (Tennessee) <https://is.gd/0CKJxc>

Maryland

“New rules on guardianship in Md. put in place.” Changes to Maryland’s guardianship rules go into effect Monday more than two years after a work group was formed to make recommendations on how to improve the process and ensure best practices are employed. The changes include new certification requirements to be completed by doctors and social workers; new training and eligibility requirements --- thedailyrecord.com, January 1 (Maryland) <https://is.gd/Jk9Dja>

Supreme Court Adopts New Performance Standards for Court Appointed Attorneys in Adult Guardianship Proceedings – Effective January 1, 2018, attorneys who are appointed to represent litigants in guardianship cases must follow rigorous guidelines intended to ensure effective advocacy and defense for seniors and people with disabilities in these proceedings. <https://www.reviewjournal.com/news/politics-and-government/nevada-supreme-court-appoints-20-to-guardian-commission/>

Nevada

“Guardianship Reform After Investigation Hits 4 Year Mark” - Driving change is our mission at KTNV because we want to elevate Las Vegas making it a safer place to live for everyone. We launched a years-long investigation into massive abuses against the elderly and disabled. Now we're ready to tell you about the results – KTNV – January 11, 2019 – (Nevada) - <https://is.gd/9bG0V5>

“Nevada Supreme Court Appoints 20 to Guardianship Commission,” – The commission will make recommendations the Nevada Supreme Court for rules on administering guardianship cases and provide oversight for implementation of new guardianship reform laws. Five bills aimed at [reforming the system](#) were signed into law by Gov. Brian Sandoval this year. Laws included creation of a State Guardianship Compliance Office in the Administrative Office of the Courts, a Guardianship Bill of Rights, and mandatory appointment of legal counsel. The law creating the State Guardianship Compliance Office goes into effect January 1, 2018. <https://www.reviewjournal.com/news/politics-and-government/nevada-supreme-court-appoints-20-to-guardian-commission/>