Before the
United States Department of Justice
Civil Rights Division

Spectrum Institute, on behalf of the class of limited conservatees under the jurisdiction of the Los Angeles Superior Court, and the class of proposed limited conservatees who will be under the jurisdiction of said court; Complaining Party, and Los Angeles Superior Court, Violating Party.	Complaint for Violations of: (Disability Accommodations) 42 U.S.C. 12132 Americans with Disabilities Act (Modifications of Policy) 29 U.S.C. 794(a) Section 504 Discrimination

1. This complaint is being filed by Spectrum Institute on behalf of approximately 12,000 adults with developmental disabilities under the jurisdiction of the Los Angeles Superior Court as limited conservatees and 1,200 such adults who are drawn into the limited conservatorship system as proposed limited conservatees each year.

2. Due to cognitive and other developmental and communication disabilities, these conservatees and proposed conservatees are not able to have meaningful participation in the administration of justice in limited conservatorship cases unless the Superior Court, its employees, agents, and court-appointed attorneys, provide, without request, disability accommodations and modifications of policies and practices, to enable these classes of individuals to participate in their cases in a meaningful way.

3. Because of the nature of their disabilities, these classes of individuals are not able to make requests for disability accommodations and modifications of policies and practices. The Superior Court, its employees, agents, and court-appointed attorneys know this or reasonably should know this.

4. These classes of individuals are involuntary litigants in these cases. They are drawn into these cases by the power of the Superior Court which initiates jurisdiction over them and, if they are declared to be a limited conservatee, remain under the jurisdiction of the court for years, decades, or for a lifetime.

5. One effective way for these classes of individuals to have meaningful participation in these cases is by the appointment of a qualified attorney to advocate for them and to defend their rights from being taken away. Other actions may also enhance the quality of their participation in these cases.

6. The Superior Court does appoint attorneys for these classes of people when their rights are in jeopardy. However, the attorneys appointed by the court are not qualified because they are not properly trained and generally are not providing effective representation to these classes of individuals. Lack of adequate training and lack of effective representation are both violations of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

7. The primary reason for *lack of adequate training* is the deficient educational programs mandated by the Superior Court for these attorneys. A significant reason for *deficient performance* by these attorneys is Rule 4.125 of the local rules of court that gives the attorneys a secondary duty that creates an inherent conflict of interest as they advocate for their clients. Lack of knowledge, education, training, and skills, also contribute to the deficient performance by these attorneys.

8. Attorneys appointed by the court to represent adults in criminal cases and to represent parents in juvenile dependency cases are not saddled with a conflict of interest. There is no equivalent to Rule 4.125 in those cases. The attorneys are free to provide true advocacy in those cases. Therefore, adults with developmental disabilities in limited conservatorships are receiving legal representation that is deficient when compared to the advocacy of court-appointed attorneys who represent accused felons in criminal cases and parents accused of abuse in juvenile dependency cases.

9. Further details about the violations of Title II of the ADA and Section 504 are found in the document titled: "Complaint to the Department of Justice for ADA Violations Against All Limited Conservatees." Those explanations are incorporated by reference as though fully set forth herein.

10. The ongoing violations of the ADA and Section 504 are partially due to the failure of the Judicial Council of California and the Los Angeles Superior Court to adopt adequate court rules for qualifications, continuing education requirements, and performance standards for court-appointed attorneys in limited conservatorship cases.

11. Proposals to modify the California Rules of Court were submitted to advisory committees of the Judicial Council on May 1, 2015. These proposals, if adopted and implemented, would remove the policy barriers to effective assistance of counsel for limited conservatees and proposed limited conservatees. Once properly educated, and once the conflict-of-interest is removed, the only thing that will ensure compliance with the ADA and Section 504 in actual practice is a change in actual performance by these attorneys. One way to make sure that happens is to have a monitoring mechanism in place to review a random sample of cases on an ongoing basis.

STATUTORY VIOLATIONS

13. The policies and practices of the Los Angeles Superior Court, as implemented by its judges, employees, court-appointed attorneys, and nonprofit agencies to which it delegates activities, are in direct violation of the following federal statutes and regulations: (a) Americans with Disabilities Act – Discrimination – 42 U.S.C. 12132; (b) Attorney General Regulation – Reasonable Modifications – 28 C.F.R. 35.130(a); and (c) Rehabilitation Act of 1973 – Discrimination – 29 U.S.C. 794(a).

REQUEST FOR RELIEF

On behalf of current limited conservatees under the jurisdiction of the Los Angeles Superior Court who are not able to seek relief on their own, and proposed limited conservatees whose cases will be processed by that court in the future, we request that the United States Department of Justice:

A) Investigate the allegations of this complaint, and review all exhibits submitted with it; and

B) Instruct the Los Angeles Superior Court to make reasonable modifications of its policies and practices, and instruct its judges, employees, court-appointed attorneys, and nonprofit agencies to which it delegates responsibilities, to do the same, to eliminate discrimination on the basis of disability from the legal representation of these classes of individuals in limited conservatorship cases.

C) Require the Los Angeles Superior Court to rescind Rule 4.125 or eliminate the provision giving court-appointed attorneys a secondary duty; and

D) Require the Los Angeles Superior Court to adopt new rules with qualifications, education requirements, and performance standards sufficient to ensure that limited conservatees and proposed limited conservatees have meaningful access to justice as contemplated by the duties imposed on the Superior Court by Title II of the ADA and Section 504.

Other:

If these steps are not taken by the court with all deliberate speed, the Department of Justice should take appropriate legal action against the Los Angeles Superior Court to remedy past violations of the ADA against limited conservatees and to prevent injustices to people with developmental disabilities who will be proposed limited conservatees in future cases.

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Respectfully submitted:

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Complaint to the Department of Justice for ADA Violations Against All Limited Conservatees

Spectrum Institute, on behalf of all limited conservatees under the jurisdiction of the Los Angeles Superior Court (hereinafter referred to as Superior Court) and on behalf of all proposed limited conservatees who will come under the jurisdiction of the Superior Court in the future, claims that the Superior Court has violated and is violating Section 504 of the Rehabilitation Act of 1973 (hereinafter referred to as Section 504), which prohibits discrimination against persons with disabilities by entities that receive federal financial assistance.[1]

Spectrum Institute also claims that the Superior Court has violated and is violating the Americans with Disabilities Act, or the "ADA," which prohibits discrimination against people with disabilities by public entities such as state and local courts.[2]

At all times relevant to this case, the Superior Court was required to follow the ADA and Section 504. Thus, its judges, court investigators, and court-appointed attorneys are and were also covered by the ADA and Section 504.

Members of the class of limited conservatees and the class of proposed limited conservatees have intellectual and developmental disabilities and therefore have a disability within the meaning of the ADA and Section 504.[3]

As involuntary participants in limited conservatorship proceedings, proceedings that are controlled by the Superior Court, both classes of individuals are qualified to participate in the programs, services, and activities operated by the Superior Court. They have no choice but to participate in limited conservatorship proceedings, especially after they are served with pleadings and/or adjudicated to be a limited conservatee under the jurisdiction and control of the Superior Court.

Under the ADA and Section 504, the terms "programs, services or activities" (hereinafter referred to as programs) of the Superior Court, including its employees and court-appointed attorneys, cover everything these employees and agents do with respect to limited conservatees. In this case, programs governed by the ADA and Section 504 involve the administration of justice.

Normally, under the ADA and Section 504, a person with a disability has the burden of making a request for a disability accommodation or for a modification of policies and practices in order to give them meaningful access to the program in question. However, there is no such burden when the

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[1] 29 U.S.C. § 794(a)

[2] 29 U.S.C. § 794(b)(1)

[3] A "disability" under the ADA and Section 504 includes any mental impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(2)(A) (2007). As regional center clients, both classes of individuals on whose behalf this complaint is filed have been determined to have a mental impairment that substantially limited one or more major life activities.

agency operating the program: (1) knows that the program participant has a disability that impairs his or her ability to have meaningful participation in the program; and (2) knows or reasonably should know that the nature of the disability is such that it precludes or impairs his or her ability to make a request for accommodation or modification. In such event, the program operator has an affirmative duty, without request, to develop an ADA plan and offer ADA services to maximize the likelihood of meaningful participation in the program.

The Superior Court knows that limited conservatees have disabilities that impair or preclude their ability to request an ADA accommodation or modification. It also knows that their disability is such that it impairs their ability to have meaningful participation in the program, namely, meaningful participation in the administration of justice unless appropriate accommodations are offered. The Superior Court has the same knowledge with respect to proposed limited conservatees.

Therefore, the Superior Court has had, and continues to have, an affirmative duty to develop, without request, disability accommodations and modifications sufficient to enable both classes of individuals meaningful access to the administration of justice. As explained below, the most critical component of any such ADA accommodation plan is the appointment of an attorney who will assist these individuals in understanding, communicating, advocating, and defending, as may be necessary to receive justice in their cases. Also, as explained below, the Superior Court has failed to appoint attorneys who satisfy those needs and requirements.

Meaningful Access to Justice

As stated above, people with cognitive and other disabilities who are involuntary participants in limited conservatorship proceedings are entitled to receive the accommodations and modifications that are necessary to give them meaningful access to the administration of justice. To explain how the Superior Court has violated the ADA and Section 504, the first step of the analysis is to examine what meaningful access to justice would involve in the context of a limited conservatorship

The administration of justice in a limited conservatorship case involves the following procedures: (1) a petition is filed asking that an adult be adjudged to lack capacity to make decisions in one or more of seven areas; (2) the adult is served with a notice of the proceeding and is given an opportunity to respond; (3) an attorney is appointed to represent the proposed limited conservatee; (4) a court investigator conducts an independent investigation of the capacities of the proposed limited conservatee, the need for a conservatorship, and the qualifications of the proposed conservator; (5) a doctor or psychologist files a declaration about the capacity of the adult to make medical decisions; (6) a regional center evaluates the adult and makes recommendations to the court as to the need for a conservatorship and if one is needed, which of the "seven powers" should be transferred to the conservator and which should be retained by the conservatee; (7) a judge makes a decision as to the need for a conservatorship, that lesser restrictive alternatives are not feasible, who the conservator shall be, and which of the seven powers should be given to the conservator.

Meaningful participation by a proposed conservatee in the administration of justice in such a proceeding would involve: (1) examining the petition for the sufficiency of the allegations; (2) evaluating the adequacy of the investigation by the court investigator; (3) evaluating the sufficiency of the assessment for capacity to make medical decisions; (4) evaluating the sufficiency of the evaluation done by the regional center; (5) conducting an independent investigation to find evidence supporting the conclusion that the proposed conservatee does have capacity to make decisions in one

or more areas that the petitioner is seeking to take control over; (6) conducting an investigation to determine if there are less restrictive alternatives that would enable the proposed conservatee to make decisions in one or more areas without the need for a conservatorship; (7) investigating whether the proposed conservatee may have been a victim of abuse in the past and whether the proposed conservator may have been a perpetrator, or an enabler, or negligent in not protecting the proposed conservatee from such abuse; (8) objecting to allegations in the petition that are not supported by clear and convincing evidence and demanding an evidentiary hearing on those issues; (9) examining adverse witnesses at such a hearing and calling supportive witnesses; (10) filing a notice of appeal from an adverse order of the court if there are arguable issues to challenge such an order.

Meaningful participation by a proposed limited conservatee would involve these 10 steps. That is what someone who did not have a cognitive disability would do if they did not have an attorney and wanted to test the sufficiency of the allegations of a petition for conservatorship. Those are also the 10 steps that a privately retained attorney would do in the representation of a proposed limited conservatee whether they had a disability or not. The same steps would be taken by a conservatee or privately retained attorney for a conservatee who is already under a conservatorship order and who is defending against a petition to restrict his or her rights even further.

A proposed conservatee or a conservatee with a cognitive disability who cannot retain private counsel is therefore dependent on an attorney appointed by the court to enable him or her to have meaningful access to justice. This requires, therefore, that such an attorney is properly trained to perform such services and is also properly informed as to how to have meaningful communications with a client who has such cognitive, communication, and other disabilities. Without such training in both of these areas, an attorney cannot provide meaningful access to justice for a conservatee or proposed conservatee. Then, in addition to having the ability to do so, it is essential that an attorney actually provide such services.

As explained below, attorneys appointed by the Superior Court to represent clients in limited conservatorship proceedings are not properly trained in how to provide effective assistance to the client in the 10 steps. Furthermore, they are not properly trained in how to engage in effective communication with clients who have cognitive, communication, and other disabilities. Finally, they are not actually providing the types of and quality of services that give their clients access to justice in these cases. Since the attorneys are appointed by a state court and paid by a county government, their failure to do so constitutes a violation of Title II of the ADA and Section 504.

Failure of Training Programs

The Superior Court holds the key to the door through which involuntary litigants must pass in order to receive meaningful access to justice in limited conservatorship proceedings. The key is providing such litigants with a qualified and trained attorney whose sole loyalty is to the client. Because the court is appointing attorneys who lack the necessary qualifications and training, the court is violating its duties under Title II of the ADA and Section 504.

The court maintains a list of attorneys from which appointments are made in limited conservatorship cases. The list is called the Probate Volunteer Panel. Attorneys volunteer to have their names placed on the PVP list. The court establishes the minimum qualifications for getting on the list and staying on it. Attorneys self certify that they meet the qualifications. They are then placed on the list and start to receive appointments in such cases.

In order to qualify and remain qualified, attorneys must attend two seminars per year. One is a mandatory training program for PVP attorneys in general. The other is a mandatory training program for those who want to represent limited conservatees.

These training programs are conducted by the Los Angeles County Bar Association. However, they are mandated by the Superior Court. Therefore, they are governed by Title II of the ADA and Section 504.

The training programs have been severely deficient. They are not training attorneys on how to provide effective assistance to clients and are not giving them the tools necessary to enable the clients to have meaningful access to justice. As a result, the attorneys go through the motions, giving the illusion of legal representation, but they are not truly engaging in effective advocacy.

The training programs should, but do not, educate these attorneys on: (1) the basics of intellectual and developmental disabilities, the types, effects, abilities and disabilities caused thereby, and effects on a client's capacities in various areas of decision making; (2) legal and psychological criteria for forensic assessments of capacity to make decisions in the seven areas involved in conservatorship proceedings; (3) the necessary training and qualifications of persons who make such capacity assessments; (4) how to challenge such assessments or the qualifications of those making them; (5) constitutional and statutory rights of people with developmental disabilities and how these rights are implicated in conservatorship proceedings; (6) federal voting rights of people with developmental disabilities and how to challenge violations in these proceedings; (7) the ADA and Section 504 rights of their clients, how to comply as an attorney and how to ensure that judges and other participants in the proceedings comply with these requirements; (8) how to conduct a contested hearing and create a record to preserve issues for appeal; and (9) the need to file a notice of appeal and advise the client about appellate rights if an adverse ruling is made on any contested issue.

As a result of inadequate training programs, and attorneys who are not sufficiently educated, the class of limited conservatees and the class of proposed limited conservatees are not provided access to the administration of justice in these proceedings. They cannot gain access to justice on their own. The court knows this. The only way for them to have meaningful participation – through representation by properly trained attorneys – is precluded because the court is not insuring that such attorneys are properly trained on issues critical to the administration of justice in these proceedings.

Ineffective Assistance of Counsel

Aside from the deficiencies in the training of court-appointed attorneys, the ultimate problem is the failure of these attorneys to provide effective legal representation to limited conservatees and proposed limited conservatees in these cases. The Superior Court is implicated in this failure because the court has not adopted performance standards for these attorneys – standards that would encourage and ensure effective legal representation. The court has a monopoly on legal representation for conservatees and therefore has a heavy affirmative duty to fulfill in this regard.

<u>Lack of ADA Accommodation Plan</u>

The first thing that court-appointed attorneys should do in these cases, but are not doing, is to develop an ADA accommodation plan to ensure that they can communicate effectively with their

clients and that their clients understand the proceedings and can participate in strategic decisions involved in these cases. As government-appointed and government-paid lawyers, these attorneys have duties under the ADA and Section 504. They know that their clients have cognitive disabilities and that they may have communication and physical disabilities as well. They know that these disabilities may prevent the clients from participating in the legal process in a meaningful way. They know that the regional center is available as a resource to assist them in developing an ADA accommodation plan to improve communication, understanding, and participation in the process. They know they can ask for an ADA accommodation expert to be appointed by the court, at county expense, to assist them in developing an ADA accommodation plan. Yet they do not make such requests, avail themselves of such resources, or develop an ADA accommodation plan. The failure to do these things are, in and of themselves, violations of the ADA and Section 504.

Failure to Object to Rule 4.125

In order for limited conservatees to have meaningful access to justice in limited conservatorship proceedings, they must have an attorney whose sole duty is to protect the interests of his or her client. That is the constitutional and statutory duty of a court-appointed attorney in such cases. Unfortunately, the Superior Court has adopted a rule that gives such attorneys a secondary duty. Rule 4.125 tells these attorneys that in addition to the duty to represent their clients, they have an additional duty – to assist the court in the resolution of the matter to be decided.

Having a duty to protect the interests of a client and a simultaneous duty to help the court resolve the issue to be decided creates a conflict of interest for these attorneys. Such a conflict of interest interferes with the due process rights of clients to have effective assistance of counsel.

Rule 4.125 only applies to probate conservatorships. There is no corresponding rule for criminal proceedings or for juvenile dependency proceedings. Indigent adults in those cases receive court-appointed attorneys whose sole loyalty is to the client. Indigent adults in those proceedings do not have cognitive disabilities and they have attorneys without a conflict of interest. Indigent adults in probate conservatorships have cognitive disabilities and they have attorneys who do have a conflict of interest. The disparate treatment is based on disability status. Assigning a limited conservatee with an attorney who has a conflict of interest denies the client access to justice.

PVP attorneys should, but do not, challenge the validity of Rule 4.125, on one or more grounds: (1) a violation of due process in that it undermines the client's right to effective assistance of counsel; (2) a violation of the ADA and Section 504 in that it precludes the client's right to have meaningful access to justice; and (3) it conflicts with the probate code in that the code specifies one role for such attorneys – to represent the interests of their clients. Court rules may not conflict with statutes.

The attorneys should either ask the court to declare the rule invalid for these reasons, or to grant an ADA modification to exempt them from the rule as a method of providing the client meaningful access to justice. The attorneys are doing neither. Instead, they accept the rule and conform their behavior and methods of advocacy to the rule. This violates the ADA and Section 504.

Failure to Use Investigative Resources

Access to justice in a limited conservatorship proceeding requires a valid assessment of the client's capacities in each of the decision-making areas in question. An involuntary litigant who had the

ability to advocate for himself or herself, and a litigant who had a privately-retained attorney, would: (1) have a professional capacity assessment done in each of these areas; (2) question capacity assessments that were done by unqualified persons, that were not based on valid criteria, and that were not supported by clear and convincing evidence, and (3) have a professional evaluation of lesser restrictive alternatives that may be available in each of the areas in question that would obviate the need to remove decision-making authority in one or more of those areas.

Procedures are available to these attorneys, such as the IPP review process at the regional centers and the appointment of an expert under Evidence Code Section 730, to engage in these essential access-to-justice evaluations. Unfortunately, these court-appointed attorneys are not using such available procedures. As a result, their clients are being denied access to justice in these cases.

Violations of Ethical Duties

Attorneys representing clients without cognitive disabilities adhere to ethical duties of fidelity, loyalty, and confidentiality. They know they are acting as fiduciaries and they act accordingly. Court-appointed attorneys for limited conservatees and proposed limited conservatees, in contrast, violate these ethical duties on a routine basis. This is primarily due to their attempt to comply with the secondary duty given to them by Rule 4.125.

These attorneys have been told, in training sessions, that they are "the eyes and the ears of the court." They were also told, during an era when the use of court investigators was suspended for several years, that they were to serve the court as de-facto investigators. As a result, many of these attorneys have included information in their written reports and have made oral statements in court that included confidential communications they received from their clients. They have also included information and made statements that are adverse to their clients keeping existing rights. In effect, they have not only violated ethical duties but, in doing so, they have denied their clients effective representation and meaningful access to justice in violation of the ADA and Section 504.

Even if Rule 4.125 were to be rescinded by the Superior Court or modified to eliminate the secondary duty, this would not remedy the past ADA and Section 504 violations caused by this rule. In Los Angeles County alone, Rule 4.125 has denied more then 12,000 involuntary litigants – people with developmental disabilities who have open cases – meaningful access to justice.

Conclusion

The policies and practices of the Superior Court, its employees, and agents, have violated the ADA and Section 504 rights of 12,000 existing conservatees with developmental disabilities. Unless these policies and practices change, they will continue to violate the rights of 1,200 limited conservatees whose new cases are processed through that court each year. The Department of Justice should open a formal investigation to determine the validity of these claims. If they are sustained, appropriate remedial action should be taken in the name of the United States of America.

June 26, 2015

Thomas F. Coleman