

Before the
United States Department of Justice
Civil Rights Division

Gregory Demer, a limited conservatee, through his
designated agent and next friend,
Thomas F. Coleman,

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 Gregory Demer, a limited conservatee, through his designated agent and next friend, Thomas F. Coleman.
2. Mr. Demer is a person with Autism Spectrum Disorder. As a result of his condition, Mr. Demer has impairments to his cognitive functioning. His ability to communicate effectively is also adversely affected by this condition.
3. As a limited conservatee, Mr. Demer is a person under the jurisdiction of the Los Angeles Superior Court and has been for approximately 10 years.
4. Due to his disability, Mr. Demer is not able to file this complaint on his own behalf. He objects to the orders of the Superior Court that have restricted his social rights and stated such in a written communication in which he asked for help. He also objects to the failure of his court-appointed attorney to protect his social rights as he requested her to do, and in a recent written communication he asked Thomas F. Coleman to assist him in obtaining a new attorney.
5. Because of his disability, Mr. Demer is not able to understand federal laws that prohibit state courts from discriminating against him on the basis of his disability and that require them to provide him meaningful access to justice even without his request. He therefore lacks the ability to file a complaint with the Department of Justice on his own.
6. Mr. Coleman has been studying Mr. Demer's case for over two years. He is aware of the violations of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 committed against Mr. Demer by the Los Angeles Superior Court.

7. The conservator of Mr. Demer is not able to file a complaint with the Department of Justice on behalf of Mr. Demer due to a conflict of interest. The conservator was the person who initiated the proceedings to have Mr. Demer's social rights taken from him. The court entered an order granting that petition – an order to which Mr. Demer's objects.

8. Mr. Demer's court-appointed attorney in the Superior Court is not able to file a complaint with the Department of Justice for two reasons. First, it is her actions that form part of the basis of this complaint and she therefore would have a conflict of interest and would not be able to complain to the Department about her own behavior. Furthermore, her appointment is only to provide Mr. Demer with legal representation in the context of the limited conservatorship proceeding and does not extend to other proceedings such as this.

9. The father of Mr. Demer is not able to file a complaint with the Department because he has a conflict of interest. He actively sought and obtained court orders restricting Mr. Demer's social rights and therefore would not be in a position to complain about violations of federal law that resulted in court orders from which he has benefitted.

10. The mother of Mr. Demer would be able to file a complaint, and supports this complaint, but is not willing to officially join in the complaint at this time. Her prior efforts asking the Superior Court to protect the rights of Mr. Demer have been actively resisted and suppressed by the parties, by the court-appointed attorney for Mr. Demer, and by the court. She is concerned about retaliation or adverse consequences to her or to Mr. Demer if she joins in this complaint at this time. She would join in the complaint, as an official complainant, however, if she is given assurances from the Department that she is protected from retaliation.

11. Mr. Coleman, therefore, is the next friend of Mr. Demer for purposes of helping him pursue his administrative remedies for violations of the ADA and Section 504 by the Superior Court. Mr. Demer expressed confidence in Mr. Coleman by asking him to help Mr. Demer obtain a new attorney. Furthermore, Mr. Coleman has taken active steps to protect Mr. Demer's rights in the Superior Court by sending letters to the judges in his case, notifying them of violations of Mr. Demer's rights, including violations committed by Mr. Demer's court-appointed attorney.

12. Mr. Coleman has standing to file this complaint, as Mr. Demer's next friend, because: (1) Mr. Demer has a disability that precludes him from filing the complaint on his own; (2) there is no other person who is willing or able to file a complaint with the Department on Mr. Demer's behalf; (3) Mr. Coleman has demonstrated a commitment to protecting Mr. Demer's statutory and constitutional rights; and (4) without this complaint filed by Mr. Coleman, the injustice committed against Mr. Demer will lack a remedy.

13. Mr. Demer is an involuntary litigant who was forced to participate in limited conservatorship proceedings by order of the Superior Court. Because of his developmental disability, Mr. Demer is 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 him to participate in his case in a meaningful way.

14. Because of the nature of his disability, Mr. Demer is 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.

15. One effective way for Mr. Demer to have meaningful participation in these cases is by the appointment of a qualified attorney to advocate for him and to defend his rights from being taken away. Other actions may also enhance the quality of their participation in his case.

16. The Superior Court did appoint an attorney to represent Mr. Demer in response to his request for an attorney to protect his social rights. However, for reasons explained in the document mentioned in the following paragraph, Mr. Demer's court-appointed attorney acted in a manner that deprived Mr. Demer meaningful access to justice. Access to justice was denied to Mr. Demer because of his disability.

17. Further details about the violations of Title II of the ADA and Section 504 by the Superior Court against Mr. Demer are found in the document titled: "Complaint to the Department of Justice for ADA Violations in Gregory Demer's Case." Those explanations are incorporated by reference as though fully set forth herein.

18. The violations of the ADA and Section 504 against Mr. Demer are also 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.

19. 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 such as Mr. Demer. 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

20. The policies and practices of the Los Angeles Superior Court, as implemented by its judges, employees, court-appointed attorneys, in Mr. Demer's case, 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 Mr. Demer, this complaint asks the United States Department of Justice to:

- A) Investigate the allegations of this complaint, and review all exhibits submitted with it; and
- B) Instruct the Los Angeles Superior Court to (1) rescind any orders restricting Mr. Demer's right to make his own social decisions and to set his own social schedule; (2) rescind any orders that enable anyone to force or pressure Mr. Demer to attend religious services; (3) remove Mr. Demer's current court-appointed attorney; (4) appoint a new properly trained attorney without a conflict of interest to represent Mr. Demer; and (5) make reasonable modifications of its policies and practices, and instruct its judges, employees, and court-appointed attorneys to eliminate discrimination on the basis of disability from the future legal representation of Mr. Demer.
- 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 such as Mr. Demer have meaningful access to justice as contemplated by the duties imposed on the Superior Court by Title II of the ADA and Section 504.

June 26, 2015

Respectfully submitted:



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Complaint to the Department of Justice for ADA Violations in Gregory Demer's Case

Gregory Demer, through his designated agent and next friend Thomas F. Coleman, claims that the Superior Court of the State of California for the County for Los Angeles (hereinafter referred to as Superior Court) violated 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

Gregory Demer also claims that the Superior Court violated 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, the judges, court investigators, and court-appointed attorneys were also covered by the ADA and Section 504.

Gregory Demer has autism spectrum disorder and therefore has a disability within the meaning of the ADA and Section 504.³

As an involuntary participant in limited conservatorship proceedings, proceedings that are controlled by the Superior Court, Gregory Demer was qualified to participate in the programs, services, and activities operated by the Superior Court. He had no choice but to participate in limited conservatorship proceedings, especially after a court order declared him to be a limited conservatee under the jurisdiction and control of the Superior Court.

Under the ADA and RA, the terms "programs, services or activities" of the Superior Court, including its employees and court-appointed attorneys, cover everything these employees and agents do with respect to limited conservatees such as Gregory Demer. For example, in this case, the terms "programs, services and activities" include:

1. Communicating with and understanding the court-appointed attorney in and out of court;
2. Communicating with and understanding the judge who is assigned to Mr. Demer's case;
3. Understanding the proceedings and meaningful participation in the defense of his rights.

As described below, the Superior Court, its employees and agents discriminated against Gregory Demer on account of his disability. The Superior Court engaged in such discrimination by not

¹ 29 U.S.C. § 794(a)

² 29 U.S.C. § 794(b)(1)

³ A "disability" under the ADA and RA is a mental impairment that substantially limits one or more major life activities. 42 U.S.C. § 12102(2)(A) (2007). Autism Spectrum Disorder is a mental impairment.

providing Mr. Demer access to justice equal to the access to justice provided to adults without developmental disabilities who are involuntary litigants in other types of judicial proceedings (such as criminal and juvenile dependency proceedings).

Conservatorship proceedings are designed exclusively to adjudicate the capacity of, and to enter orders restricting the lives of, people with cognitive disabilities that impair their ability to understand, formulate decisions, and communicate with others. Once an adjudication has been made that an adult with a developmental disability lacks the ability to make major life decisions, the court assumes jurisdiction over the adult for life. That happened to Mr. Demer. A conservator was appointed and Mr. Demer has been under the jurisdiction of the Superior Court for 10 years.

When a petition is filed by a conservator to take additional rights away from a conservatee, the court is put on notice that a person with a disability who is under its jurisdiction needs an attorney to assist the person in defending against the petition. That is what happened to Mr. Demer when the conservators filed a petition to be given authority to make all social decisions for Mr. Demer.

Knowing that such a petition was pending, the court dismissed the attorney who was representing Mr. Demer, leaving Mr. Demer without anyone to help him defend his existing social rights from further erosion. The court knew that Mr. Demer had a developmental disability that impaired his ability to understand complex concepts and that impaired his ability to communicate. Knowing that Mr. Demer had such disabilities, the court had an affirmative obligation, even without request, to provide accommodations that would ensure that Mr. Demer would have access to justice. Instead of providing additional services and accommodations, as necessary, the court took away the only means he had to understand the process, namely, his court-appointed attorney.

Even though the court had an obligation to provide accommodations and to modify its policies and practices to ensure access to justice for Mr. Demer, without request, the fact is that in this case Mr. Demer did make a request for help. He wrote a note to the court, reminding the judge that the social rights petition was pending and asking the judge to appoint an attorney for him.

The judge responded by appointing an attorney. However, for reasons explained below, the actions of the court-appointed attorney were not sufficient to provide Mr. Demer access to justice in the legal proceedings involving the social rights petition. Also, the policies of the Superior Court itself violated the ADA and Section 504 because they discriminate against Mr. Demer, and all involuntary litigants in limited conservatorship proceedings, because of their disabilities.

Failure to Modify Policies – Rule 4.125

The most egregious violation of equal access to justice for people with developmental disabilities is in Rule 4.125 – a court rule that deprives limited conservatees, such as Mr. Demer, of the legal services of a true advocate whose sole duty is to defend the interests of the client. Adults without developmental disabilities receive court-appointed attorneys in criminal cases and juvenile dependency cases who have undivided loyalty to the client. In conservatorship cases, however, these attorneys are given a secondary role to assist the court in the resolution of the matter to be decided. Imposing such a dual role on attorneys creates an inherent conflict of interest.

Involuntary litigants in limited conservatorship cases receive court-appointed attorneys who have

conflicts of interest, whereas involuntary litigants in criminal or juvenile dependency cases get attorneys whose sole loyalty is to the client. Where the class of litigants have cognitive disabilities, the attorney has a conflict of interest, whereas the attorney is conflict-free when appointed in cases where the class does not have such disabilities. This is discrimination on the basis of disability.

The discrimination against Mr. Demer is not hypothetical or academic. It is real. His court-appointed attorney cited her “secondary duty” to the court as a justification for actions that violated ethical duties of loyalty and confidentiality and that undermined a constitutional duty to provide Mr. Demer with effective assistance. The violation of those duties contributed to the order that stripped Mr. Demer of his social rights. The cascading effect of the ADA violation harmed Mr. Demer.

The court should have modified its local rule to exempt Mr. Demer’s attorney from having a secondary duty. Knowing that Mr. Demer had a disability that prevented him from making a request for such a modification, the court should have done so on its own motion. Furthermore, the court-appointed attorney – as an agent of the state and being paid by the county – should have realized that the court rule created a conflict of interest that precluded her from advocating solely for the rights of her client. As an agent of the state and county government, the attorney should have known that she had a duty, even without a request, to seek modifications of established policies and practices to ensure access to justice for her client. Taking steps to challenge the local court rule, or seeking an exemption from that rule in Mr. Demer’s case, was required in order to eliminate the disability discrimination inherent in the rule. She did not seek such a modification. Instead, she complied with the rule and used its discriminatory mandates to justify her actions in which she violated her duties of loyalty and confidentiality, and in which she advocated against the rights of her own client.

To summarize the primary violation of the ADA and RA in this case: (1) Rule 4.125 gives attorneys appointed to represent involuntary litigants in conservatorship cases two duties, one to serve the client and the other to serve the court; (2) conservatorship cases, by definition, involve involuntary litigants who have cognitive disabilities; (3) a similar court rule does not exist for court-appointed attorneys in other types of cases involving involuntary litigants without cognitive disabilities, such as defendants in criminal proceedings and parents in juvenile dependency proceedings; (4) criminal defendants and parents in these other proceedings receive court-appointed attorneys without a court-imposed conflict of interest; (5) the conflict of interest may work to the disadvantage of people with disabilities, such as it has to Mr. Demer; (6) the court and the court-appointed attorneys, as paid agents of the government, are governed by the ADA and by Section 504; (7) the policy of the court, and the actions of the court-appointed attorneys pursuant to this policy discriminate against adults with developmental disabilities, such as Mr. Demer, by denying them effective access to justice.

It should be emphasized that the court and the court-appointed attorney had a duty to provide accommodations and modifications to Mr. Demer without being requested to do so. The law has been interpreted to require such accommodations and modifications, even without request, when: (1) the agency knows that a person has a disability; (2) the type of disability is such that it hinders the ability of the person to participate in the programs or activities operated by the agency; and (3) the agency knows or reasonably should know that the disability prevents the person from making a request for accommodation or modification. All of these elements are present in Mr. Demer’s case.

Mr. Demer is an involuntary litigant who had no choice but to participate in the court proceedings. He has a disability that impairs his ability to understand the complexities of the litigation and to fully

participate in the defense of his rights. Because of his disability, he must rely on the performance of his attorney to defend his social rights from being taken away. The court and the court-appointed attorney knew that he was not able to request a modification or exemption for his attorney from Rule 4.125, that he did not know such a rule existed, that it denied him equal access to justice, and that he had a right to make an ADA request for accommodation or modification. Thus, the burden was not on Mr. Demer to make an ADA accommodation or modification request.

The court and the court-appointed attorney had a duty to formulate an ADA plan to maximize access to justice for Mr. Demer. They probably were not even aware that the ADA and Section 504 applied to the court's policies and to the attorney's practices, because they have never received any training on these laws and how they apply to limited conservatorship proceedings. However, their ignorance of the law is not a defense to a violation of the ADA and Section 504. They had a duty to have an ADA plan for Mr. Demer, even without request. They failed to fulfill that duty. That is all that needs to be said, except that their violation of the ADA undermined Mr. Demer's right to access to justice.

In addition to the general violation of the ADA and Section 504 caused by adoption of Rule 4.125 by the Superior Court, and the failure of Mr. Demer's court-appointed attorney to challenge the rule or seek an exemption from it in his specific case, there are other ADA and RA violations in this case that form the basis of this complaint.

Refusal to Provide Requested Auxiliary Services

The ADA and Section 504 were violated by the refusal of the court and the court-appointed attorney to honor a specific request for accommodation made on Mr. Demer's behalf just before he was taken into the judge's chambers for questioning.

It is stressful enough for people with developmental disabilities just to be in a courtroom, especially knowing that the issue is whether their rights will be taken away. But being told they will be taken behind closed doors to be questioned, with just a court-appointed attorney and a judge present with them, would raise the level of anxiety exponentially higher. Mr. Demer's ability to understand complex concepts and to communicate his thoughts are adversely affected by his developmental disability. So it is understandable that his mother would alert the court that taking her son back into chambers for questioning would be the type of event that could aggravate the effect of his disability on his ability to understand and to communicate.

Gregory Demer's mother asked the court to allow her son to have a support person with him in chambers, as an auxiliary service, to maximize his potential for understanding what was happening and to increase the effectiveness of his communication. Such a person was present in the courtroom – a licensed social worker from the regional center who could have provided that auxiliary service. She knew about Mr. Demer's specific disability and had experience helping him to understand and to communicate.

The court-appointed attorney, who had spent little time with Mr. Demer, stated that a support person was not needed. Denying the request, the judge said he had no problem understanding Mr. Demer. The judge missed the whole point. The auxiliary service was for the benefit of Mr. Demer, not the judge. As for the attorney, this is another example of her loyalty to the court overriding her duty to her client. She should have advocated for her clients's ADA right to an auxiliary service to assist

him in understanding and communicating. Instead, she assented to the violation of the ADA. Her silence implicitly enabled the court to commit an overt violation of the ADA and Section 504.

What Mr. Demer endured in chambers must have been agonizing for him. He was examined and cross-examined by his own attorney – as though he were a hostile witness – in an attempt to get him to back down from his repeated prior statements that he feared his father and did not want to visit him. Had he been allowed to have a support person with him, perhaps the anxiety of that pressure cooker might have been less severe. Perhaps the presence of a third person would also have caused the cross-examiners to be more respectful and less relentless in their pursuit of adverse admissions by Mr. Demer. We will never know how the process or the outcome might have been different. But different or not, the fact is that the ADA and Section 504 were violated by the court and the court-appointed attorney by refusing to honor a request for accommodation.

Refusal to Allow Support Services

Gregory Demer is required, pursuant to court order, to follow a social schedule that requires him to visit with his father every third weekend. The next weekend he visits with his mother. The next weekend he theoretically has to himself. Then the rotation begins again.

Mr. Demer's mother told the court that she does not need a court order on visitation, but it has been forced on her anyway. She allows Gregory to decide whether to visit her or not. He usually chooses to see her. He is free to bring a staff person with him on these visits. His mother is fine with that.

Mr. Demer wants to bring a support staff with him when he is forced to visit with his father. He wants to be independent and to have the freedom to decide whether to visit his father. That freedom of choice has been taken away by the court. He must visit his father. The court order gives Gregory's father total control over activities that occur during a scheduled visit.

Although Mr. Demer wants to bring a support staff person with him when he visits his father, the father will not allow this to happen. The father claims that since he was given authority by the court to determine the activities during the visits, this authority gave him the right to refuse to allow his son to bring a support staff person with him.

As a result of the father's reliance on the court order giving him control over activities during "his" weekend, to this day Mr. Demer is not allowed to bring a support staff person with him on court-mandated visits with his father. He is free to bring such a support person when he visits with his mother because she respects his right to choose who to bring with him. Not so with his father.

A person with a developmental disability, such as Gregory Demer, has the right under the ADA to have a support person accompany him on outings. Because his father has been empowered by a court order to override the ADA, the actions of the father are violations authorized by a government agency. The father is acting as an agent of the court and therefore is an extension of the Superior Court for purposes of the ADA and Section 504. By empowering the father, the court is responsible for actions taken by the father that adversely affect the rights of his *adult* son.

June 26, 2015



Thomas F. Coleman