



Disability and Guardianship Project

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March 22, 2016

Ms. Callie T. Dietz
State Court Administrator
P.O. Box 44170
Olympia, WA 98504-1170

Re: Response by the AOC to our letter to the Washington Supreme Court

Dear Ms. Dietz:

The Disability and Guardianship Project of Spectrum Institute sent a letter to the Washington Supreme Court, dated January 15, 2016, requesting that appropriate modifications be made to provide access to justice for guardianship respondents, especially access to effective advocacy services. A letter amending the request was sent to the court on February 11, 2016.

I was in Olympia with our Washington Advisor, Tina Baldwin, on March 16, 2016, at which time we filed a special report and set of exhibits with the Washington Supreme Court titled *The Justice Gap*. (www.spectruminstitute.org/gap) We delivered an original and 9 copies of both documents to the Clerk of the Supreme Court so that each justice would have a copy to review.

Our letters and the special report were addressed to the Supreme Court as a public entity which is subject to the provisions of Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. We were writing to the court as the public entity that supervises the judicial branch of government in Washington State pursuant to the provisions of the Constitution of the State of Washington. We were not writing to the Administrative Office of the Courts which is a statutory agency created by the Washington Legislature.

As you know, the Supreme Court functions in various capacities. In its adjudicative role, the court decides cases and settles controversies in the context of petitions and appeals that are brought to it by parties involved in specific cases. In its administrative role, the court adopts rules governing legal proceedings in the trial court and appellate court systems and engages in a variety of administrative activities regulating the conduct of judges and attorneys. The court supervises the operations of the Washington State Bar Association.

We have been communicating with the court in its administrative capacity. The court has an obligation under Title II and Section 504 to ensure that litigants with cognitive and communication disabilities receive access to justice pursuant to the requirements of the Due Process Clause of the Fourteenth Amendment and the federal disability laws referenced above. This includes ensuring that respondents in guardianship cases receive access to effective advocacy services. Appointment of counsel – properly trained, subject to performance standards, and monitored to guarantee compliance with those standards – is the only way to provide modifications and accommodations that make certain there is access to justice for involuntary litigants with such disabilities in these cases.

The Justice Gap and its exhibits provide information showing that access to justice is not being provided to these litigants as contemplated by relevant state and federal laws. Most respondents are not receiving court-appointed attorneys. When attorneys are appointed, there are no training programs, performance standards, or monitoring mechanisms to determine that the advocacy services are effective. Ensuring access to justice for these litigants is an administrative responsibility of the Washington Supreme Court. While the court may delegate activities to the Administrative Office of the Courts to assist it in carrying out its duties under the Washington Constitution and Title II of the ADA, the ultimately responsibility rests with the Supreme Court.

We are aware of the activities of WINGS. My colleague, Tina Baldwin, has been a member of WINGS since its inception. She and I attended the WINGS Conference in Seattle on March 17, 2016. We shared information with conference participants about *The Justice Gap* and related materials. We were pleased that so many participants agreed that counsel should be appointed as an ADA accommodation so that respondents can have meaningful participation in their cases.

Some of the exhibits to the report indicate that Washington officials understand the connection between the ADA requirement of access to justice and the appointment of an attorney as an accommodation that may be necessary to accomplish that goal. (See Exhibits 24-27)

The issue of mandatory appointment of counsel for guardianship respondents is on the agenda of the Long Range / Strategic Planning Committee of WINGS. However, there is no timetable for that committee to develop this issue and make recommendations to the Steering Committee or for the Steering Committee to make recommendations to the court about its implementation. While these committees review these issues – which could take months or even years – a majority of guardianship respondents in these proceedings are being processed through the courts without an advocacy attorney to assist them to understand the proceedings, to investigate possible defenses, and to test the sufficiency of evidence being used to remove their existing rights.

Justice delayed is justice denied. Requirements of the ADA exist now and are ongoing. They cannot be suspended because an issue is being studied by an advisory committee of volunteers. Furthermore, the WINGS group is a generic collection of individuals looking into a wide range of issues involving the entire guardianship system. It may be more appropriate for the Supreme Court to convene a special advisory committee of practicing lawyers, law professors, judges, ADA accommodation experts, and disability rights and senior self advocates to address these issues. An *Advisory Committee on ADA-Compliant Legal Advocacy Services* may be better equipped to tackle these complicated legal and constitutional issues – and do so in a more timely manner.

Although I am responding to your letter from the AOC, this letter is intended for the Washington Supreme Court and its nine justices. Copies are therefore being sent to the Clerk of the Supreme Court. We encourage the court to take appropriate steps to address these issues in a timely manner.

Respectfully submitted:



Thomas F. Coleman
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cc: Clerk, Chief Justice, and Associate Justices of the Washington Supreme Court