

Speaker Availability

ADA and the Right to Competent Counsel in Adult Guardianship and Conservatorship Cases

National Deficiencies in Policy and Practice

A Presentation by Attorney Thomas F. Coleman
Director, Disability and Guardianship Project

Although reform of adult guardianship systems has received national attention for several decades and some progress has been made, one critical issue has been missing from the discussion: the right of guardianship respondents to the appointment of competent counsel who provides effective advocacy.

All 50 states have procedures for establishing guardianships or conservatorships for adults who lack the capacity to make major life decisions. In 20 states, an attorney does not have to be appointed to represent these involuntary litigants. Among all states, Massachusetts is the only one with comprehensive training and performance standards for attorneys who represent guardianship respondents. California is currently considering the adoption of new standards proposed by Spectrum Institute.

When these special needs clients do receive an attorney, the courts and bar associations have no monitoring mechanisms to determine if their attorneys are providing effective advocacy services. Due to their disabilities, the clients are unable to identify deficient performance or to complain of such.

This presentation explains how federal due process standards and statutory protections, under Title II of the ADA and Section 504 of the Rehabilitation Act, require the judicial branch to ensure that guardianship respondents receive access to justice – especially access to effective advocacy services.

Appointment of counsel is the only way to provide these litigants meaningful participation in their cases – proceedings in which significant liberty interests are at risk. The adoption of training and performance standards, with effective monitoring mechanisms, is the only practical way to minimize the risk of deficient performance by such attorneys.

This presentation has several segments: (1) discovering access-to-justice deficiencies in state policies and practices; (2) developing ADA-compliant training and performance standards; (3) filing complaints with the DOJ for ADA noncompliance by state courts; and (4) a 50-state strategy to secure access to effective advocacy services for guardianship respondents throughout the nation.

The length of the presentation can range from an introduction and overview (one hour) to a more thorough analysis with time for questions, answers, and strategy discussions (3 hours).

The presentation can be tailored to meet the needs of a variety of audiences: guardianship attorneys, disability rights advocates, disability services agencies, judges, court administrators, ADA coordinators, legislators and staff, or university classes.

Those who attend will have a better understanding of the ADA and how it applies to guardianship proceedings, deficiencies in current guardianship policies and practices, and how to develop and implement effective strategies and methods to improve the situation in a particular jurisdiction.

Contact Thomas F. Coleman to schedule a presentation for your organization, agency, meeting, or conference. Reference materials will be provided to those who attend a presentation.

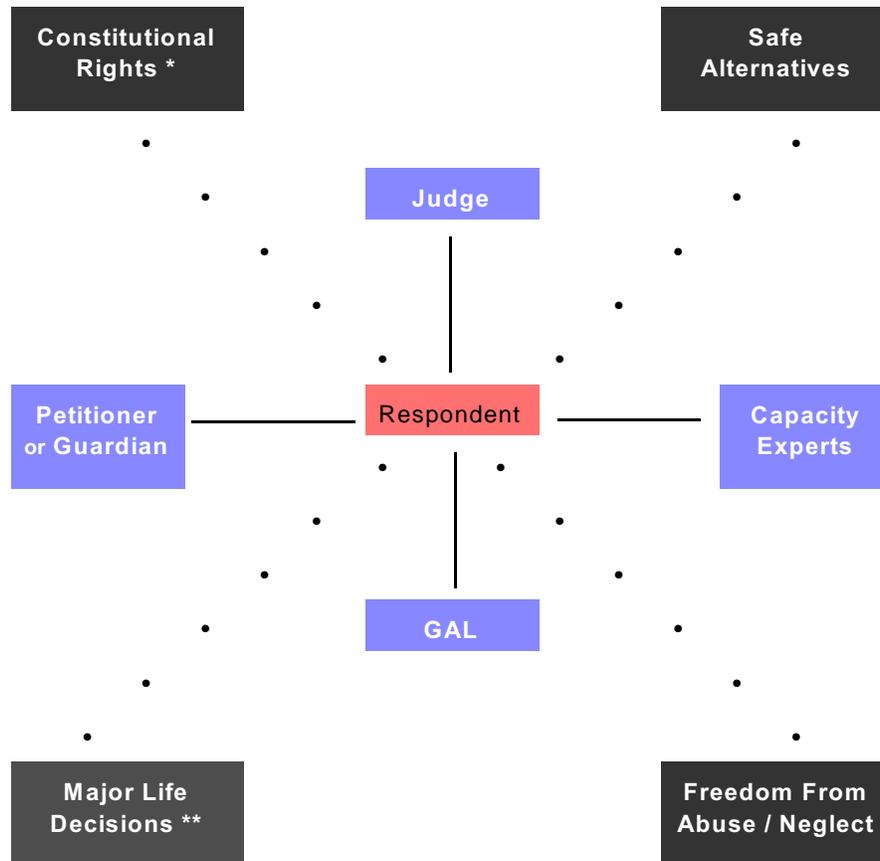


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Participants and Issues in Guardianship Proceedings

Appointing Counsel is a Necessary ADA Accommodation to Ensure that Respondents with Cognitive Disabilities Have Access to Justice



Respondents with cognitive disabilities lack the ability to represent themselves in guardianship proceedings. Appointing an attorney is a necessary accommodation under the Americans with Disabilities Act to enable a respondent to have meaningful participation in a case. Once an attorney is appointed, counsel must provide *effective* advocacy services. To ensure effective assistance of counsel, courts must adopt ADA-compliant performance standards, require proper training of the appointed attorneys, and create methods to monitor their actual performance. The duty of the courts regarding appointment, training, and monitoring of ADA-accommodation attorneys stems from Title II of the ADA and Section 504 of the Rehabilitation Act of 1973.

Advocacy services of an appointed attorney include: examining capacity assessments in all areas of decision making, determining whether less restrictive and safe alternatives are viable, vetting the proposed guardian, insisting on a care plan that provides safety and reduces the risk of abuse, and making sure that the judge, petitioner, guardian ad litem (GAL) or court investigator, capacity experts, and guardian follow statutory directives. A guardianship respondent is unable to perform these essential functions without an attorney.

** Constitutional rights include intimate association (sex), the right to travel, the right to marry, the right to contract, the right to vote, and freedom of choice in personal decisions. ** Major life decisions include choices regarding residence, occupation, education, medical care, social life, finances, etc.*

Thomas F. Coleman, Legal Director, Spectrum Institute

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Project Activities

Conferences

Conservatorship Reform – conducted a conference in 2014 in Los Angeles resulting in publication of a report “Justice Denied: How California’s Limited Conservatorship System is Failing to Protect the Rights of People with Developmental Disabilities” – cited extensively by the Compassionate Care Coalition in a report – *Thinking Ahead Matters* – calling for reform of the limited conservatorship system.

Voting Rights – conducted a conference in 2014 in Los Angeles stimulating the passage of new laws to protect the voting rights of conservatees in 2014 (AB 1311) and 2015 (SB 589) and an investigation by the United States Department of Justice of alleged voting rights violations by the judicial branch in California.

Washington State

Special Report – submitted a report in March 2016 to the state Supreme Court titled “The Justice Gap: The Judicial Branch Has a Duty to Appoint, Train, and Supervise Attorneys to Effectively Represent Respondents in Guardianship Cases.” It documents the failure of judges to appoint attorneys in a large majority of cases and the lack of performance standards and training for the attorneys who are sometimes appointed.

WINGS – submitted *The Justice Gap* report to the Working Interdisciplinary Network of Guardianship Stakeholders at its conference in March 2016, with a request that WINGS endorse the appointment of attorneys for respondents in all guardianship cases.

State Supreme Courts

Outreach Project – we are writing to supreme courts in all 50 states to remind them of their duty, under Title II of the ADA, to ensure access to justice for guardianship respondents, especially access to the effective advocacy services of an appointed attorney. So far, we have written to courts (and bar associations) in California, Colorado, Indiana, Michigan, Nevada, Ohio, Oregon, Pennsylvania, South Dakota and Washington.

California Judicial Council

Proposed New Rules – submitted a framework for new court rules for court-appointed attorneys in limited conservatorship cases in 2015, including performance standards, qualifications, and training to ensure ADA-compliant advocacy services. The Judicial Council approved a two-year plan to review our proposals with a target date of January 1, 2018 for any new rules to become effective.

U.S. Department of Justice

White Paper – submitted a report in 2015 titled “Due Process Plus: ADA Advocacy and Training Standards for Appointed Attorneys in Guardianship Cases” to provide national standards for effective advocacy services that are compliant with due process and the Americans with Disabilities Act.

Complaint – submitted a complaint against the Los Angeles Superior Court in June 2015 (later expanded to include the state judiciary) for alleged violations of Title II of the ADA for the failure of the courts to ensure effective advocacy services by court-appointed attorneys representing adults with developmental disabilities in conservatorship cases. An audit of a sample of cases was submitted to show a pattern and practice. As of April 2016, the complaint is still under review by the DOJ.

Bar Associations

Outreach Project – we are writing to the state bar associations in all 50 states to remind them of their duty, under Title II of the ADA, to modify complaint procedures to ensure access to justice for guardianship respondents who may receive ineffective assistance of counsel. Random audits of cases may be necessary to accomplish this.

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Endorsement – an international organization that advocates for the human rights of people with significant disabilities has endorsed our Access to Advocacy Outreach Project that promotes the appointment and monitoring of trained attorneys for respondents in all guardianship cases.



Thomas F. Coleman

People with Disabilities Have Been Part of His Research, Education, and Advocacy for Decades

Thomas F. Coleman has been advocating for the rights of people with disabilities since he met Dr. Nora J. Baladerian in 1980. That was the year when Coleman became the Executive Director of the Governor's Commission on Personal Privacy.

Coleman wanted the Commission to focus on the privacy rights of a wide array of constituencies, one of which was people with disabilities. On his recommendation, Dr. Baladerian became a Commissioner and Chaired its Committee on Disability.

The Commission's Report, issued in 1982, contained recommendations to clarify and strengthen the rights of people with disabilities. One of its proposals was that "disability" be added to California's hate crime laws. That happened in 1984.

Coleman's next project involving disability issues was his work as a Commissioner on the Attorney General's Commission on Racial, Ethnic, Religious, and Minority Violence. In addition to focusing on violence motivated by racial prejudice and homophobia, the Commission's work—spanning several years from 1983 to 1989—also included violence against people with disabilities.

The next phase of Coleman's work with disability issues involved family diversity. Coleman was the principal consultant to the Los Angeles City Task Force on Family Diversity. He directed this 38-member Task Force from 1986 to 1988. He wrote its final report, which included a major chapter on Families with Members Who Have Disabilities. Recommendations were made on how the city could improve the quality of life for all families, including people with disabilities.

A few years later, he and Dr. Baladerian created a Disability, Abuse, and Personal Rights Project, which was organized under the auspices of their nonprofit organization, Spectrum Institute.

Coleman's advocacy shifted to other issues for several years, focusing on widely divergent subjects such as promoting the civil rights of single people, to fighting the abuse of troubled teenagers by boot camps and boarding schools.

Several years ago, Coleman began working again with Dr. Baladerian, devoting more of his time to the

disability and abuse issues which she has championed for decades. As he learned more about these issues, he dedicated more of his time and talent to abuse of people with disabilities.

A few years ago, Coleman and Dr. Baladerian instituted a new Disability and Abuse Project, which in 2012 conducted the largest national survey ever done on abuse and disability.

Although the Project mostly involves research and advocacy on policy issues, Coleman became involved in some individual cases in California. One challenged a plea bargain as too lenient to serve justice for sexual assault victims with disabilities. Another sought to reduce the 100 year sentence of an 18-year-old man with a developmental disability as disproportionately harsh. Three other cases involved adults with developmental disabilities whose rights were violated by the limited conservatorship system.

Coleman's most recent campaign is the Disability and Guardianship Project, which seeks to better protect the rights of adults with developmental disabilities in guardianship proceedings.

Coleman has been practicing law since 1973. In addition to publishing many articles and reports on guardianship reform, his advocacy activities have been directed to the United States Department of Justice as well as all three branches of government in many states.

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More about his advocacy activities at these links:

www.disabilityandabuse.org/whats-new.htm

www.tomcoleman.us