



Newsletters of Spectrum Institute are published quarterly. The next newsletter will be released in July 2023.



A Growing State and Federal Interest in Guardianship Reform

Spectrum Institute is Concentrating Efforts in California and Missouri

As an organization with a modest budget and which primarily operates through volunteerism, Spectrum Institute is strategically concentrating its guardianship and conservatorship reform efforts in two states.

We started with conservatorship reform in California some 10 years ago and are continuing to advocate for reform there. Last year we were invited to provide research and consulting services to the Alternatives to Guardianship Project in Missouri. Our efforts there are being well received by individuals and organizations that share our goal of promoting justice and equal rights for adults with developmental disabilities.

As you can see from articles in this newsletter, we have been very active during the first quarter of this year. We hope that readers will

support our mission by making a financial contribution. With 501(c)(3) tax exempt status, donations to Spectrum Institute are tax deductible under federal law. Please [donate](#) today.



Thomas F. Coleman
Executive Director



U.S. Senate Holds Hearing on Troubled State Guardianship Systems

The US Senate's Special Committee on Aging held a hearing on March 30, 2023, to hear from experts and those affected by guardianships and conservatorships, potentially pointing the way to an overhaul of these systems.

Guardianships are run by states, and each state has its own rules. But experts insist the Senate committee can push for changes so that these systems operate under more just and uniform rules nationwide. Guardianships should be seen as a final resort, they say, not the first option as often occurs now.

Erica Wood, the former assistant director of the American Bar Association Commission on Law and Aging, told Bloomberg News that one vital reform would be to have legal counsel represent people every time someone files a petition for guardianship. Many states do not currently provide legal counsel to those targeted by guardianship petitions. Wood also supports "a much more full-fledged examination of less restrictive options" to guardianship before any court order is issued.

Julie Kegley, a senior attorney with the Georgia Advocacy Office, said

her office supports changes such as having federal agencies, including the Department of Justice, train judges on the harms of guardianships.

Morgan Whitlatch, a director with the Center for Public Representation, said the federal government “must simultaneously and equally invest in strategies that encourage states and territories to divert their constituents away from guardianship and court systems and towards less restrictive options.”

Christina Baldwin, chairperson of Spectrum Institute, and Thomas F. Coleman, legal director, sent a [letter](#) to the Senate Committee proposing more funding for demonstration projects in the states that encourage supported decision-making (SDM) as a less restrictive alternative to guardianships and conservatorships. [California](#) could use federal funding for counseling on supported decision-making at the self-help centers in superior courts throughout the state as mandated by recently enacted AB 1663. Federal funding would also assist other states to emulate a pilot project in [New York](#) that helps adults with mental disabilities and their families develop safe and effective SDM arrangements.

For more information about the hearing, [click here](#).



California Agency Responds to ABC-TV Investigative Series on Limited Conservatorships

ABC-TV Channel 10 in Sacramento, California [reported](#) that the California Department of Developmental Services (DDS) recently released a [report](#) evaluating its role in the conservatorship process. The report follows a lengthy investigation by ABC 10 of conservatorships involving adults with developmental disabilities. [Andie Judson](#), a journalist with ABC10, conducted the multi-year investigation which aired in a [series](#) titled "The Price of Care: Taken by the State."

The ABC10 investigation uncovered a failing system and exposed alarming practices by DDS. The series has been credited for helping stimulate passage of new legislation in California (AB 1663) which requires that supported decision-making be seriously explored and be ruled out before a judge may order an adult into a conservatorship. It also prompted DDS to announce new reform initiatives, including the creation of a national panel of experts to review the agency's conservatorship process. The new report is the product of that panel.

In reaction to the report, Judy Mark, President of Disability Voices United, remarked: "There's no question that this panel was put together and that this report was put out there because of the ABC10 series."

Two members of the board of trustees of Spectrum Institute -- Attorney Thomas F. Coleman and Dr. Barbara Imle -- were interviewed extensively by ABC10 and appeared in several episodes of the series.

In response to the newly released DDS evaluation, ABC10 asked Imle for her reactions. Imle questioned whether the recommendations made by the panel of experts will cause any improvements, absent a massive influx of new funding to DDS and to the regional centers that provide services to these adults.

Imle was a regional center service coordinator for several years. She left her position to get a doctorate degree. Imle's dissertation involved a massive review of DDS, regional centers, and conservatorships.



New Civil Rights Rules Will Affect the Judicial Branch in California

At its meeting on April 3, 2023, the California Civil Rights Council (CRC) will receive public input on new regulations it is developing to interpret and implement Gov. Code Section 11135. That statute prohibits the state, its agencies, and entities funded by the state, from

discriminating against recipients of their services on various bases, including discrimination on the basis of mental disability.

The statute requires state-operated programs and services to obey the Americans with Disabilities Act. It applies to services provided within the Judicial Branch. This would include probate conservatorship proceedings.

Victims of discrimination, including litigants who are not provided accommodations to enable them to have effective communications or meaningful participation in judicial proceedings, may file a complaint with the state Civil Rights Department. The department may investigate and take appropriate remedial action against an offending entity, including filing a lawsuit in state or federal court.

CRC is housed within the California Civil Rights Department. It issues regulations implementing the state's civil rights laws.

Spectrum Institute submitted [written comments](#) to CRC, including proposals to clarify how Section 11135 applies to judicial proceedings. The Center for Estate Administration joined in the submission. Thomas F. Coleman, legal director of Spectrum Institute, will make oral remarks at the April 3 meeting.

Coleman sees these regulations, if implemented properly, as a tool that can help stop some of the abuses by judges and court-appointed attorneys in probate conservatorship proceedings. Having an entity in the Executive Branch that can investigate disability discrimination within the Judicial Branch will help create the checks and balances necessary for real accountability.



Former Intern Publishes Law Review Article on Conservatorship Reform

We are pleased to share an article written by Maria Reyes Olmedo

which was recently published in the Loyola of Los Angeles Law Review. Maria served as an [intern](#) with Spectrum Institute during the summer of 2021. Maria is scheduled to graduate and receive a law degree in May 2023.

The article is titled: “Overprotected but Unrepresented: An Argument for Mandatory Appointment of Counsel and Against Automatic General Conservatorships in California.”

The abstract of the article explains: “Conservatorships are restrictive arrangements that must be reserved for people with severe intellectual and/or developmental disabilities. However, California probate courts unnecessarily impose conservatorships and forego less restrictive alternatives for the sake of administrative convenience. While AB 1194 will ameliorate California’s paternalistic conservatorship system, this Note advocates for requiring courts to appoint counsel to all conservatees and proposed conservatees in every conservatorship proceeding, and to enact conservatorships only after proving less restrictive methods are insufficient. Humans—regardless of their dis/ability—deserve to age with dignity in a conservatee-centric system that does not violate their constitutional, federal, and state rights.”

Our congratulations to Maria for a well-written piece of scholarship. To read the full article, [click here](#).



DOJ Considering Our ADA Complaints in California and Missouri

Spectrum Institute filed a class-based [complaint](#) with the U.S. Department of Justice nearly eight years ago. It [alleged](#) that a court-appointed attorney program operated by the Los Angeles Superior Court has been violating the Americans with Disabilities Act by providing deficient legal services to litigants with mental and developmental disabilities in probate conservatorship proceedings. A complaint was also filed on behalf of an individual litigant.

The complaints have apparently languished in a pile of backlogged paperwork. Three years ago, a DOJ lawyer [reported](#) that the complaints were still "pending review." Spectrum Institute has never received word from the DOJ that the complaints have been accepted or rejected. In response to a recent inquiry regarding them, the DOJ responded: "We will let you know when we have an update on the status of your complaints."

Since the complaints apparently have not been rejected, we recently took the opportunity to provide the DOJ with additional examples of ADA violations by the [Los Angeles Superior Court](#) as well as the [Judicial Council of California](#). We are waiting to learn what action, if any, the DOJ will take on our original complaints as well as the updated allegations.

Meanwhile, we have been in communication with the DOJ regarding alleged ADA violations by the Judicial Branch in Missouri in connection with the manner that adult guardianship proceedings are being processed in that state.

Spectrum Institute filed an ADA [complaint](#) with the DOJ on January 12, 2023 alleging that the adult guardianship system is operating in violation of federal law on a wide range of issues. The DOJ acknowledged receiving the complaint. On January 26, Viviana Bonilla-Lopez, a trial attorney with the Special Litigation Section of the DOJ, interviewed Thomas F. Coleman, legal director of Spectrum Institute, to learn additional details about the ADA complaint.

We were encouraged to file the Missouri complaint after learning that a federal investigation had been opened that touched on the guardianship system in that state.

The DOJ issued a [press release](#) on November 16, 2022, announcing that it has opened an investigation under the ADA to determine whether Missouri's use of guardianships for people with serious mental illness contributes to unnecessarily restrictive placements in skilled nursing facilities. The press release encouraged anyone with relevant information to contact the DOJ.

We are waiting to learn whether the DOJ will take action on any of our submissions.



Spectrum Institute Produces Publications for Missouri Project

Supported Decision-Making: Options for Missouri

Spectrum Institute has produced a new report for the Alternatives to Guardianship Project promoting the use of supported decision-making (SDM) as an alternative to adult guardianships in Missouri. The report provides a framework to stimulate conversations among stakeholders and strategic planning by advocates for new legislation in Missouri to make SDM and other less restrictive alternatives to guardianship for people with mental and developmental disabilities a viable and practical reality rather than a theoretical possibility. The report is being widely distributed throughout the state.

The options it presents will become the basis for a series of zoom forums later this year to encourage feedback and suggestions. The report and the community evaluation process should be valuable to legislators as they consider introducing or supporting SDM legislation. For a copy of the report, [click here](#).

Social Rights of Adults with Developmental Disabilities

This report explains the legal basis for the rights that such adults have in connection with their social decisions, activities, and relationships. It focuses on provisions in the constitutions of the United States and the State of Missouri, as well as various federal and state statutes. The report is written for the benefit of self-advocates, parents, service providers, and state agencies charged with protecting the rights of people with developmental disabilities. It is also intended to educate judges, court-appointed attorneys, and guardians involved in adult guardianship proceedings. To access the report, [click here](#).

Sexual Rights: Annotated Bibliography

A 47-page bibliography of academic and professional literature is now

available containing policy statements, reports, and articles on the sexual rights of adults with developmental disabilities. The bibliography offers those with a sincere interest in this topic access to a wide range of literature on which to build a new set of policies and protocols that will respect and protect the sexual rights of adults with developmental disabilities in Missouri or elsewhere. To access the bibliography, [click here](#).

Sexual Rights: Legal Authorities

As a companion document to the bibliography on sexual rights, a memo is now available explaining the legal authorities supporting the freedom of intimate association guaranteed by the constitution to consenting adults, including those who have developmental disabilities. The abstract to the memo explains: "Adults with developmental disabilities – regardless of gender, marital status, or sexual orientation – deserve the same opportunity to experience sexual relationships as adults without disabilities. This legal report on the parameters of the freedom of intimate association, along with the related bibliography of academic and professional literature, are intended to provide a better understanding of the sexual rights of adults with developmental disabilities. Such an understanding should lead to an informed and balanced approach to a sensitive topic." To access the legal memo, [click here](#).

Marriage Rights: Legal Authorities and Current Practices

The freedom to marry has long been recognized as one of the vital personal rights essential to the orderly pursuit of happiness. That is why the freedom to marry is constitutionally protected. But for adults with developmental disabilities, a variety of barriers often block their access to marriage. Obstacles to marriage include overly restrictive definitions of "capacity to marry," the failure of schools and service providers to educate teens and young adults about the benefits and obligations of marriage, and economic penalties that may be imposed by federal and state benefits programs on those who choose to marry.

This report explains the legal basis for the freedom to marry for adults with developmental disabilities. It also makes recommendations on how the State of Missouri can assist such adults in making that right become a reality. Although this report focuses primarily on Missouri, it contains information that would be relevant to any state. To read or download the report, [click here](#).

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