

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.



www.spectruminstitute.org/outreach
tomcoleman@spectruminstitute.org

(818) 230-5156