



Disability and Guardianship Project

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February 8, 2016

Hon. John E. Conery, President
Hon. Russell Otter, President-Elect
American Judges Association
300 Newport Avenue
Williamsburg, VA 23185

Re: ADA and the Right to Counsel in Adult Guardianship Proceedings

Dear ADA President and President-Elect:

The American Judges Association prides itself on being a leader in advancing the concept of “procedural fairness.” Access to justice, whether as a matter of due process or as a requirement of the Americans with Disabilities Act, is another way to describe the principle of procedural fairness.

Because the AJA attaches such importance to this principle, we believe the organization would have a major interest in our Access to Advocacy Outreach Project. (<http://spectruminstitute.org/outreach/>) We are in the process of contacting the supreme courts in all 50 states to ask them to ensure that guardianship respondents – involuntary litigants with cognitive and communication disabilities – receive access to justice in such proceedings. That cannot occur unless they have access to effective advocacy services.

Our research indicates that procedural fairness is lacking in the 20 states that do not require the appointment of counsel for guardianship respondents in all cases. It is also lacking when courts do not have training and performance standards when such attorneys are appointed, either as a matter of right or as a matter of judicial discretion. Regardless of whether the reason for appointing an attorney is statutory or constitutional, due process requires that these attorneys provide effective assistance. Without training and performance standards, the right to effective assistance of counsel is left to chance. Procedural fairness cannot be an arbitrary hit or miss prospect. Other than Massachusetts which has such standards, or California which is now considering them, this issue has not been on the agenda of supreme court justices or court administrators anywhere in the nation.

More information is available on our website at: <http://spectruminstitute.org/guardianship/> and <http://disabilityandabuse.org/whats-new.htm>. Finally, should you ever need a speaker at a seminar or conference, please let us know. (<http://disabilityandabuse.org/ada-guardianship-presentation.pdf>)

Very truly yours:

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