



Disability and Guardianship Project

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February 4, 2016

Eric C. Schulte
President
State Bar of South Dakota
222 E. Capitol Avenue #3
Pierre, SD 57501

Re: An Invitation to Participate in the Access to Advocacy Outreach Project

Dear Mr. Schulte:

Today we sent a letter to the South Dakota Supreme Court asking the court to ensure that guardianship respondents with developmental disabilities receive access to justice. A copy of the letter and related materials are enclosed for your review.

We are asking the court to exercise its responsibility under Title II of the ADA and Section 504 of the Rehabilitation Act to provide these involuntary litigants a court-appointed attorney and to adopt training and performance standards to ensure that they receive effective assistance of counsel.

South Dakota is among a minority of states that does not require the appointment of counsel in all adult guardianship cases. Without appointed counsel as an advocate and defender, we cannot imagine how these litigants would have access to justice in these cases – proceedings that may result in the loss of fundamental liberties.

But appointment of counsel would not be enough, in and of itself, to satisfy the court's duty to ensure access to justice for litigants who have cognitive and communication disabilities. As a matter of due process, and to provide *meaningful* access to justice under federal law, counsel must provide effective assistance. This cannot be left to chance. There must be enforceable training and performance standards, and monitoring mechanisms, in place.

We invite you to study the White Paper we have produced on this subject so that you and your colleagues can become more familiar with the issues. We also invite you to support our request to the court and, to the extent that you may have time and resources, participate in our Access to Advocacy Outreach Project in South Dakota.

We look forward to hearing from you so that we can discuss this matter further.

Very truly yours,

Thomas F. Coleman
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