



Disability and Guardianship Project

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February 8, 2016

Conference of Chief Justices
300 Newport Avenue
Williamsburg, VA 23185

Attention: Hon. David Gilbertson, President
Hon. John Minton, Jr., President-Elect

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

Dear Conference Members:

We thought the Conference should be aware that we are in the process of requesting the supreme courts in all 50 states to take appropriate measures to ensure that guardianship respondents receive access to justice in such proceedings – as required by Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. (<http://spectruminstitute.org/outreach/>)

In particular, our communications with these public entities point out ways in which the courts should be ensuring that these involuntary litigants have access to effective advocacy services, without which they are at a distinct disadvantage because of their cognitive and communication disabilities. (<http://spectruminstitute.org/white-paper/>)

Some 20 states do not provide for the mandatory appointment of counsel in all guardianship cases. In the 30 states where counsel is mandated, and in the 20 states where counsel is sometimes appointed, only Massachusetts has adopted comprehensive training and performance standards for such attorneys. The Judicial Council of California has initiated a two-year project to review rule changes proposed by our organization, for possible adoption effective January 1, 2018. Without such standards, and effective monitoring mechanisms, whether clients with cognitive and communication disabilities receive effective advocacy services is left to chance. The lack of proper training and performance standards, with practical enforcement mechanisms, may itself constitute a violation of Title II and Section 504. (<http://spectruminstitute.org/doj/>)

We believe that the Conference of Chief Justices can play an important role in assisting the state supreme courts to address these issues. We invite the Conference to place this item on its agenda and to take appropriate action to help state courts develop appropriate educational programs and to adopt effective procedural mechanisms to improve access to justice for guardianship respondents.

Respectfully submitted:

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