



CEDAR

Coalition for Elder & Disability Rights

November 4, 2017

John M. Gore
Acting Assistant Attorney General
United States Department of Justice
Civil Rights Division
950 Pennsylvania Ave N.W.
Washington, DC 20530

Re: Implementing the directive of S. 178 Section 505

Dear Mr. Gore,

I am following up on the November 1, 2017 letter sent to you by Thomas F. Coleman, Legal Director for Spectrum Institute. Mr. Coleman drew your attention to the recently passed S. 178, Section 505 of which directs the Attorney General to “publish best practices for improving guardianship proceedings.”

Mr. Coleman pointed out that Title II of the Americans with Disabilities Act (ADA) applies to guardianship/conservatorship proceedings. Guardianship respondents are entitled to meaningful access to justice in court proceedings that can strip many of their civil rights.

Mr. Coleman explained that the Department of Justice provides guidance to states on application of ADA in criminal justice proceedings. The Department of Justice has yet to provide guidance on the ADA requirement that respondents in guardianship/conservatorship proceedings have meaningful participation in their court proceedings. Mr. Coleman submitted a White Paper on ADA compliance for court-appointed attorneys in guardianship/conservatorship cases.

California’s Courts

CEDAR focuses on California conservatorships [adult guardianships] and the deficiencies in the current conservatorship system. California’s Probate Code 1801(e) requires “clear and convincing evidence” before a court can lawfully impose a conservatorship. Yet in case after case, we see courts establish conservatorships with no due process. No evidence. No testimony. No opportunity for a defense. Proposed conservatees are often not allowed to attend the court hearings that strip them of their civil rights.

In Monterey County, Judge Thomas Wills placed an elderly woman under conservatorship in a hearing that lasted only three minutes. In Santa Barbara County, Judge Timothy Staffel placed a developmentally delayed young man under conservatorship ex parte and without the required notice to family.

California's Court-Appointed Attorneys

We routinely see court appointed attorneys fail to advocate for their clients' rights. In some cases, court appointed attorneys actively **oppose** the rights of their clients. Fomenting discord among family members or inciting conflict between care facilities and families can be exceedingly lucrative. Multi-million-dollar estates are depleted by attorney billings. Formerly wealthy conservatees find their estates depleted, becoming dependent on public assistance in their final years.

In San Bernardino County, my mom was imprisoned and isolated in an assisted living facility for over a year. Law enforcement said the facility denied visitation in retaliation for our complaints of abuse. My mom's court appointed attorney told the court that he opposed my mom having visitation with family because: *It might inconvenience the facility*. The court appointed attorney was paid over \$200,000 for his "services to the conservatee." The conservator's attorney was paid about \$250,000.

Family eventually obtained a temporary restraining order against isolation abuse. It took sixteen court hearings and cost family \$70,000 in attorney fees. By the time we finally secured my mom's right to visitation, her dementia had progressed to where she no longer recognized close family members. That was not an acceptable remedy.

California's Legislation ... Ignored

My mom's isolation was the impetus for the nation's first legislation on right to visitation. AB 937 (2013) amended Probate Code 2351(a) to clarify that conservatees have a right to visitation. Our input helped shape AB 1085 (2015), which stated that all adults in California have the right to visit with and communicate with whomever they wish. If only the courts followed the law....

In case after case, we see conservatees denied contact with their loved ones. In case after case, we see judges ignore conservatees' right to visitation. In the most terrifying cases, we see judges act to strip conservatees of their right to contact with loved ones. Once again, there is no evidence. No testimony. No opportunity for a defense. Conservatees are rarely allowed to attend the hearings that result in isolation for the remainder of their lives. Court appointed attorneys remain silent, or they actively participate in taking away their clients' rights.

The enclosed complaint about Judge Thomas Wills in Monterey County shows a pattern of denial of due process and violations of civil rights. Any conservatee whose case goes before Judge Wills may find her right to visitation stripped with a single comment from the bench. Not one court appointed attorney advocated for the rights of the conservatees mentioned in our complaint.

The enclosed complaint about Judge Timothy Staffel in Santa Barbara County involves a developmentally delayed conservatee (now 25) who has been isolated for seven years. His court appointed attorneys, Public Defenders, **did not provide any defense** at the initial conservatorship hearing. Then the Public Defenders **did not make an appearance in court for over six years**. The latest Public Defender (the fourth in 2017) favors restricting visitation to the level that the facility

unlawfully imposed in prior years. The Public Defender's recent efforts appear to focus on reducing liability for her department, rather than advocating for her client's rights.

Summary

As Tom Coleman stated in his November 1, 2017 letter, S. 178 Section 505 directs the Attorney General to "publish best practices for improving guardianship proceedings." We join in Mr. Coleman's request that the Attorney General publish best practices that incorporate requirements of ADA Title II.

At minimum, judges, conservators, guardians ad litem, court investigators, court-appointed attorneys, and capacity experts must follow the law. Conservatees and proposed conservatees must be given due process and equal protection under the law. Individuals with cognitive and communication disabilities must be receive supports to find meaningful justice in those proceedings.

Courts must not strip individuals of their civil rights in hearings that last only a few minutes. Court-appointed attorneys must advocate for their clients' rights, rather than seeking to enrich themselves from the estates of wealthy conservatees. Court appointed attorneys who oppose their clients' rights must face appropriate discipline.

California has excellent policy, but California's conservatorship courts often fail to implement that policy. Guidance from the Attorney General could encourage California's courts and agencies to implement appropriate policy. Please let us know if CEDAR can be of any assistance.

Respectfully,

Linda Kincaid, MPH

C:

Mr. Thomas Coleman, Spectrum Institute

Mr. Richard Black, Americans Against Abusive Probate Guardianships

Ms. Rachel Aviv, author, *How the Elderly Lose their Rights*

Mg. Greg Byers, filmmaker, *Pursuit of Justice*