



Disability and Guardianship Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

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Patricia W. Griffin, President / Gerald A. Marroney, President-Elect
Conference of State Court Administrators
300 Newport Avenue
Williamsburg, VA 23185

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

Dear President and President-Elect:

The Conference of State Court Administrators published a White Paper in 2010 addressing whether it should be mandatory for state courts to appoint counsel for guardianship respondents. This is an issue of continuing interest to state courts. (<http://spectruminstitute.org/outreach/>)

Noting that appointment of counsel was not required in many jurisdictions, the White Paper asked: “[G]iven that a guardianship restricts control by the person with diminished capacity over liberty and property, should not a constitutional right to counsel exist?” Before answering the question, the report noted: “Because representation is key to providing procedural due process, without adequate representation or the cognitive ability for self representation, a guardianship proceeding could be viewed as unfair and could result in the unjust loss of fundamental rights. A person subject to a guardianship can lose his or her right to vote, marry, contract, make healthcare decisions and decide how to manage his or her assets. In 1987, a congressional committee opined that guardianship could be the most severe form of civil deprivation which can be imposed on a citizen in the United States.”

The White Paper, endorsed by the Conference, gave an emphatic and unequivocal answer: “In states where right to counsel has not been addressed, courts should take a leadership role in requiring the appointment of counsel to protect the rights of persons with diminished capacity.”

We applaud the Conference for taking a position supporting the due process rights of involuntary litigants with cognitive and communication disabilities – and for implicitly encouraging states to ensure that litigants receive access to justice as required by the Americans with Disabilities Act.

We ask the Conference to expand its recommendation to apply to all states, even where the issue was once considered and courts decided against mandatory counsel. States, such as Washington, should revisit the issue, especially keeping in mind their duties under Title II of the ADA. We also ask the Conference to recommend that all states adopt ADA-compliant training and performance standards for court-appointed attorneys in guardianship cases. (<http://spectruminstitute.org/white-paper/>)

Very truly yours:

Thomas F. Coleman
Legal Director, Spectrum Institute
tomcoleman@spectruminstitute.org