

# Legal Services Program Appears to Violate the ADA

by Thomas F. Coleman

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<http://disabilityandabuse.org/daily-journal.pdf>

A legal services program operated by the Los Angeles County Superior Court does not appear to comply with Title II of the Americans with Disabilities Act. Adults with developmental disabilities are receiving deficient legal services in limited conservatorship proceedings.

The court operates a Probate Volunteer Panel (PVP) from which attorneys are appointed to represent clients who have intellectual and developmental disabilities. It is responsible for the deficient performance of these attorneys because the court approves who gets on the list, appoints them to specific cases, reviews and approves their fee claims, and mandates them to attend court-approved training programs.

Yet the court has been willfully indifferent to the failure of attorneys to provide effective assistance to these clients and has knowingly allowed deficient training programs to operate for many years.

Conducting [my own investigation](#) using the court's computers, I discovered that mandatory procedures to protect the rights of proposed conservatees are frequently waived. Optional procedures that would increase the likelihood of a just result often are not utilized, even though they could have been without exceeding the court's time guidelines.

In short, proposed conservatees are not afforded the process they are due. Cases are rushed through the system. Shortcuts are used. Steps are missed. Efficiency, not quality, seems paramount to both the court and the attorneys it appoints.

In the 18 cases I looked at of one attorney, services that could have been performed but were not include: (1) objecting to the lack of an investigation by a court investigator and the lack of an investigator's report even when no investigator was involved; (2) reviewing school records for clients who were enrolled in school; (3) interviewing any staff members at these schools; (4) reviewing the regional center report in several cases; (5) interviewing the doctor who submitted the medical capacity declaration in any of the cases; (6) interviewing any of the relatives, other than the custodial parents, who were identified in the petition; (7) reviewing the most recent Individual Program Plan or any clinical evaluation reports in the regional center files in any of the cases; (8) asking for an expert to be appointed under Evidence Code Section 730 as authorized by law in any of these cases — especially in cases where the right to make sexual decisions was retained by the client upon recommendation of the attorney; and (9) developing an ADA accommodation plan for clients.

For all practical purposes, the only accommodation the court provides to these litigants is a court appointed attorney.

An evaluation of 25 additional cases handled by six other attorneys who represented proposed limited conservatees shows a similar pattern of waiving procedural protections (court investigator reports and regional center reports) and failing to take advantage of procedures that were available and that would have increased access to justice and a fair result — many of which could have been utilized without exceeding the presumptive 12-hour limit for attorney services (per the general order of the presiding judge). This pattern was known to and ratified by a judge.

Title II of the ADA and Section 504 of the Rehabilitation Act place an affirmative duty on state and local courts to ensure that litigants with cognitive and communication disabilities receive access to justice. This is especially so when the litigants are forced to participate in legal proceedings. The duty is amplified, and requires the court to take action on its own motion, when the court is aware that these involuntary litigants have mental or emotional difficulties that impair their ability to participate in legal proceedings in a meaningful manner unless they receive accommodations.

Under circumstances such as those associated with limited conservatorship proceedings, the court must provide accommodations, and modify usual policies and practices, to ensure access to justice for these litigants. For all practical purposes, the only accommodation the court provides to these litigants is a court-appointed attorney.

Having provided such an accommodation, it is the responsibility of the court to ensure these attorneys are properly trained to represent clients with intellectual and developmental disabilities. But my research sug-

gests the court has failed to ensure proper training of these attorneys.

Proposed conservatees lack the ability to know when their attorneys are performing in a deficient manner, and lack the ability to complain and demand a new attorney — so it is the responsibility of the court to put various quality assurance controls in place to ensure these attorneys are giving the clients access to justice. The court has not done so. Judges are rubber stamping the fee claims and ignoring the deficiencies evident in the reports submitted by the attorneys to the court.

There is a clear pattern of ADA violations by court-appointed attorneys, by the legal services program operated by the court, and by the training programs mandated by and implicitly approved by the court. The Los Angeles Superior Court is ultimately responsible for these violations. ◇◇◇

***Comment:** After this was published in the Daily Journal, I gave the matter further thought and realized that, as the funding source of this legal services program, the **County of Los Angeles** is ultimately responsible for these ADA violations. The county is willfully allowing this to happen.*



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