



Disability and Guardianship Project

2100 Sawtelle • Suite 204 • Los Angeles, CA 90025
(818) 230-5156 • www.spectruminstitute.org

November 1, 2017

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

Re: Implementing the directive of Section 505 of recently enacted legislation (S. 178)

Dear Mr. Gore:

Congress recently passed and the President signed into law S. 178 – a bill introduced by Sen. Chuck Grassley (R-IA). Section 505 of the new law directs the Attorney General to “publish best practices for improving guardianship proceedings.”

It should go without saying that “best practices” would require that participants in guardianship proceedings – judges, guardians ad litem, court investigators, court-appointed attorneys, and capacity experts – obey relevant state and federal laws. Guardianship proceedings are a service provided by public entities (state and local courts). Title II of the Americans with Disabilities Act applies to guardianship proceedings. Guardianship respondents are individuals with significant cognitive and communication disabilities who are entitled to meaningful access to justice in such proceedings.

The Department of Justice has given guidance to the states on the application of the ADA to criminal justice proceedings involving defendants with intellectual and developmental disabilities. No guidance has yet been given to the states on what the participants in guardianship proceedings must do to comply with the ADA’s mandate that respondents have meaningful participation in their cases.

The need for such guidance is underscored by the directive of Section 505 of the recently-enacted S. 178. A White Paper submitted by Spectrum Institute to the Department of Justice (DOJ) focuses on what court-appointed attorneys must do to comply with the ADA in the delivery of legal services to clients in guardianship proceedings. (<http://www.spectruminstitute.org/white-paper/>)

That White Paper can assist the DOJ to develop best practices for such court-appointed attorneys. The standards contained in the White Paper should satisfy the best practices directive of Section 505 – in terms of what would be required in order for attorneys to provide competent legal advocacy and defense services. Standards for judges, guardians ad litem, court investigators, and capacity experts also need to be developed. Perhaps a series of publications – each one focusing on a particular type of guardianship participant – would be a helpful approach to what may otherwise appear to be a complex maze of roles and practices of a variety of people in these proceedings.

Whatever procedural approach the DOJ takes to implement the directive of Section 505 – individual publications focused on judges, attorneys, etc. or one large document discussing best practices for everyone involved in guardianship proceedings – the requirements of the ADA and Section 504 of the Rehabilitation Act of 1973 should be at the core of such guidance publications.

Spectrum Institute has been studying guardianship and conservatorship proceedings for several years, including the application of the ADA and Section 504 to these proceedings. We have published a variety of educational materials on this subject. (<http://www.spectruminstitute.org/library/>)

In June 2017, representatives from Spectrum Institute and other groups met with attorneys in the Disability Rights Section. Our primary request was for the DOJ to provide guidance to the states on how the ADA applies to guardianship practices. (<http://disabilityandabuse.org/doj-guidance.pdf>) After that meeting, we went to congressional offices to indicate our support for S. 178.

Now that S. 178 has been signed into law, we encourage the DOJ to address the issue of the ADA and its application to guardianship proceedings as part of the DOJ's response to the directive in Section 505. If we can be of any assistance to the DOJ in this regard, please let us know.

Very truly yours:



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

p.s. The issue of overreaching and abusive guardianship practices – and how they infringe on the civil rights and financial well being of seniors and people with disabilities is gaining greater attention in the media. A short documentary on the subject – *Edith and Eddie* – has recently been released. It depicts the plight of an interracial couple in their 90s. New Yorker Magazine recently published a major article – *How the Elderly Lose Their Rights* – about financial exploitation by lawyers and professionals who use guardianship proceedings to prey on the elderly. When you find time, you will find the film and the article very enlightening – and disturbing. Also, Spectrum Institute is in the final stages of producing a documentary film – *Pursuit of Justice* – about civil rights abuses by state guardianship systems. The film will be released for nationwide distribution in 2018. I will send you a link to the film online when it is available. The role of the DOJ in protecting the civil rights of guardianship respondents is prominently featured in the film.

cc: Ms. Rebecca Bond, Disability Rights Section
Mr. Richard Black, Americans Against Abusive Probate Guardianships
Ms. Linda Kincaid, Coalition for Elderly and Disability Rights
Mr. Tom Wright, Producer, *Edith and Eddie*
Ms. Rachel Aviv, author, *How the Elderly Lose Their Rights*
Mr. Greg Byers, filmmaker, *Pursuit of Justice*