



## **Disability and Guardianship Project Disability and Abuse Project**

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# **Guardianship Reform: A Call for Action by the National Council on Disability**

by Thomas F. Coleman

Let 2018 be known as the year that the National Council on Disability resolved to take decisive action to secure access to justice for people with disabilities who are involved in guardianship proceedings in state courts. Let it be known as the year that NCD began advocating for the implementation of reforms through these public entities:

### **United States Department of Justice**

\* *ADA Guidance Memo to State Courts.* The DOJ has issued guidance memos on how state courts may fulfill their obligations under the Americans with Disabilities Act in criminal proceedings and in child welfare proceedings involving litigants with intellectual and developmental disabilities. NCD should urge the DOJ to issue appropriate ADA guidance for guardianship proceedings.

\* *Implement Section 505 of S178.* Congress has directed the DOJ to develop best practices guidance to state courts on how to improve guardianship proceedings. NCD should monitor the progress of the DOJ in complying with this directive and should encourage the inclusion of ADA compliance as a foundational requirement for any best practices materials developed by DOJ.

\* *Timely Resolution of ADA Complaints.* Spectrum Institute filed a class-based ADA complaint with the DOJ in July 2015 regarding deficient legal services being provided to limited conservatorship respondents in California. DOJ has yet to formally respond to the complaint. An individual complaint on the same issue was filed on behalf of Gregory D. at that time. No response has been issued by the DOJ. NCD should urge the DOJ to respond to and resolve ADA complaints about guardianship and conservatorship proceedings in a timely manner.

### **State Supreme Courts**

\* *Fulfill Title II ADA Obligations.* Guardianship proceedings occur in state courts. The rules for such proceedings are promulgated by the supreme court or judicial council of each state. NCD should remind these public entities of their ADA responsibilities to litigants with disabilities in guardianship proceedings and that their failure to ensure access to justice for such litigants would be a violation of federal law. NCD should survey state supreme courts as to what actions they are taking to provide access to justice for litigants who have cognitive and communication disabilities.

\* *Mandatory Appointment of Counsel.* Having administrative oversight responsibilities for state courts processing guardianship cases, supreme courts have a duty to take affirmative steps to ensure

access to justice for litigants with cognitive and communication disabilities. Such litigants lack the ability to have meaningful participation in their cases without the appointment of counsel. NCD should urge state supreme courts to adopt rules requiring the appointment of counsel to represent such litigants, even without request. Placing the burden to request counsel on a litigant with such disabilities would itself be a violation of the ADA.

\* *Mandatory Training of Appointed Counsel.* In order to fulfill their obligations to ensure access to justice for guardianship respondents, state supreme courts should mandate training for appointed attorneys in such proceedings to ensure their advocacy and defense practices are ADA compliant. NCD should survey the training requirements and programs for such attorneys in all 50 states.

### **State Bar Associations**

\* *Rules of Professional Conduct.* NCD should review the rules of professional conduct promulgated by the bar associations in all 50 states to determine whether they mention the ADA responsibilities of attorneys who represent clients with cognitive and communication disabilities.

\* *Continuing Education Programs.* NCD should review the continuing education requirements and training programs approved or mandated by the state bar association in all 50 states to determine if they adequately inform attorneys of their ADA obligations, and how to fulfill those obligations, when they represent clients with cognitive and communication disabilities.

\* *Modified Complaint Procedures.* NCR should review the complaint procedures by the state bar associations in all 50 states to determine if adequate modifications have been implemented to make them accessible to clients who have cognitive and communication disabilities whose attorneys may have committed ethical violations or violated the rules of professional conduct.

Spectrum Institute has developed materials on all of the issues listed above and would be willing to share them with NCD, as well as sharing our experiences in connection with our contact with the DOJ, state supreme courts, and state bar associations in calling for reforms in these areas.

This call for action is being submitted to NCD in response to its request for public comments to two potential projects involving guardianship reform being considered for the upcoming fiscal year. Since the issue of guardianship reform is so important, the approach of the proposed projects appears to be too passive and too academic.

The focus of NCD projects on guardianship reform should look forward and not backward, should develop solutions rather than dwell on problems, and should involve advocacy more than academics. By taking the actions summarized above, NCD can move beyond a passive role of studying issues and into an pro-active role of securing meaningful access to justice for hundreds of thousands of people with disabilities who need real leadership on these issues. ♦ ♦ ♦

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Thomas F. Coleman is the legal director of Spectrum Institute. Through its Disability and Guardianship Project, and with the assistance of a growing network of supporters, the organization has been advocating for guardianship reform for the past several years. A film released on March 1, 2018 – *Pursuit of Justice* – is a national call to action. (<http://pursuitofjusticefilm.com/>) Information about the project is found online (<http://spectruminstitute.org/guardianship/>) as is a chronological listing of its advocacy activities. (<http://disabilityandabuse.org/whats-new.htm>) - - - - - Email: [tomcoleman@spectruminstitute.org](mailto:tomcoleman@spectruminstitute.org)