



Disability and Guardianship Project
Disability and Abuse Project

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February 22, 2017

Alexis Podesta, Acting Secretary
Business, Consumer Services, and Housing Agency
915 Capitol Mall - Suite 315-A
Sacramento, CA 95814

Re: Request for Meeting to Discuss the Agency's Role in Protecting the Right of People with Developmental Disabilities to Access to Justice in Limited Conservatorship Proceedings

Dear Secretary Podesta:

We are writing to bring a civil rights problem to your attention. It affects tens of thousands of adults with intellectual and developmental disabilities in California. We would like to discuss with you the role that your agency can play in helping to remedy the most critical part of the problem.

More than 43,000 adults with developmental disabilities are currently in limited conservatorships. About 5,000 new cases are initiated each year. We have been studying the limited conservatorship system for several years now and have documented a pattern and practice of civil rights violations by various participants in the system, including and especially by court-appointed attorneys.

Some counties have the public defender's office represent respondents in these cases. Others, such as the County of Los Angeles, fund a legal services program that pays private attorneys to represent these involuntary litigants. We have discovered that the program funded by Los Angeles County has a pattern and practice of violating the due process and ADA rights of these litigants.

We have reached out to local, state, and federal officials – so far to no avail. The Department of Fair Employment and Housing has specific statutory jurisdiction to address ADA violations by public entities. (Government Code Section 11135) But before we approach DFEH, we would like an opportunity to discuss the matter with you. The problem is so serious and has persisted for so long, we believe it is appropriate for a cabinet-level officer to be briefed on it before we take any further action. Having a representative of DFEH at such a meeting certainly would be appropriate.

We will be in Sacramento on March 27 for various meetings to address other statewide aspects of the limited conservatorship system. We have time available between 9:00 a.m. and 10:30 a.m. or after 3:30 p.m. Please let us know if such a meeting with you can be scheduled that day.

Respectfully submitted:

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Enclosures

The State Can Intervene When Counties Fund ADA-Noncompliant Legal Services Programs

By Thomas F. Coleman

All California counties receive funds from the state to operate legal services programs providing lawyers to respondents in limited conservatorship cases. If a program does not comply with the Americans with Disabilities Act, the entity using state funds to operate or finance the program is violating California Government Code Section 11135 because this law incorporates Title II of the ADA.

Title II requires public entities to provide people with disabilities meaningful access to services. ADA-compliant advocacy services require performance standards and training programs for appointed attorneys and a system of monitoring performance. The County of Los Angeles is not doing any of this. It pays for substandard services the same as it pays for effective services. No questions asked.

The Department of Fair Employment and Housing (DFEH) has jurisdiction to enforce Section 11135. It therefore can investigate complaints for Title II violations by a county and, if warranted, can negotiate a settlement or

file a lawsuit in state or federal court. The director may also initiate an investigation on his or her own motion and file a lawsuit for systemic violations affecting a protected class.

DFEH has not yet been presented with evidence of [systematic ADA violations](#) by the court-appointed attorney program for limited conservatorships funded by the County of Los Angeles. Spectrum Institute filed an informal [ADA complaint](#) with the county but later withdrew it when the county failed to follow its own procedures for such complaints.

If the Board of Supervisors were to restructure the legal services program to make sure that attorneys for limited conservatorship respondents are complying with the ADA, the problem of systemic and ongoing violations of Title II and Section 11135 would be moot.

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Thomas F. Coleman is the legal director of Spectrum Institute. He may be reached at: tomcoleman@spectruminstitute.org.

Government Code Section 11135

(a) No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state. Notwithstanding Section 11000, this section applies to the California State University.

(b) With respect to discrimination on the basis of disability, programs and activities subject to subdivision (a) shall meet the protections and prohibitions contained in Section 202 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof, except that if the laws of this state prescribe stronger protections and prohibitions, the programs and activities subject to subdivision (a) shall be subject to the stronger protections and prohibitions.

(c) The protected bases referenced in this section have the same meanings as those terms are defined in Section 12926.

(d) The protected bases used in this section include a perception that a person has any of those characteristics or that the person is associated with a person who has, or is perceived to have, any of those characteristics.