

Tom Coleman - Spectrum Institute

Subject: Many additional changes are needed in the Missouri guardianship system despite SB 806

Listserv members,

When I heard of the passage of SB 806, and read the congratulations being offered, I was hopeful that a close reading of the new law would put a smile on my face. It did not.

Last year, Spectrum Institute did a thorough review of the adult guardianship system in Missouri. We used two perspectives: (1) whether the system is providing access to justice as required by due process and the ADA; (2) whether the system is doing enough to minimize the risk of abuse and to respond effectively when abuse is suspected or reported. The answer to both questions was a resounding NO.

Our findings were presented at a public policy conference sponsored by The Arc of Missouri. A report was submitted to those who attended the conference. The report identified MANY serious deficiencies in the guardianship system and offered specific solutions to improve the system in each area of deficiency. A copy of that report is attached.

Based on that report, Spectrum Institute filed a formal administrative complaint with the Missouri Supreme Court under Title II of the ADA. The clerk of the court has informed us that the complaint is under review by the court. More information about the complaint can be found at: <http://spectruminstitute.org/Missouri/>

Today I reviewed the text of SB 806 to see whether it has improved the guardianship system in Missouri in any significant way. It contains minor improvements. It does little to address the numerous and serious deficiencies identified in our report and in our ADA complaint to the Supreme Court. It takes a few steps forward in what will be a long journey.

Here are a few of the things it does: (1) requires the court appointed attorney to meet with the respondent at least 24 hours prior to the hearing; (2) prohibits the petitioner from nominating the attorney for the respondent; (3) requires the attorney to advise the client of his or her rights; (4) specifies that the respondent shall be advised of the right to appeal the court's decision; (5) builds on the current requirement of least restrictive alternative by explaining some of the options to be considered, including supported decision-making (but does not define SDM or establish criteria for safe and legal SDM); (6) requires the guardian, in an annual report, to discuss future plans for the ward; (7) requires the guardian to discuss, in an annual report, the current mental and physical condition of the ward and any changes in such since the last report; (8) specifies that the court, as part of any annual review, may refer

the matter to appropriate agencies to review the conduct of the guardian; (9) specifies that anyone who interferes with the right of the ward to petition the court for a change in status, can be held in contempt of court; (10) specifies that a guardian shall encourage the ward to participate in decisions; (11) specifies that the guardian may for good cause limit the ward's right to communicate freely and privately with family, friends, and other persons (without the need for prior court approval); and (12) specifies that a ward may petition the court for a change in status, but does not clarify that counsel must be appointed to assist the ward in preparing or presenting such a petition to the court.

Some of these are small improvements; others are alarming.

Here is an ADA analogy by which to evaluate the extent of improvement that SB 806 provides. Let's say there are 25 steps leading up to a courthouse that does not have an elevator or a ramp. Access to justice would require modifications that would get a litigant up to the courthouse door, through the hallway, and into the courtroom. Having a ramp that took someone closer to the top of the stairs, but not all the way, would not be a victory or anything to celebrate. It would be an improvement, but one that would stimulate more advocacy for a complete solution. The same could be said for a system that provided a sign language interpreter for a portion of a court proceeding but not for the complete proceeding. Again, something is better than nothing, but such a system would probably make advocates angry and cause them to criticize the system rather than praising it.

What the Missouri Legislature has done though the passage of SB 806 is better than nothing – but nowhere good enough. Furthermore, the Supreme Court has done virtually nothing to fulfill its responsibilities under Title II of the ADA to ensure effective communication and access to justice for people with disabilities who are involuntarily drawn into guardianship proceedings. Our complaint to the court, and the report on which it is based, make that very clear.

Finally, we appreciate the letter supporting the ADA complaint that was filed with the court by The Arc of Missouri. It would be more than appropriate at this time for other disability rights organizations to do the same.

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<http://disabilityandabuse.org/whats-new.htm>

<http://pursuitofjusticefilm.com/>

p.s. Please let me know if I have missed any other relevant provisions in SB 806 that address the deficiencies in the current guardianship system.