



Disability and Guardianship Project

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February 6, 2016

Ben Orzeske, Chief Counsel
Katie Robinson, Legislative Program Director
Uniform Law Commission
Chicago, Illinois

Re: ADA and the Right to Counsel in Adult Guardianship Proceedings
(Supplemental Information about “Alternative A” to Section 5-305)

Dear Mr. Orzeske and Ms. Robinson:

In addition to the information we supplied to you in our letter dated February 4, 2016, we would like the Uniform Law Commission to consider arguments as to why the adoption of “Alternative A” to Section 5-305 may subject a state to liability for violating Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973.

The Uniform Probate Code “Alternative A” requires appointment of counsel for a guardianship respondent if he or she requests an attorney. This provision violates Title II of the ADA which dispenses with the need for a request for an accommodation when a court knows that a litigant has a disability that impedes his or her ability to make such a request. In such cases, the court has an affirmative duty to provide such accommodation without a request.

Alternative A was developed without considering the requirements of the ADA. Jurisdictions that choose this option are setting their courts up for a federal lawsuit or an investigation by the DOJ.

Most guardianship respondents have serious cognitive and communication disabilities. These disabilities may preclude them from understanding their right to an attorney, the role of an attorney, or the desirability of being represented by one. Due to their disability, they are unlikely to request an attorney. Not having an attorney adversely affects their ability to have access to justice in these cases. By conditioning their right to be represented by counsel on a request, while knowing they may be unable to do so, a court would be violating Title II of the ADA.

We invite you to review our White Paper for more information about the ADA and the right to effective advocacy services. (<http://spectruminstitute.org/white-paper/>)

Very truly yours:

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