



Disability and Guardianship Project

9420 Reseda Blvd. #240, Northridge, CA 91324
(818) 230-5156 • www.spectruminstitute.org

April 8, 2016

Honorable Matthew B. Durrant
Chair, Utah Judicial Council
P.O. Box 140210
Salt Lake City, UT 84114

Re: Suggested Modifications to the Utah Courts Webpage on ADA Accessibility

To the Utah Judicial Council:

We are writing to bring to your attention problems with the content of the ADA Accessibility webpage on the website of the Utah Courts. (www.utcourts.gov/admin/ada/) We assume that the content for the webpage is provided by the Administrative Office of the Courts – an agency of the Judicial Branch which is responsible to the Utah Judicial Council.

The good news is that the webpage is an acknowledgment that court proceedings are a government service that is subject to the provisions of Title II of the Americans with Disabilities Act. Since the Utah court system likely receives some federal funding, the Judicial Branch would also be subject to the requirements of Section 504 of the Rehabilitation Act of 1973 (a mirror of the ADA).

It is also good news that the webpage correctly explains that when an ADA accommodation is necessary, the court “must provide one that will effectively allow you to participate in court proceedings.” Although it is not directly stated on the webpage, the ADA requires that an accommodation must ensure *meaningful* participation in the proceedings.

Now for the bad news. The webpage has two major deficiencies. First, it is premised on an incorrect assumption that an accommodation must only be provided when it is requested. While that is generally true, there is a major exception. When a public entity knows that a recipient of services has a disability that precludes meaningful participation in the services, and also knows that the nature of the disability is such that the disability impairs or precludes the recipient from requesting an accommodation, a request is not necessary to trigger the mandates of the ADA. Under such circumstances, the public entity has a duty, on its own motion, to evaluate the need for an accommodation and to provide one that will give the recipient meaningful access to the services. In this case, it would require an assessment of a guardianship respondent and providing an accommodation to give him or her the ability to participate in the guardianship proceedings in a meaningful way.

The filing of a petition for guardianship, with allegations of incapacity to make major life decisions, including financial decisions, puts the courts on notice that the respondent likely lacks the capacity to retain an attorney (assuming he or she has the money to do so). The allegations also put the courts on notice that, due to cognitive disabilities, the respondent probably lacks the ability to understand the legal proceedings or to participate in them in a meaningful way.

Based on prior experience – documenting that a large majority of such petitions are granted – the courts know that the allegations in a current petition are not likely to be frivolous. The courts must take them seriously. Having been put on notice that the respondent has significant cognitive and communication disabilities, the courts should be aware that such information places them under a duty to assess the need for an accommodation to enable the respondent to have meaningful participation in the proceedings. The Signature Program is readily available as an accommodation.

For more information on the duty of courts in this regard, see the White Paper and Exhibits submitted to the Department of Justice. (<http://spectruminstitute.org/white-paper/>) Also, a federal district court has ruled that appointment of a legal advocate for a litigant with a cognitive disability is required by Section 504 when the proceeding places significant liberties in jeopardy. (See the “Sitting Ducks” essay submitted to you with our first letter.)

The second problem has to do with the incorrect statement that: “The court also cannot provide a free attorney as an accommodation.” The court can – and does – provide a free attorney to guardianship respondents who are unable to retain their own attorney. It is called the Signature Program.

Perhaps the Utah Judicial Council is not viewing it as such, but attorneys appointed to represent guardianship respondents through the Signature Program are an accommodation – one that is premised on an understanding that such respondents lack access to justice and do not have meaningful participation in their cases without an appointed attorney. Since the lack of access to justice stems directly from the cognitive and communication disabilities of the respondent, appointing attorneys to represent them is a *de facto* ADA accommodation. The Utah Judicial Council should acknowledge the Signature Program as a *de jure* ADA accommodation for these respondents.

The webpage should delete the sentence referenced above. The inclusion of that sentence on the webpage may itself be a violation of the ADA to the extent that the word “cannot” discourages friends, family members, or interested parties or agencies from requesting the appointment of an ADA-accommodation attorney for litigants with cognitive disabilities in civil cases.

As we did in our first letter to you, we call your attention to Exhibits 24-27 to *The Justice Gap* report which we recently filed with the Washington State Supreme Court. These exhibits contain materials regarding the appointment of counsel as an appropriate ADA accommodation for litigants who have cognitive disabilities. (<http://spectruminstitute.org/gap/exhibits/exhibits-contents.pdf>)

We invite you to contact us if we can assist the Utah Judicial Council in any way. Perhaps the Judicial Council, State Bar, or other agencies sponsoring educational seminars for attorneys or judges may want to invite us to make a presentation on the ADA as it interfaces with judicial duties and legal advocacy responsibilities in the context of adult guardianship proceedings.

Respectfully submitted:



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