



Disability and Guardianship Project

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October 1, 2019

Leah Wilson, Executive Director
Alan Steinbrecher, Chair
State Bar of California
180 Howard Street
San Francisco, CA 94105

Re: Ensuring ADA-Compliant Trainings for Court-Appointed Conservatorship Attorneys

Dear Ms. Wilson and Mr. Steinbrecher:

Last week the Judicial Council of California approved a new rule requiring court-appointed attorneys representing clients in probate conservatorship proceedings to receive training on a variety of topics. The rule is effective January 1, 2020.

Our organization proposed these new training requirements several years ago and have been monitoring the work of the Judicial Council ever since. With the adoption of this rule, the role of the Judicial Council has essentially ended. Now it is the responsibility of the State Bar to ensure that the intended beneficiaries of the rule – seniors and people with disabilities – have attorneys who are properly trained on all of the required topics. This responsibility, of necessity, involves the Mandatory Continuing Legal Education (MCLE) credit approval process.

The State Bar has two procedures for MCLE credit approval: single activity approval and multiple activity approval. In the former process, a provider must submit materials to the State Bar for approval of a specific seminar or educational venture. In the latter process, a provider such as a local bar association, obtains blanket approval in advance which permits it to offer MCLE credits for any and all of its educational activities.

The multiple activity approval process has not worked well in places such as Los Angeles County. For several years, the superior court and the county bar jointly conducted training programs for court-appointed attorneys who represent clients in probate conservatorship proceedings. Audits of those trainings revealed that many topics which should have been covered were not and that misinformation was being provided on topics that were covered. Unethical practices were sometimes promoted by the trainings. The multiple activity MCLE approval process contributed to this problem. Organizers of the trainings essentially had been given a blank check from the State Bar and they abused the trust that is inherent in such blanket pre-approval.

These deficient trainings contributed to deficient representation of vulnerable adults who, because of cognitive disabilities, had no way of realizing that their attorneys were performing deficiently. Due to their disabilities, these clients were not able to file complaints with the State Bar. As a result, the attorneys were allowed to engage in deficient advocacy and defense in case after case. Audits of dozens of cases in Los Angeles confirmed ineffective representation by such attorneys.

Spectrum Institute filed a complaint with the United States Department of Justice alleging that deficient trainings, ineffective representation, and the lack of a monitoring mechanism to ensure quality representation for these litigants with cognitive disabilities all constituted violations of the Americans with Disabilities Act. That complaint is still under review by the DOJ.

We once filed a complaint with the State Bar about deficient trainings in Los Angeles County. When we received no response from the State Bar for nearly a year, we wrote to the Supreme Court. Since the State Bar is an arm of the Supreme Court, that judicial entity is essentially the administrative supervisor of the State Bar. In response to our communication, the Supreme Court contacted the State Bar to nudge it into action.

When we started to receive inquiries from various staff members at the State Bar – communications which gave us hope that the State Bar would get proactive – we withdrew the specific complaint that was pending. We hoped that the State Bar would take actions to ensure that seniors and people with disabilities would receive effective representation by well-trained attorneys. Unfortunately, that never happened.

These staff members were either transferred to other positions, left the State Bar entirely, or simply stopped communicating. So our hope for pro-active measures by the State Bar was short lived. To this day, despite years of communications to officials and state members of the State Bar about deficient trainings and deficient representation, and their adverse effects on seniors and people with disabilities, the State Bar has taken no action whatsoever to address these problems.

The adoption of this new training rule provides an opportunity for the State Bar to use its authority to ensure that only high quality trainings receive MCLE credit approval. It could appoint an advisory committee of academics and practitioners with expertise in constitutional law, disability rights, capacity assessments, less restrictive alternatives, the ADA, and other topics mandated by the new rule. These advisors could review applications from providers who want to conduct trainings under the new rule and make recommendations for approval or disapproval of MCLE credit.

The State Bar, as an arm of the Supreme Court, is a public entity with duties under Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, and Section 11135 of the Government Code. These laws cover all activities of the State Bar, including its MCLE approval process and its complaint procedures. Failure to protect litigants with significant disabilities – in light of the problems that have already been brought to the attention of the State Bar – would constitute a violation of these state and federal laws. Of necessity, this would implicate the Supreme Court since it is the public entity that oversees the State Bar.

We look forward to learning what the State Bar will do to ensure that the intended beneficiaries of the new training rule actually receive the ultimate benefits the rule was designed to achieve.

Respectfully,



Thomas F. Coleman

Legal Director

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cc: Jorge E. Navarrete, Supreme Court Administrator
Rebecca Bond, Disability Rights Section, U.S. Dept. of Justice

ATTACHMENTS

Status of ADA Complaint to the Department of Justice

Guardianship Matrix: Participants and Issues in a Conservatorship Proceeding

Materials Submitted to the Judicial Council in Support of the New Rules

Letter from Jorge Navarrete, Administrator of the California Supreme Court

Communications with the State Bar (2014 - 2018)

New Training Rules Approved by the Judicial Council on September 24, 2019

Letter and Attachments Are Available Online:

<http://disabilityandabuse.org/state-bar-mcle-request.pdf>