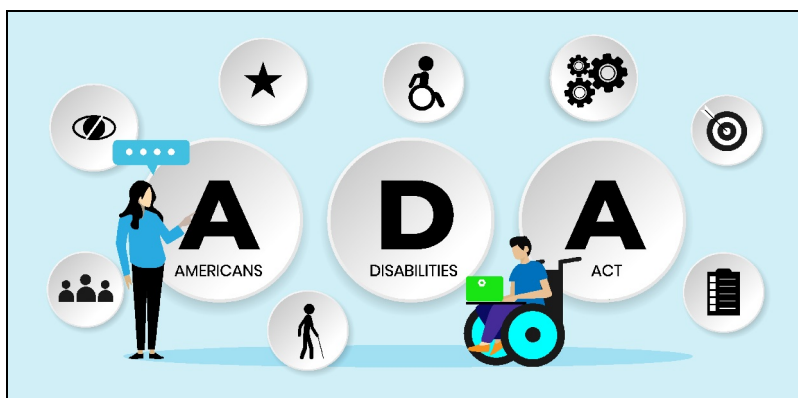


How the ADA Applies to Guardianship Proceedings

A Primer for Missouri's Judges, Attorneys, and Guardians



Annotated Bibliography

Produced by Spectrum Institute
for the Alternatives to Guardianship Project

December 1, 2022

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Spectrum Institute is a nonprofit organization with tax exempt status under section 501(c)(3) of the Internal Revenue Code. The corporation is designated by the IRS as a private operating foundation.

For the past ten years, the organization has focused its research, education and advocacy activities on conservatorship reform in California and guardianship reform in other states. In this regard, its legal director is acting as a consultant to the Alternatives to Guardianship Project in Missouri.

In addition to improving access to justice for adults with mental and developmental disabilities who are involved in these proceedings, the organization also focuses on legal issues involving disability and abuse as well as the right of people with developmental disabilities to have prompt and equal access to appropriate and effective mental health therapy services.



The Alternatives to Guardianship Project helps people with developmental disabilities avoid or terminate unnecessary guardianships by using safe and legal alternatives. It encourages and assists parents, educators, judges, lawyers, physicians, and other professionals to implement such alternatives whenever feasible. It promotes the adoption of public policies and systemic changes to protect the rights of people with developmental disabilities, ensuring equal rights and access to justice. These activities are accomplished through research, education, counseling, and advocacy.

The Alternatives to Guardianship Project is a function of Hulme Resources Inc., a 501(c)(3) nonprofit corporation offering services for individuals with developmental disabilities and their families, including case management, life coaching, transition planning, and benefits planning.



Funding for the Alternatives to Guardianship Project is being provided by the Missouri Developmental Disabilities Council, grant PGA010-22007 and grant PGA010-22008, as authorized by Public Law 106-402 - Developmental Disabilities Assistance and Bill of Rights Act 2000.

Document online at:

alternativestoguardianship.com/ada-bibliography.pdf

About the Bibliography

This annotated bibliography is the product of years of research into the Americans with Disabilities Act (ADA) and how it applies to conservatorship and guardianship proceedings involving adults with mental and developmental disabilities. This research started with an analysis of the conservatorship system in California. Attention was later focused on guardianships in Washington State and Texas.

Thomas F. Coleman, legal director of Spectrum Institute, was asked to make a keynote presentation about adult guardianships at a statewide conference sponsored by the Arc of Missouri in 2017. He shared with conference attendees his findings about deficiencies in the guardianship system in Missouri—including noncompliance with the ADA—along with recommendations on how the system could be improved. Later that year, Spectrum Institute filed a formal complaint with the Supreme Court of Missouri about aspects of the system that violate the ADA. Although the court stated that it would review the issues raised in the complaint, it shelved the matter in 2018 without undertaking a formal investigation or taking any corrective action.

Coleman began serving as a consultant to the Alternatives to Guardianship Project this year. Several months of research into the guardianship system in Missouri has revealed that the problems that existed in 2017 remain problems today. Guardianship proceedings are conducted as though the ADA does not exist. It appears that judges, lawyers, and guardians are not fully aware that in addition to the mandates of state statutes and constitutional due process, the protections of the ADA also apply to adult guardianship proceedings.

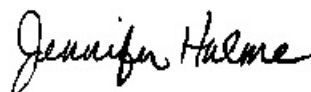
At the request of the Alternatives to Guardianship Project, Spectrum Institute is producing companion documents titled “How the ADA Applies to Guardianship Proceedings: A Primer for Missouri’s Judges, Attorneys, and Guardians.” The first document is an annotated bibliography citing statutes, court cases, and policy reports along with comments on each citation explaining how it is relevant to the guardianship system in Missouri. The second document, to be released at a later date, will contain findings and recommendations directed to various agencies and public officials on how to bring the guardianship system into compliance with the ADA.

The U.S. Department of Justice recently opened an investigation under the ADA focusing on the rights of adults with mental disabilities in Missouri – including those who find themselves entangled in the state’s guardianship system. In view of this development, we trust that our reports will be well received by the judges and lawyers who are responsible for protecting the rights of the 30,000 adults living under an order of guardianship and the 3,000 who are targeted by new petitions each year.



Spectrum Institute

<https://spectruminstitute.org/>



Alternatives to Guardianship Project

<https://alternativestoguardianship.com/>

How the ADA Applies to Guardianship Proceedings

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Annotated Bibliography

ADA Title II Regulations

<https://alternativestoguardianship.com/ada-title-2-regulations.pdf>

Comment: This document contains a set of regulations adopted by the DOJ interpreting Title II of the Americans with Disabilities Act. Public entities must provide services to persons with “known” disabilities equal to services provided to those without disabilities. It is the *knowledge* of the disability that triggers a duty under the ADA. Accommodations must be provided if they are needed in order to ensure equal participation in the service. Accommodations must also be provided to litigants with disabilities if they are needed to ensure the individual has effective communication in the legal proceeding. Individual or class-based complaints may be filed against a public entity with an appropriate federal agency. The DOJ is the agency designated to receive and investigate complaints against state and local courts that allegedly are violating the ADA. Under section 504 of the Rehabilitation Act of 1974, public entities that receive federal funding for any program or activity must provide accommodations to ensure that an individual has effective communication while participating in a public service. Failure to do so may result in the loss of federal funds.

ADA Title II Guidance

<https://alternativestoguardianship.com/ada-title-2-guidance.pdf>

Comment: This guidance memo provides information in greater detail to assist public entities, including courts, in complying with Title II and Section 504 in connection with the services that people with disabilities are receiving. Title II applies to all programs, activities, and services operated by State and local governments. This includes courts. Where public and private entities act jointly, the public entity must ensure that the relevant requirements of Title II are met. (This would apply to private attorneys who are appointed by the court to provide legal services to litigants with mental or developmental disabilities in guardianship proceedings.)

The term “disability” in Title II and Section 504 includes mental disabilities. Mental impairments include mental or psychological disorders, such as intellectual disabilities formerly known as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

Individuals protected by Title II and Section 504 include those: with *actual* mental disabilities that limit a major life activity; with a *record of* such a condition; or who are *regarded as* having such an impairment. (All respondents in adult guardianship proceedings would be covered by at least one of these situations: actual, a record of, or regarded as.) Therefore, from the moment a petition is filed, the court's duties under the ADA are triggered. Also, the moment an attorney is appointed to represent such an individual, the attorney's services are covered by the ADA since they know the client has a disability within the meaning of Title II. The court's duties to ensure effective communication with and meaningful participation by such individuals are not eliminated simply because the court has appointed an attorney to represent an individual. In fact, the court's duties may be increased since the court has an obligation to ensure that third parties to whom it delegates to provide services to a litigant with disabilities are themselves ensuring effective communication and meaningful participation in those services.

Because of the importance of effective communication in state court proceedings, special attention must be given to the communications needs of individuals with disabilities involved in such proceedings. Ensuring that litigants with mental or developmental disabilities have effective communication in a legal proceeding may require that a court-appointed attorney have specialized training in how to communicate with such individuals as well as when and how to insist that the court provide accommodations to them. This may involve paying the attorney extra hours to spend with the client to explain each step of the legal process or to read and explain each document filed with the court. It may also require asking the court to employ technology to allow the client to attend court proceedings remotely.

Analysis and Scope of ADA Title II and Section 504

<https://alternativestoguardianship.com/scope-title-2-and-504.pdf>

Comment: This DOJ publication contains a section-by-section analysis of Title II of the ADA which extends mandates of Section 504 of the Rehabilitation Act of 1973 to public entities whether or not they receive federal funds. The requirements of Title II apply to all of state or local public entities and their agencies and instrumentalities. This includes all judicial branch entities whether the services are conducted by judicial officers or employees or by third-parties to whom such services are delegated. (In guardianship proceedings, for example, such third parties would include court-appointed attorneys, guardians ad litem, and court-appointed professionals who conduct evaluations and assessments.) All aspects guardianship proceedings are covered by Title II.

Section 504 ad Title II Require Meaningful Access to Services

<https://alternativestoguardianship.com/meaningful-access-cases.pdf>

Comment: Section 504 of the Rehabilitation Act of 1973 applies to any public entity that receives federal funding. The judicial branch in Missouri receives [federal funds](#). Many [circuit courts](#) receive federal funding. The ADA gives participants in government services

at least as much protection as provided by the regulations implementing Section 504 of the Rehabilitation Act. The protection afforded by the ADA is characterized as a guarantee of “meaningful access” to government benefits and programs.

Public Entity’s Liability for Violations of ADA and Section 504

<https://alternativestoguardianship.com/ada-liability.pdf>

Comment: A public entity may be liable for violations of the ADA and Section 504 for failing to providing effective communications and meaningful access to persons with disabilities even when no request for an accommodation has been made. It is the knowledge of a disability that triggers a duty. “[A] plaintiff’s failure to expressly ‘request’ an accommodation is not fatal to a claim where the defendant otherwise had knowledge of an individual’s disability and needs but took no action.”); Duvall, 260 F.3d at 1136 (Section 504 “create[s] a duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.”).

Thus, a public entity can be liable for damages under § 504 if it intentionally or with deliberate indifference fails to provide meaningful access or reasonable accommodation to disabled persons.” Lemahieu, 513 F.3d at 938 “Where, as here, the plaintiff seeks damages under section 504 and the ADA, she must show the defendant had notice of her need for an accommodation and “fail[ed] to act.” Duvall, 260 F.3d at 1139. She can establish notice by showing that she “alerted the public entity to [her] need for accommodation;” or that “the need for accommodation [was] obvious, or required by statute or regulation.” Id. When an entity is on notice of the need for accommodation, it “is required to undertake a fact-specific investigation to determine what constitutes a reasonable accommodation.”

Missouri courts are put on notice of the need for an accommodation the moment a petition for a guardianship is filed. The petition notifies the court that the respondent has such severe mental disabilities that they cannot provide for basic needs and that someone must be appointed to take charge of their lives. The petition and other documents filed in support of the petition, including a medical assessment of incapacity, put the court on notice of its “duty to gather sufficient information from the disabled individual and qualified experts as needed to determine what accommodations are necessary.” Duvall, 260 F.3d at 1136. Court-appointed attorneys are similarly put on notice of the need to do an ADA needs assessment of the client. And yet, ADA assessments are not done by the court or appointed attorneys to determine what accommodations would be necessary to ensure effective communication for and meaningful participation by litigants with serious mental or developmental disabilities in legal proceedings that could deprive them of basic liberties for years or decades. All because of a misunderstanding by the judicial branch that requests are needed.

A Public Entity Cannot Avoid Its ADA Responsibilities by Delegating Services to a Third-Party Vendor

<https://alternativestoguardianship.com/ada-duties-not-delegable.pdf>

Comment: The courts that conduct judicial proceedings and appoint attorneys who represent litigants with disabilities, and the public entities that fund these services, have responsibilities under Title II of the ADA to ensure the services are ADA-compliant. The courts and funding agencies cannot avoid their responsibilities by delegating duties to the lawyers who are appointed. The appointing authorities and funding agencies have oversight responsibilities.

Missouri Courts ADA Policies

<https://alternativestoguardianship.com/missouri-courts-ada-policies.pdf>

Comment: Responses from the Office of State Courts Administrator and independent research shows that the ADA policies of the judicial branch in Missouri are found in various documents and on several webpages of court websites. Unlike in other states, such as [California](#) and [Washington](#), there is no court rule in Missouri pertaining to the duties of courts to provide accommodations to litigants who have disabilities. The policy statements that do exist are silent on providing accommodations to litigants who have mental or developmental disabilities that may interfere with meaningful participation in judicial proceedings or that may hinder effective communication of such litigants with judges, attorneys, and other participants in legal proceedings. Judicial policies do not address the duties of courts, even without a request, to provide accommodations to litigants with obvious or known disabilities, such as in adult guardianship proceedings where virtually all respondents have actual or perceived mental or developmental disabilities that are so serious that they have warranted court intervention. There are no requirements for court-appointed attorneys to receive education or training on the ADA or on how to effectively communicate with and represent clients with serious mental or developmental disabilities. ADA information in judicial branch materials focuses solely on physical access issues for people with mobility disabilities and sign language interpreters for people who are deaf.

ADA-Compliant Standards for Appointment, Training, Performance and Monitoring of Appointed Attorneys in Guardianship Proceedings

<https://alternativestoguardianship.com/summary-standards.pdf>

Comment: This document summarizes standards that would ensure that judicial policies and practices relating to court-appointed attorneys in guardianship proceedings conform to the requirements of due process and the Americans with Disabilities Act. The ADA is a federal law that applies to state and local judicial proceedings, including guardianship proceedings. Since attorneys are appointed for guardianship respondents pursuant to state law and by judicial officers of the state, the state has an obligation to ensure that legal services provided by these attorneys for adults with mental and developmental disabilities satisfy the requirements of due process and that such attorneys are properly trained and perform

services in a competent manner.

The document includes: qualification and training standards; standards to regulate the operations of the system used for the recruitment, appointment, and discipline of such attorneys; monitoring standards to provide quality assurance oversight for representation in individual cases as well as making sure that the standards for all aspects of the legal services system are being properly implemented. The document would be helpful for the judicial branch in Missouri since it currently lacks any of these standards to guide judges and appointed attorneys comply with the ADA in individual cases.

Title II ADA Guide for Washington Courts

<https://alternativestoguardianship.com/washington-ada-self-eval-guidance.pdf>

Comment: The Clerk of the Supreme Court of Missouri sent a [letter](#) to Spectrum Institute on October 14, 2022, explaining that “[T]his Court does not have any records pertaining to self-evaluations performed pursuant to 28 C.F.R. § 35.105 regarding adult guardianship proceedings or any other judicial proceedings.” If such an evaluation had been done in the past, it is likely there would be a record of such. Since the Supreme Court has never done such an evaluation, it is likely that circuit courts throughout the state also have not done a self-evaluation of whether their policies and practices in legal proceedings involving litigants with disabilities comply with the requirements of Title II of the ADA and, if not, how to bring them into compliance. In view of the problems identified in this commentary and annotated bibliography, all entities within the judicial branch should conduct a self-evaluation now.

Missouri’s judicial officers and court administrators do not have to start from scratch in conducting an ADA-compliance evaluation. The judicial branch in Washington State has an excellent guide on issues to be addressed in an ADA self-evaluation. This guide: identifies and explains the goals associated with providing equal access in judicial proceedings; gives an overview of the ADA requirements; makes suggestions for developing an accommodation plan; and defines key terms in the ADA guidelines.

Guardianship of Individuals with Developmental Disabilities: Toolkit for Judicial Use

<https://alternativestoguardianship.com/ohio-dd-judicial-tools.pdf>

Comment: This toolkit was developed under the guidance of the Subcommittee on Adult Guardianship of the Supreme Court of Ohio’s Advisory Committee on Children & Families. The toolkit was developed with the assistance of the subcommittee’s Workgroup on Guardianship of Individuals with Developmental Disabilities. An ADA complaint was filed with the Missouri Supreme Court in 2017 bringing to its attention serious deficiencies in the state’s guardianship system – proceedings which operate under the administrative supervision of the Supreme Court. The court was advised: “While compliance with the ADA is not discretionary, the methods used by this Court to achieve compliance is. Several options

are presented in these materials. One of them – and perhaps the best way to start the process of review – would be for this Court to authorize the Chief Justice to convene an Advisory Committee on Access to Justice in Guardianship Proceedings. This approach has been used by other supreme courts.”

The Supreme Court of Missouri chose not to address the substantive and procedural problems identified in the ADA complaint. Likewise, it did not convene an advisory committee to study and make recommendations to improve the administration of justice in guardianship proceedings. As a result, judges in Missouri do not have a toolkit like the one developed in Ohio. However, they can look to the Ohio judicial toolkit for guidance in processing and adjudicating guardianship proceedings in Missouri since much of the information in the Ohio toolkit is generic and would apply to any state.

Guardian Matrix: Issues and Participants

<https://alternativestoguardianship.com/guardianship-matrix.pdf>

Comment: Respondents with cognitive disabilities do not have the ability to represent themselves in complex guardianship proceedings. Appointing an attorney is required by due process. It is also mandated by the Americans with Disabilities Act as an accommodation to make possible the promise of meaningful participation. Once appointed, counsel must provide effective advocacy. To ensure such, courts should adopt ADA-compliant performance standards, require appropriate training of attorneys, and create effective ways to monitor their performance. The duty of the courts regarding these functions – appointment, training, and monitoring – stems from due process as well as the ADA.

Having a Support Person is a Form of ADA Accommodation

<https://alternativestoguardianship.com/ada-support-person-contexts.pdf>

Legal proceedings are often intimidating to people with full cognitive and communication abilities. Imagine how the complexities of a guardianship proceeding and the fear of interacting with strangers such as a judge and court-appointed attorney – could adversely affect the ability of an adult with mental or developmental disabilities to participate in the case. Accommodations should be made to reduce fear and improve communication and participation. One such accommodation would be allowing a trusted family member or friend to act as a support person to the adult at all stages of the proceeding. Having a support person is a common practice for people with disabilities in a wide range of contests. It should be used more frequently in guardianship proceedings.

Beyond Guardianship: Toward Alternatives That Promote Greater Self-Determination

<https://alternativestoguardianship.com/ncd-2018-report.pdf>

Comment: This report was issued by the National Council on Disability in 2018. NCD is

an independent federal agency charged with advising the President, Congress, and other federal agencies regarding policies, programs, practices, and procedures that affect people with disabilities. In its transmittal letter sending the report to the President, NCD explained: “The Beyond Guardianship report explains how guardianship law has evolved, explores due process and other concerns with guardianships, offers an overview of alternatives to guardianship, and identifies areas for further study.”

The report recommended: “The Department of Justice (DOJ), in collaboration with the Department of Health and Human Services (HHS), should issue guidance to states (specifically Adult Protective Services [APS] agencies and probate courts) on their legal obligations pursuant to the Americans with Disabilities Act (ADA). Such guidance should address NCD’s position that: 1) the ADA is applicable to guardianship proceedings; 2) the need for assistance with activities of daily living or even with making decisions does not give rise to a presumption of incapacity; and 3) guardianship should be a last resort that is imposed only after less restrictive alternatives have been determined to be inappropriate or ineffective.

This report contains information that would be helpful to judges and court-appointed attorney as they fulfill their constitutional and statutory duties under federal and state law in adult guardianship proceedings in Missouri.

The Supreme Court of Missouri Has a Duty to Ensure ADA Compliance in Guardianship Proceedings

<https://alternativestoguardianship.com/supreme-court-ADA-duties.pdf>

Comment: By failing to even consider ADA accommodations or modifications of normal policies and practices on their own motion at the initial stages of a guardianship proceeding, circuit court judges have been engaging in structural error in thousands of cases each year in Missouri. Similarly, structural error is being committed on a regular basis by the inaction of court-appointed advocacy attorneys and guardians ad litem who fail to assess communication needs or identify the supports and services that would enhance access to justice for guardianship respondents. The Supreme Court should, without delay, create a committee to study the guardianship system with a view to enacting ADA-compliant rules for courts, and standards for attorneys and guardians ad litem in guardianship proceedings. Appropriate training also should be required for judges, attorneys, and guardians ad litem. The ADA requires as much.

Premising ADA Accommodations on Requests Violates Federal Law

<https://alternativestoguardianship.com/missouri-vs-feds.pdf>

Comment: All website pages of the Missouri Courts, including the Office of State Courts Administrator, and local courts, suggest that ADA accommodations need only be provided by courts upon request. No information is provided on the duties of courts to provide

accommodations on their own motion and without request when litigants, such as in adult guardianship proceedings, have obvious or known cognitive or communication disabilities which impair meaningful participation in their case. The policies, training materials, and public statements of the judicial branch should be amended to inform judges, court staff, court-appointed attorneys, and the public that ADA accommodations may need to be provided in judicial proceedings for known or obvious disabilities even without a request.

ADA Complaint Dismissed By Supreme Court Based on Hopes for 2018 Legislation

<https://alternativestoguardianship.com/ada-complaint-2017.pdf>

Comment: Spectrum Institute filed a complaint with the Missouri Supreme Court in 2017 alleging that the policies and practices of courts and court-appointed attorneys were depriving respondents of access of justice in guardianship proceedings as required by Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. The court acknowledged receipt of the complaint and stated that it was under review. However, it languished for several years without the court informing the complainant of the status of its inquiry. After an records request from the Alternatives to Guardianship Project in 2022, the court stated that in light of guardianship reform legislation enacted in 2018, the court determined that no action should be taken on the ADA complaint “while the probate divisions worked to implement the new legislation.” The court added that it was “open to receiving any additional materials for consideration on this subject.” In fact, the 2018 legislation did not address the deficiencies identified in the 2017 ADA complaint. The commentary titled “How the ADA Applies to Guardianship Proceedings” and this annotated bibliography are being sent to the Supreme Court in response to its invitation to submit additional materials pertaining to the ADA and its application to guardianship proceedings.

Administering Trauma-Informed Justice in Missouri Guardianship Proceedings:

Findings and Recommendations (2017)

<https://alternativestoguardianship.com/findings-and-recommendations.pdf>

Comment: In 2017, Spectrum Institute conducted a thorough review of available information and documents pertaining to the adult guardianship system in Missouri. This document contains its findings and recommendations to improve the administration of justice in guardianship proceeding. Some of those recommendations focused on the need to amend policies and practices to ensure that the ADA is properly administered and implemented in these proceedings. The document also contains demographics and other data about adults with developmental disabilities, both in and out of guardianships.

Administering Trauma-Informed Justice in Missouri Guardianship Proceedings:

Annotated Bibliography with Strategic Commentary (2017)

<https://alternativestoguardianship.com/recommendations-bibliography.pdf>

Comment: This annotated bibliography contains detailed information relevant to adult

guardianship proceedings on several important topics: demographics, prevalence of abuse, mandatory reporting, supported decision-making, duties of court-appointed attorneys, the Americans with Disabilities Act and its application to guardianship proceedings, and recommendations for amendments to statutes to address deficiencies in the current statutory scheme.

Disability, Abuse, and Guardianship: Reducing Risk and Improving Response in Missouri (2017)

<https://alternativestoguardianship.com/2017-powerpoint.pdf>

Comment: This PowerPoint presentation was made at the [4th Annual Educational Summit of The Arc of Missouri](#). The presentation identified ways in which persons who are in charge of or participating in Missouri's guardianship system can reduce the risk of abuse and provide an effective response if and when maltreatment is suspected or reported. The application of the ADA to guardianship proceedings was mentioned during various portions of the presentation.

ADA Compliance: A Request to the California Judicial Council to Clarify the Sua Sponte Obligations of Courts to Ensure Access to Justice (2019)

<https://tomcoleman.us/publications/2019-ada-compliance.pdf>

Comment: All website pages of the Missouri Courts, including the Office of State Court Administrator and local courts, suggest that ADA accommodations need only be provided by courts upon request. No information is provided on the duties of courts to provide accommodations on their own motion and without request when litigants, such as in adult guardianship proceedings, have obvious or known cognitive or communication disabilities which impair meaningful participation in their case. The same situation exists in California. Spectrum Institute filed a request with the California Judicial Council in 2019 asking that rule-making body to take action to clarify that courts have ADA obligations even without a request being made if they are aware that a litigant has a disability that may impair full and equal participation in a proceeding. The report filed in California is relevant to the current situation in Missouri.

Commentaries on the Application of the ADA to Guardianship Proceedings

a. ADA Title II Guidance from the U. S. Department of Justice is Instructive to Participants in the Limited Conservatorship System (2018)

<https://tomcoleman.us/publications/doj-guidance.pdf>

Comment: The United States Department of Justice posted a [Technical Assistance Publication](#) on its website on January 11, 2017, to provide guidance to criminal justice agencies on how to comply with Title II of the ADA in the administration of their programs and delivery of their services. Much of what

is said in that publication is relevant to the administration of justice by courts and ancillary personnel (court investigators, court-appointed attorneys, and guardians ad litem) in guardianship proceedings. This commentary contains excerpts from that publication, with comments on how they are relevant to the need for compliance with the ADA in the administration of justice and provision of legal services in guardianship proceedings.

b. The ADA and Guardianship Courts: Excerpts from DOJ and HHS Joint Guidance to Courts in Child Welfare Proceedings, With Comments on Their Application to Adult Guardianship Proceedings. (2019)

<https://tomcoleman.us/publications/doj-hhs-ada-guidance-to-courts.pdf>

Comment: The United States Department of Justice and the Department of Health and Human Services issued a joint memo to provide guidance to court systems and other public entities involved in child welfare proceedings involving parents with disabilities. The joint memo explains how the Americans with Disabilities Act and Section 504 of the Rehabilitation Act apply to such proceedings. This commentary focuses on specific provisions of the joint memo and explains how the guidance is equally applicable to court systems and adult protective service agencies interacting with people with disabilities who are involved in adult guardianship proceedings.

c. Limited Conservatorships and the Denial of Access to Justice: Who is Responsible under the ADA?

<https://tomcoleman.us/publications/who-is-responsible-under-ADA.pdf>

Comment: This memo was sent to the Department of Justice identifying public agencies in California that should be investigated for ADA deficiencies in the state's conservatorship system. Similar agencies in Missouri could be the focus of a DOJ investigation for similar reasons: circuit courts, State Courts Administrator, Supreme Court, Missouri Bar, counties that fund legal services for indigents; and court-appointed attorneys who receive public funds.

Webinar on the Americans with Disabilities Act for Judges and Judicial Staff in California (2021)

<https://spectruminstitute.org/2021/06/webinar-for-california-judiciary/>

Comment: This webinar discusses the duties that judges and judicial staff in California have under state and federal disability nondiscrimination laws to ensure that people with cognitive disabilities have access to justice in judicial proceedings. Special emphasis is placed on probate conservatorship proceedings where the court is informed from the very start that a proposed conservatee may have serious mental disabilities that could hinder communications and prevent meaningful participation in the proceeding. It stresses that the court has a sua

sponte responsibility to assess the ADA needs of such litigants and then to make modifications to court policies or provide reasonable accommodations to the litigant to maximize effective communication and meaningful participation. It also discusses the remedies that litigants have when their disability rights are violated by the court. These include writs and appeals to an appellate court, an administrative ADA complaint to the offending court, complaints to state civil rights enforcement agencies, and complaints to the United States Department of Justice. During the webinar, the audience is taken through 91 pages of reference materials, explaining how each section contains a piece of the ADA Judicial Compliance puzzle. The audience is given a sense of what access to justice would look like in these cases if a court were to fulfill its legal obligations. Much of the information in this webinar are relevant to courts and judicial administrators in Missouri.

Due Process Plus: ADA Advocacy and Training Standards for Appointed Attorneys in Adult Guardianship Attorneys

<https://disabilityandguardianship.org/white-paper/>

Comment: This White Paper was submitted to the United States Department of Justice in support of an ADA complaint against the Los Angeles Superior Court alleging deficiencies in the legal services being provided to disabled litigants by court-appointed attorneys. This paper offers a comprehensive set of standards for the training and performance of attorneys appointed by the court to represent people with mental or developmental disabilities in guardianship cases. The problems identified in California also exist in Missouri. Therefore, most of the arguments and references in the White Paper would be relevant in any investigation that may be initiated by the DOJ of the guardianship system in Missouri.

Efficiency vs. Justice: The deliberate bypass of legal protections has denied many limited conservatees access to justice in violation of Title II of the ADA

<https://alternativestoguardianship.com/efficiency-vs-justice.pdf>

Comment: This report explains how the limited conservatorship system should function. It also discusses the obligations of the probate court under Title II of the ADA and how a court-appointed attorney is the court's method of complying with Title II to ensure that a proposed conservatee has access to justice. The report provides a template of what access to justice would look like in a typical case. It contrasts this template with the practices of one attorney in particular (Attorney X) and several attorneys in Courtroom X. A pattern of Title II violations are evident in both comparisons.

A similar pattern of ADA-noncompliant legal services appears to exist in guardianship proceedings in Missouri. The only action that might be considered as an ADA accommodation for respondents is the appointment of counsel. But information from the State Courts Administrator and a review of State Bar MCLE requirements show that court-appointed attorneys are not required to have any special training for clients with mental or developmental disabilities. Also, they are not provided with any performance standards

regarding what they should do to ensure their legal services satisfy due process and comply with the ADA. As a result, they are left to their own devices. There are financial incentives to put only a few hours into each case. A review of dockets in hundreds of such cases in 10 circuit courts throughout the state revealed that in many, if not most cases, attorneys spend as little as three hours from start to finish. As a result, clients are not provided the type of meaningful participation in a case that is contemplated by due process and the ADA.

State Bar ADA Alert: Complaint System is Inaccessible

<https://alternativestoguardianship.com/2021-state-bar-ada-alert.pdf>

Comment: This report alerted the California Supreme Court and the State Bar, which is an arm of the Court, that the complaint and discipline system of the State Bar is not ADA accessible. Without modifications to existing policies and practices, the complaint and discipline system is not practically available to people with serious cognitive or communication disabilities who may have received deficient legal services or who have been victims of unethical practices of attorneys who were appointed to represent them in probate conservatorship proceedings.

The same inaccessibility problem exists in Missouri. The Missouri Bar is an arm of the Supreme Court. As a result, its policies and practices are subject to review and approval of that court. Title II applies to all agencies and instrumentalities of the judicial branch. Therefore, The Missouri Bar is obligated, even without a request, to make its services equally available to persons with mental or developmental disabilities who are represented by licensed attorneys in guardianship proceedings. The Missouri Bar knows or should know that 30,000 adults are living under an order of guardianship at any given time. It knows that some of these involuntary litigants are represented by counsel when contested issues arise. The Missouri Bar is or should be aware that thousands of guardianship petitions are filed each year in the state and that each of the respondents has serious mental or developmental disabilities. The Missouri Bar has a complaint system for clients to use when they believe their attorneys have engaged in deficient or unethical services. The effectiveness of that system depends on the ability of a client to read, write, understand, recall, and communicate. Guardianship respondents, whether in the pre-adjudication or post-adjudication phase, have significant disabilities in one or more of these areas. As a result, they are not able to access or use the complaint and discipline system of The Missouri Bar. The Bar, and the Supreme Court which oversees it, should take affirmative steps to address the lack of meaningful access to this system by thousands of adults, some of whom may have legitimate complaints against attorneys which will not be investigated without a work-around method to remedy or pro-actively minimize deficient performance by court-appointed attorneys.

Retention of Voting Rights Varies Widely by County in Missouri (2022)

<https://alternativestoguardianship.com/missouri-voting-variations.pdf>

Comment: While reviewing hundreds of court dockets in several circuit courts in Missouri

for other reasons, significant variations by county were found in decisions by judges on whether to allow a guardianship respondent to retain his or her voting rights. Such large discrepancies suggest that state and federal voting rights laws are not being enforced in a uniform manner throughout the state.

Voting Rights of People with Developmental Disabilities: Correcting Flaws in the Limited Conservatorship System (2014)

<https://alternativestoguardianship.com/voting-rights-of-conservatees.pdf>

Comment: This commentary focused on a situation in California in 2014 similar to the situation that exists today in Missouri with respect to the widespread denial of voting rights of adults with mental and developmental disabilities. The commentary suggests that this situation has persisted because judges and court-appointed attorneys have been unaware of the existence of federal laws that call into question the validity of the current policies and practices in Missouri that deprive so many adults who are living under an order of guardianship disenfranchised. The commentary explains that because of the “supremacy” provision of the United States Constitution, state statutes and constitutions are superseded by federal statutes that govern the same subject matter. Congress has passed several statutes that apply to voting. Some of them pertain to voting rights for people with disabilities. This includes the Americans with Disabilities Act and similar laws that require accommodations in the voting process for people with disabilities. Policies and practices in Missouri related to the denial of voting rights for “incapacitated” adults should be scrutinized through this federal voting-rights lens and modified as necessary to conform to federal mandates.

What a Difference a Year Makes: Progress in Securing Voting Rights for People with Developmental Disabilities (2015)

<https://alternativestoguardianship.com/what-a-difference-report.pdf>

Comment: These materials document the transition in California from an era when 90% of conservatees lost their right to vote to one where 90% retain voting rights. This transition was prompted by a voting rights complaint with the U.S. Department of Justice against the Los Angeles Superior Court. The DOJ accepted the complaint and broadened it to an investigation of judicial practices statewide. The Legislature responded by passing two bills to bring California into conformity with federal laws. AB 1311 ensured that people with mental and developmental disabilities are not deemed “incapacitated” merely because they need help during the voting process. SB 589 declared a presumption of capacity to vote and required that, before taking away voting rights of conservatees, judges must find clear and convincing evidence that, with out without assistance, an adult cannot express a desire to vote. California’s voting rights policies and practices now comply with the ADA. The same cannot be said of Missouri’s current policies and practices in guardianship proceedings.

Voting Rights Materials: From Noncompliance to Compliance with Federal Voting Rights and Disability Rights Laws

<https://alternativestoguardianship.com/voting-rights-materials.pdf>

Comment: This packet to materials focuses on the impact that SB 589 had in California on the voting rights of conservatees. Looking forward, the law makes it very hard for judges to deprive conservatees of their voting rights. Looking back, it requires an inquiry by a court investigator every two years into whether the conservatee's situation has changed so that they currently meet the standards to have their voting rights restored.

Accommodations Are
Provided Upon Request

– Missouri Courts
Websites*



* All website pages of the Missouri Courts, including the Office of State Court Administrator and local courts, suggest that ADA accommodations need only be provided by courts upon request. No information is provided on the duties of courts to provide accommodations on their own motion and without request when litigants, such as in adult guardianship proceedings, have obvious or known cognitive or communication disabilities which impair meaningful participation in their case.

The ADA is a federal law prohibiting discrimination against persons with disabilities in places of public accommodation, **government services**, and employment. Missouri Attorney General Website.

The ADA applies to courts and judicial services. *Tennessee v. Lane*, 541 U.S. 509 (2004)

A public entity must offer accommodations for **known** physical or mental limitations. Title II Technical Assistance Manual of DOJ

Even without a request, an entity has an obligation to provide an accommodation when it **knows or reasonably should know** that a person has a disability and needs a modification. DOJ Guidance Memo to Criminal Justice Agencies, January 2017

Some people with disabilities are not able to make an ADA accommodation request. A public entity's duty to look into and provide accommodations may be triggered when the need for accommodation is **obvious**. *Updike v. Multnomah County*, 870 F.3d 939 (9th Cir 2017)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, **not a request**. *Pierce v. District of Columbia*, 128 F.Supp.3d 250 (D.D.C. 2015)

A request for accommodation is not necessary if a public entity has **knowledge** that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are **obvious**. *Robertson v. Las Animas*, 500 F.3d 1185 (10th Cir. 2007)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had **knowledge** of an individual's disability and needs but took no action. *A.G. v. Paradise Valley*, 815 F.3d 1195 (9th Cir. 2016)

The import of the ADA is that a covered entity should provide an accommodation for **known** disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. *Brady v. Walmart* 531 F.3d 127 (2nd Cir. 2008)