



December 1, 2022

Missouri Supreme Court,
State Courts Administrator,
and Circuit Courts
c/o ADA Coordinators

Re: An invitation to learn how the ADA applies to adult guardianship proceedings

Dear Justices, Administrators, Judges, and ADA Coordinators:

When people think about disability accommodations for court users under the Americans with Disabilities Act, what immediately comes to mind are sign language interpreters for people who are deaf or physical access issues for wheelchair users, such as parking spots or elevators or accessible restrooms. They also think about responding to requests for accommodations. What they don't consider are providing accommodations to ensure effective communication and meaningful participation in legal proceedings for litigants with mental or developmental disabilities. They also do not consider obligations of the courts to provide accommodations or make modifications for litigants with obvious mental or developmental disabilities who, because of the nature of their conditions, are not able to make requests for accommodations. These are disability accommodation issues that arise every day in adult guardianship proceedings. These are issues that have been overlooked.

The moment a guardianship petition is filed, Missouri courts are put on notice that the individual targeted by the petition – the respondent – has such serious mental or developmental disabilities that the state allegedly must intervene to appoint a guardian to take charge of the individual's life. The moment such a petition is filed, the mandates of the ADA become operational even without a request for accommodation being filed. These mandates impose obligations on the court and the court-appointed attorney. The moment a guardianship order is granted, the court and the court-appointed guardian have ADA obligations to ensure that the protected person has effective communication and meaningful participation in their case – a legal proceeding that may continue for years and sometimes decades.

Spectrum Institute has been studying the adult guardianship system in Missouri for several years. Our research indicates that the Supreme Court, State Courts Administrator, and judges, court staff, court-appointed attorneys, and court-appointed guardians in the circuit courts are not applying the ADA to guardianship proceedings as required by federal law. There seems to be a misunderstanding that ADA accommodations are only needed in response to a request. ADA accommodation assessments for guardianship respondents with obvious or known disabilities are not being done by ADA coordinators and are not being requested by court-appointed attorneys or court staff who become aware of disabilities that likely will interfere with effective communication and meaningful participation by litigants in these liberty-threatening legal proceedings.

The United States Department of Justice recently announced that it is investigating the manner in which the State of Missouri is treating adults with mental disabilities. Part of the investigation focuses on potential

violations of the ADA that may be occurring in adult guardianship proceedings. With this investigation underway, now would be a good time for the judicial branch and the legal profession to learn about their ADA duties to disabled litigants in guardianship proceedings – during both the pre-adjudication and post-adjudication stages.

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 is an annotated bibliography of more than 30 documents that offer guidance on the duties of courts and their appointed agents under the ADA in guardianships and other legal proceedings and the corresponding ADA rights of litigants with disabilities in these cases. The bibliography is attached. It may also be found online at: <https://alternativestoguardianship.com/ada-bibliography.pdf> The second, to be released in the near future, will contain findings from our study of the policies and practices in Missouri’s guardianship system with recommendations directed to various officials and agencies of state and local government on how to bring the system into compliance with the ADA. That document will be sent to you when it is released.

We invite the justices and staff of the Supreme Court, the staff of the Office of State Courts Administrator, officials at The Missouri Bar, and bench officers and staff of the circuit courts to review these materials, identify any ADA deficiencies in guardianship policies and practices, and take appropriate actions to correct them. As recently as September 21, 2022, the Supreme Court indicated that it was open to receiving additional materials for consideration on the subject of the state’s guardianship system. <https://alternativestoguardianship.com/missouri-supreme-court-reply.pdf> We hope that the circuit courts also welcome such information.

We request ADA coordinators to forward this message to justices, judges, and administrators. Please let us know if we can be of any help as a review process occurs.

Respectfully,

A handwritten signature in blue ink that reads "Thomas F. Coleman". The signature is written in a cursive style with a large initial 'T'.

Thomas F. Coleman
Legal Director, Spectrum Institute
(818) 482-4485
<https://alternativestoguardianship.com/>