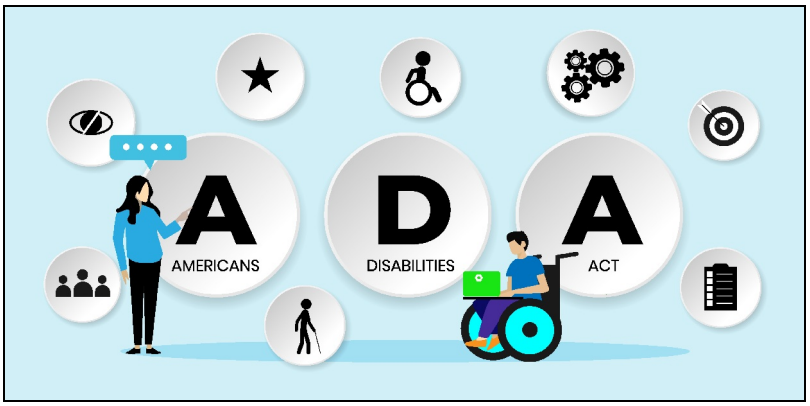
How the ADA Applies to Guardianship Proceedings

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



Report and Recommendations

Produced by Spectrum Institute
for the Alternatives to Guardianship Project

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Thomas F. Coleman
Legal Director
Spectrum Institute

Jennifer Hulme
Executive Director
Hulme Resources Inc.

https://spectruminstitute.org/
https://alternativestoguardianship.com/

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.

Documents online at:

https://alternativestoguardianship.com/ada-report.pdf

alternativestoguardianship.com/ada-bibliography.pdf

Methodology

The investigation of Thomas F. Coleman of the adult guardianship system in Missouri began in 2017 when he accepted an invitation to give a plenary presentation at the Fourth Annual Educational Summit of The Arc of Missouri. The title of the presentation was "Disability and Abuse: Administering Trauma-Informed Justice in Missouri Guardianship Proceedings." He distributed an annotated bibliography with strategic commentary which included an analysis of guardianship statutes and case law as well as constitutional precedents and applicable mandates from the ADA.

In preparation for the presentation, Coleman interviewed Les Wagner, Executive Director of the Missouri Association of County Developmental Disabilities Services; Gary Schanzmeyer, Deputy Director of the Division of Developmental Disabilities of the Missouri Department of Mental Health; and Susan Eckles, Managing Attorney of Missouri Protection and Advocacy. Written information was supplied by Catherine Nelson Zacharias, Legal Counsel to the Office of State Courts Administrator.

Following the presentation, Coleman distributed a comprehensive set of findings and recommendations to improve access to justice for people with mental or developmental disabilities in guardianship proceedings in Missouri.

Spectrum Institute then filed a formal complaint with the Supreme Court of Missouri, bringing to its attention that the adult guardianship system is not in compliance with the Americans with Disabilities Act. Although the court acknowledged receiving the complaint and stated that it was under review, no action was taken. It was not until 2022 that the court disclosed that it had quietly dismissed the complaint in 2018.

Coleman's attention was again drawn to the guardianship system in Missouri when he was contacted by Jennifer Hulme in 2022. Hulme is the founder and director of Hulme Resources Inc. Her nonprofit received a grant from the Department of Mental Health on behalf of the Missouri Developmental Disabilities Council to study alternatives to guardianship. As legal director of Spectrum Institute, he accepted Hulme's invitation to serve as a consultant to a newly-formed Alternatives to Guardianship Project.

For several months, Coleman has reviewed and analyzed the guardianship system in Missouri. He again researched statutes, court rules, and case law. Hulme reached out to several organizations and agencies asking for information and suggestions on how to improve the guardianship system and promote viable alternatives for adults with developmental disabilities. Coleman reviewed supported decision-making laws enacted in other states. He interviewed a probate judge and a public administrator. Information was obtained through records requests sent to the Supreme Court and Office of State Courts Administrator. These and other investigative activities are explained on the "what's new" page of the website of the Alternatives to Guardianship Project. In addition, individuals from various professions and walks of life are serving as advisors to the project.

The findings and recommendations in this report are based on several years of research, outreach, and collaboration with a wide range of organizations, officials, and individuals.

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How the ADA Applies to Guardianship Proceedings

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

By Thomas F. Coleman

> The unequal treatment of disabled persons in the administration of judicial services has a long history, and has persisted despite several legislative efforts to remedy the problem.... Faced with considerable evidence of the shortcomings of previous legislative responses, Congress was justified in concluding that this 'difficult and intractable problem' warranted [the enactment of Title II].... Recognizing that failure to accommodate persons with disabilities will often have the same practical effect as outright exclusion, Congress required the States to take reasonable measures to remove architectural and other barriers to accessibility.... [A]s it applies to the class of cases implicating the fundamental right of access to the courts, [Title II] constitutes a valid exercise of Congress'...authority to enforce the guarantees of the Fourteenth Amendment.
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> *Tennessee v. Lane*, 124 S.Ct. 1978, 1993-4 (2004).

Missouri operates a guardianship system for the protection of adults who have mental or developmental disabilities that prevent them from providing for their care or managing their finances. When clear and convincing evidence is presented that an adult cannot make decisions for personal care or finances, and that less restrictive alternatives are not available to avoid harm to the adult, a court may appoint a guardian to make some or all major life decisions for them. When a family member is not available, a county official known as a public administrator may be appointed to serve as the guardian. A guardianship continues until there is proof that it is no longer needed. For seniors with mental disabilities, a guardianship could last several years until they die. For young adults with developmental disabilities, a guardianship could remain in effect for decades.

A guardianship proceeding places fundamental rights at risk of loss. Liberties we all take for granted – making choices for living arrangements, health care, education, finances, voting, driving a car, social interactions, sexual relations, and marriage – are in jeopardy when a petition for guardianship is filed. As a result, courts must afford adults targeted by such petitions, referred to here as respondents, due process of law. One of those due process protections is the appointment of an attorney to represent the respondent. Due process requires than such attorneys act as zealous advocates to advance the wishes of the respondent and to protect their substantive and procedural rights.

Although guardianship proceedings are primarily governed by state statutes and judicial

decisions, they are also subject to federal legal mandates. This includes the due process clause of the 14th Amendment of the United States Constitution. In addition, the actions of the courts, appointed attorneys, and appointed guardians are subject to the mandates of federal nondiscrimination laws such as the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973. Title II of the ADA applies to state-operated and state-funded programs and services. This includes judicial proceedings and government-funded legal services. Section 504 places nondiscrimination requirements on public entities that receive federal funds. This includes judicial branch entities receiving such funding.

This primer explains the federal constitutional and statutory rights of respondents in the pre and post adjudication stages of guardianship proceedings. It also explains the corresponding duties of courts, appointed attorneys, and appointed guardians under the due process clause and the ADA. The 30,000 adults currently living under an order of guardianship and the 3,000 respondents who are targeted by new petitions each year are entitled to receive "Due Process *Plus*" in these proceedings. Whether they do, however, depends on judges, attorneys, and guardians understanding their Due Process *Plus* duties. This primer is intended to fill an educational void that currently exists on these issues in Missouri.

Due Process *Plus* Duties of the Supreme Court

As the state's highest court, the Supreme Court of Missouri has two types of jurisdiction over the administration of justice. One is its power to adjudicate legal disputes. That role is fulfilled by hearing cases, issuing orders, and writing opinions. The other is its administrative role over the legal system in general. That role is exercised by adopting rules governing judicial proceedings and judicial ethics, rules of professional conduct for attorneys, rules mandating judicial and legal education, and adopting a budget for judicial branch operations.

Adjudicative Jurisdiction

An attachment to an ADA complaint filed with the Supreme Court in 2017 explained the importance of the court's adjudicative jurisdiction – something rarely used in adult guardianship proceedings. ("The Supreme Court of Missouri Has a Duty to Ensure ADA Compliance in Guardianship Proceedings," Spectrum Institute 2017)) The following are excerpts from that commentary:

> "The case of Mildred Link is an example of the Supreme Court exercising its appellate jurisdiction to shape guardianship law in Missouri. (*In re Link*, 713 S.W.2d 487 (Mo, 1986)) In that proceeding, Mildred Link appealed from an order of the Probate Division of the Circuit Court declaring her to be incompetent and appointing a guardian of her person and a conservator of her estate. The court reversed those orders and, in doing so, issued an opinion stating that guardianship respondents are entitled to due process of law and to

competent and effective representation of counsel in the proceedings.

> "It was only because Mildred Link filed an appeal that the Supreme Court was able to give direction to judges and attorneys throughout the state about the due process rights of respondents in guardianship proceedings. Unfortunately, appeals by guardianship respondents are rare and appeals by adults with intellectual and developmental disabilities are virtually nonexistent. As a result, there has not been a growing body of case law in Missouri on the procedural and substantive rights of respondents in guardianship proceedings.
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> "Judges and attorneys are more likely to respect the rights of litigants when they know that an appeal is a distinct possibility. They are less likely to adhere to the rule of law when they think that an appeal is only a very remote prospect. People who believe they have the ultimate and final word and who lack supervision act differently than people who believe they are being watched or that they may be audited. That's human nature. The fact that guardianship respondents almost never appeal stunts the adjudicative growth of guardianship law and allows systemic flaws to go uncorrected indefinitely."

Administrative Jurisdiction

A case search on a legal database known as Casetext did not find any decisions of the Missouri Supreme Court in adult guardianship cases since it issued the opinion in the Link case in 1986. A recent review of hundreds of dockets in guardianship cases in ten circuit courts provides an explanation for this precedential void. There are no appeals in these cases because court-appointed attorneys seldom contest petitions. There are no jury trials and contested court trials are rare. Perhaps as many as 95% of the cases result in an order of guardianship being entered without any objection from court-appointed attorneys.

As a result, the only feasible way the Supreme Court can protect the constitutional and statutory rights of guardianship respondents, including their Due Process *Plus* rights, is by exercising its administrative jurisdiction.

The attachment to the ADA complaint filed with the Supreme Court in 2017 explained the constitutional basis for the court's administrative jurisdiction. It urged the court to exercise it in to protect the rights of guardianship respondents and to ensure compliance by courts and appointed attorneys with their duties under the due process clause and the ADA.

The following are excerpts from the attachment pertaining to administrative jurisdiction.

> "Article V, Section 5 gives the Supreme Court a duty to establish 'rules relating to practice, procedure, and pleading for all courts and administrative

> tribunals.' These rules have the force and effect of law. Although it has the authority to do so, the Supreme Court has not yet established rules governing the practices of judges, attorneys, and guardians ad litem in adult guardianship proceedings.
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> "To reiterate, because there are few appeals by guardianship respondents in these cases, the normal corrective appellate process is generally not operating in these proceedings. As a result, it would be highly beneficial for the Supreme Court to fulfill its duty under Section 5 by promulgating rules to establish procedural protections and to set professional standards for attorneys appointed to represent guardianship respondents whether it is in the role of advocacy lawyers or as guardians ad litem."

The Supreme Court can also protect the rights of guardianship respondents through its administrative supervision of The Missouri Bar. In furtherance of the court's constitutional authority, the Missouri Bar was created by order of the Supreme Court in 1944. Through the state bar, the Supreme Court exercises its administrative authority over the practice of law in Missouri. The court must approve rules of professional conduct issued by The Missouri Bar and approve discipline imposed on attorneys. The bar association, therefore, is an arm of the Supreme Court and all of its policies and practices are subject to the court's approval. The Supreme Court is ultimately responsible for rules governing professional conduct and the complaint procedure to investigate alleged violations of those rules.

Neither The Missouri Bar or the Supreme Court has taken any action to regulate lawyer-client relationships in guardianship proceedings – regardless of whether the attorneys are privately retained or are appointed by a court. Knowing that such special needs clients are generally unable to identify or complain about any deficient performance of their attorneys, it is essential for the bar and the court to find ways to protect the rights of these clients to effective assistance of counsel and to have access to administrative remedies when the performance of attorneys violates due process, the ADA, or the rules of professional conduct.

The Chief Justice plays a special role in the administration of justice. According to Article V, Section 8: "The chief justice of the supreme court shall be the chief administrative officer of the judicial system and, subject to the supervisory authority of the supreme court, shall supervise the administration of the courts of this state." As "supervisor in chief" of the judicial branch and the state bar, the chief justice can promote reforms to the adult guardianship system which is primarily operated by the judiciary. While some chief justices have steadfastly ignored systemic problems in guardianship and conservatorship systems operated by the judiciary, leadership to address these problems has been provided by other chief justices in places such as Michigan, Florida, Nevada, and Iowa. Having served on the Missouri Supreme Court for 10 years now, Chief Justice Paul C Wilson could do much to stimulate needed reforms to the guardianship system if he were to make the issue a priority.

Court Rule on ADA Compliance

Article V, Section 5 gives the Supreme Court of Missouri a duty to establish "rules relating to practice, procedure, and pleading for all courts and administrative tribunals." These rules have the force and effect of law. Although it has the authority to do so, the Supreme Court has not yet established rules governing the practices of judges, attorneys, and guardians in adult guardianship proceedings. Although federal disability nondiscrimination statutes and regulations apply to Missouri courts conducting guardianship proceedings, the Supreme Court has not promulgated any rules regarding judicial practices and procedures to guide the courts in complying with the Americans with Disabilities Act.

"A public entity shall not exclude or otherwise deny equal services, programs, or activities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association." (Americans with Disabilities Act Title II Regulations, § 35.130(g)) (Emphasis added) Respondents in adult guardianship proceedings have known mental or developmental disabilities.

Section 35.160 of the 1991 Title II regulations requires a public entity to take appropriate steps to ensure that communications with participants with disabilities are as effective as communications with others. 28 CFR 35.160(a). In addition, a public entity must "furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity." 28 CFR 35.l60(b)(1). These provisions apply to litigants with mental or developmental disabilities.

The nondiscrimination provision in § 35.130(a) provides that no individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity. The Department of Justice consistently interprets this provision and § 35.160 to require effective communication in courts. This requirement applies to adult guardianship proceedings.

Title II protects three categories of individuals with disabilities: 1) Individuals who have a physical or mental impairment that substantially limits one or more major life activities; 2) Individuals who have a record of a physical or mental impairment that substantially limited one or more of the individual's major life activities; and 3) Individuals who are regarded as having such an impairment, whether they have the impairment or not. (DOJ Title II Technical Assistance Manual, Section I-2.1000) Mental impairments include mental or psychological disorders, such as intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities. (Ibid.) Respondents in adult guardianship proceedings fall within the protected classes regardless of whether they are litigants during the pre-adjudication phase or after an order of guardianship has been entered.

Persons with disabilities who are participating in the judicial process as parties before the court should be provided auxiliary aids and services as needed for effective communication. "Because the appropriateness of particular auxiliary aids and services may vary as a situation changes, the Department strongly encourages public entities to do a communication assessment of the individual with a disability when the need for auxiliary aids and services is first identified, and to reassess communication effectiveness regularly throughout the communication." (Americans with Disabilities Act Title II Regulations, § 35.160) Because guardianship respondents have known mental or developmental disabilities that are regarded as being so serious as to require state intervention in their lives, this requirement of a communication assessment applies at the beginning of a guardianship proceeding.

"A public entity has a continuing obligation to assess the auxiliary aids and services it is providing, and should consult with individuals with disabilities on a continuing basis to assess what measures are required to ensure effective communication." (Americans with Disabilities Act Title II Regulations, § 35.160) It appears that judicial branch entities in Missouri have never done such an assessment.

The United States Department of Justice has jurisdiction to investigate violations of Title II of the ADA committed during the administration of justice, including violations by courts. (Americans with Disabilities Act Title II Regulations, § 35.190(b)(6))

A section by section analysis of Title II by the DOJ clarifies that Title II regulations apply to all services provided by a public entity. In other words, Title II applies to anything a public entity does. Courts are public entities. All governmental activities of public entities are covered, even if they are carried out by contractors. A public entity is responsible for ensuring compliance with the Americans with Disabilities Act and other disability rights laws throughout the program or service it is providing. A public entity must properly supervise the compliance by third-party contractors with disability rights laws, including the obligation to provide effective communication and meaningful participation in the program or service. At an absolute minimum, that means that the public entity must collect data from third-party contractors sufficient to demonstrate whether or not those entities are meeting their obligations. When a court appoints an attorney to represent a disabled litigant or appoints an expert to evaluate them in a guardianship proceeding, the court has a duty to supervise the services provided by the lawyer or the expert. The court's supervisory duty to enure ADA compliance by agents of the court cannot be delegated away.

The Supreme Court should adopt a rule of court governing ADA accommodations in court proceedings. Part one of the rule should establish procedures for processing requests for accommodations. Part two should specify the duties of courts to provide accommodations for obvious or known disabilities, even without a request, when the nature of the disability may interfere with the ability of a litigant, witness, or other court participant to make a request.

Administrative Guidance on ADA Compliance

The administrative role of the Supreme Court is derived from Article V, Section 4 of the state Constitution. That provision states: "The supreme court shall have general superintending control over all courts and tribunals." It continues: "Supervisory authority over all courts is vested in the supreme court which may make appropriate delegations of this power."

As supervisor of the judicial branch of government in Missouri, the Supreme Court is vested with the authority to appoint staff members to aid the court in fulfilling its administrative duties. Article V, Section 4.2 of the Constitution states: "The supreme court may appoint a state courts administrator and other staff to aid in the administration of the courts, and its shall appoint a clerk of the supreme court and may appoint other staff to aid in the administration of the business of the supreme court."

Self-evaluation is an important component of compliance with Title II of the ADA. (28 C.F.R. § 35.105) In response to a records request, the Clerk of the Supreme Court stated: "[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."

The State Courts Administrator provides administrative, technical, and programmatic support to the courts in Missouri. According to a communication from the Office of State Courts Administrator in 2017, the support provided by that office appears to be limited to signs regarding ADA accommodations, assisted listening devices, and training to judges and court staff regarding the ADA. There is no evidence that OSCA has provided any information to judges or judicial staff about their duties or how to provide accommodations to litigants with mental or developmental disabilities. Furthermore, it appears that all information about ADA accommodations is premised on a request being made. Even without a request, Missouri courts and court-appointed agents have duties to provide accommodations to litigants with known disabilities, including mental or developmental disabilities, to ensure effective communication and meaningful participation in legal proceedings. This is especially so for guardianship proceedings where all litigants have such serious disabilities that the power of the state is being invoked to take control of their lives.

Courts in other states have provided detailed guidance to judges and judicial staff on providing ADA accommodations to litigants with mental disabilities.

For example, the Georgia Judicial Council published a document in 2017 titled "A Meaningful Opportunity to Participate: A Handbook for Georgia Court Officials on Courtroom Accessibility for Individuals with Disabilities." It explains: "A person with a disability is defined as an individual who has a physical or mental impairment that substantially limits one or more major life activities, or has a record of such impairment."

One section of the Georgia handbook is devoted to accommodating individuals with cognitive disabilities. Another focuses on accommodating individuals with mental health disabilities. It contains the following admonition: "Keep in mind that many people with cognitive impairments may not be able to request accommodations effectively on their own and may need assistance in constructing appropriate accommodation requests, whether from the court or from their legal representatives."

The Georgia handbook contains another warning that would be particularly applicable to guardianship proceedings where there may be a tendency to proceed without the personal presence of the respondent. "As with other disabilities, courts must not exclude or limit participation of qualified individuals with mental illnesses. In determining whether an individual with a mental illness is qualified to fulfill the role of witness, juror, or other participant in a court program, the court needs to conduct an individualized analysis of the particular person in the particular situation and provide any necessary reasonable modifications. Most people with mental illnesses are capable of fulfilling their role and a court must not exclude them on the basis of generalizations, assumptions, or stereotypes."

The Florida State Courts System has produced a document titled "Title II Guidelines for the State Courts System of Florida." It provides detailed guidance to courts on how to comply with Title II. It explains: "Under Title II of the ADA, all state and local governments are required to take steps to ensure that their communications with people with disabilities are as effective as communications with others . . . What does it mean for communication to be effective? Simply put, effective communication means that whatever is written or spoken must be as clear and understandable to people with disabilities as it is for people who do not have disabilities. This is important because some people have disabilities that affect how they communicate." The document adds: "It is important to distinguish between an individual with a mental health diagnosis and an individual with an intellectual disability or autism, in order to provide the appropriate necessary assistance or auxiliary aids or services."

The Access to Justice Board has produced a document, endorsed by the Board of Judicial Administration in Washington State titled: "Ensuring Equal Access for People with Disabilities: A Guide for Washington Courts." The guide "focuses on visual, hearing/communication, mobility, and cognitive disabilities, and aims to 1) give a basic understanding of how these disabilities may affect access, 2) clarify what the law requires of courts, and 3) help courts provide effective access." It identifies common barriers for people with disabilities, discusses the obligations of judges and court personnel, identifies some approaches to solving common problems, and recommends steps for compliance.

The Washington guide emphasizes: "The ADA applies to all judicial programs and services, and to all participants: jurors, lawyers, parties, witnesses, and observers." It adds: "This means identifying and removing barriers, or identifying and implementing accommodations. These requirements apply to court services, viewed in their entirety. (Emphasis added)

A section of the Washington guide focuses on cognitive and other mental disabilities. It states: "The single most important means of ensuring access for people with cognitive disabilities is to educate and motivate court staff so they can provide effective assistance. Local advocacy organizations can be a resource for training in effective communication. Completing a program for all staff may take time, but the first and most important step is to include such training in the court's ADA compliance plan."

To date, the Supreme Court of Missouri has provided no guidance to bench officers and judicial staff on their duty to provide accommodations to litigants with mental or developmental disabilities in legal proceedings. On behalf of the Supreme Court, the Office of State Courts Administrator should review and build upon what other states have done. A guidance document should be produced in consultation with disability rights organizations.

Court Rule on Annual Reports by Guardians

When a petition for adult guardianship is filed, it must be served on the adult in question as well as their spouse, parents, adult children and anyone having the respondent's care and custody known to the petitioner. If no spouse, parent or child is known, it must be served on the closest known relative of the respondent. (RSMo §475.075(2)) Requiring service of the petition on such persons is way to ensure that the court receives accurate information and does not rely solely on one interested party. This is especially important when a respondent who has serious mental or developmental disabilities may not be able to personally respond to the petition.

A petition for guardianship is granted if the court finds by clear and convincing evidence that "the capacity of the respondent to receive and evaluate information or to communicate decisions is impaired to such an extent as to render the respondent incapable of managing some or all of the respondent's essential requirements for food, clothing, shelter, safety or other care so that serious physical injury, illness, or disease is likely to occur. . ." (RSMo §475.075(11)) A person who has been adjudicated incapacitated or disabled or both is presumed to be incompetent. (RSMo §475.078(3))

An adjudication that a respondent's incapacity interferes with their ability to carry out basic life functions places the respondent within the protections of the Americans with Disabilities Act. Those protections require that the court – itself or through court personnel, and any court-appointed attorney or guardian – take affirmative steps to ensure that the respondent has effective communication and meaningful participation in the guardianship proceeding for its duration. Many guardianship proceedings last for years. Some for decades.

Unfortunately, it is the practice of circuit courts in Missouri to relieve the court-appointed attorney as counsel for respondents when or soon after an order of guardianship is entered.

This leaves adults with serious mental or developmental disabilities to represent themselves in an ongoing legal proceeding. This is something that the overwhelming number of protected persons could not do.

The court has ongoing duties in active guardianship cases. Each of these statutory duties carries with it a corresponding duty under the Americans with Disabilities Act.

"At least annually, the court shall inquire into the status of every adult ward and protectee under its jurisdiction for the purpose of determining whether the incapacity or disability may have ceased or changed and to insure that the guardian or conservator is discharging the guardian's or conservator's responsibilities and duties . . ." (RSMo §475.082(1)) Shall inquire. Those words are mandatory and put the burden on the court to determine the current status of the protected person and to determine if the guardian has been discharging their duties. One of those duties is to comply with the ADA.

To assist the court in making these determinations, guardians must file an annual report with the court "concerning the personal status of the adult ward and plans by the guardian or limited guardian for future care." (RSMo §475.082(2))

"The court may as part of its review, in its discretion, order the performance of a mental status evaluation of the ward and may require any hospital, physician, or custodial facility to submit copies of their records relating to the treatment, habilitation, or care of the ward." (RSMo §475.082(3))

"If there is an indication that the incapacity or disability of the ward or protectee has ceased, the court shall appoint an attorney to file on behalf of the ward or protectee a petition for termination of the guardianship or conservatorship or for restoration." (RSMo §475.082(4))

"If it appears to the court as part of its review or at any time upon motion of any interested person, including the ward or protectee or some person on behalf of the ward or protectee, that the guardian or conservator is not discharging the guardian's or conservator's responsibilities and duties as required by this chapter or has not acted in the best interests of the ward or protectee, the court may order that a hearing be held and direct that the guardian or conservator appear before the court." (RSMo §475.082(5))

There is no requirement by statute or court rule that a guardian serve a copy of the annual report on the protected person, custodians or care providers, or relatives of the protected person. While the annual report is technically a public record, without notice to such persons, they would have no way of knowing if or when an annual report has been filed other than repeatedly going to the courthouse to check. Annual reports are not available online.

An adult with such serious mental or developmental disabilities is not able to travel to the

courthouse in order to find and read a guardian's annual report. It would be unreasonable to assume that custodians, care providers, or relatives would do so. States such as Arizona require the guardian's annual report to be served on the protected person, their souse or parent, and any court-appointed attorney. In Alaska and New Hampshire, it must be served on the protected person. In New York, it must be sent to the protected person and if they live in a facility to the chief executive of the facility.

Not serving a copy of the guardian's annual report on the protected person and those who care for or care about them, leaves the court with one-sided information. A guardian who is abusing or neglecting a protected person will not be reporting that abuse or neglect to the court. While a protected person has a right under the Americans with Disabilities Act to have the court consider their views under each subdivision of Section 475.082 – whether they are no longer incapacitated, whether some rights should be restored, and whether the guardian is failing to discharge their duties – there is no way for them to do so when they are not served with a copy of the annual report and do not have an attorney to represent them in these post-adjudication proceedings.

The current policies and practices of the circuit courts in discharging court appointed-attorneys at or soon after an order of guardianship is entered and not requiring guardians to serve a copy of annual reports on protected persons and those close to them violates the "effective communication" and "meaningful participation" mandates of the ADA.

To bring post-adjudication proceedings such as judicial review of the annual reports of guardians into compliance with the ADA, the Supreme Court should adopt a rule requiring guardians to serve a copy of their annual report on protected persons. Because many protected persons may not be able to read or understand such a document, the rule should also require that copies be served on the person in whose custody the protected person lives, known care providers, and known relatives. Such individuals may assist the protected person to understand what the guardian has reported to the court and to communicate with the court any errors or omissions in that report, including any acts of abuse or negligence by the guardian.

Another rule of court should be adopted by the Supreme Court requiring court-appointed attorneys to remain attorney of record in post-adjudication proceedings, including receiving and reviewing annual reports of the guardian and reporting to the court information that the protected person or the attorney believes the court should consider in discharging its duties under RSMo §475.082. Without these additional protections in place, protected persons do not have effective communication or meaningful participation in the annual reporting process.

Other states have taken steps to ensure that adults living under an order of guardianship have periodic reviews of their status that ensure the court is receiving more than one-sided information by a guardian or conservator.

In California, court investigators conduct biennial investigations during which they personally visit the conservatee's residence and interview the conservatee to ascertain their condition and their wishes. This information is conveyed to the court where it is reviewed along with the conservator's report. This type of affirmative outreach by an employee of the court helps to ensure that the protected person has effective communication and meaningful participation in post-adjudication periodic status review proceedings.

In Nevada, the Clark County District Court handles about 80% of the adult guardianship cases in the state. Unless a respondent has their own private attorney – which is unusual – the court appoints the Legal Aid Center of Southern Nevada to represent them. Once appointed, that nonprofit lawfirm remains attorney of record for the life of the case. If an order of guardianship is entered, the lawfirm remains actively engaged with the client. A lay advocate goes to the client's residence every six months to check on their status. If circumstances have improved, a petition to remove restrictions on rights or a petition to terminate the guardianship may be filed. If the review suggests that the guardian has been abusive or neglectful, a request for a status review will be filed with the court. The ongoing involvement of the lawfirm ensures that the client has effective communication and meaningful participation in post-adjudication proceedings.

In contrast, adults with serious mental or developmental disabilities in Missouri are essentially abandoned by court-appointed attorneys once a guardianship is granted. The courts do not provide them with any way to be meaningfully involved in post-adjudication proceedings. They have no practical way to bring to the court's attention any deficiencies in the guardian's performance or any changed circumstances that warrant court action.

Education of Judges

Judges and court commissioners preside in more than 3,000 new adult guardianship cases each year and review the status of more than 30,000 active guardianship cases annually. These proceedings involve adults with mental or developmental disabilities, many of whom also have physical or communication disabilities.

Unlike family court judges who are required to participate in continuing education classes pertaining to the speciality of family law, there are no rules requiring any education or training for judges handling guardianship cases. (Rule 15.05, Supreme Court Rules) Likewise, there is no requirement that bench officers receive training on the requirements of the Americans with Disabilities Act as applied to judicial proceedings or on the need to provide accommodations, even without a request, to litigants with known or obvious mental

or developmental disabilities. While the Office of State Courts Administrator stated in a communication in 2017 that some judges receive training on the ADA, there is no indication that these voluntary trainings explain the duty to provide accommodations to litigants with mental or developmental disabilities. Trainings appear to focus on court users who are deaf or who have mobility disabilities.

The Texas Supreme Court issued an administrative order in 2017 requiring judges who hear guardianship cases to receive training in the following areas: the aging process and the nature of disabilities; requirements of the ADA and compliance methods; principles of equal access and accommodation; and the use of community resources for people with disabilities.

The California Judicial Council is the official rule-making entity within the judicial branch of that state. As a preamble to rules on judicial education, the Judicial Council has emphasized that "education for all justices, judges, subordinate judicial officers, and court personnel is essential to enhance the fair, effective, and efficient administration of justice."

Rules of Court enacted by the Judicial Council require that all trial court judges must receive 30 hours of continuing education every three years, with additional requirements that judges regularly assigned to hear probate court matters must have six hours of training on guardianships and conservatorships. Conservatorships, which are the equivalent of adult guardianships in Missouri, are heard in California's probate courts. In addition, the Judicial Council has published a benchguide to assist probate judges in processing conservatorship cases.

Spectrum Institute produced a 67-minute webinar and a 91-page reference book for California judges in 2021 to assist them in understanding how the ADA applies to judicial proceedings. Missouri judges are currently lacking such guidance.

The Supreme Court of Ohio has published a toolkit for judges titled "Guardianship of Individuals with Developmental Disabilities." The toolkit was developed under the guidance and oversight of the Subcommittee on Adult Guardianship of the Supreme Court of Ohio's Advisory Committee on Children & Families.

The Administrative Office of the Courts in Washington State has produced a document titled "Title II ADA Guide for Washington Courts." The guide helps individual courts to evaluate whether their current systems comply with the ADA and to develop plans to improve those systems. It states: "Washington Courts need to be fully compliant with the requirements of the ADA, not only because it is the law, but because equal access to justice is a fundamental right."

The Michigan State Court Administrative Office has issued a document titled "Michigan Trial Court Administration: Reference Guide" which provides guidance to courts throughout

the state on a variety of administrative matters. Compliance with the ADA is one of them. An entire chapter of the reference guide is devoted to the ADA. The opening sentence of that chapter states: "Michigan courts have an obligation to take proactive steps to remove barriers to accessibility for people with disabilities." Among the many details provided in the 12-page chapter is a reminder that "Every chief judge and ADA coordinator must complete ADA training." This includes the chief judge of each probate court in the state.

The National Association for Court Management has published a document titled "Adult Guardianship Guide: A Guide to Plan, Develop and Sustain a Comprehensive Court Guardianship and Conservatorship Program." The guide is a tool to help state courts to evaluate and improve their guardianship systems. The guide calls for states to develop and institutionalize training programs and materials for judges and court staff, judicial officers, managers, staff, and volunteers. On the issue of judicial education, the guide states:

> "Managing an adult guardianship caseload requires specialized training of judges, judicial officers, and court staff. The complexity of capacity hearings, the loss of rights for alleged incapacitated individuals, the potential for abuse, and the court's obligation to provide active monitoring make guardianships unique among civil cases. Despite the need for training, many state judicial education programs offer few opportunities for judges and court staff to learn about the dynamics and best practices associated with guardianships."

The guide provides information about judicial education programs in states such as New Jersey, Maryland, and Nebraska.

> "New Jersey provides guardianship training courses to judges at its annual Judicial College and judicial education conferences. Maryland's Judicial College offers 'nuts and bolts' and advanced courses for guardianship judges on alternating years. Maryland WINGS members and the WINGS Coordinator also provide additional training, technical assistance, and networking opportunities to guardianship judges and court staff. . . . Nebraska has a full day of mandatory education for court staff working with guardianships and conservatorships, which provides an overview of the staff responsibilities and use of the case management tools available for these critical and challenging cases."

The guide also emphasizes that among the pressing training needs for judicial staff who work on adult guardianship matters are topics of special interest, such as common aspects of aging, the causes and effects of dementia, the Americans with Disabilities Act, and effective communication strategies. The guide adds: "The need for specialized training for judges and court staff in the area of adult guardianships is of growing importance. Over time, it is anticipated that educational opportunities will grow as well. Judges and court managers

should advocate for the development of comprehensive statewide training on adult guardianship issues."

The National Council on Disability (NCD) issued a report in 2018 titled "Beyond Guardianship: Toward Alternatives that Promote Greater Self-Determination." NCD is an independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families. In its report, NCD emphasized that the ADA applies to adult guardianship proceedings. Noting that "[g]uardianship cases are often dispensed with as quickly as possible with little concern for due process or protecting the civil rights of individuals facing guardianship," the report recommended that "A state guardianship court improvement program should be funded to assist courts with developing and implementing best practices in guardianship, including training of judges and court personnel on due process rights and less-restrictive alternatives."

In a follow-up report released in 2019, NCD recommended that guardianship court improvement programs should provide judicial trainings "on the availability of less restrictive options for decision-making support under state law" consistent with the ADA requirement that services be provided to people with disabilities in the least restrictive manner that will meet their needs.

Adapting and implementing these federal recommendations and state models, the Supreme Court of Missouri should:

Adopt a court rule requiring judges who hear guardianship cases to participate in continuing education on ADA accommodations for litigants with mental or developmental disabilities, communicating with such litigants, best practices for capacity assessments, and the exploration of less restrictive alternatives.

Consistent with its ADA duties, direct the Office of State Courts Administrator to develop a webinar and reference book on the ADA to be distributed to such bench officers. Materials from California and Ohio can be adapted for use in Missouri.

Produce a Title II Guide for Missouri Courts to assist circuit courts to fulfill their duties under the ADA to ensure that litigants with known mental or developmental disabilities have effective communication and meaningful participation in legal proceedings, especially guardianship proceedings where all respondents are protected by the ADA.

The Trial Judge Education Committee and the Coordinating Commission for Judicial Education could assist the court in developing such rules, webinars, and reference books.

Education of Attorneys

In nearly all cases, judges appoint attorneys to represent adults with mental or developmental disabilities in guardianship proceedings in Missouri. The only exceptions are the rare situations when a respondent has hired a private attorney. There may be as many as 200 court-appointed attorneys who represent such clients on a regular basis in Missouri.

The only qualification for accepting court appointments in guardianship cases is active membership in The Missouri Bar. According to a communication from the Office of State Court Administrator, "There is no required training for court-appointed lawyers in guardianship proceedings." An Internet search did not identify any voluntary legal education programs that have been conducted in Missouri focusing on the representation of clients with disabilities in adult guardianship proceedings.

The Rules of Professional Conduct require an attorney to provide competent representation, to act with zealous advocacy, and to communicate with a client in a manner that enables the client to effectively participate in litigation. These rules apply to clients with mental or developmental disabilities. Despite these professional duties, there are no rules of court or rules of professional conduct requiring attorneys who represent clients with such disabilities to have specialized training. That was formerly the case in California, but in 2020 the California Judicial Council amended rules on training to require court-appointed attorneys in conservatorships to attend educational programs that will enhance their ability to effectively represent clients with mental or developmental disabilities.

Under the new rules, conservatorship attorneys are required to gain knowledge about: (1) state and federal statutes including the ADA, rules of court, and case law governing probate conservatorship proceedings, capacity determinations, and the legal rights of conservatees, persons alleged to lack legal capacity, and persons with disabilities; (2) ethical duties to a client under Rules of Professional Conduct and other applicable law; (3) special considerations for representing seniors and people with disabilities, including individualized communication methods; and (4) less restrictive alternatives to conservatorships, including the use of non-judicial supported decision-making arrangements.

The Adult Guardianship Guide published by the National Association for Court Management contains a section emphasizing the importance of specialized education for court-appointed attorneys in guardianship proceedings.

> "Training programs for attorneys are a crucial component of strengthening the bench-bar partnership in guardianship matters. . . . Courts have an interest in ensuring these attorneys are aware of their roles and duties. Training is critical to prepare attorneys to receive such appointments, and to ensure protection and provision of fair and equal treatment for the vulnerable adults they serve.

> Training may be provided through continuing legal education sponsored by the court or bar associations; bench-bar conferences; publication of manuals and other training materials; and promulgation of standardized forms."

To help educate attorneys who accept court appointments in guardianship proceedings in that state, the New Jersey Supreme Court has issued a publication titled "Guidelines for Court-Appointed Attorneys in Guardianship Matters." It contains sections on standard procedures expected of attorneys in these cases; interviewing clients; and contesting a guardianship. The Adult Guardianship Guide explains that New Jersey has a robust set of educational opportunities for court-appointed attorneys.

> "New Jersey's probate judges and the probate sections of county bar associations periodically provide bench-bar conferences that address guardianship topics. The New Jersey State Bar Association's Institute for Continuing Legal Education also hosts periodic guardianship seminars, with panelists from the bench, bar, and Administrative Office of the Courts. The seminars provide a comprehensive overview of guardianship law and procedure; highlight recent developments and emerging trends in guardianship; and provide information on the state Judiciary's guardianship initiatives."

In Maryland, a court rule prohibits attorneys from being appointed to represent a disabled litigant in a guardianship proceeding unless they "have been trained in aspects of guardianship law and practice in conformance with the Maryland Guidelines for Attorneys Representing Minors and Alleged Disabled Persons In Guardianship Proceedings attached as an Appendix to the Rules in this Title." (Rule 10-106, Maryland Court Rules)

The guidelines require attorneys to undergo specialized training on specific topics prior to accepting appointments in adult guardianship cases. Continuing education on these topics is encouraged. The attorney's role as a zealous advocate is explained in detail and specific performance actions are listed.

Performance standards for court-appointed attorneys in adult guardianship proceedings in Massachusetts describe the steps which must, at a minimum, be taken by attorneys acting as zealous advocates in these cases. In order to accept appointments in these cases, attorneys must attend a two-part training program. Part one involves a comprehensive five-day review of substantive mental health law and the procedural rules applicable in mental health proceedings. Conducted from a defense perspective, emphasis is placed upon litigation technique and strategy. Part two includes an overview of the clinical perspectives on the diagnosis and treatment of mental illness, with an emphasis on those issues typically raised in mental health proceedings. In addition to this rigorous training, attorneys must participate in a mentorship program where they represent clients under the supervision of an attorney experienced in these cases. In order to maintain certification for guardianship practice,

attorneys must attend eight hours of continuing education in this field each year.

In Nevada, attorneys with the Legal Aid Center of Southern Nevada are appointed to represent adults in guardianship proceedings in about 80% of such cases in that state. The center conducts rigorous training of these attorneys. It has developed a comprehensive training manual, including a checklist of performance tasks to assist the attorneys in fulfilling their role as zealous advocates.

In sharp contrast to the education and training requirements adopted in these other states, attorneys appointed to represent clients with mental or developmental disabilities in adult guardianship proceedings in Missouri are left to their own devices. There are no qualifications for appointments. No continuing education requirements. No performance standards or guidelines. No quality assurance controls.

The Supreme Court of Missouri has experience in adopting training and performance standards. For example, it has published a document titled "Training Standards for Juvenile Justice Professionals." It has also published standards for guardians ad litem in juvenile and family court matters.

The Supreme Court should exercise its administrative authority to promulgate rules specifying qualifications and continuing education requirements for attorneys appointed to represent respondents in adult guardianship proceedings. Among the requirements should be training on effective communication with clients who have mental or developmental disabilities and ways to maximize the participation of such clients in these proceedings consistent with the ADA.

The Supreme Court should direct The Missouri Bar, in consultation with disability and mental health advocacy organizations, to develop performance standards for court-appointed attorneys in adult guardianship cases. Advocacy and defense practices should enhance the client's rights under the ADA to effective communication and meaningful participation in their cases at all stages of a guardianship proceeding. The Missouri Bar should annually sponsor a guardianship training institute for court-appointed attorneys.

Education of Lay Guardians

Guardians play a central role in the lives of adults with mental or developmental disabilities who are living under an order of guardianship. Other than the requirement of an annual report to the court, guardians have almost unlimited control of adults placed into their custody and care.

Protected adults are generally not in a position to complain to the court about their living

conditions or about abusive or neglectful behavior of their guardians. Their attorneys generally have been discharged and their disabilities usually preclude communications with the court. There is no court employee or other third party to monitor their lives. Missouri essentially functions on an "honor system," with courts assuming that guardians will file a timely, accurate, and complete annual report. Because the reports are not served on the protected adult or people close to them, courts receive one-sided information which may be self-serving or misleading by omission. It is unlikely that a guardian will provide information to the court that is negative to the guardian.

Lay guardians are more likely to perform their duties appropriately if they have been properly educated about the rights of protected persons and their duties of guardians. Unfortunately, Missouri does little to educate guardians on these matters. The Office of State Courts Administrator reports "There is no required training for guardians."

In a document titled "Adult Guardianship Guide," the National Association for Court Management has urged states to develop robust training programs and educational materials for guardians. The development and implementation of programs by states for the orientation, education and assistance of guardians is also recommended in the National Probate Court Standards.

Washington State requires lay guardians to complete a training program approved by the administrative office of the courts and the local court which appointed them. New York State also requires lay guardians to participate in a training program. "Fundamentals of Guardianship: What Family/Lay Guardians Need to Know" is a training program sponsored by the Office of Elder Justice in the Courts and the Administrative Office of Pennsylvania Courts (AOPC). The Arizona court system, through an administrative order, requires non-licensed fiduciaries to complete training prescribed by the Supreme Court. Maryland has court rules that require guardians to receive training. The Judicial Council of California has published a 318-page Handbook for Conservators covering a wide range of issues that may arise after an adult is ordered into a conservatorship.

The American Bar Association Commission on Law and Aging has a list of 20 states with guardian training and education videos. Missouri is not on that list.

The Supreme Court of Missouri should adopt a court rule requiring guardians to participate in a training program. The task of developing such a program and related educational materials can be delegated to the Office of State Courts Administrator in consultation with Mo-WINGS, the Missouri Developmental Disabilities Council, Missouri Protection and Advocacy, the Department of Mental Health, and disability organizations such as The Arc of Missouri.

As appointed agents of the state, guardians have duties under the ADA to ensure that adults

with disabilities under their care have effective communication and meaningful participation in these ongoing legal proceedings, whether in or out of court. Guardians should provide accommodations to these adults to maximize their participation in the decision-making process. The federal ADA rights of protected adults and the corresponding ADA duties of guardians should be included in any training programs or materials developed in Missouri.

Simplified Complaint Process

A Missouri statute authorizes a protected person to file a motion with the court alleging that a guardian is not performing their duties as required by law or not acting in the best interests of the protected person. (RSMo §475.082(5)) Upon written complaint to the court by a protectee, a guardian may be removed for failure to discharge their duties. (RSMo §475.110)

Once an order of guardianship is granted and the court-appointed attorney has been discharged, it is unlikely that a protected person will have meaningful access to this formal complaint procedure. Due to their serious mental or developmental disabilities, they will not be able to engage in such written communications with the court. If they are not in communication with an attorney, protected persons have no meaningful way to convey to the court that their rights are being violated or their best interests are being ignored.

By court rule or other administrative means, the Supreme Court should establish an ADA-compliant grievance process that is accessible to adults with mental or developmental disabilities. Such a process might involve sending a court visitor to see the protected person every six months to check on their well-being. It might also involve keeping the court-appointed lawyer as attorney of record in the post-adjudication phase with the attorney having a duty to periodically reach out to the client to check on their status. The complaint process should be simple and explained to protected persons in terms they are likely to understand. Protected persons should also be informed that Adult Protective Services can be contacted if there is any alleged abuse or neglect. The APS phone number and instructions on how to report abuse or neglect should be provided in writing to every protected person as soon as an order of guardianship is entered.

The Adult Guardianship Guide explains that while most courts have rules and statutes that include provisions to remove a guardian, "the process is not usually apparent to those outside of the court system and can be difficult to navigate." A process that is difficult for people with disabilities to use is not ADA-compliant. The guide has recommendations that the Missouri Supreme Court should consider.

> "Access to a complaint process is improved when family members, persons subject to guardianship, attorneys and others are provided with information describing the process and the requirements, easily accessible forms, and clear

> expectations of the court's possible response to a complaint. Jurisdictions may begin the streamlining process by reviewing their current guardian complaint procedures and rewording them so that most individuals may easily understand and follow them. . . In any court, there should be a plan to communicate clear information about the process and requirements to the parties."

The New Mexico legislature passed a law in 2019 creating a grievance process to file a complaint about a court-appointed guardian or conservator. The Supreme Court responded by producing a recorded video providing instructions on how to file a grievance.

Accessibility of State Bar Complaint Procedure

The most meaningful ADA accommodation for a litigant with mental or developmental disabilities is the appointment of competent counsel who zealously advances the client's wishes and protects their rights. Once counsel is appointed, due process requires counsel to provide effective legal representation.

The Missouri Bar is an arm of the Supreme Court. Rules of Professional Conduct for attorneys are adopted by the Supreme Court. A complaint and discipline system is operated by The Missouri Bar under the supervision of the Supreme Court. This system is available to clients who have grievances against attorneys who allegedly have engaged in unprofessional conduct or violated professional ethics. The system is premised on an assumption that clients with grievances will take the initiative to file a complaint if the attorney has engaged in wrongdoing. That assumption is generally valid. However it does not take into account the predicament of clients who have serious mental or developmental disabilities.

Such clients are not likely to identify willful misconduct or negligence in the delivery of legal services. They are also unlikely to be aware of the complaint process, to understand it, or to file the necessary paperwork to initiate an investigation.

The complaint and discipline system is a service of a public entity. As such, it is governed by Title II of the ADA. The Missouri Bar, and the Supreme Court which oversees it, are responsible to ensure that the complaint and discipline system is accessible to clients with disabilities, including those with mental or developmental disabilities.

These public entities know that thousands of respondents with mental and developmental disabilities are represented by court-appointed attorneys each year in Missouri. It is reasonable to assume that some of them, by omission or otherwise, may engage in conduct that would subject them to discipline if a complaint were filed with The Missouri Bar. The problem is that, due to the nature of their disabilities, this class of clients is unable to file such complaints. To them, the complaint and discipline system is functionally inaccessible on account of their disabilities.

The Supreme Court should direct The Missouri Bar to convene a Workgroup on Complaint System Accessibility to study this problem and make recommendations on how to make the benefits of the system available to clients with mental or developmental disabilities, especially those who are respondents in adult guardianship proceedings. A commentary on this topic can provide practical suggestions to such a workgroup.

Olmstead and the Public Guardian

Public administrators (PAs) throughout the state serve as guardians for 11,000 of the 30,500 adults in Missouri who are living under an order of guardianship. One-third of their caseload consists of adults with intellectual or developmental disabilities. While national professional standards call for a ratio of one guardian per 20 protected adults, public administrators in Missouri, on average, have a ratio of one guardian to 90 adults. (Missouri Public Guardianship Report: 2020)

Public administrators are a function of county governments. As such, they are public entities within the meaning of Title II of the ADA. The services they perform, including guardianship services, are regulated by Title II.

Explaining the decision of the United States Supreme Court in *Olmstead v. L.C.*, the Missouri Department of Mental Health states on its website: "Title II of the ADA requires that any entity administering public funds must ensure services, programs, and activities are provided in the most integrated setting appropriate to the needs of qualified individuals with disabilities. Persons served must be informed that they have the right to receive services in the most integrated setting appropriate to their needs."

In terms of less restrictive alternatives, the Missouri Association of Public Administrators (MAPA) reported: "PAs often do not have the bandwidth for limited guardianship or supported decision-making, even when it is preferable. Guardianship is perceived by some system stakeholders as a loss or reduction of the ward's independence and rights. However, without appropriate resources to spend additional time in decision-making with wards, PAs cannot easily afford partial rights to wards."

This statement raises concerns that public administrators are not able to comply with their ADA Olmstead duties. The Department of Mental Health, in consultation with The Arc of Missouri, Missouri Protection and Advocacy, and other disability rights and disability services organizations should review the adequacy of guardianship services in several counties to determine if a lack of funding or staffing is contributing to Olmstead violations in the delivery of these services. Furthermore, the existing investigation by the Department of Justice should review potential Olmstead violations in guardianship services by public administrators.