



Assistant Attorney General Kristen Clarke
Civil Rights Division
United States Department of Justice

Re: ADA violations by Missouri's guardianship system

Dear Ms. Clarke,

I read with great interest the [press release](#) just issued by the DOJ about an ADA investigation of the manner in which the State of Missouri is treating adults with mental disabilities. The release stated that part of the inquiry is focusing on the state's adult guardianship system.

You were quoted as saying: "The Civil Rights Division will continue to defend the rights of individuals with mental health disabilities to access the community-based services they need and to participate fully in community life." The press release encouraged individuals with relevant information to contact the department. This email is a response to that invitation.

For the past five years, Spectrum Institute has been studying the adult guardianship system in Missouri and how it has been systematically violating the rights of individuals with mental and developmental disabilities. The guardianship system operates primarily under the control of the judicial branch. Our research shows that as a matter of policy and practice the guardianship system routinely violates protections afforded to individuals with disabilities under the Americans with Disabilities Act. These violations have been brought to the attention of the Supreme Court of Missouri but to no avail. ADA-noncompliant policies and practices are adversely affecting the rights of 30,000 adults who live under an ongoing order of guardianship as well as 3,000 adults with mental or developmental disabilities who are targeted by new guardianship petitions annually.

Some of these individuals live in licensed care facilities while most are living under the control of guardians in unsupervised residential settings. The state does not have a meaningful system of oversight to prevent or remedy violations of the rights of these individuals. There is no system in place to ensure that adults living under an order of guardianship have access to the community-based services they need and can participate fully in community life. The moment an order of guardianship is granted, their court-appointed attorneys are relieved as counsel, thus leaving the individuals without any way to have meaningful participation in their guardianship cases – legal proceedings which may remain active for years if not decades. While guardians do file an annual report with the court, it is not served on anyone – not even the respondent. Because no monitoring agency reaches out to these adults to verify their well-being, abuses of rights can continue for years because the court does not receive feedback from anyone but the guardian. This is not the type of

effective communication and meaningful participation required by the ADA.

We have information and documentation to share with the attorneys who are conducting the investigation announced by the press release. This includes a report prepared in connection with a policy conference sponsored by the Arc of Missouri in 2017, an ADA complaint and exhibits filed with the Supreme Court of Missouri in 2017, a response by the court indicating that it took no action on the complaint, and the results of an investigation initiated this year into current ADA violations by the guardianship system in Missouri.

Rebecca Bond and Elizabeth Johnson, attorneys in the Disability Rights Section of the Civil Rights Division, can provide you with information about ongoing communications and meetings of Spectrum Institute with the DOJ regarding violations of the ADA by state guardianship and conservatorship systems. This includes: a complaint for voting rights violations filed in 2014 in response to which the DOJ opened a formal inquiry in California in 2015; a complaint filed in 2015 alleging ADA violations by the court-appointed-attorney program operated by the Los Angeles Superior Court; an in-person meeting with DOJ attorneys in Los Angeles in 2015; an in-person meeting with DOJ attorneys in Washington D.C. in 2016; an informational filing with the DOJ in 2017 regarding the ADA complaint filed with the Missouri Supreme Court that year; and correspondence by mail and email with various attorneys in the DOJ in more recent years – all encouraging the DOJ to provide guidance to state courts on how to implement guardianship proceedings in compliance with the ADA. Congress directed the DOJ to provide such a guidance memo several years ago but to date it has yet to be released.

I call your attention to a new project in Missouri for which I am acting as a consultant. As one of its activities, the Alternatives to Guardianship Project is attempting to encourage state officials to bring the guardianship system into compliance with federal nondiscrimination laws, including the guiding principle of *Olmstead* that less restrictive alternatives be used whenever feasible. <https://alternativestoguardianship.com/whats-new.html> Our new research suggests that the judges and court-appointed attorneys who operate the guardianship system in Missouri are not taking seriously the ADA in general and the *Olmstead* decision in particular. Perhaps the recent announcement of the DOJ's investigation will get their attention.

I look forward to hearing from you and the attorneys who are conducting this investigation. We have much information to share that is relevant to the DOJ's inquiry.

Best regards,

Thomas F. Coleman

Legal Director

Spectrum Institute

(818) 482-4485 / <https://spectruminstitute.org/>