



Mental Health Project Disability and Guardianship Project

1717 E. Vista Chino A7-384 • Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

January 12, 2023

Steven H. Rosenbaum
Chief, Special Litigation Section
Civil Rights Division - U.S. Department of Justice
4 Constitution Square - 150 M. St. NE
Washington, DC 20002

Re: ADA Complaint Against Missouri's Adult Guardianship System

Dear Mr. Rosenbaum:

On November 16, 2022, the Department of Justice (DOJ) opened an investigation to determine whether the State of Missouri is in violation of Title II of the Americans with Disabilities Act by unnecessarily institutionalizing adults with serious mental illnesses. The investigation is investigating whether services to this population could be provided in more integrated settings and whether the use of guardianships are contributing to unnecessary institutionalization.

We are writing to ask the DOJ to either broaden this investigation or to open a new investigation to determine whether adults with mental and developmental disabilities are unnecessarily being placed under an order of guardianship – with a corresponding loss of fundamental rights – in violation of the ADA. An investigation by the DOJ would show that less restrictive alternatives to guardianship are not seriously being explored by judges, court-appointed attorneys, and other official participants in guardianship proceedings. It would also show a pattern and practice of ADA violations that unnecessarily keeps thousands of adults trapped in guardianships for years.

These ADA violations stem from systemic problems with the guardianship system. Judges and appointed attorneys act as though the ADA does not apply to these proceedings. They are not trained on the requirements of the ADA and their duties to ensure that respondents have effective communication and meaningful participation in these proceedings. ADA education of judges and court-appointed attorneys is nonexistent.

The judicial branch misinforms litigants and the public that ADA accommodations are dependent on requests when in fact judges and court-appointed attorneys have a duty to take affirmative steps to ensure that litigants with known mental or developmental disabilities receive accommodations, even without a request, to ensure that they can understand the proceedings, communicate their wishes, and can participate in the proceedings to the best of their ability with the use of appropriate supports and services.

The judges and attorneys who operate the guardianship system do not seem to be aware that the “less restrictive alternative” requirement in the guardianship system is grounded in federal law – the due process clause of the United States Constitution as well as the “most integrated setting” mandate of the Supreme Court’s decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999).

Spectrum Institute filed an ADA complaint with the Supreme Court of Missouri in 2017 alleging that the adult guardianship system was operating in violation of the ADA. The complaint was acknowledged by the court but was soon swept under the judicial rug which left the issues raised in the complaint unresolved. The DOJ received an informational copy of that complaint.

Spectrum Institute recently sent materials to the Supreme Court, State Courts Administrator, and the ADA coordinators of all circuit courts throughout the state. The materials identified specific ADA violations in the adult guardianship system and suggested measures that could be taken to address these violations. An informational copy of these communications was sent to the DOJ.

We are now elevating our communications to the DOJ from the level of information sharing to that of a formal complaint against the State of Missouri. Six years have passed since we filed the ADA complaint with the Supreme Court of Missouri. No steps have been taken by the judicial branch to address these issues.

This complaint is filed on behalf of the 3,000 adults who are targeted by new petitions annually in Missouri and the 30,000 others who are living under an order of guardianship in the state. Due to the nature of their mental and developmental disabilities, they are not able to file individual complaints with the DOJ to address the ADA violations they may have individually experienced. It is therefore necessary for an organization such as ours to file a complaint on behalf of the class of persons adversely affected by these systemic and systematic ADA violations.

We urge the DOJ to open an investigation into these allegations. We would welcome an opportunity to provide additional information or cooperate with such an investigation.

Respectfully submitted:



Thomas F. Coleman

Legal Director

tomcoleman@spectruminstitute.org

cc: Viviana Bonilla-Lopez, Special Litigation Section

References:

<https://alternativestoguardianship.com/ada-invitation-to-learn.pdf>

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

<https://alternativestoguardianship.com/ada-report-email.pdf>

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

<https://alternativestoguardianship.com/doj-letter-missouri.pdf>

<https://alternativestoguardianship.com/doj-missouri-letter.pdf>