

New Research Exposes ADA Violations in Legal Services Program

by Thomas F. Coleman
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Less than two months ago Spectrum Institute filed a class action complaint with the United States Department of Justice against the Los Angeles Superior Court. The disability rights organization alleged that a legal services program operated by the court was not in compliance with Title II of the Americans with Disabilities Act. (“Deja Vu for Disability Rights at Justice Department,” [Los Angeles Daily Journal](#), June 26, 2015)

The complaint was accompanied by nearly 500 pages of exhibits showing exactly how adults with developmental disabilities were receiving deficient legal services in limited conservatorship proceedings. The Los Angeles Superior Court operates a Probate Volunteer Panel (PVP) from which attorneys are appointed to represent clients who have intellectual and developmental disabilities.

The complaint alleged that the court itself is responsible for the deficient performance of these attorneys because the court approves which attorneys get on the list, appoints them to specific cases, reviews and approves their fee claims, and mandates them to attend court-approved training programs. It further alleged that the court has been willfully indifferent to the failure of attorneys to provide effective assistance to these clients and has knowingly allowed deficient training programs to operate for many years.

Although my work product in connection with the complaint and exhibits was reviewed by a

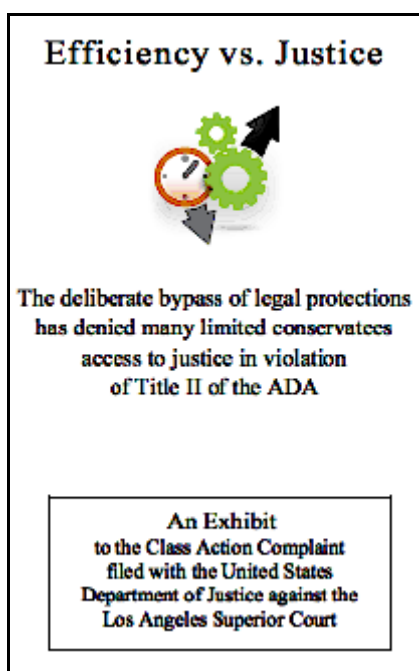
team of project advisors, I took the lead role in conducting the research and analysis of the PVP program, the quality of advocacy of PVP attorneys, and the deficiencies in the training programs the attorneys were required to attend. I wrote the complaint, which was filed after doing some 2,000 hours of research, analysis, and writing over the course of about 18 months. The complaint took into consideration information gathered during interviews, consultations, and conferences.

When I started this inquiry, I had no idea I would discover systemic problems that affect all moving parts of the limited conservatorship system: judges, self help clinics, regional centers, court investigators, conservators, and court-appointed attorneys. I also could not imagine that the level of institutional resistance to reform would be so great.

I thought I was finished with the court-appointed attorney phase of the project when the complaint was filed with the DOJ on June 26. But then, a few weeks later, I got the bright idea to develop one last

exhibit to convince the Department of Justice to open a formal investigation into the PVP program. So I mustered up the energy to make trips to the courthouse to use the court’s computers to look for indisputable facts showing a pattern of ADA violations by probate judges and court-appointed attorneys.

I examined in considerable detail what one PVP attorney did and did not do as he repre-



sented clients with developmental disabilities in 18 cases over the course of several months in fiscal year 2012-2013. I also examined in similar detail how cases were handled in one specific courtroom during the same time frame by six different attorneys who appeared before that judge.

I took note of the services these attorneys performed and those they chose not to perform. I found myself reviewing their PVP reports and their fee claims, much as the judges would be doing prior to granting an order of conservatorship and ordering the county to pay their fees.

At times, the intensity of the research into court documents in dozens of limited conservatorship cases found me both physically exhausted and emotionally charged. Part way through my research, I instinctively knew that the recurring practices I was documenting would be of extreme interest to the Department of Justice.

My preliminary insights were confirmed when I finished tabulating the results of the research. My review of the activities of Attorney X and of the practices in Courtroom X shows a pattern of ongoing violations of Title II of the ADA. Instead of modifying policies and practices to increase access to justice, the exact opposite has occurred.

Mandatory procedures to protect the rights of proposed conservatees were frequently waived. Optional procedures that would increase the likelihood of a just result were not utilized even though they often could have been done without exceeding the court's time guidelines.

As a result, proposed conservatees were not afforded the process they were due. Cases were rushed through the system. Shortcuts were used. Steps were missed. Efficiency, not quality, seemed paramount to the court and the attorneys the court appointed.

The results of this research form the basis of a

90-page report being submitted to the Justice Department today. The data is so irrefutable that I am optimistic this final exhibit will result in DOJ intervention that puts an end to the PVP legal services program as it now exists.

In addition to sending this new exhibit to the DOJ, I am also sharing a recently discovered legal precedent from the Montana Supreme Court. (In re K.G.F., [29 P.3d 485](#) (Mt. 2001)) The performance standards the court imposed on conservatorship attorneys as a matter of due process easily could be used by the DOJ as performance standards required by the ADA.

While the attorneys at the DOJ mull over this new information, my colleagues and I keep pressing for reform on other fronts.

We are awaiting a reply from the County of Los Angeles in reaction to an informal complaint alleging that the county is out of compliance with the ADA for funding such a deficient legal services program. We hope that Supervisor Sheila Kuehl will move the discussions with the county in the right direction, perhaps shifting the operations of the program from the court to another agency or organization. Probate judges should be deciding cases, not telling attorneys how to prepare or argue limited conservatorship cases being litigated.

We are also eager to see how the Judicial Council responds to our proposals for new court rules on qualifications, educational requirements and performance standards for court-appointed attorneys in limited conservatorship cases. We are cautiously optimistic but won't hold our breath as we wait for such long overdue guidance from the administrative arm of the Judicial Branch. ♦♦♦

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