

# ACCOUNTABILITY

The  to Real Guardianship Reform

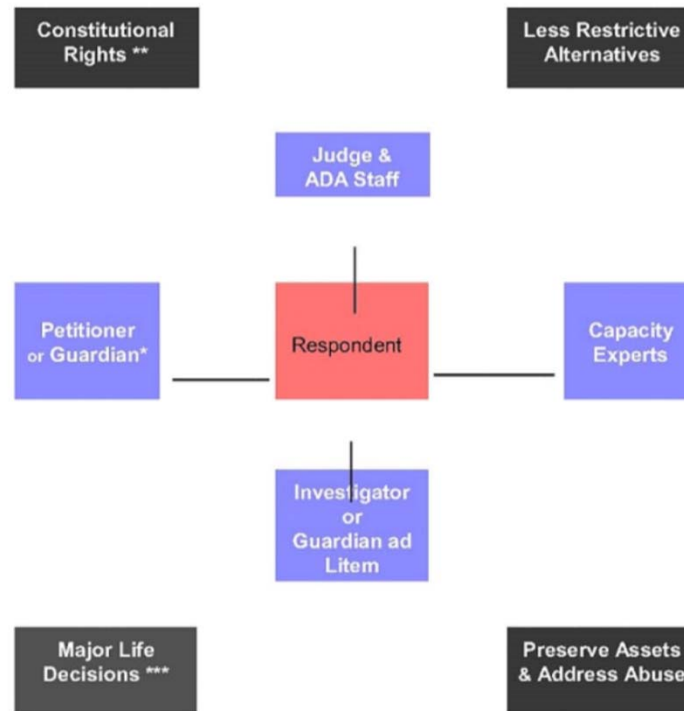
A Presentation to  
Guardianship Reform Advocates

*By Thomas F. Coleman, J.D.*  
Legal Director  
Spectrum Institute

© Spectrum Institute – Tampa – 2019

Respondents Need  
Zealous Attorneys  
To Make the System  
**ACCOUNTABLE**

## Guardianship Matrix Issues and Participants



**Appointing an Attorney for All Respondents is Required by Due Process and the ADA to Ensure that People with Cognitive Disabilities Have Access to Justice**

## Methods to Achieve Accountability Through Effective Legal Advocacy

We Need an Army of Dedicated Attorneys  
Forcing Compliance with the Law  
From Coast to Coast



Spectrum Institute – Tampa -- 2019

# The Challenge



**Transforming Attorneys**

From Law Violators

to

Law Enforcers

## A Multi-Faceted Approach

- ★ Challenge the Failure to Appoint Attorneys
- ★ Eliminate Judicial Control of Legal Services
- ★ Clarify the Role of Attorneys as Zealous Advocates
- ★ Remove the Profit Motive for Attorneys
- ★ Impose Performance Standards on Attorneys
- ★ Develop Mechanisms to Monitor "The System"
- ★ Provide Funding for Federal Oversight
- ★ Look to What Other Nations Are Doing

# A Multi-Faceted Approach

★ Challenge the Failure to Appoint Attorneys



*Courts in 30 States Are Sitting Ducks for ADA Complaints*

Examples:

Sacramento -- Washington -- Federal DOJ

# A Multi-Faceted Approach

- ★ Eliminate Judicial Control of Legal Services

*Clarify the Code of Judicial Ethics:*  
Judges Should Decide Cases, Not Coach Attorneys



Example:  
California Supreme Court

# A Multi-Faceted Approach

- ★ Clarify the Role of Attorneys as Zealous Advocates



Example:

Legislative Proposal  
in California

*Current Law in  
Massachusetts & Maryland*



# A Multi-Faceted Approach

★ Remove the Profit Motive for Attorneys



Reasonable Salaries for Non-Profit Attorneys

Reasonable Salaries for Public Defenders

“Medicare” Type Fees for Private Attorneys

Example:

Legal Aid Center of Southern Nevada

# A Multi-Faceted Approach

★ Impose Performance Standards on Attorneys



Examples:

Self Imposed: Legal Aid Center of Southern Nevada

State Mandated: Massachusetts and Maryland

Legislative Proposal: California

Spectrum Institute – Tampa – 2019

# A Multi-Faceted Approach

- ★ Develop Mechanisms to Monitor “The System”



Example:

Alameda County District Attorney:  
Proposal for Conservatorship Justice Project

# A Multi-Faceted Approach

- ★ Provide Funding for Federal Oversight



**Department  
of Justice**

Create New Positions at DOJ to Investigate and Prosecute  
Violations of the ADA by State Courts and Federal Criminal  
Laws by Participants in State Guardianship Proceedings

# A Multi-Faceted Approach

- ★ Look to What Other Nations Are Doing



Shift Paradigm from Substituted Decision-Making  
To Supported Decision-Making As Required by  
CRPD Treaty Signed by 166 Nations

# ACCOUNTABILITY

The  to Real Guardianship Reform

For more information:

[www.spectruminstitute.org/accountability](http://www.spectruminstitute.org/accountability)

*By Thomas F. Coleman, J.D.*  
Legal Director  
Spectrum Institute

© Spectrum Institute – Tampa -- 2019