



June 16, 2021

Presiding Judge  
Superior Court  
c/o ADA Coordinator

Re: Superior Court Compliance with State and Federal Disability Nondiscrimination Laws

Dear Presiding Judge:

Spectrum Institute recently initiated an ADA Judicial Compliance Project. The purpose of the project is to provide educational materials to bench officers and judicial staff to assist them in fulfilling the obligations that public entities have under federal laws (ADA Title II and Section 504 of Rehabilitation Act) and state laws (Government Code Section 11135 and Welfare and Institutions Code Section 4502.) <https://spectruminstitute.org/ada-judicial-compliance-project/>

In phase one of the project, we contacted the ADA coordinators in all 58 superior courts about a webinar on this topic for judges and court staff. <https://spectruminstitute.org/2021/06/webinar-for-california-judiciary/>

In phase two, we reconnected with these coordinators to determine whether their courts had adopted an ADA grievance procedure and to direct them to a model procedure in case their court did not have one.

Now, in phase three, we are writing to presiding judges, such as you, to alert you to what we call *sua sponte* ADA obligations of courts. There may be a misconception that ADA obligations only arise upon request. That is not so. They arise when a judicial officer or court staff gain knowledge that a court user, such as a litigant, has significant disabilities that may impair communications or meaningful participation in the judicial process. <https://disabilityandguardianship.org/cal-vs-feds.pdf>

More information about these *sua sponte* duties, and the prospect of their violation being structural error that may require an automatic reversal on appeal, is found in a report we submitted to the Judicial Council. <https://disabilityandguardianship.org/2019-ada-compliance.pdf>

Each superior court is an independent public entity. Each has its own obligations under the ADA and state nondiscrimination laws. We encourage you to direct the attention of the court's ADA coordinator to state nondiscrimination laws that may have been overlooked but which apply to the operations of the superior courts. Government Code Section 11135, which is enforced by the Department of Fair Employment and Housing, prohibits disability discrimination (and requires reasonable accommodations) by state entities. Superior Courts are state entities. Welfare and Institutions Code Section 4502 prohibits discrimination against people with developmental disabilities by entities receiving public funds. Superior Courts receive public funds. These state laws are similar to, but separate and distinct from, the federal ADA. Since both state and federal laws are involved, we sometimes refer to this as ADA+.

We encourage you to share this information with the judges and court staff who are involved in probate conservatorship proceedings. The moment that a petition is filed seeking an order of conservatorship, the court is made aware that a proposed conservatee who is targeted by the petition, has significant cognitive disabilities that likely will impair communications and meaningful participation in the proceeding. Such knowledge triggers the court's *sua sponte* ADA+ duties. The failure of such litigants to request accommodations -- something most of them cannot do because of the nature of their disabilities -- does not absolve the court of its independent duty to conduct a needs assessment and to provide reasonable supports and services to maximize the potential for effective communication and meaningful participation in the proceeding.

Appointing an attorney is one form of accommodation that would help achieve these necessary objectives. But an entity with an ADA obligation cannot relieve itself of such merely by delegating the responsibility to another person or entity. The delegating authority -- in this case, the court -- must take reasonable steps to ensure that the appointee conducts the needs assessment and secures the supports and services necessary for effective communication and meaningful participation.

We realize that fulfilling these responsibilities may not be an easy task when it comes to protecting the ADA+ rights of litigants with cognitive disabilities. It may be harder than dealing with wheelchair access, handicap parking, or sign language interpreters. But the function of courts, as a matter of due process, is to ensure that all litigants have access to justice.

We have seen varying degrees of compliance with the ADA+ mandates by courts, with some courts even taking affirmative steps to comply with procedures the law doesn't impose in order to increase equal access for persons with a wide range of disabilities. However, we have also become aware of many areas where the courts are falling short of their mandated responsibilities. We are willing to assist courts in remedying these shortcomings through procedures and processes aimed at ensuring these most vulnerable members of our society are treated with the dignity, and provided the equal protection and access, that they deserve.

We encourage the judicial officers and staff in your court to watch the webinar and to review the associated materials. We also invite you to reach out to us for more information or a consultation if you feel that would be helpful.

Respectfully,



Thomas F. Coleman

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