



Disability and Guardianship Project

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(818) 230-5156 • www.spectruminstitute.org

September 30, 2019

Ms. Deborah Lee
ADA Coordinator
Second District Court of Appeal
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

Re: *Conservatorship of A.E.* (Court of Appeal Case No. B297092)
Notice of the need for an ADA accommodation for A.E.

Dear Ms. Lee:

I am writing to you in your capacity as an ADA coordinator for the Second District Court of Appeal. I saw your name on a booklet listing the ADA coordinators for the various Courts of Appeal.

The above-entitled appeal came to my attention on September 24 – the day I was making a presentation at the meeting of the Judicial Council in Sacramento. The focus of my verbal remarks was the duty of California courts to provide ADA accommodations, *sua sponte*, to a litigant with known disabilities that interfere with effective communication or meaningful participation in a proceeding. I also submitted a written report to the Judicial Council on that subject. It can be found online at: <http://spectruminstitute.org/ada-compliance.pdf>

Little did I know that within minutes after I completed my verbal remarks, I would find out about this appeal. As I read the opening brief, it became clear that A.E., a 27-year-old autistic woman with intellectual disabilities, would not be able to represent herself in this appeal – a proceeding that centers on her and that affects all aspects of her life. I went to the Court of Appeal website and reviewed the page titled “Parties and Attorneys.” I saw that A.E. was listed as a party and that her attorney was listed as the Ventura County Public Defender. I contacted the public defender’s office by phone and by email. I determined that in fact A.E. does not have an attorney on appeal. The public defender is not representing her in this appellate proceeding.

I spoke with the attorney for appellant (the mother of A.E.) and then spoke with the mother. I confirmed that A.E. is not represented by counsel, that her disabilities preclude her from representing herself, and that the nature and extent of her disabilities prevent her from requesting the appointment of counsel. As a result, in its current procedural posture this case will proceed without the legal rights and interests of A.E. being represented. Appellant has her own personal interests which are being advanced by her chosen attorney. Respondent Public Guardian’s institutional interests as appointed conservator are being represented by County Counsel. A.E., in contrast, is being left out of the appellate process.

The Second District Court of Appeal has already set a precedent of appointing appellate counsel for a litigant with autism in an appeal from an order of conservatorship. In that case, the litigant was an appellant. (B290805) That case, *Conservatorship of O.B.*, is currently pending in the California Supreme Court. As an advocacy organization promoting disability rights, Spectrum Institute was given permission by the Supreme Court to file an *amicus curiae* brief in that case.

Whether a disabled litigant in a conservatorship appeal is designated as appellant, respondent, or overview party should not matter. When the Court knows that a party has a disability that precludes self-representation, it has a duty to provide an accommodation in the form of appointed counsel. This duty is not dependent on a request for an accommodation being made by the disabled litigant. Requiring a request from those who cannot do so would preclude an entire class of disabled litigants from the protections of the ADA. Federal law requires a court to provide an appropriate accommodation on its own motion under circumstances such as those in this case.

I am not making an explicit request under Rule 1.100 of the California Rules of Court. Rather, this is a notice to you, as ADA coordinator for the Second District, that a litigant in this appeal needs an accommodation in the form of appointed counsel in order to have effective communication and meaningful participation in this proceeding. In bringing this to your attention, I am merely amplifying materials that are readily available in the record on appeal and information in the opening brief – both sources of which give the Court knowledge of the nature and severity of A.E.'s disabilities. (If the Court were to construe this letter as a request under Rule 1.100 and then grant the request by appointing counsel for A.E., that would be an alternative approach to doing so on its own motion in response to the knowledge it has acquired through this notice.)

While our organization is not representing A.E. on appeal, we would appreciate the courtesy of learning whether the Court of Appeal decides to appoint an attorney as an ADA accommodation in order to ensure that she has meaningful participation in the appellate proceedings or whether the appeal will be processed and decided without A.E. having the benefit of counsel.

In addition to the website link to the Judicial Council report mentioned above, I am providing other documents with this notice. Enclosed you will find an email from public defender's office and a summary of federal regulations and judicial precedents on the *sua sponte* duties of public entities, including courts, to provide ADA accommodations even without request.

I look forward to learning what actions have been taken by the Court of Appeal to fulfill its duties under Title II of the Americans with Disabilities Act, under Section 504 of the Rehabilitation Act of 1973, and under Section 11135 of the California Government Code (which incorporates Title II into California law).

Respectfully,



Thomas F. Coleman

Legal Director

Direct phone: (818) 482-4485

tomcoleman@spectruminstitute.org

cc: Raylene Lopez, Roswald Morales

Any program or activity that is funded by the state shall meet the protections and prohibitions of Title II of the ADA and federal rules and regulations implementing the ADA. (Cal. Gvt. Code Sec. 11135)

A public entity must offer accommodations for *known* physical or mental limitations. (Title II Technical Assistance Manual of DOJ)

Even without a request, an entity has an obligation to provide an accommodation when it knows or reasonably should know that a person has a disability and needs a modification. (DOJ Guidance Memo to Criminal Justice Agencies, January 2017)

Some people with disabilities are not able to make an ADA accommodation request. A public entity's duty to look into and provide accommodations may be triggered when the need for accommodation is obvious. (*Updike v. Multnomah County* (9th Cir 2017) 930 F.3d 939)

It is the knowledge of a disability and the need for accommodation that gives rise to a legal duty, not a request. (*Pierce v. District of Columbia* (D.D.C. 2015) 128 F.Supp.3d 250)

A request for accommodation is not necessary if a public entity has knowledge that a person has a disability that may require an accommodation in order to participate fully in the services. Sometimes the disability and need are obvious. (*Robertson v. Las Animas* (10th Cir. 2007) 500 F.3d 1185)

The failure to expressly request an accommodation is not fatal to an ADA claim where an entity otherwise had knowledge of an individual's disability and needs but took no action. (*A.G. v. Paradise Valley* (9th Cir. 2016) 815 F.3d 1195)

The import of the ADA is that a covered entity should provide an accommodation for *known* disabilities. A request is one way, but not the only way, an entity gains such knowledge. To require a request from those who are unable to make a request would eliminate an entire class of disabled persons from the protection of the ADA. (*Brady v. Walmart* (2nd Cir. 2008) 531 F.3d 127)

“If no request for an accommodation is made, the court need not provide one.”

– *Judicial Council*
2017 Brochure *



* Rule 1.100 and all Judicial Council educational materials are erroneously premised on the need for a request.

Spectrum Institute -- Disability and Guardianship Project

From: Quest, William [mailto:William.Quest@ventura.org]

Sent: Friday, September 27, 2019 10:40 AM

To: Spectrum Institute -- Disability and Guardianship Project <tomcoleman@spectruminstitute.org>

Subject: RE: follow up to our phone conversation

Tom,

I can confirm that the public defender's office is not representing A.E. on appeal.

Best,

William Quest

From: Spectrum Institute -- Disability and Guardianship Project <tomcoleman@spectruminstitute.org>

Sent: Friday, September 27, 2019 5:40 AM

To: Quest, William <William.Quest@ventura.org>

Subject: follow up to our phone conversation

William Quest

Appellate Section

Public Defender's Office

County of Ventura

Re: Conservatorship of A.E. (Superior Court No. 56-2018-00518054-PR-CP-OXN)

Mr. Quest,

I am writing as a follow up to our phone conversation the other day about the appeal in the Conservatorship of A.E.

A.E. was represented in the superior court by the Office of the Public Defender. Based on my conversation with you, it is my understanding that your office is not representing her in the appellate process and that it will not be filing a brief on her behalf in the Court of Appeal.

My organization advocates for the rights of people with developmental disabilities. We plan to ask the Court of Appeal to appoint an attorney on appeal to represent Ashley and her interests in that proceeding. As part of the request, I will be representing to the Court that A.E. is currently not represented by counsel on appeal.

I would appreciate a quick reply to this email to confirm that your office is not representing her on appeal and that it will not be filing an appellate brief. Your reply will be helpful to us in securing an appointed attorney for her on appeal.

Thank you for your cooperation.

Tom Coleman

Spectrum Institute

(818) 482-4485



Appellate Courts Case Information

CALIFORNIA COURTS
THE JUDICIAL BRANCH OF CALIFORNIA

2nd Appellate District

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Court data last updated: 09/27/2019 04:32 AM

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[Parties and Attorneys](#)

[Trial Court](#)

Parties and Attorneys

Conservatorship of A.E.
Division 6

Case Number [B297092](#)

Party	Attorney
Kristine D. Admire : Petitioner and Appellant 1706 Sinaloa Road # 210 Simi Valley, CA 93065	Lisa M. MacCarley Attorney at Law 700 No. Brand Blvd. Suite 240 Glendale, CA 91203-3271
Office of the Public Guardian, Ventura County : Respondent	Office of the County Counsel 800 S. Victoria Ave. Administration Building Ventura, CA 93009 Leroy Smith Ventura County Counsels Office 800 South Victoria Avenue Ventura, CA 93009
A. E. : Overview party	Office of the County Public Defender Office of the Public Defender 800 S. Victoria Ave., 2nd Floor Ventura, CA 93009 Contact Name: Appellate Department

[Click here](#) to request automatic e-mail notifications about this case.

Spectrum Institute -- Disability and Guardianship Project

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ADA COORDINATORS

CALIFORNIA SUPREME COURT

COURTS OF APPEAL

SUPERIOR COURTS

The information in this list is subject to change. Please contact Linda McCulloh regarding updates at linda.mcculloh@jud.ca.gov
415-865-7746

Rev. 5-20-2019