



Disability and Guardianship Project

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October 29, 2019

Ms. Beth Robbins
Assistant Clerk / Executive Officer
ADA Coordinator
Court of Appeal – First Appellate District
350 McAllister Street
San Francisco, CA 94102

Re: Dubro et al. v. Dubro et al., Court of Appeal No. A157185
Notice of the need for an ADA accommodation for Katherine Dubro

Dear Ms. Robbins:

I am writing to you in your role as an ADA coordinator for the First District Court of Appeal.

The above-entitled case came to my attention on October 26 when a colleague sent me a copy of Appellant's Opening Brief. This colleague knew that Spectrum Institute advocates for the right to counsel for conservatees and propose conservatees in proceedings that affect their lives. This appeal is such a proceeding.

The real party in interest in this appeal is Katherine M. Dubro, an elderly woman who has been placed into a conservatorship of her person and her estate. This appeal involves the payment of fees from Ms. Dubro's estate.

After reading the opening brief and conferring with counsel for appellant, I have learned that Ms. Dubro was not represented by an attorney during the proceedings prior to the entry of the order of conservatorship. Similarly, she was not represented by counsel in the post-judgment proceedings involving a dispute over the payment of fees from her estate. Despite knowing that her dementia prevented Ms. Dubro from representing herself, the trial court failed to appoint counsel to protect her legal rights and financial interests throughout the entirety of the proceedings below.

Some of Ms. Dubro's children have filed the current appeal. Appellant's opening brief argues that the order below should be reversed because of the failure of the court to appoint counsel to represent Ms. Dubro during the fee dispute. Although appellants are trying to protect the rights of their mother, they may be precluded from doing so because, at this juncture, Ms. Dubro is not represented by appellate counsel. As a result, the violation of Ms. Dubro's right to counsel in the trial court cannot be raised directly on her behalf through her own appellate counsel. This court, therefore, might not reach the merits of the appeal due to a lack of standing by appellants to argue vicariously for their mother. (Conservatorship of Gregory D. (2013) 214 Cal.App.4th 62.)

Even though Ms. Dubro is the real party in interest, and it is her estate at risk in this appeal, the Court of Appeal does not list her as a party to the case. It is as though she is invisible to the court.

California courts have a duty to provide ADA accommodations, *sua sponte*, to a litigant with known disabilities when those disabilities may interfere with effective communication or meaningful participation in a legal proceeding. A written report on this subject was recently submitted to the Judicial Council. It can be found online at: <http://spectruminstitute.org/ada-compliance.pdf> (Editorial comment: this document is at: <https://disabilityandguardianship.org/spectrum/ada-compliance.pdf>)

The Second District Court of Appeal has appointed counsel to represent probate conservatees in appellate proceedings, regardless of whether they have been designated as appellants, respondents, or overview parties. That court recognizes that as the person who is most central to a conservatorship proceeding, a conservatee needs counsel in order to ensure that his or her views or legal interests are adequately protected in appellate proceedings arising out of a conservatorship.

In *Conservatorship of O.B.* (No. B290805), counsel was appointed for a conservatee who was an appellant. In *Conservatorship of A.E.* (B297092), counsel was appointed for a conservatee who was first designated as an overview party and then renamed as a respondent. Appointment in the latter case was done after Spectrum Institute wrote to the ADA coordinator for the Second District Court of Appeal calling to the court's attention its duties under Title II of the ADA and Government Code Section 11135 which incorporates the mandates of the ADA into state law. (See attached letter).

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 Americans with Disabilities Act. Federal law requires a court to provide an appropriate accommodation on its own motion under circumstances such as these.

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 First 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 Ms. Dubro's disabilities.

Please bring this notice to the attention of the administrative presiding justice. If the director of the First District Appellate Project is consulted on this, he may wish to speak with Mr. Jay Kohorn of the California Appellate Project. Mr. Kohorn is familiar with the two appeals cited above since that project assigned counsel in those appeals with express direction from the Court of Appeal.

Respectfully,



Thomas F. Coleman

Legal Director

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