

## **Spectrum Institute -- Disability and Guardianship Project**

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January 4, 2020

Chaya Mandelbum  
Chairperson  
Fair Employment and Housing Council

Re: Gvt. Cod Sec. 11135 and the ADA as applied to conservatorship proceedings

Dear Chaya,

During the FEHC meeting on October 23, 2019 you asked me for information on what ADA duties the probate courts have in conservatorship proceedings. This email and the two attachments are being sent to you in response to that question. I hope to send you additional information in the coming weeks.

The U.S. DOJ has issued guidance memos about the duties of courts, attorneys, and ancillary personnel in child welfare proceedings and in the criminal justice system. I have written commentaries on how those memos are instructive as adapted to conservatorship proceedings (called guardianship in most states). They are attached.

<http://disabilityandabuse.org/doj-hhs-ada-guidance-to-courts.pdf>

<http://disabilityandabuse.org/doj-guidance-and-maryland.pdf>

This should give you a general idea of what judges, lawyers, investigators, and others should be doing, to comply with the ADA in and out of the courtroom in connection with conservatorship proceedings in California. Unfortunately, these participants are not aware of their duties under the ADA and so virtually nothing is being done to comply with the ADA in conservatorship cases. This is a systemic problem which results in a pattern and practice of ADA violations by omission.

The FEHC and DFEH each have a role to play to ensure that Government Code Section 11135 is obeyed by judges, attorneys, investigators, and others who work for the state or who are paid with state funds. So far, both agencies have not taken any actions to address this area of the law in connection with conservatorship proceedings, even though virtually every adult targeted by and forced to participate in these proceedings has serious disabilities that require accommodations in order to ensure effective communication and meaningful participation in their cases.

I look forward to working with FEHC to take appropriate action to fill the regulatory void on this matter and with DFEH to find ways for the department staff to be pro-active to investigate and remedy violations (since the victims of ADA violations cannot file complaints themselves).

Thanks for showing an interest in this overlooked area of the law.

Tom Coleman  
Spectrum Institute

cc: Kevin Kish, Director, DFEH

p.s. Please share this with the other members of the Council.