Mental Health Project
Disability and Guardianship Project

1717 E. Vista Chino A7-384 • Palm Springs, CA 92262
(818) 230-5156 • www.spectruminstitute.org

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Chairperson Tani Cantile-Sakauye
California Judicial Council
455 Golden Gate Avenue
San Francisco, CA 94102-3688

Re: Request to Amend Court Rules and Judicial Standards

Dear Chief Justice:

We request that the Judicial Council amend the California Rules of Court and the Standards of Judicial Administration to clarify the duties of judges to take affirmative steps to ensure that litigants with known disabilities that may interfere with access to justice receive accommodations or modifications to ensure meaningful participation and effective communications in judicial proceedings.

Rule 1.100 is helpful but not sufficient. The duties of a judge under that rule are only triggered when a litigant makes a request for accommodations. Litigants with significant cognitive or communication disabilities who do not have an attorney cannot invoke the protections of that rule. Federal law requires accommodations or modifications, sua sponte, when a judge knows or has reason to believe that a litigant has disabilities that may interfere with participation in a judicial proceeding but, due to the nature or severity of the disability, the litigant is practically unable to request an accommodation. The current Rules of Court are silent on this issue and therefore provide no guidance to trial or appellate courts when such a situation arises.

The Standards of Judicial Administration contain general principles that are helpful but are not specific enough to provide proper guidance. For example, Standard 10.17(b)(1)(C) states: "All who appear before the court are given the opportunity to participate effectively without undue hardship or inconvenience." This standard is violated when the court has before it an adult with significant mental or developmental disabilities who is the target of a petition for probate conservatorship and who does not have a retained or appointed attorney. When a judge allows the case to proceed without appointing counsel for such an individual, the court is placing an undue hardship on the individual which prevents access to justice in the proceeding.

Standard 10.20(a)(1) is also violated when a judge knows that a litigant without an attorney has significant mental or developmental disabilities and the judge fails to provide that litigant with an attorney to advocate for and defend his or her rights. The standard states: "Ensure

that courtroom proceedings are conducted in a manner that is fair and impartial to all of the participants."

A recent survey of superior courts asked whether they had policies regarding providing accommodations to litigants with known or obvious disabilities even without a request – especially where the nature of the disability precludes a litigant from making such a request. Many courts responded. The answer was uniformly "no" – they do not have such a policy.

It seemed clear that someone had given advice to these independent judicial entities – perhaps someone at the Judicial Council – because nearly all of them responded with the same sentence: "In offering accommodations to court users under the Americans with Disabilities Act, the court follows the requirements of California Rules of Court, rule 1.100." That rule requires a court user to request an accommodation. It does not pertain to or require action by a court when no request is made.

Each superior court is a separate constitutionally created entity within the judicial branch. Each has its own obligations under Title II of the ADA. Any yet, these entities rely entirely on Rule1.100 to fulfill their ADA obligations even though the rule has no bearing on sua sponte ADA obligations when a litigant is unable to make a request.

We have written to the Judicial Council in the past about this problem, asking that it use its authority to provide guidance to judges about their affirmative obligations to litigants with mental or developmental disabilities that prevent them from making a request. We also made a presentation on this matter to the Council in person at one of its meetings. We have never received a response, nor are we aware of any action taken by the Council to rectify this ongoing problem – one that adversely affects a significant number of litigants, especially those who are ensnared in probate conservatorship proceedings.

We are raising this issue again because the problem surfaced in a new report we have just released. "Public Funding of Legal Services in Conservatorship Proceedings" focuses on the disparate policies and practices among the 58 counties and local superior courts regarding indigent legal defense services for conservatees and probate conservatees. The report contains information that underscores the problem that for many such litigants the superior court fails to appoint them an attorney, thereby requiring them to represent themselves – a task that they obviously cannot do because of the nature and severity of their disability.

A "whistle blower" report from the Alta California Regional Center called our attention to this problem several years ago. We previously shared that letter with the Judicial Council, but to no avail. A complaint was filed with the Sacramento County Superior Court alleging that its failure to appoint counsel for a significant number of proposed conservatees – some seniors and others adults with developmental disabilities – violated Title II of the ADA. That too was brought to the attention of the Judicial Council, again without any action to remedy this problem.

We submitted to the Judicial Council a document divided in two sections. On the left is the

pronouncement by the Council that if no request is made that no accommodation will be provided. On the right are statutory and regulatory provisions, as well as federal judicial precedents, making it crystal clear that requests for disability accommodations are not required when the disability is known or obvious to the public entity, especially when the nature of the disability precludes a request. It appears that these precedents have had no impact on the Judicial Council since no action has been taken to modify the Rules of Court or the Standards of Judicial Administration to address this matter.

One action that could be taken, as a start, would be to amend Rule 1.100 to add a provision stating that this rule is not intended to relieve courts of their obligations, sua sponte, to provide accommodations or make modifications to judicial policies and procedures when a litigant has an obvious or known disability that may interfere with meaningful participation or effective communication in a judicial proceeding. A second provision could also be added, similar to one in Washington State, advising courts that appointment of an attorney may be necessary as a disability accommodation to ensure litigants with cognitive disabilities have access to justice in judicial proceedings. (Washington State Court Rules - GR 33)

We are asking the Judicial Council, again, to take action to provide guidance to trial courts regarding their obligations to provide disability accommodations, even without request, to litigants with known or obvious disabilities – such as litigants in probate conservatorship proceedings – and that one necessary accommodation may be the appointment of counsel.

Respectfully submitted:

Thomas F. Coleman
Legal Director

References:

https://spectruminstitute.org/ada-compliance.pdf

https://disabilityandguardianship.org/teach-thyself.pdf

https://disabilityandguardianship.org/01-complaint-dd.pdf

https://disabilityandguardianship.org/cal-vs-feds.pdf

https://disabilityandguardianship.org/alta-letter.pdf

https://disabilityandguardianship.org/sacramento-essay.pdf