

NO. 995371

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DOROTHY HELM O'DELL,

Petitioner,

v.

KRISTYAN CALHOUN,

Respondent.

ON DISCRETIONARY REVIEW FROM
THE COURT OF APPEALS, DIVISION III

Court of Appeals No. 36820-3-III

(Consolidated with No. 36826-2-III)

Yakima County Superior Court No. 18-4-00054-4

**MOTION OF SPECTRUM INSTITUTE AND
MENTAL HEALTH ADVOCACY SERVICES
TO FILE MEMORANDUM OF *AMICI CURIAE***

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1. Identity of Moving Parties.

Amici curiae Spectrum Institute and Mental Health Advocacy Services ask for the relief sought in paragraph 2.

2. Statement of Relief Sought.

Pursuant to RAP 13.4 and RAP 10.6, *amici curiae* ask permission to file a memorandum in support of the petition for review.

3. Identity and interest of *amici curiae*.

Spectrum Institute is a nonprofit organization with tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. Its mission is to protect the rights of people with actual or perceived disabilities, especially when they find themselves involuntarily entangled in guardianship or conservatorship proceedings. The organization accomplishes its mission through research, education, and advocacy. It identifies individual injustices and systemic problems and offers suggestions to elected officials on how to correct these injustices and solve these problems.

Spectrum Institute has a history of engagement with officials in Washington State to promote justice and equal rights for seniors experiencing cognitive challenges, adults with mental illnesses, and adults with intellectual and developmental disabilities who become involved in guardianship proceedings.¹ (See endnote 1.)

Spectrum Institute is interested in the instant case because it offers this Court an opportunity to correct a manifest violation of the constitutional rights of a specific individual, while at the same time setting in place procedural due process safeguards and substantive “good faith” standards that will provide greater and much needed protection for alleged incapacitated persons who find themselves entangled in guardianship proceedings, perhaps through the overreach of a professional fiduciary, in the future.

Mental Health Advocacy Services (MHAS) was founded in 1977 as a joint project of the Los Angeles County Bar Association and the Beverly Hills Bar Association. MHAS protects and advances the legal rights of low-income adults and children with mental health disabilities and empowers them to assert those rights in order to

maximize their autonomy, achieve equity, and secure the resources they need to thrive. Through its staff's deep-seated knowledge and experience across a broad range of mental health legal issues, MHAS has secured a unique position and ability not only to serve these clients but also to be a highly sought after technical assistance provider; MHAS annually trains hundreds of attorneys, mental health professionals, consumer and family member groups, and other advocates in mental health law and rights.

4. Facts Relevant to this Motion.

This case has great significance for the classes of people for which *amici curie* advocate. Adults who are vulnerable to predatory behavior due to age or disability or mental illness need greater protection – not only in defending themselves in the context of a guardianship proceeding but also in seeking redress through an independent civil action against an alleged predator.

Instead of providing petitioner Dorothy Helm O'Dell with accommodations for her perceived disability – accommodations that would have assisted her in achieving access to justice – the trial court

did just the opposite by blocking her every attempt to prove that predatory and unethical practices had occurred and to seek relief from such practices. The Court of Appeals improperly minimized the outrageously unethical and illegal actions of the person who filed the petition for guardianship – who happened to also be a licensed professional fiduciary – by labeling these actions as “missteps.” The Court of Appeals also improperly ignored the violations of procedural due process which were committed against Ms. O’Dell by the trial court. Granting review and addressing these injustices, and then adopting procedural requirements and substantive “good faith” standards will help level the playing field for future litigants so they will have a fair chance to fight back when they believe they have been victimized by predatory behavior and unethical practices.

5. Grounds for Relief and Argument

Counsel for *amici curiae* have reviewed the factual and legal assertions in the petition for review as well as the opinion of the Court of Appeals and the petition for rehearing. They are therefore familiar with the procedural and evidentiary facts of this case. Counsel have

been studying guardianship practice in Washington State for many years and therefore are also aware of how large classes of vulnerable adults are affected by the guardianship system.

Attorney Cheryl Mitchell is very familiar with guardianship practice and elder law. She has published many legal practice books on these topics. She is co-author of *Elder Law and Health Law* which has a section on guardianships. She is co-author of a recent article in the *WSBA Bar News*, the legal publication of the State Bar Association, about the new guardianship law that will become effective on January 1, 2022. Further, her practical experience as a guardian, a guardian ad litem, an attorney for the AIP, and as an attorney for guardians that has provided her with the diversity of experience rather than simply a technical review and analysis of the law. As with many aspects of the law, the actual practice is much different from the theory.

Attorney Thomas F. Coleman has published many legal commentaries on these topics and has written many policy reports.

<https://spectruminstitute.org/publications/> One of those publications, *The Justice Gap*, was filed with this Court.

By granting this motion and filing the memorandum of *amici curiae* in support of the petition for review, this Court will have the benefit of the perspective of advocates for these classes of people in addition to the perspective of an individual litigant as to why review should be granted.

Petitioner's interest is primarily in receiving justice for herself while *amici curiae* will argue that the grant of review will benefit a large class of vulnerable adults in Washington. Petitioner's view is case specific. The viewpoint of *amici curiae* is focused on an entire class of potential future victims of guardianship abuse, bad faith, and unjustified fee claims.

The petition for review is heavy on the law and lighter on the facts. As a result, the factual basis for the injustice to Ms. Helm does not jump out at the reader of the petition. This is one of those rare cases where a full understanding of the facts is almost more important than the legal issues presented for review. If the Court grants this motion and files the memorandum of *amici curiae*, it will have an easy-to-read summary of the facts as well as details of such facts cited to the

record. Reading the summary and the details will make it very clear exactly what Ms. Calhoun, the trial court, and the appellate court did to Ms. Helm. The facts themselves, even to a lay person, demonstrate that serious constitutional violations occurred to Ms. Helm – events which can be prevented or minimized if this Court grants review and clarifies that future guardianship respondents must be afforded a meaningful opportunity for discovery and an evidentiary hearing to elicit evidence of a lack of good faith and to challenge fees connected with such actions.

As a result, it would be appropriate for the Court to grant this motion and to allow the memorandum to be filed.

Dated: April 5, 2021

Respectfully submitted:



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Attorney for *Amici Curiae*



Thomas F. Coleman
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Endnote

1. Tina Baldwin, chairperson of the board of trustees of Spectrum Institute, was appointed to the WINGS project by the Administrative Office of the Court in 2015. (April 30, 2015 – appointment letter: <https://disabilityandguardianship.org/spectrum/wings-appointment-letter.pdf>) Spectrum Institute filed a letter with the Supreme Court requesting modifications to policies and procedures to bring the guardianship system into compliance with the ADA. (January 15, 2016 / Request for ADA Modifications: <https://disabilityandguardianship.org/disabilityandabuse/washington-letter.pdf>). Tina Baldwin served as a member of WINGS for three years, submitting proposals for improving the system. (Feb 5, 2016 – Tina proposal to WINGS subcommittee: <https://disabilityandguardianship.org/spectrum/wings-subcommittee-proposals.pdf>) Thomas F. Coleman, legal director of Spectrum Institute, attended a WINGS conference and attended a workshop on guardianship monitoring. (Feb 15, 2016 – Tom attends conference: <https://disabilityandguardianship.org/spectrum/registration-wings.pdf>) Spectrum Institute submitted a report to the Supreme Court titled The Justice Gap. (March 16, 2016 – Brochure for WINGS – letter to supreme court – letter to legislature: <https://disabilityandguardianship.org/spectrum/brochure-for-WINGS.pdf>;

<https://disabilityandguardianship.org/spectrum/gap/transmittal-letter.pdf>;

<https://disabilityandguardianship.org/spectrum/gap/exhibits/exhibit-20.pdf>) Spectrum Institute published a commentary on the duty of the Supreme Court to bring the guardianship system into compliance with the ADA. (October 17, 2017 – Essay on duty of supreme court re ADA compliance:

<https://disabilityandguardianship.org/spectrum/Washington/washington-essay.pdf>) Spectrum Institute filed a formal ADA complaint with the Supreme Court. (November 8, 2017 – ADA complaint to supreme court:

<https://disabilityandguardianship.org/spectrum/Washington/washington-complaint.pdf>) Letters were sent to the United States Department of Justice regarding ADA violations. (November 8, 2017 – DOJ letters re Washington noncompliance with ADA:

<https://disabilityandguardianship.org/spectrum/Washington/doj-letters.pdf>) The Chief Justice of the Supreme Court wrote to Spectrum Institute acknowledging receipt of the ADA complaint and promising to get back in touch. (Dec 22, 2017 – letter from chief justice re ADA complaint:

<https://disabilityandguardianship.org/washington-chief-justice.pdf>) Spectrum Institute published commentary on the relevance of a DOJ guidance memo to the guardianship system in Washington. (Jan 19, 2018 – essay on relevance of DOJ guidance to Washington State:

<https://disabilityandguardianship.org/doj-guidance-and-washington-state.pdf>) Spectrum Institute did a follow-up letter to the Chief Justice but did not receive any response. (April 18, 2019 – letter inquiring on status of ADA complaint filed in Nov 2017:

<https://disabilityandguardianship.org/washington-chief-justice-letter-status.pdf>) Spectrum Institute wrote to the governor with concern about guardianship legislation. (April 19, 2019 – letter to Governor re retrograde guardianship legislation:

<https://disabilityandguardianship.org/retrograde-washington-legislation.pdf>) Spectrum Institute published a commentary on the application of the ADA to Washington’s guardianship system. (Nov 30, 2019 – Essay on ADA application to guardianship proceedings:

<https://disabilityandguardianship.org/spectrum/washington-ada-rule.pdf>) There is a significant amount of footage about Washington’s guardianship system, including film showing a report being delivered to the Clerk of the Supreme Court at the counter of the court’s offices in Olympia. (Documentary film includes footage on problems with guardianship system in Washington: <http://pursuitofjusticefilm.com/>)

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this day I have served a true and correct copy of the foregoing Motion to File Memorandum of *Amici Curiae* on the following counsel representing the parties in this matter by mailing a true and correct copy via U.S. Mail with first class postage affixed to the following addresses:

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Dated this 5th day of April, 2021, at Palm Springs, CA 92262.


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