



Disability and Guardianship Project

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December 7, 2019

Mr. Jorge Navarrete
ADA Coordinator
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: Conservatorship of Todd, Supreme Court #S259229, Court of Appeal #H046137
Ex-parte Notice of the Need for an ADA Accommodation for Victoria Todd

Dear Mr. Navarrete:

I am writing to you in your role as an ADA coordinator for the California Supreme Court. Your name was listed as such in a directory of ADA coordinators published by the Judicial Council.

This case was brought to my attention on December 5, 2019. I learned that Victoria Todd, listed as an “overview party” on the “parties and attorneys” page of the Supreme Court’s website has for years had serious disabilities that may impair her ability to utilize the services of the Supreme Court. Her disabilities have been so significant that for several years she was under a LPS order of conservatorship with the Public Guardian for Santa Cruz County acting as her conservator.

Ms. Todd’s parents have filed a petition for review in this Court, seeking review of the decision of the Court of Appeal for the Sixth Appellate District. A copy of that opinion is attached to this notice. The issue before the Court of Appeal was whether the Santa Cruz County Superior Court erred in denying a petition for probate conservatorship wherein Ms. Todd’s parents sought to be appointed as her conservators instead of the Public Guardian who was appointed to serve as her conservator in a continuing LPS conservatorship.

The superior court proceeding, like the proceeding in the Court of Appeal and the proceeding in this Court all involve the life and well-being of a seriously disabled woman. Despite the fact that these proceedings involve her life and who should have had authority to make decisions on her behalf while she was in need of a conservatorship, Ms. Todd was not represented by counsel in the trial court or in the appellate court. The “parties and attorneys” page on the website of the Court of Appeal (attached) shows that the court did not appoint an attorney to represent her in the appellate proceeding. She did not participate pro per. Likewise, the “case information” pages on the website of the superior court show that she was not represented by counsel during the proceedings in the trial court. The superior court denied the petition without conducting a hearing and therefore the court never directly heard from Ms. Todd since she did not participate in that proceeding pro per.

Throughout the proceedings in the trial and appellate courts, the only attorney to appear was the Santa Cruz County Counsel representing the public guardian. The website page of the County Counsel (attached) makes it clear that the County Counsel represents agencies of county government, not private individuals. The County Counsel did not represent Ms. Todd in the trial court or on appeal. The minute order from the trial court denying the petition without an evidentiary

hearing (attached) shows that Ms. Todd was not personally present for that proceeding nor was she represented by counsel.

The appellate opinion explains on page 2 that the papers filed by the County Counsel in opposition to the petition stated that “respondent had learned from Todd that she did not want to appear at the hearing and that she opposed any parental control over her affairs.” Had that statement come from Mr. Todd’s own attorney, that would be one thing. But she was not present in court nor represented by her own attorney. The opinion of the Court of Appeal does not indicate whether the opposition to the petition was verified. Therefore, the superior court had before it, as did the Court of Appeal, a hearsay statement about Ms Todd’s wishes. The accuracy of that assertion was never tested.

The Supreme Court now has a petition for review before it in a proceeding where the real party in interest, denominated “overview party,” has had serious disabilities for several years that necessitated that her life be taken over in a conservatorship. And yet, despite the seriousness of her mental condition, this disabled party has never been represented by counsel.

Under the Americans with Disabilities Act and Government Code Section 11135, this Court has a duty to provide accommodations to litigants with known disabilities that may interfere with effective communications or meaningful participation in legal proceedings before this Court. The Court has a duty, *sua sponte*, to take appropriate steps to ensure that litigants with serious disabilities are able to receive the benefits of the services the Court provides.

In a proceeding involving a petition for review, Rule 8.500(a) of the California Rules of Court (attached) entitles a party, such as Ms. Todd, to file an answer to oppose or support the petition for review and to ask the court to address additional issues if it grants review. Normally, this would be a function fulfilled by the attorney representing the party in the Court of Appeal. However, the Court of Appeal, like the superior court, did not fulfill its own ADA duties to ensure that Ms. Todd would have effective communication and meaningful participation in the proceedings below.

At this juncture, without an accommodation or modification by this Court, Ms. Todd will be denied the benefit of Rule 8.500(a) due to her disabilities and the failure of the Court of Appeal to have provided her with an attorney on appeal. To compensate for this ADA failure, this Court could appoint an attorney to represent Ms. Todd in this Court for the purpose of determining whether to support or oppose the petition for review. Also as an accommodation, this Court could extend the time for filing such a responsive pleading until such time as an appointed attorney would be able to ascertain the wishes of Ms. Todd and to formulate an appropriate response to the petition.

Spectrum Institute is not representing Ms. Todd in the proceeding before this Court. Our organization is performing a civic duty out of a sense of moral obligation to bring to your attention as an ADA coordinator the fact that a woman who has had serious disabilities cannot access the services of the Supreme Court. This is not a request for an accommodation. It is a notice to the Supreme Court that it should act on its own motion to assess the need to provide this litigant with an accommodation.

All courts in California, whether at the trial or appellate level, have a *sua sponte* duty to provide accommodations when they learn that a litigant has a disability that, without accommodation, will prevent effective communication or meaningful participation in court proceedings. It is the knowledge of such a disabling condition, with or without a request, that triggers the duty of courts to take pro-active measures to provide appropriate accommodations. In a case such as this, the only effective accommodation would be the appointment of appellate counsel.

Appointing counsel as an ADA accommodation to ensure access to appellate justice for conservatees with cognitive disabilities is not unprecedented. On two occasions in the recent past the Second District Court of Appeal has done just that. 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. In the former case, Spectrum Institute submitted a commentary to the California Appellate Project which then sent it to staff at the Second District. In the latter case, counsel was appointed after we wrote to the ADA coordinator regarding the court's duties under Title II of the ADA and Government Code Section 11135 which incorporates the ADA into state law.

The failure of courts to appoint counsel for proposed conservatees was brought to the attention of the Supreme Court in an *amicus curiae* brief we recently filed. (S254838). Contributing to this problem is Rule 1.100 and materials published by the Judicial Council that incorrectly declare that ADA accommodations need not be provided without a request. This is contrary to federal law.

California courts do have a duty to provide ADA accommodations, *sua sponte*, to litigants with known disabilities when those disabilities may impair effective communication or meaningful participation in legal proceedings. 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>

Whether a disabled litigant in a conservatorship appeal is designated as appellant, respondent, or overview party should not matter. When an appellate court knows that a party has a disability that may preclude 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 may not be able to do so would preclude an entire class of disabled litigants from the protections of the ADA. Federal law requires courts to provide an appropriate accommodation on its own motion under circumstances such as this. (See attachment)

Please bring this notice to the attention of the Supreme Court as a reminder of its obligations under Title II of the ADA. If this Court appoints counsel as suggested in this notice, counsel may decide to ask this Court to grant review to consider "additional issues" not presented in the petition for review, namely, whether the decisions of the trial court and appellate court should be reversed for the failure of those courts to appoint an attorney to represent Ms. Todd in those proceedings. Some trial courts appoint counsel routinely in such matters, while others do not. Some appellate courts appoint counsel for disabled litigants while others do not. Appointed counsel may argue that granting review is necessary to secure uniformity of decision or to settle an important question of law on the duty of trial and appellate courts under the ADA or as a matter of due process to appoint counsel for litigants with serious cognitive or other disabilities that interfere with their ability to effectively participate in the proceedings in which they are entangled. Or appointed counsel may choose some other path. Either way, Ms. Todd will not be able to effectively participate in the proceedings pending in this court without appointment of counsel as an ADA accommodation.

Respectfully,



Thomas F. Coleman
Legal Director
(818) 482-4485

cc: ADA Coordinators, Sixth District Court of Appeal, Santa Cruz County Superior Court