

Application of ADA Regulations to Washington State Court Proceedings Involving Bonnie Jeanne Southall

1. Bonnie Jean Southall, a resident of Washington State, is 98 years old. She is blind. Ms. Southall prefers to be referred to as “Jeanne.”
2. Due to a hospital error that took Jeanne off thyroid medication she had been taking for some time, Jeanne began to display symptoms of cognitive disability. When the error was later discovered through the research of a close friend of Jeanne, she was placed back on the thyroid medication and her cognitive functioning improved.
3. Despite the fact that her temporary cognitive disability had been alleviated, a petition initiating a guardianship proceeding was filed anyway. (**Walla Walla County Superior Court Guardianship Case No. 17-4-00078-5**) It alleged that she was so incapacitated that Jeanne could not care for herself and that the court should appoint a guardian. Based on the petition, the court was placed on notice that Jeanne had either actual or alleged disabilities.
4. The guardianship court is a public entity within the meaning of Title II of the Americans with Disabilities Act. The court is a service provider. The service provided by the court is the administration of justice.
5. Once a person is placed under an order of guardianship, an additional service is provided by the court: protection. The duty to protect is delegated by the court to court-appointed guardian. The guardian administers this service with the authorization of and under the supervision of the state.
6. As explained in considerable detail in a letter to United States Senator Patty Murray, the actions of the court in Jeanne’s guardianship proceedings, the actions of the guardian ad litem in those proceedings, and the actions of the court-appointed guardian (both during those proceedings and in subsequent civil court protective proceedings) violated Jeanne’s rights under the Americans with Disabilities Act.
7. The ADA requires that people with disabilities receive access to justice in judicial proceedings – both inside and outside of the courtroom. The ADA requires that courts take reasonable steps to ensure that people with disabilities have meaningful participation in their cases. The ADA requires courts to modify normal practices and procedures, if necessary, to ensure ADA compliance. Appointment of an attorney is an accommodation that, if proper advocacy services are provided, may satisfy the ADA’s requirement of access to justice for a litigant with disabilities.
8. The ADA requires that a public entity takes steps to ensure that a recipient of its services has effective communication while participating in or receiving such services. A court is a public entity. Effective communication in court proceedings requires that a litigant with disabilities is present in court, is acknowledged by the court, and receives an ongoing explanation of what is transpiring and what will transpire. To ensure that a litigant who is elderly and blind has effective communication in guardianship proceedings, the court should take steps to ensure that all pleadings and written communications have been read to and explained to the litigant by someone of the litigant’s choice in whom the litigant has confidence and trust. A court should explain to such a litigant his or her right to be present at all proceedings and his or her right to speak and to be heard. The court should also explain to the litigant the right to present written communications to the court, or other written

documents, and to have the assistance of someone to submit such communications.

9. The judge in the guardianship proceeding in Jeanne's case failed to obey these "effective communication" requirements of the ADA. At her guardianship hearing, Jeanne was not called up to the counsel table like other participants were. She was not given an opportunity, at the beginning of the proceedings, to request an attorney or to communicate with the judge.

10. The court-appointed guardian ad litem failed to ensure that Jeanne received effective communication or access to justice in the proceedings.

11. Once placed under an order of guardianship, the court-appointed guardian initiated civil protective proceedings to isolate Jeanne from and cut off her communications with her closest friend. This was done without consultation with Jeanne and without her participation in the proceedings.

12. The judges who entered protective orders to separate Jeanne from her friend, did so without inquiring of Jeanne as to her wishes. They did so without allowing Jeanne to participate in the proceedings in a meaningful way. (**Vulnerable Adult Protection Order Case No. 17-2-00655-7**)

13. Although the guardian ad litem and the guardian are both guilty of ADA violations – as are the judges who issued the protective orders – the public entity that is primarily responsible for all ADA violations is the court that conducted the guardianship proceedings and that entered an order placing Jeanne into a guardianship and appointing a guardian to take charge of Jeanne's life. That court cannot escape responsibility for ADA violations committed by those who were appointed by the court to act on behalf of the state, namely, the actions of the guardian ad litem and the guardian.

14. The ADA has a complaint procedure to bring violations to the attention of the appropriate federal agency with responsibility for investigation. Complaints for ADA violations committed by courts, and by agents appointed by courts, should be filed with the United States Department of Justice. A complaint may be filed by the aggrieved individual or by an authorized representative.

15. In Jeanne's case, because she is blind, and because her guardian is one of the agents of the public entity responsible for ADA violations, Jeanne has given permission to attorney Cheryl Mitchell to write to United States Senator Patty Murray asking for federal intervention to protect her rights under the Americans with Disabilities Act. This service is being provided by Cheryl Mitchell in her role as an ADA support person for Jeanne. Because of Jeanne's age, a speedy investigation by the Senator's Office is essential in order to ensure that Jeanne receives redress in a timely manner.

17. The violations of Jeanne's federal statutory and constitutional rights by the Washington State guardianship system are also being brought to the attention of the Washington Supreme Court by Spectrum Institute as an example of how badly that system is out of compliance with the ADA. Spectrum Institute filed a complaint with the Supreme Court in November 2017 to inform the court of systemic and continuing violations of the ADA – in policy and practice – by the state's guardianship system. Such proceedings are conducted under the administrative supervision of the Supreme Court. Jeanne's case shows that such violations are currently occurring.

18. Spectrum Institute is also giving advance notice to the United States Department of Justice in Washington D.C. and the United States Attorney's Office for the Eastern District of Washington that a formal ADA complaint may be filed in the near future on Jeanne's behalf if the matter is not quickly resolved by the state judiciary. Federal intervention should not be necessary.