

Access to the Courts for People with Developmental Disabilities

California Statutes and Regulations

People with developmental disabilities, like everyone else, have a right of “access to the courts.” This right is specifically recognized and emphasized in the California Code of Regulations. (17 CCR § 50510) This regulation implements the statement of rights contained in Welfare and Institutions Code Section 4502. That statute affirms the right of people with such disabilities to full participation in any program or activity that receives public funds. Courts receive public funds.

Legal proceedings are an activity of the courts. Full participation in a legal proceeding would include the right to examine and evaluate pleadings, offer objections, make motions, produce evidence, challenge evidence, call witnesses, cross-examine witnesses, and file an appeal.

People with serious cognitive and communication disabilities are denied access to the courts and full participation in conservatorship proceedings when their disabilities prevent them from performing these activities. Appointment of counsel, therefore, would be required to ensure that they have meaningful participation in the proceedings. The rights of such litigants under this statute and this regulation are coextensive with their “equal access” rights under the Americans with Disabilities Act and Government Code Section 11135.

Relevant portions of Section 50510 appear below:

“Each person with a developmental disability . . . is entitled to the same rights, protections, and responsibilities as all other persons under the laws and Constitution of the State of California and the Constitution of the United States. . . These rights include, but are not limited to the following:

“(A) Access Rights . . .

(10) A right to advocacy services, as provided by law, to protect and assert the civil, legal, and service rights to which any person with a developmental disability is entitled.

(12) A right of access to the courts for purposes including, but not limited to the following:

(D) To contest a guardianship or conservatorship, its terms, and/or the individual or entity appointed as guardian or conservator.”

In interpreting and enforcing Section 11135 and relevant provisions of the ADA, as these legal protections would apply to people with developmental disabilities who are involved in conservatorship proceedings, the Department of Fair Employment and Housing should do so in a manner that recognizes and protects the equal access rights of such persons under Section 4502 and Section 50510. (Cf. *Payne v. Superior Court*, 17 Cal. 3d 908 (Cal. 1976))

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