

Guardian. Someone who protects.

Children need permission from a parent or guardian, to take part in field trips or other activities. Health care providers need the authorization of a parent or guardian in order to treat a patient who is a minor.

Those are situations that come to mind when we think of guardians. But there are guardians of adults, too. And sometimes there are children who are guardians of parents.

I don't mean that minors can be guardians of parents, only that "adult children" can encounter situations in which their elderly or inform parents are in need of that kind of help. It's a role reversal that is becoming more common than it used to be, what with life spans being greater.

"We need a guardianship bill!" was a mantra I heard at gatherings of the New York State Association for Retarded Children, Inc., decades ago. When first I heard that statement I didn't know what it was about. But soon someone explained it to me.

NYSARC included numerous people who were highly qualified to explain guardianship and other legal issues. The one who laid it out for me was Augustus M. Jacobs, a courtly gentleman indeed. His specific court was the New York State Supreme Court, First District (Manhattan). He was one of the founders, in 1949, of the first organization of its kind, the Association for the Help of Retarded Children. I have his AHRC lapel pin.

The guardianships NYSARC was talking about were those in which persons with mental retardation would reach the age of majority but would not be able to handle all the responsibilities that come with adulthood. Their parents wanted to be able to continue to protect and guide them—to act as their guardians.

Most such parents expected that they would predecease their offspring. Some conditions causing mental retardation also included other health challenges which tended to shorten life spans, but even so, parents realized there probably would come a time when they would not be around, or able, to carry out their guardianship functions.

Often standby guardians were

named. For mentally retarded adults, usually a parent or parents were named guardian/s, and often a sibling was appointed standby guardian. There could be other standby or contingency arrangements made, too. A local chapter of NYSARC would be one possible choice. The reasoning was that such an entity would have a longer "lifetime" than an individual. Chapters and NYSARC itself had guardianship committees; I served on several.

Then there are the guardian arrangements in which adult children assume responsibility for parents. Most of us know some of those guardians and their parents.

This isn't the same as being "attorney-in-fact" or having the responsibility of power of attorney. That role is one in which the grantor voluntarily and knowingly gives the POA that authority, so that the POA can act for the grantor as needed, or maybe regularly. Typical duties and powers would be handling money and other assets, paying bills, selling property and making living arrangements.

Ordinarily the grantor can revoke or change power of attorney arrangements at will. Also, the grantor is still free to make decisions too, to pay bills and sign checks and buy things.

Guardianship arrangements may not always be voluntary on the part of the person being "guarded." Sometimes that individual is too impaired in mental function to participate in the decision. Courts grant those non-voluntary guardianship arrangements based on a showing that the individual is incompetent. The court must find the proposed guardian to be suitable. Usually the person petitioning the court to appoint a guardian for someone is also proposing to be that guardian; but sometimes the petition asks the court to appoint another person or entity.

Would you be surprised if I told you some guardians of adults are untrustworthy? Probably not. There have been high profile cases in the news, where the rich and famous were victimized, usually by those close to them, through abuse of guardianship prerogatives.

There's an organization devoted to helping those victimized by guardianship abuse, and to seeking legislation and court rulings that will help prevent such abuse.

National Association to Stop Guardian Abuse has a website you can Google for.

Some of NASGA's activists were in McKean County recently to monitor court proceedings related to the guardianship of Rita Denmark, a Bradford widow her daughter alleges to have been virtually abducted to Florida and wrongfully placed under guardianship there and then placed in a secure care facility and her assets made off with.

Sad. Worrisome. The court may rule on some aspects of that case later this week.

Peace.

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