



estate & trust disputes

The Emotional Charge of Guardianship: a Point of View from an Independent Guardian

By Adam M. Fried



A parent of young children feels incredible stress and sadness when their children fight. When healthy, the parent is capable of breaking up the fight or at least standing in between to force peace or at least stave off war. But when parents age and their ability to take care of themselves diminishes, the power shifts. A parent, once strong, becomes the pawn - the tool by which old hatreds are dredged and old wrongs righted.

Sadly, when the problems associated with aging are coupled with children who cannot get along, the parents suffer. The children battle over money. They battle over where the parent should live and who gets to make important medical decisions. They take advantages, in pay back, for previous perceived transgressions. They refuse to share information vital to the needs of the parent. They take turns playing their parents like ping pong balls. The end result is danger to the parent and the need for an independent decision maker.

Anyone who has been involved in a guardianship dispute would attest to the high level of emotional charge inherent in the issues being decided. Families

often choose sides: each side not only believing that they are right, but that the other side is evil. They lose track of the humanity and needs of the parent. The subject of the dispute, typically an incompetent adult, is torn in the middle like a tug of war rope. I often stand in the role of independent guardian and find the job challenging - almost all decisions are challenged from one side or the other, even if the decision is made in the best interest of the parent. As a lawyer in the middle, the only thing that can be done is to continue to try to make decisions that are reasonable under the circumstances with the intent of doing good rather than hurting. But often the result is perceived as hurtful or, at a minimum, unenlightened.

Decisions can involve such tragic circumstances of life support, nursing home placement or even taking away the car keys. The subject of the proceedings complains for loss of control and autonomy. The children disagree and encourage the parent to battle. The children interfere with the goal of normalizing the situation. If money is the root, then lawsuits might need to be brought to recover assets obtained under suspicious circumstances.

As a lawyer who has worked on all sides of the dispute, I often wonder whether the people we are trying to help understand that the independent guardian is working to bring rationality to the process. Do the families, despite the internal battles and differences of opinion, understand that the independent is striving to bring people together to talk and stop the fighting so that the focus can be on the well being and peace of the parent?

While circumstances sometimes compel that the role of an independent guardian

warrants the delivery of pro bono services, most often when tapped by the court to take on such hard circumstances as standing in the middle of hatred and vehemence, the independent guardian will seek authority for payment for services rendered: sadly, the business side of things. It was in that vein, having concluded the role of independent in a hard case, that a family member answered the questions:

"I want to thank you for the work that you did on behalf of my mother. You accomplished more in the short time that you served her than any of the other attorneys combined. I am impressed with that. Even though when I was working as a professional my pay scale was \$50.00 an hour when broken down to an hourly basis, I do find your fees on her behalf to be reasonable considering the amount of work you did in such a short period of time. Again, I thank you. I consider your expenses fair. Can't thank you enough."

Do people care? Do they recognize the effort? Do they understand the decisions are not made in spite? While many family involved in such disputes are blind to the needs of their parents and even more blind to the impact their behavior has on their parents, many more strive to get it.

The cold hard truth is, in circumstances where an incompetent adult has family who cares for them and reasonable estate planning to deal with decision making during periods of incompetency, a guardianship is not necessary, let alone the appointment of an independent. But, when families fight. When they engage in tug of war or take advantage, then there is no choice but to lock into the protections and disadvantages of a court imposed guardianship. If you are engaged in battle with your sibling, open your eyes. Realize the impact on your parent. Take a step back, resolve to fight after your parents are long gone so they don't have to stress about your inability to talk to each other.

About the Author: Adam is a shareholder in the Trust, Estate & Probate Litigation Section of Reminger Co., LPA. He represents clients in numerous types of probate disputes that challenge estate planning documents and transfers of wealth, including will contests, trust disputes, charges of undue influence and the fraudulent use of powers of attorney.

This has been prepared for informational purposes only. It does not contain legal advice or legal opinion and should not be relied upon for individual situations. Nothing herein creates an attorney-client relationship between the Reader and Reminger. The information in this document is subject to change and the Reader should not rely on the statements in this document without first consulting legal counsel.

AKRON 400 Courtyard Square • 80 South Summit Street • Akron, Ohio 44308 • (330) 375-1311
CINCINNATI 525 Vine Street • Suite 1700 • Cincinnati, Ohio 45202 • (513) 721-1311
CLEVELAND 101 West Prospect Avenue • Suite 1400 • Cleveland, Ohio 44115 • (216) 687-1311
COLUMBUS 200 Civic Center Drive • Suite 800 • Columbus, Ohio 43215 • (614) 228-1311
SANDUSKY 237 W. Washington Row, 2nd Floor • Sandusky, Ohio 44870 • (419) 609-1311
TOLEDO One SeaGate • Suite 1600 • Toledo, Ohio 43604 • (419) 254-1311
YOUNGSTOWN 11 Federal Plaza Central • Suite 1200 • Youngstown, Ohio 44503 • (330) 744-1311
FT. MITCHELL 250 Grandview Drive • Suite 550 • Ft. Mitchell, Kentucky 41017 • (859) 426-7222
LEXINGTON Vine Center • 333 West Vine Street • Suite 1670 • Lexington, Kentucky 40507 • (859) 233-1311
LOUISVILLE 730 West Main Street • Suite 300 • Louisville, Kentucky 40202 • (502) 584-1310
INDIANAPOLIS College Park Plaza • 8909 Purdue Road • Suite 200 • Indianapolis, Indiana 46268 • (317) 663-8570
FORT WAYNE Lincoln Tower 116 East Berry • Street Suite 1735 • Ft. Wayne, Indiana 46802 • (260) 755-2280
NORTHWEST INDIANA One Professional Center 2100 N. Main Street • Suite 202 • Crown Point, Indiana 46307 • (219) 663-3011

