



<http://www.growny.org/>

email: info@grow-ny.org

Phone: 914-493-1318

POSITION PAPER ON GUARDIANSHIP

GROW believes that the current Article 17-A family guardianship statute is the most effective abuse prevention legislation ever implemented and should be retained as a means of protecting the safety of the developmentally disabled under a family approach.

As the court has dismissed the constitutional challenge to Article 17-A (although an appeal is pending GROW believes it is unlikely to succeed), GROW believes that best way forward is to make technical amendments to 17-A that will ensure that developmentally disabled individuals who are able to advocate for themselves receive notice of their right to do so and to ensure that all individuals have an advocate to defend their rights before the guardianship court. Otherwise, we see no need to make changes to a statute that has achieved the goals of allowing developmentally disabled individuals to be protected from abuse.

As stated by former Nassau County Surrogate Judge Radigan:

Article 17-A of the Surrogate's Court Procedure Act (SCPA), as currently enacted, permits the surrogate to appoint a guardian of the person or property, or both, for individuals with a developmental disability. In most cases, Article 17-A is used to ensure long-term guardianship of persons who never were and never will be able to care for themselves. It permits their parents, when the disabled persons become adults, to serve as their legal guardians while the parents live and appoint successors when the parents are gone. When it appears to the satisfaction of the court that a person is an individual with a developmental disability, the court is authorized to appoint a guardian if it is in the "best interest" of such a person. A mentally retarded person or an individual with an intellectual disability is a person incapable of managing their affairs or making decisions on their own behalf. An individual with a developmental disability is a person having an impaired ability to understand and appreciate the consequences of decisions on their own behalf, which results in such persons being incapable of managing their affairs.

We further agree with Judge Radigan's conclusion "Article 17-A remains flexible to be tailored to the individual under such a disability. The answer is not to modify or repeal such a beneficial statute, or otherwise incorporate SCPA 17-A into Article 81 because someone may attempt to use it inappropriately." (NYLJ, March 14, 2016).

March 2018