The Arc of Illinois/FSN/LFA 10th Informational Seminar 9:30 a.m. - 10:30 a.m.

Brian Rubin, J.D.

President 2011 - 2015
Director 2004 - 2019

An “Overview”:

- Special Needs Trusts
- ABLE Accounts
- Guardianships & Alternatives
“Legal and future planning for our fellow Illinois families of individuals with special needs, including intellectual disabilities, developmental disabilities, physical disabilities, and/or mental illness, is not one thing we do, it’s the only thing we do; it’s not one area of our practice, it’s our only area of practice.”

Brian N. Rubin, Attorney & Parent
Benjamin A. Rubin, Attorney & Sibling
Attorney Brian Rubin is the founder of Rubin Law, a former IRS Agent, and former IRS Attorney, has been a practicing attorney since 1976; he has been married to his wife Linda for the past 45 years, and is the parent of three children, one of whom, Mitchell, 41, has Autism. Brian’s law practice, for four decades, since Mitchell was one year old, has been dedicated to serving the legal and future planning needs of his fellow Illinois families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness.

- Director, Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities (including his son, Mitchell) since 1989
- Trustee, Life’s Plan, Inc. (a subsidiary of Ray Graham Association) which serves as Trustee of Special Needs Trusts
- Past Chairman (2011-2013), and Director (2006-2019), the Special Leisure Services Foundation, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA)
- Founding Chairman (1989-1991), and Trustee, Foundation of The Special Education District of Lake County (1989-1997)
- Former Director, KESHET (Jewish Parents of Children with Special Needs) (1990-1996)
- Serves on the Advisory Council of Encompass (Encompass in partnership with Jewish Child & Family Services, Jewish United Fund, JVS Chicago, JCC Chicago, Keshet, and The Center for Enriched Living and Center for Independent Futures) serving individuals with intellectual disabilities
- Former Director, DayOne Pact, which serves as Trustee of Special Needs Trusts as well as Guardian for individuals with intellectual disabilities, developmental disabilities, and/or mental illness (2008-2015)
- Former Director, Northpointe Resources, also an agency serving individuals with intellectual disabilities (1990-1991)
- Past President (2017-2018), and Director (2008-2019) of the Special Needs Alliance, the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only)
- Former member, Special Needs Law Section Steering Committee, National Academy of Elder Law Attorneys (2009-2015)
- Charter Member, Academy of Special Needs Planners (2006)
- Faculty, Illinois Institute for Continuing Legal Education (IICLE), American Bar Association and Illinois State Bar Association, on the topic of special needs planning, as well as text-book author for IICLE
- Elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC)
- Received the highest attorney rating from Martindale-Hubbell of “AV® Preeminent™”
- Received AVVO’s highest attorney rating of “Top Attorney”
“the attainment of the limiting age does not operate to terminate the hospital and medical coverage of a person who, because of a handicapped condition that occurred before attainment of the limiting age, is Incapable of self-sustaining employment & is dependent on his or her parents, or other care providers for lifetime care & supervision.”

Special Needs Trust

3rd Party
Private & Pooled Versions

Self Settled
aka, OSRA, 1st Party, Pay Back...

Private (64A) & Pooled (64C)
How to put $ in the Trust? From your & others’ Wills & Trusts

EXTENDED FAMILY & FRIENDS
- Instruction letter
- Form Codicil
- Form Trust Amendment
- Trust Certification
- Consult with their Attorneys/Advisors

But... Beware of absentee parents & grandparents
EX-SPOUSE LETTER

So...
1st set up SNT
2nd reference in Wills/Trusts
3rd extended family too

But... But...

Change Beneficiaries
✓ Life Insurance
✓ IRA
✓ 401k
✓ Profit Sharing
✓ Etc.
WHAT ABOUT GIFTS?
- **NOT** Directly
- **NOT** ABLE (stay tuned!)
- **NOT** UTMA

3rd Party SNT

---

So far just 3rd Party
But WHAT IF...

---

BENEFICIARY HAS ASSETS
- 529?
- NOT
- IRA - 401k
- Large Gift
- Excess SS/SSDI
- Inheritance
- WILL/TRUST/BENEFICIARY

CHILD SUPPORT - DIVORCE
If “not that much”
consider spending it down on
allowed expenditures, such as:
✓ COMPUTER, TV, DVD PLAYER...
✓ VACATION
✓ PRE-PAID FUNERAL
✓ PAY OFF DEBTS... EVEN TO PARENTS...
✓ CLOTHES
✓ BUT MUST BE FOR HIS/HER
✓ SOLE BENEFIT...

When to consider ABLE?
1. Excess SSDI/SSI/Earnings to avoid $2,000 issue? But if SSDI not SSDI, G working, consider ABLE too!
2. Short term savings
3. For beneficiary to be in control of “some” spending money
4. Small inheritances not correctly left to 3rd party trust
5. Small law suit settlements
6. Since 2016 - ADDITIONAL CONTRIBUTION ONLY BY BENEFICIARY of the lesser of EXPECTED INCOME for year B federal poverty level amount, if an contribution by an employer to retirement saving plan. However, the earned income will still be counted for purposes of eligibility.

ABLE SIDE NOTE
Illinois Statutes - Not as advertised...
• "No Pay Back" is being "advertised" BUT
1. Per Feds (CMRS) the "No Pay Back" doesn't apply to all B Illinois Medicaid Waivers including DDD and DRS, and specifically CILA/ICFDD, SOSS, & HBSS.
2. Also, per Feds (CMRS) the "No Pay Back" doesn't apply to any medical Medicaid post age 65.
• Tax Deduction... so what...
Otherwise
1st Party
Special
Needs
Trust

1st Party SNT
Called... "Self Settled"... or
☑ "OBRA 93 Trust"
☑ "(d)(4)(A) or (C) Trust"
☑ "PAY BACK Trust" (like an ABLE account...
☑ because...

1st Party Special Needs Trust

Medical Malpractice
Personal Injury
Inheritance & Gifts
to 3rd party SNT
Guardian's own assets
such as savings bonds
Child Support

Then upon passing...

The State
even before
FUNERAL bill...
any left over goes to:
FAMILY
GUARDIAN

Rubin Law
1ST PARTY SNTS
ARE THE VERSIONS
REQUIRED
FOR CHILD SUPPORT
NOT
3RD PARTY SNTS!
OR
ABLE (BUT $ CAP)

You say you already have a special needs trust?

Does it qualify?

Was it approved by SSA & HFS (Illinois Medicaid Agency)? AG?
Will it be approved when it is submitted (it must be submitted to SSA & HFS)?
COMMON ATTORNEY MISTAKES!

- NO Grand-Fathering Required Language
- NO prohibition of 1st Party money in 3rd Party Trust
- NO requirement to use "1st Party Trust money or ABLE money prior to 3rd Party Trust money"
- NO 100% transparency
- NO requirement to "fight...SHOULD provide ability to distribute to ABLE"
- OVER RESTRICTIVE Language...
- NO Trustee powers to convert or terms not "broad" enough
- NO "Bread All" or extra Language
- NO "Next Generation" Trustees...
- NO "Contribution" or GIL Language 3rd Party
- NO "Contingent" BBT for others
- NO Nursing Homes Sub-Trust for All 50 States
- NO TRUST/SUSS/Military & other "public" Pensions Sub-Trust
- NO Trustees of Guardian Power to change corporate trustees...
- NO Change of State Provision...
- NO Trustee or Guardian Power to hire investment management

and more... (SNA/ASNP)
www.specialneedsalliance.org

COMMON ATTORNEY MISTAKES!

Other Documents Need SPECIAL Language

- Wills "Guardians for post 18"...
- Living Trusts upon Incapacity...
- Powers of Attorney...

(755 ILCS 5/11a-16)

Testamentary guardian

A parent of a disabled person... requires... to act... to be appointed... successor guardian of the person... if the court finds that the appointment of the one so designated will serve the best interests and welfare of the word...

(Source: P.A. 81-795.)
• Schools?
• Doctors/Hospitals
• Insurance Claims?
• Signing documents/Contracts
• Dealing with SSA /State
• Residential/Living arrangements
• Employment/Day Programs
• Agencies
• Marriage
• Driving
• Arrests – DD/ID/MI is NOT Diplomatic Immunity...

STOP!
This means YOU.

SO... the questions to ask...
• Can he/she fully manage his/her personal, medical, education & financial decisions?
  Even IF can...
• Could he/she be vulnerable to, or be taken advantage of by others?

IF SO, THEN...

Before considering "Guardianship", ALWAYS first consider the ALTERNATIVES
Supported Decision Making

SUPPORTED DECISION MAKING
ILLOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2023
1. Authorizes the creation of supported decision-making agreements.
2. Allows a "supporter" to assist a "principal" with an intellectual or developmental disability in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement.
3. Provides a form.
4. Principal may revoke at any time.
5. CANNOT MAKE DECISIONS for principal.
6. If NO decisional capacity then Guardianship is what is needed.

CAPACITY for Medical Decisions:
Decisional capacity means the ability to understand and appreciate the nature and consequences of a decision regarding medical treatment or forgoing life-sustaining treatment AND the ability to reach and communicate an informed decision in the matter as determined by the ATTENDING PHYSICIAN.

CAPACITY for
SDM & Powers of Attorney
Testamentary capacity is defined in Illinois as the mental ability to know and remember who are the natural objects of beneficence, to comprehend the kind and character of beneficence, and to make disposition of the property according to some plan formed in (one's) mind.
Illinois
Health Care
Surrogate Act

(If NO decisional capacity)

[Image]

PowerS of
Attorney

(If decisional capacity)

[Image]
THE STATE
DHS/HFS
REQUIRES THEIR
OWN FORM
Print? Mark?
Stamp?
Direct others to sign?

WHAT IF he/she DOES HAVE CAPACITY to "sign" BUT
➢ Terminates/voids the PA as soon as... when...?
➢ AND...
  • Doesn't PROHIBIT him/her from...
  • Remains VULNERABLE?

If he/she can't, or won't" sign" DPAs...
AND/OR if you determined that SDM, DPAs, or HCSA,
are simply NOT ENOUGH to assist and/or protect
him/her...
THEN, MAYBE... JUST MAYBE, "some form" of
GUARDIANSHIP would be appropriate to help, and to
protect him/her, from himself/herself, and from
others...
DMV does NOT follow the law!
Even if DMV, with M.D. letter, allows, DON'T!
1. Liability
2. Insurance?
NOT IF PLENARY for sure... Limited?

GUARDIANSHIP

- Move out of State
- Move out of County? (Depends on County)
- Why some parents/siblings decline?
- Then what?
- State Guardian/Private?

What if:
- He/she NEEDS a Guardian, BUT won't cooperate? or
- He/she will be "DRIVING"?
- Concerned about LIABILITY?
... then CONSIDER "LIMITED" Guardian?
Limited Guardianship
Appointment of a Limited Guardian **DOES NOT**
constitute a finding of legal incompetence!

**REQUIRED TRAINING!**
**ILLINOIS LAW - Public Act 100-483**
Effective September 6, 2016
REQUIRED TRAINING FOR GUARDIANS... even for parents

- Required Training
- outlines the duties and responsibilities of guardians...
- outlines the rights of a person with a disability...
- at no cost, and shall...
- File with court a certificate of completion within one year, EXCEPT...
- "the court may, for good cause, can exempt from this requirement..."
- However, only applies to 101 of the 102 Illinois counties...
- **NOT** applicable to Cook???? Don't ask!

Co-Guardians?
- Law?
- Agencies?
- M.D.s/Hospitals?
"Legal and future planning for our fellow Illinois families of individuals with special needs, including intellectual disabilities, developmental disabilities, physical disabilities, and/or mental illness, is not one thing we do, it's the only thing we do; it's not one area of our practice, it's our only area of practice."

Brian N. Rubin, Parent
Benjamin A. Rubin, Sibling
INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select boxes below)

2. ☐ Letters of Intent (“Guidance & Information Form” for “future team”)
3. ☐ Impact on Divorce & Child Support on SSI & Medicaid
4. ☐ Keeping your Child on YOUR Health Insurance (past 26)
5. ☐ Guardianship & Alternatives (Powers of Attorney)
6. ☐ Special Needs Trusts & Special Needs Future Planning
7. ☐ Adult Sibling Group & Sib Shop information for younger siblings
8. ☐ Impact of Guardianship on Driver’s License
9. ☐ Taxes & Special Needs Trusts
10. ☐ Taxes & Adult HBSS Waiver
11. ☐ ABLE Accounts
12. ☐ Military Pension Benefit (SBP)
13. ☐ Pre-Paid Funeral Arrangements Rules
14. ☐ Please add me/us to your list to receive your newsletters by email

Check appropriate box and complete the needed information.

1. ☐ Do not contact me/us, just please send by email the information requested above.
   Email address is: ____________________________________________________________

2. ☐ Please contact me (us) to schedule an “Initial Consultation”.
   Day time phone number: (____) ___________________ Email: _______________________
   Name(s): __________________________________________________________________

3. ☐ Please contact me (us) to schedule a presentation to a group, organization, school, or agency.
   Day time phone number: (____) ___________________ Email: _______________________
   Name(s): __________________________________________________________________