

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

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Corporation

Special Needs Legal & Future Planning

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847-279-7999 • Toll Free 866-ToRubin



Attorney Brian Rubin is the founder of Rubin Law, a former IRS Agent, and former IRS Attorney, has been a practicing attorney since 1976, 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.

- Past President (2011-2015), The Arc of Illinois, served on The Arc of Illinois Board for 15 years (2004-2019)
- Past Chairman, State of Illinois Statewide Advisory Council on Developmental Disabilities (2000-2004)
- Past Chairman, State of Illinois Autism Task Force (2004-2015)
- Former Commissioner, State of Illinois Guardianship & Advocacy Commission since (2013-2020)
- Served, State of Illinois Department of Human Services Office of Inspector General Quality Care Board (2006- 2012)
- Director, Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities (including his son, Mitchell) since 1988
- 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"

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Brian Rubin — Mitchell Rubin — Benjamin Rubin

“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*

Brian Rubin

M E M B E R

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Attorneys for special needs planning.

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CILA
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DAY/SE

WORK

FAMILY INHERITANCES

GOVERNMENT

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SSDI
\$2,000
CDB/DAC

Medicaid
AABD \$2,000
HBWD \$25,000

Medicare
24 months

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PARENTS' HEALTH INSURANCE!

Dependent children **NOT** subject to "limiting age" provisions!

Even if living "residentially"!

Even if can't claim as dependent for IRS Income Tax purposes!

since 1969, amended 1997 & 2007.

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“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.”

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WRONG WAY

X

- “Directly”
- No Will
- “Disinherit” & leave to others (“moral obligation”)
- “Traditional Trust”

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Special Needs Trusts

3rd Party
Private & Pooled Versions

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

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2 Versions, both...

- ✓ Reserve
- ✓ Supplemental fund
- ✓ Over & above
- ✓ Government benefits
- ✓ No \$ limit
- ✓ Federal
- ✓ State




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3RD PARTY TRUSTS

ORIGINAL - GOOD

by Court Decisions **1982**

by Statute **760 ILCS 3/509 - 1/1/20**

Original statute **760 ILCS 5/15.1 - 9/6/91**




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3RD PARTY TRUST

INHERITANCE



GIFT

INSURANCE
IRA
401K

BENEFICIARY'S OWN ASSETS
(dividends)

SPECIAL NEEDS TRUST

THEN UPON BENEFICIARY PASSING, PARENT(S) DECIDE: FAMILY CHARITY GUARDIANS

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**BUT I STILL
DON'T GET IT ?**

**Just what
IS a Trust?**

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**Just another way
of holding "title"
to, or "ownership"
of, assets,
investments or
accounts...**

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**3rd PARTY
SPECIAL NEEDS TRUST**

So what's all
the ***paper*** for?
 ✓ Instruction Manual
 ✓ "Rules of the Road"

Who can use it?
 - Parents
 - Siblings
 - Grandparents
 - Anyone...

✓ **EXCEPT BENEFICIARY**
 Remember - 3rd Party
 Parents & Family
 as Trustees...

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**How to put \$
in the Trust?
From your
& others'
Wills & Trusts**

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EXTENDED FAMILY & FRIENDS

- **Instruction letter**
- **Form Codicil**
- **Form Trust Amendment**
- **Trust Certification**
- **Consult with their Attorneys/Advisors**



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**But...
Beware of
absentee
parents &
grandparents**



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EX-SPOUSE LETTER

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

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But... But...

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Change Beneficiaries

- ✓ Life Insurance
- ✓ IRA
- ✓ 401k
- ✓ Profit Sharing
- ✓ Etc.

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WHAT ABOUT GIFTS ?

- NOT** Directly
- NOT** ABLE (stay tuned!)
- NOT** UTMA

YES **3rd Party SNT**

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

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**BENEFICIARY
 HAS ASSETS**

529? **NOT!** **UTMA** **Accounts** **at 21** **Large Gift** **Low-Sub** **Settlement**

IRA - 401k **Inheritance** **WILL/TRUST/BENEFICIARY** **Excess SSI/SSDI**

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CHILD SUPPORT - DIVORCE

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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...

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When to consider ABLE?

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issuer? But if SSD not SSI... & working, consider HBWD test
2. Short term savings
3. For beneficiary to be in control of “same” spending money
4. Small inheritances not correctly left to 3rd party trust
5. Small law-suit settlements
6. Since 2018 - **ADDITIONAL CONTRIBUTION ONLY BY BENEFICIARY** of the lesser of **EARNED INCOME** for year & **federal poverty level amount**. **If no contribution** by an employer to **retirement saving plan**. However, the earned income will still be counted for purposes of eligibility.

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ABLE SIDE NOTE

- Illinois Statutes - **Not as advertised.**
- “No Pay Back” is being “advertised” BUT
 1. Per Feds (CMS) the “No Pay Back” doesn’t apply to all 9 Illinois Medicaid Waivers including DDD and DRS, and specifically CIL/MCFDD, SODC, & HBSS.
 2. Also, per Feds (CMS) the “No Pay Back” doesn’t apply to any medical Medicaid post age 55.
- Tax Deduction... so what...

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Otherwise
1st Party
Special
Needs
Trust
Federal Law 8/10/93
Illinois Law 1/1/96

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

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1st Party Special Needs Trust

Medical Malpractice
 Personal Injury
 Inheritances & Gifts
ABLE to 3rd party SNT

Special Needs Trust

His/Her own assets such as savings bonds, **IRA, ABLE, 529 & CAD**

Then upon passing...
 The State:
FUNERAL bill
 any left only then:
 FAMILY
 CHARITY
 GUARDIANS

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

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THE ABCS OF SNTs is a seminar for public and private law firms. It covers the following topics:

- What are SNTs and why are they important?
- How are SNTs created and how do they work?
- What are the different types of SNTs and how do they differ?
- How are SNTs enforced and what are the consequences of non-compliance?
- How can SNTs be used to protect your client's interests?
- How can SNTs be used to resolve disputes between family members?
- How can SNTs be used to resolve disputes between business partners?
- How can SNTs be used to resolve disputes between creditors and debtors?
- How can SNTs be used to resolve disputes between landlords and tenants?
- How can SNTs be used to resolve disputes between employers and employees?
- How can SNTs be used to resolve disputes between neighbors?
- How can SNTs be used to resolve disputes between strangers?

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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!
- Prohibition of 3rd Party Trust money in 3rd Party Trust!
- NOT 100% Discretionary
- PERMITTING Pay TO... (So... SHOULD provide ability to distribute to ABLE)
- OVER RESTRICTIVE Language...
- NO Trustee powers to correct" or terms not "broad" enough
- NO "Next Generation" Language
- NO "Next Generation" Trust Language
- NO "Contributor" or Gift Language 3rd Party
- NO "Contingent" SNT for others
- NO Nursing Home Sub-Trust for ALL 50 States
- NO TRSUS Military & other "public" Pensions Sub Trust
- NO Change of State Provision
- NO Change of State Provision
- NO Illinois Trust Designated Representative provision

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

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COMMON ATTORNEY MISTAKES!

**Other Documents
 Need SPECIAL Language**

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

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(755 ILCS 5/11a-16)

Testamentary guardian

A parent of a disabled person may designate by will a person, corporation or public agency qualified to act... to be appointed as... successor guardian of the person or of the estate or both of that person...

If the court finds that the appointment of the one so designated will serve the best interests and welfare of the ward, it shall appoint the one so designated...

(Source: P.A. 81-795.)

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Who will be Guardian?

- Who will make all of the necessary decisions?
 - Medical?
 - Government Benefits?
 - School Issues?
 - Recreation & Social?
 - Employment?
 - Day Programs?
 - Residential?



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Who will be Guardian?

- Can they understand them?
 - Job will outlast them?
 - Other Children? Grandchildren? Friends?
 - School District of Guardian?
 - Married Spouse?
 - Trustees?
- Who is going to fill our shoes?



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**When someone is an adult, 18 in Illinois, that person is presumed fully legally competent...
 ...and only IF a court (Judge) determines otherwise, is that person NOT deemed competent...**

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- 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...



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Attorney at Law
Philadelphia, PA 19104

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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...

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Before considering "Guardianship", ALWAYS first consider the ALTERNATIVES

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Supported Decision Making

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SUPPORTED DECISION MAKING?
ILLINOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2022

1. Authorizes the creation of supported decision-making agreements
2. Allows a "supporter" to assist a "principal" with an intellectual or developmental disability **WHO HAS DECISIONAL CAPACITY**, 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.

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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.**

SDM & Powers of Attorney
CAPACITY for

Testamentary capacity is defined in Illinois as the mental **ability to know and remember who are the natural objects of [one's] bounty, to comprehend the kind and character of [one's] property, and to make disposition of the property according to some plan formed in [one's] mind.**

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\$ FINANCIAL \$
1987
Print?
Mark?
Stamp?
Direct others to sign?

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... (text too small to read) ...

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Example additional Powers, when appropriate... 1987 to 2021

- > Government Benefits
- > IRS
- > Residential
- > Employment matters
- > Funding/establishing self settled (d4A/C) SNTs & ABLE Accounts
- > HIPAA release
- > UID/PW
- > Copies

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1987, 2011 & several revisions thereafter...
HEALTH CARE
Print?
Mark?
Stamp?
Direct others to sign?

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... (text too small to read) ...

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DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS
Illinois Statewide 10/1/07 CS 01-146-10

EDUCATION
SPECIAL ED - 2007

Print?
Mark?
Stamp?
Direct others to sign?

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PRINT
STAMP

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MENTAL HEALTH

Print?
Mark?
Stamp?
Direct others to sign?

5 PAGE FORM

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SSA

REQUIRES THEIR OWN FORM

Print?
Mark?
Stamp?
Direct others to sign?

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**THE STATE
DHS/HFS
REQUIRES THEIR
OWN FORM**

**Print?
Mark?
Stamp?**

Direct others to sign?

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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?**

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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...

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The Law!
755 ILCS 5/11a
Going to court to take away
someone's rights...

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GUARDIANSHIP

- ↘ When can do it ?
- ↘ Where (venue) ?
- ↘ Notice (14 days), Summons (14 days), M.D. Report (3 months)
- ↘ GAL
- ↘ **Person vs. Estate** ?
- ↘ Required Reports ? Depends on County... Now On-Line... E-File - **BUT** then there is Cook!
- ↘ Residential Placement ?
- ↘ Sterilization ?

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County Specific Instructions Provided To Clients

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 Founded 1911

PROTECT YOURSELF FROM A DISASTROUS DIVORCE BY OBTAINING A LIMITED LIABILITY GUARDIANSHIP

IF YOU ARE CONCERNED ABOUT YOUR ABILITY TO DRIVE OR OPERATE A MOTOR VEHICLE, YOU SHOULD CONSIDER OBTAINING A LIMITED LIABILITY GUARDIANSHIP.

1. **Liability**

2. **Insurance?**

NOT IF PLEINARY
for sure... Limited ?

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GUARDIANSHIP

➔ **Move out of State**

➔ **Move out of County?** ✓ (Quasi-judicial County)

➔ **Why some parents/siblings decline?**

➔ **Then what?**

➔ **State Guardian/Private?**

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 1000 Peachtree Street, N.E.
 Atlanta, Georgia 30309
 404.253.1111
 www.rubinlaw.com

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 Founded 1911

What if:

- He/she **NEEDS** a Guardian, **BUT** won't cooperate? or
- He/she will be **"DRIVING"**?
- Concerned about **LIABILITY**?

... then CONSIDER "LIMITED" Guardian?

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 Atlanta, Georgia 30309
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Limited Guardianship
Appointment of a Limited
Guardian **DOES NOT**
constitute a finding of legal
incompetence!

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REQUIRED TRAINING!
ILLINOIS LAW - Public Act 100-483
Effective September 8, 2008
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...
"This court, max. 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!

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Co-Guardians ?

- Law ?
- Agencies ?
- M.D.s/Hospitals?

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• Use Short Term Guardian Declaration to delegate to Co... or Cos to a 3rd party?




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You need to write it ALL down!

Guidance & Instructions For Future Guardians, Trustees, & Care Providers.



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Request Form Item # 2

Fillable PDF Form & Articles on Topic

ALSO ON RUBIN LAW WEB SITE:
<https://www.rubinlaw.com/wp-content/uploads/2018/10/Letter-of-Intent.pdf>

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In EP Magazine
February 2011
Brian Rubin

In Parenting
Special Needs
Jan/Feb 2014
Brian Rubin

In MetLife
Agent/Broker
Newsletter
Edition 4, 2013
Brian Rubin

Running START

From The Century

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Special Needs Legal
Estate Planning

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Benji Rubin
President
S.I.B.S.
Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network

MEMBER SNA
President 2017-2018

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S.I.B.S. www.sibsnetwork.org
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Special Needs Legal
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Special Needs Legal & Future Planning

www.rubinlaw.com - email@rubinlaw.com

Buffalo Grove - Chicago - Old Orchard

847-279-7999 - Toll Free 866.To.Rubin (866-867-8246) - Fax 847-279-0090



Brian Rubin — Mitchell Rubin — Benjamin Rubin

“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

MEMBER
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SPECIAL NEEDS ALLIANCE
Attorneys for special needs planning.
President 2017-2018

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& Future Planning

INFORMATION REQUEST FORM

DOCUMENTS WILL BE SENT BY EMAIL (select boxes below)

1. Special Needs Alliance "Special Needs Trust Handbook"
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): _____