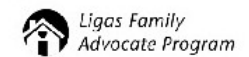


12th Annual Informational Seminar

presented by

*The Arc of Illinois, Family Support Network and
the Ligas Family Advocate Program*



9:15 - 10:15 a.m. - *“As you are planning for the future - What You Need to Know about Guardianship, Alternatives to Guardianship, POA, and an overview of ABLE”*

Presented by Brian Rubin, JD, and Benji Rubin, JD, Rubin Law

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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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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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**What are
the
ALTERNATIVES?**

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OPTION #1
Do nothing?
Actually...
If **NO** "CAPACITY"
FOR **MEDICAL DECISIONS...**
THEN →

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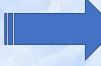
Supported Decision Making

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SUPPORTED DECISION MAKING?
ILLINOIS PUBLIC ACT 102-0614 - EFFECTIVE 2/27/2022 (755 ILCS 9/1)
1. Authorizes the creation of supported decision-making agreements
2. Allows a "supporter" to assist a "principal"...
3. **WHO HAS AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY...**
4. **WHO HAS DECISIONAL CAPACITY**, "in accessing, collecting, or obtaining information that is relevant to a decision authorized under the supported decision-making agreement." *I know.*
"CLEAR AS MUD!"
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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OPTION #3
AGAIN, IF *DO HAVE* Decisional Capacity
then... 

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PowerS of Attorney

(IF decisional capacity)




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\$ FINANCIAL \$

1987

**Print?
Mark?
Stamp?**


Direct others to sign?



31

Example **additional** Powers, when appropriate... 1987 to 2024

- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C)
- SNTs & ABL Accounts
- HIPAA release
- UID/PW
- Copies
- **AND MUCH MORE...**



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R 1987, 2011 & several revisions thereafter...
HEALTH CARE
 Print?
 Mark?
 Stamp?
 Direct others to sign?
 1987 was 1 page
 2024 Now 7 pages

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DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS
 Illinois Statute 105 ILCS 5/14-6.10

EDUCATION
 SPECIAL ED -2007
 Print?
 Mark?
 Stamp?
 Direct others to sign?

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DECLARATION FOR MENTAL HEALTH TREATMENT

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** refuses to "sign"? **OR**
- **DOESN'T HAVE CAPACITY** to "sign"? **OR**
- **HAS CAPACITY, HOWEVER**, just can't help getting himself/herself into trouble; maybe legal, maybe criminal, maybe financial, maybe personal, maybe medical/health related? **OR**
- **HAS CAPACITY, HOWEVER**, is a danger to himself/herself or others?

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AND WHAT IF he/she **DOES HAVE CAPACITY** to "sign" **BUT**


- **He/She** terminates/voids the PA as soon as... when...?
- **AND...**
 - Doesn't **prohibit** him/her from...
 - Remains vulnerable?



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That is, *will Powers be enough?*



- What if he/she is on computer buying things with mom's credit card.
- What if he/she refuses to have parents at IEP/504/ISP meeting, or is "tricked".
- What if he/she is being asked to sign ___?



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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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OPTION # 4

Guardianship...



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BACK TO

Little/Big Brother Benji



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The Guardianship Law!

755 ILCS 5/11a

**Going to court to take away
someone's rights...**

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GUARDIANSHIP

- Independence vs. Protection?
- **Guardian Liability Concern? Stay tuned @...**
- Court... Law Suit... Venue – County where individual resides (Not where petitioners reside)...
- Report – Illinois M.D., ***IF I/DD can be a clinical psychologist licensed under the Clinical Psychologist Licensing Act.***
- Summons (14 days)
- Who can be appointed (U.S. Resident)
- Required notices

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GUARDIANSHIP

- When can do it ?
- Person vs. Estate \$\$\$\$?
- Residential Placement ?
- Sterilization
- Annual Reports ? On Line... E-File!

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NO MORE MAILING ANNUAL REPORTS
or even hand delivering!
MUST NOW
E-FILE AS OF 1/1/18

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GUARDIANSHIP

- Move out of State
- Move out of County
- Why some parents/siblings decline due to possible liability or?
- Then what?
- State (vs County) Guardian/Private?
 - DayOne Pact...

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Co-Guardians ?

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

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“When considering appointing co-guardians, the court shall consider the proposed co-guardians' history of cooperating and working together on behalf of the person with a disability. The court shall appoint only co-guardians who agree to serve together.”

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NO DRIVER'S LICENSE IF PLEINARY GUARDIANSHIP

Illinois State Law (755 ILCS 5/11a-25) requires the probate court to notify the Secretary of State's Driver Services Department when a person is adjudged to be a person with a disability and a plenary guardian is appointed, no later than 7 days after the entry of the probate court order.

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When the Secretary of State receives the required notification from the probate court, that office is subject to the Illinois State Law at 625 ILCS 5/6-103, specifically paragraph 5 of that law, which provides that the Secretary of State shall not issue, renew, or allow the retention of any driver's license not issue any permit under this Code to any person, as a driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease.

REQUEST FORM # 8

Beware of the law!

Even if DMV, (Liability - Insurance) **NOT IF F... ed needed!**

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Why/When Limited Guardianship?


- ✓ Needs Guardian, but won't cooperate? Consider "limited" ...
- ✓ Liability concerns of Guardian candidates? Consider "limited" ...
- ✓ He/she will be "driving"? **MUST** only have "limited", **NOT** plenary!

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



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(755 ILCS 5/11a-18.3)
Duties of short-term Guardian of a disabled person

(a) *...The short-term guardian of the person shall have authority to act... without direction of the court... in no case shall exceed a cumulative total of 60 days in any 12 month period for all short-term guardians appointed by the guardian.*

(b) *... not have any authority to act as guardian of the estate ...*

(Source: P.A. 90-796, eff. 12-15-98.)

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REQUIRED TRAINING!
NEW ILLINOIS LAW - Public Act 100-483
Effective September 8, 2018
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 **MUST**
- File with court a certificate of completion within one year
- *The court, may, for "good cause", waive, upon motion.*

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GAC - Office of State Guardian
Guardianship Training

Click here to take the Guardianship training that will provide you with a certificate that you can file with the court; to obtain the certificate and take the training you will need to register with an email address: <https://onenet.illinois.gov/guardianship>


Click here if you would like to view the training without registering; you will not be provided a certificate: <https://onenet.illinois.gov/page.aspx?Item=115288&review=1>

Click here for a list of disability related resources: <https://onenet.illinois.gov/page.aspx?Item=116080>

Guardianship Training Link:
<https://www2.illinois.gov/sites/gac/OSG/Pages/Guardianship-Training.aspx>



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DOCUMENTS WILL BE SENT BY EMAIL (Select 8 items below)

1. Special Health Orders "Special Health Trust Checklist"
2. Letter of Intent ("Business & Information Form" for "Future Trust")
3. Report on Status & Third Party or SSI & Medicaid
4. Training your Child on Adult Health Decisions (part 2)
5. Guardianship & Alternatives (Power of Attorney, Supported Decision Making)
6. Special Health Trusts & Special Health Trust Planning
7. Adult Living Group & 503-Step information for younger siblings
8. Report of Guardianship on Short's Letter
9. Trusts & Special Health Trusts
10. Trusts & Adult Health Trusts
11. ABA's resources
12. Attorney Practice Benefit (APB)
13. The Adult Health Arrangements Book
14. Please add notes to your list to receive your materials by email

Check appropriate boxes and complete the required information.

An appropriate name and address used by your education institution
 Email address: _____
 Day time phone number: (____) _____ Email: _____
 Name: _____




Please contact me to schedule a presentation to a group, organization, school, or meeting
 Day time phone number: (____) _____ Email: _____
 Name: _____

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You need to write it ALL down!

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

AKA Letter of Intent...

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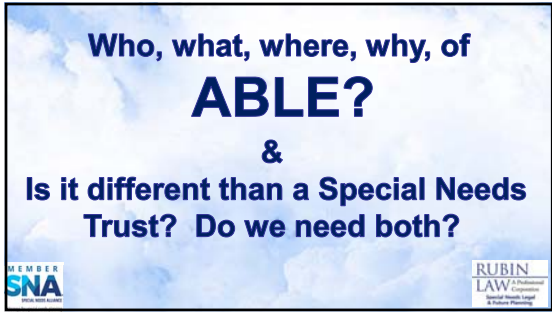
Request
Form
Item # 2
Fillable PDF Form
& Articles on Topic

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

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1st - Special Needs Trust(s)

- **Resource Limits:**
 - SSI \$2,000
 - AABD Medicaid \$17,500 since 5/2023
 - HBWD Medicaid \$25,000 & QBs
- Protection from themselves & others
- **NO MAXIMUM!**

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Special Needs Trusts

- ➔ **3rd Party**
- ➔ **Self Settled**
aka, OBRA, 1st Party, Pay Back...

Private & Pooled (next speaker)

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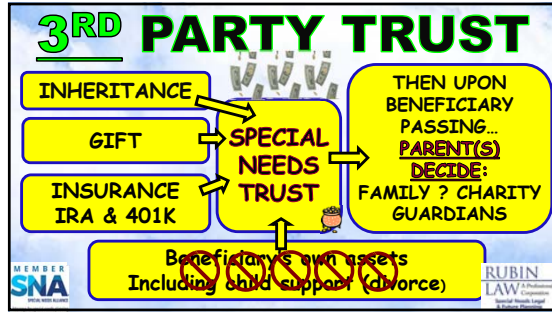
64

SNTs.. 2 Versions, both...

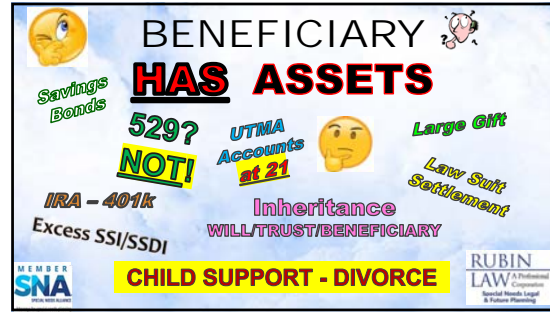
- ✓ Reserve
- ✓ Supplemental Fund
- ✓ Over & Above Government Benefits
- ✓ No \$ limit
- ✓ Federal
- ✓ State

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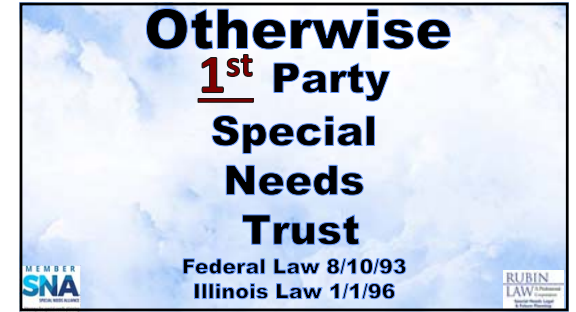
65



66



67





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1st Party SNT

Called... **"Self Settled"...** or

- "OBRA 93 Trust" ...
- "(d)(4)(A) or (C) Trust" - (C is Pooled)
- "PAY BACK Trust" (like an ABLE account...)
- because...

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If "NOT that much"

When to consider ABLE?

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issue (SSI) & \$17,500 AABD Medicaid issue?
 - But if SSD not SSI... & working, consider HBWD 1st!
2. Short term savings
3. For beneficiary to be in control of "some" spending money
4. Avoid 1/3 reduction for housing if on SSI
5. Small inheritances not correctly left to 3rd party trust
6. Small lawsuit settlements
7. Court ordered divorce child support not to exceed \$18,000 in a calendar year (2024)... *(MAYBE, beware?)*
8. 2018 - Convert traditional 529 Account... up to \$18,000 limit...
9. 2018 - Additional contribution: by BENEFICIARY of the lesser of earned income from employment for year & federal poverty level amount, if no contribution by or for to an employer retirement saving plan. However, the earned income will still be counted for purposes of eligibility.

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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, Parent

Benjamin A. Rubin, Sibling

**NO travel needed...
consultations and
document signing,
ALL virtual, via
zoom, now
permitted in
accordance with
new Illinois laws...**

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Brian N. Rubin, Parent

I received the following from a fellow father of a child with special needs.

Someone I Love

- Someone I love relies on me in ways you will never understand.
- Someone I love endures pain and challenges that break my heart and renew my spirit at the same time. Someone I love is unable to advocate for themselves for things that most of us take for granted.
- Someone I love will never have the opportunities that every child should have.
- Someone I love will need unconditional love and support after I am gone - this frightens me to the core.
- Someone I love encounters pity, stereotyping responses, and prejudice at every turn, because they look, act, and/or learn differently than others.
- Someone I love has needs that require me to allow "outsiders" to have power and input in areas that should be mine alone to meet.
- Someone I love will continue to look to me for everything in life long after other children are able to assume a place as part of the world.
- Someone I love has needs that require more time and energy than I have to give.
- Someone I love has needs that mean I am not able to meet basic needs of my own.
- Someone I love has needs that have become the driving force behind major decisions my family makes.
- Someone I love has changed me in ways I will never be able to describe.
- Someone I love has taught me about love and about the really important things in life...
- And still others don't understand what it is to be me.. they aren't living in my skin.

Brian Rubin

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WHAT WE DO...

- Special Needs Trusts
- Government Benefits Planning (Medicaid/ SSI/ Medicare/ SSDI)
- Estate & Estate Tax Planning – Wills & Trusts
- Estate, Probate and Trust Administration
- Guardianships & Alternatives
- Powers of Attorney
- Letters of Intent
- Consulting on Special Needs Family Divorces
- Navigating the Illinois “MAZE” of Children & Adult Services
- Consulting on Special Needs Medical-Malpractice/ PI Settlements

ATTORNEYS

Brian Rubin (Parent) ~ Benjamin (Benji) Rubin (Sibling)
Judith (Judie) Smith ~ Melanie Hoffman ~ Jolie Kaplan (Sibling)

SUPPORT STAFF

Jill Yonover, Paralegal ~ Michelle Fettner, Paralegal
Karen Muschkat, Legal Assistant ~ Linda Rubin, Legal Assistant (Parent)
Debbie Dawdy, Legal Assistant (Sibling) ~ Holly Garcia, Office Manager
Mitchell Rubin, Clerical Support (who has Autism)

Attorney Brian Rubin, the founder of Rubin Law, a former IRS Agent, and former IRS Attorney, has been a practicing attorney since 1976, is the parent of three children one of whom, Mitchell, has Autism. Brian's law practice, for nearly four decades, since 1982, when 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. Brian is a Past President (2017-2018) of the Special Needs Alliance, the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only), served on the Special Needs Law Section Steering Committee of the National Academy of Elder Law Attorneys, was a Charter Member of the Academy of Special Needs Planners, and is a Faculty Member and Text Book Author for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs legal and future planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics. Brian has been elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC) and has received the highest attorney rating from Martindale-Hubbell, AV® Preeminent™, and AVVO's highest attorney rating of Top Attorney. Brian is a Past President of The Arc of Illinois (2007-2011), served on The Arc of Illinois Board for 15 years (2004-2019), is a Past Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities (2002-2004), is the Immediate Past Chairman of the State of Illinois Autism Task Force (Chairman 2005-2015) established by the Illinois Legislature in 2005, serves as a member of the State of Illinois Guardianship & Advocacy Commission since 2013, served on the State of Illinois Department of Human Services Office of Inspector General Quality Care Board for 6 years, among many other State of Illinois Committees and Commissions. Brian has been a member of the Board of Directors of Clearbrook (an organization serving more than 8,000 individuals with intellectual and/or developmental disabilities, including his son, Mitchell) since 1989, is a member of the Board of Trustees of Life's Plan, Inc. which serves as Trustee of both Pooled Special Needs Trust and individual Special Needs Trusts, served as a member (Past Chairman) of the Board of Directors of the Special Leisure Services Foundation, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA), served as the founding Chairman of the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation), served on the Board of Directors of KESHET (Jewish Parents of Children with Special Needs), served previously 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), served for 7 years on the Board of Directors of Pact, Inc., now known as 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, and served on the Board of Directors of Northpointe Resources, also an agency serving individuals with intellectual and/or developmental disabilities.





Attorney Benjamin (Benji) Rubin, Brian's youngest son, Mitchell's "little/big" brother, has been a member of the Law Firm since 2010, and is now President of the professional corporation. Benji graduated from the University of Illinois College of Law, Magna Cum Laude, received his undergraduate degree from Northwestern University, and his Graduate Law Degree, an LLM (Tax), with honors, also from Northwestern University. Benji is a member of the Academy of Special Needs Planners, a member of the national Board of Directors of the Special Needs Alliance, national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only), is Vice-Chair, American Bar Association Elder Law and Special Needs Planning, Prior Chairman of the American

Bar Association Special Needs Planning Committee, past President of SIBS (Supporting Illinois Brothers and Sisters), the Illinois chapter of the national Sibling Leadership Network, an organization of adult siblings of individuals with intellectual disabilities, developmental disabilities and/or mental illness. Benji served as a member of the Board of Directors of The Arc of Illinois and is a member of the Clearbrook Associate Board, an organization serving more than 8,000 individuals with disabilities, including his brother, Mitchell. He also serves on the Board of Directors NSSRA (Northern Suburban Special Recreation Association) which facilitates and provides year round recreation programs and services to individuals in Deerfield, Glencoe, Glenview, Highland Park, Kenilworth, Lake Bluff, Northbrook, Northfield, Wilmette and Winnetka; Highwood and Lake Forest, and Riverwoods. He also serves on the Board of Directors of 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, serves on the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation), served previously 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). Benji is also a Faculty Member for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics. Having Mitchell as a brother profoundly shaped who Benji is today, and thus the type of law he chose to practice. His firsthand experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs. Now as an adult, those sometimes present and future responsibilities he has regarding his brother's care are a concern that he shares with all brothers and sisters of individuals with special needs.

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): _____

NO TRAVEL NEEDED...

Consultations and document signing (by request) - via ZOOM.