



74TH ANNUAL CONVENTION Advocacy for All

Thursday May 2nd

10:45-11:45



Session #17
Brian Rubin
Benji Rubin
Rubin Law, A
Professional Corporation

**"Special Needs Trusts, ABLE
Accounts, Letters of Intent,
and Related Topics"**

Brian Rubin, a parent, and Benji Rubin, a sibling, of Mitchell Rubin who has Autism, will present the basics of special needs' planning, including special needs trusts, ABLE accounts, selecting the future team of trustees and guardians, impact of divorce and law-suit settlements, educating the extended family, letters of intent, and many related topics.

1:45-2:45



Session #22
Brian Rubin
Benji Rubin
Rubin Law, A
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**"Alternatives, One Size Does
NOT Fit All: Supported
Decision Making (new Illinois
law), Powers of Attorney,
and Guardianship (Plenary
and Limited)"**

Brian Rubin, a parent, and Benji Rubin, a sibling, of Mitchell Rubin who has Autism, will explain Guardianship (Limited and Plenary), and the alternatives, including Supported Decision Making (new law), Powers of Attorney, and related matters.

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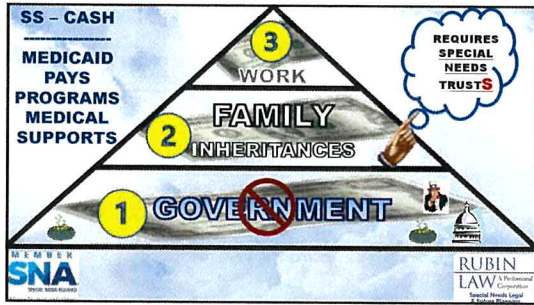
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& Future Planning**

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“Legal and future planning for our fellow families of individuals with special needs, including intellectual disabilities, developmental 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.”



18

19

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.**

SNA and RUBIN LAW logos are at the bottom.

20

“the attainment of the **limiting age** does not operate to terminate the hospital and medical coverage of a person who, because of a **condition** that occurred before the attainment of the limiting age, is **incapable of sustaining employment & dependent on his or her parents, or other care providers for lifetime care & supervision.**”

Request Form # 4

21

X

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

WRONG WAY

WRONG WAY

22

Special Needs Trusts

23

Special Needs Trusts

➔ **3rd Party**

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

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24

SNTs.. 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**

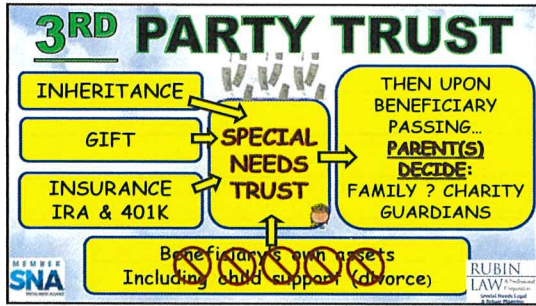
➔ by Statute 760 ILCS 3/509 (1/1/20)
Original statute 760 ILCS 5/15.1 **1991**

GIFTS INHERITANCES
NOT
OWN
1st Party!

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26



27

OK... SO
**INSIDE WILL OR
LIVING TRUST ?**

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WRONG WAY **NO! NO! NOT!** WRONG WAY

YOU WILL LIVE IN TRUST!

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29



30



31



32

BENEFICIARY HAS ASSETS

Savings Bonds

529? NOT!

UTMA Accounts at 21

Large Gift

Law Suit Settlement

IRA - 401k

Excess SSI/SSDI

Inheritance

WILL/TRUST/BENEFICIARY

CHILD SUPPORT - DIVORCE

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33

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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34

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 let!
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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35

Otherwise
1st Party
Special
Needs
Trust

Federal Law 8/10/93
 Illinois Law 1/1/96

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36

Back to dad...

Greetings



37

1st Party SNT

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

- "OBRA 93 Trust"...**
- "(d)(4)(A) or (C) Trust"**
- "PAY BACK Trust" (like an ABL account...)**
- because...**

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39

40


41

★ You say you **already have** a special needs trust?

★ Does it **qualify**?

★ Was it **approved** by SSA & State Medicaid Agency

★ Will it be approved when it is submitted (It **must** be submitted to SSA & State)? – 10 day rule...



42


COMMON ATTORNEY MISTAKES!

Testamentary

That is:

In Will or Living Trust

“only” when pass on...




43

COMMON ATTORNEY MISTAKES!

Not

100%



Discretionary



44

COMMON ATTORNEY MISTAKES!

**Permitting
Pay TO...**
{So... **SHOULD**
provide ability to
distribute to ABLE!}

45

COMMON ATTORNEY MISTAKES!



**Over
Restrictive
Language...**




46

COMMON ATTORNEY MISTAKES!

**No "Contribution"
or
Gift Language
3rd Party**

47

COMMON ATTORNEY MISTAKES!

**No
"Contingent"
SNT for others**



48

COMMON ATTORNEY MISTAKES!

**NO
Nursing Home
IMPOVERISHMENT
PROVISION**



49

COMMON ATTORNEY MISTAKES!

**NO
TRS/SURS/Military
& other "public"
Pensions Sub Trust**



50

COMMON ATTORNEY MISTAKES!

**NO Trustee(s)'
or Guardian
Power to change
corporate trustee...**




51

COMMON ATTORNEY MISTAKES!

**NO Change
of State
Provision...**




52

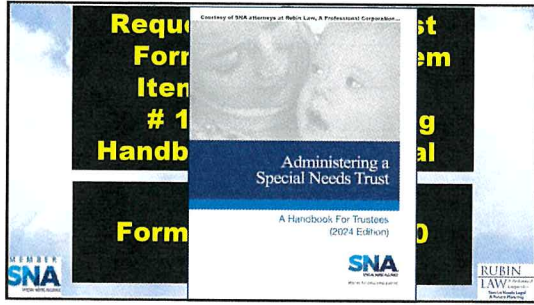
COMMON ATTORNEY MISTAKES!

Other Documents

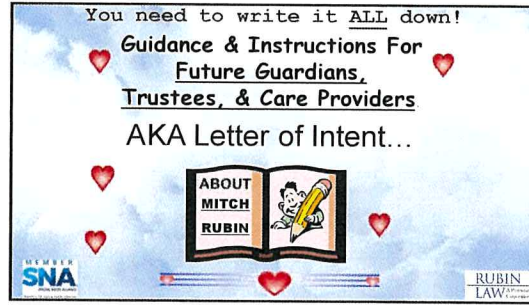
- * **Wills need special language!**
- * **Living Trusts too**
- * **Insurance Trusts too**
- * **Powers of Attorney too**
- * **Beneficiary Designations too**



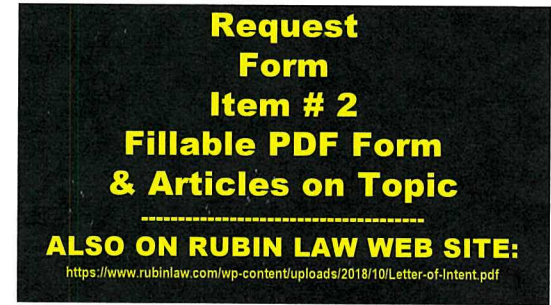

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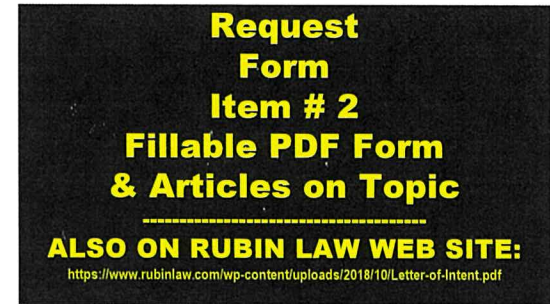
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57



58



59

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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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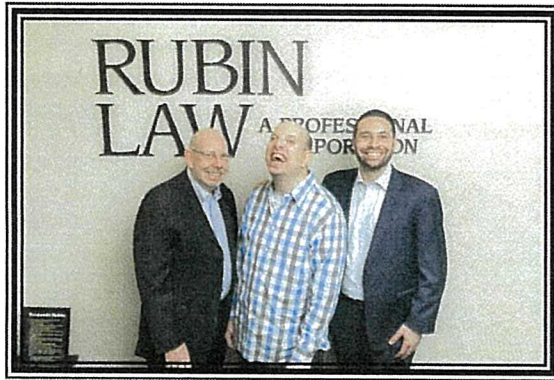
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Brian N. Rubin, Parent

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)

Brian Rubin

Attorney Brian Rubin, the founder of [Rubin Law, A professional Corporation](#), 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, 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 of the [Special Needs Alliance](#), the national, non-profit, as-sociation 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 Textbook 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 Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities, is a Past Chairman of the State of Illinois Autism Task Force (established by the Illinois Legislature), served as a member of the State of Illinois Guardianship & Advocacy Commission, and served on the State of Illinois Department of Human Services Office of Inspector General Quality Care Board, among other State of Illinois Committees and Commissions.

Brian is a Past President of The [The Arc of Illinois](#) (served on The Arc of Illinois Board for 15 years), 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.

Brian has also served 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, he 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 Trustees 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 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), and served on the Board of Directors of [Northpointe Resources](#), also an agency serving individuals with intellectual and/or developmental disabilities.

Brian and his wife Linda reside in Lincolnshire, Illinois.

Benjamin Rubin

Attorney Benjamin (Benji) Rubin, is President of [Rubin Law, A professional Corporation](#). The firm was founded in 2001 by Benji's father, Brian Rubin. The firm's law practice is limited to special needs legal and future planning for Benji's and Brian's fellow families of individuals with intellectual disabilities, developmental disabilities, and/or mental illness.

Benji joined the law firm in 2010 upon graduation from Law School. 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 has been elected as a Fellow of [ACTEC](#) (The American College of Trust and Estate Counsel).

Benji is a member of the national Board of Directors of the [Special Needs Alliance](#), the national, non-profit, association of experienced special needs planning attorneys (membership is by invitation only), is Vice-Chair of the American Bar Association Elder Law and Special Needs Planning Group, a past chair of the American Bar Association Special Needs Planning Committee, is immediate 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, and a member of the [Academy of Special Needs Planners](#).

Benji served as a member of the Board of Directors of [The Arc of Illinois](#) for 9 years. He also serves on the Board of Directors [NSSRA Foundation](#) (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. In addition, Benji 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 frequent speaker for the American Bar Association and the Illinois State Bar Association on those topics.

Benji lives with his wife and three children in Northbrook, Illinois.

Having an older brother with Autism 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.

