



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, ABL
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, ABL 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
Professional Corporation

**"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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& 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.”

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






15

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network.org
 & Sisters
 national
 network

7
 SIBLING LEADERSHIP NETWORK

tip.org

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DOCUMENTS AND SERVICES TO REQUEST:
 1. Social Security Number "Special Needs Trust Provisions"
 2. Letter of Intent (Guidelines & Information Form for "Future Years")
 3. Support as Director & Board Support in SIBS & Leadership
 4. Meeting year 2024 on 2024 Annual Business Meeting PPT
 5. Accountability & Informational Powers of Attorney, Supported Decision Making
 6. Social Security Trusts & Special Needs Trusts Planning
 7. Adult Sibling Dispute & Dispute Mediation/Alternative Dispute Resolution
 8. Consent of Siblingship in Divorce & Litigation
 9. Trusts & Special Needs Trusts
 10. Trusts & Asset Protection
 11. IRAs & 529 Plans
 12. Probate & Estate Planning
 13. Trusts & Asset Protection
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16

Back to dad...

Greetings



17

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.*

28

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?

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

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

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**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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**EDUCATION
SPECIAL ED -2007**

**Print?
Mark?
Stamp?
Direct others to sign?**

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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** 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?



39

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 ___ ?



40

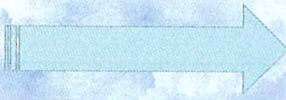
If he/she can't, or won't "sign" DPAs... **AND/OR** if you determined that SDM, DPAs, or HCSA, are simply **NOT ENOUGH** to assist and/or protect him/her...

THEN, MAYBE... JUST MAYBE, "some form" of **GUARDIANSHIP** would be appropriate to help, and to protect him/her, from himself/herself, and from others...



41

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 IDD 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 PLENIARY 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.

51

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 or 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.

Beware REQUEST w the law!

Even if DMV, liability - insurance}

FORM # 8

NOT IF needed!

52

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://ononet.illinois.gov/bsa/sianstba>

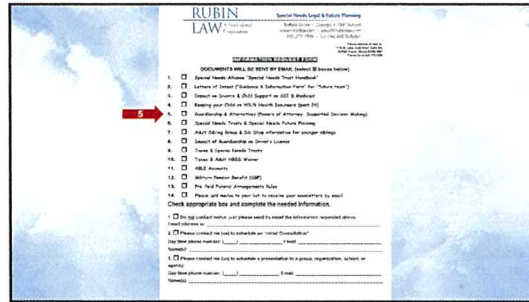
Click here if you would like to view the training without registering; you will not be provided a certificate: <https://ononet.illinois.gov/page.aspx?item=115288&review=1>

Click here for a list of disability related resources: <https://ononet.illinois.gov/page.aspx?item=116040>

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



57



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CHECKLIST

- Special Needs Alliance "Special Needs Trust Handbook"
- Letter of Intent (Guidance & Information from the "Future Trust")
- Special in Juvenile & Child Support in J&C & Mediation
- Keeping your Child in W-2 Health Insurance (Item #5)**
- Identification & Protection Powers of Attorney (Supplemental Services Package)
- Special Needs Trusts & Special Needs Future Planning
- Asset Protection Trusts & Other Trust Information for longer Article
- Special of Guardianship in Senior's Living
- Trusts & Special Needs Trusts
- Trusts & Adult Abuse Worker
- IRAs Accounts
- Advance Health Care's (AHC)
- Pre Paid Funeral Arrangements Rules
- Powers will relate to your will to receive your beneficiary to asset

Check appropriate box and complete the needed information.

I do not understand what you please send to assist the information requested above.
 I need assistance on _____

I have contact me to be scheduled on "Initial Consultation"
 On the date please telephone _____ Email _____

I have contact me to be scheduled a presentation to a group, organization, school or agency.
 On the date please telephone _____ Email _____

58

You need to write it ALL down!

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

AKA Letter of Intent..





59

**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>

60

**In EP Magazine
February 2011
Brian Rubin**

**In Parenting
Special Needs
Jan/Feb 2014
Brian Rubin**

**In Mat Life
Agent/Broker
Newsletter
Edition 4 2013
Brian Rubin**

61

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MEMBER SERVICES CENTER

GOODWILL WILL BE SENT BY SNA, SNA's Service Center

Need to make changes? Request Change Form (attached)
 Letter of Intent (Editorial & Distribution Form) (see "Return form")
 Sign up to receive a DVD Report on SNA & Service
 Request your name on SNA's Service Report (SNA)
 Authority & membership (years of service)
 Special needs issues in Special Needs Service Reporting
 Add, change items & the frequency for program filings
 Types of membership in SNA's Service
 Types & Special needs issues
 Types & Add-Value Services
 Add Services
 Why you should join (SNA)
 Add Services

Please add notes for your fee to receive your membership by mail
Check appropriate box and complete the needed information

I am not a member, but I would like to receive the materials requested above
 First address: _____
 City/State/Zip: _____
 Daytime phone number: (____) _____
 E-mail: _____

I am a current member, but I would like to receive the materials requested above
 First address: _____
 City/State/Zip: _____
 Daytime phone number: (____) _____
 E-mail: _____

**Email form
To
email@rubinlaw.com**

62

QUESTIONS

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63

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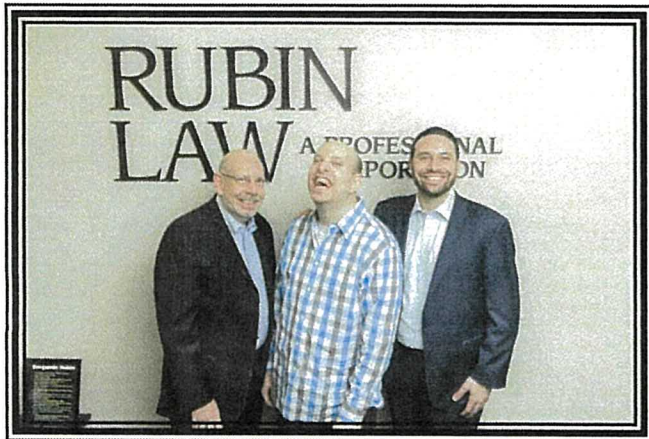
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Brian Rubin — Mitchell Rubin — Benjamin Rubin

“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

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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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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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. It is not one thing we do – it is the only thing we do. It is not one area of our practice, but our only area of practice.

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.

