



RUBIN LAW

A Professional Corporation

Special Needs Legal & Future Planning

WWW.RUBINLAW.COM
EMAIL@RUBINLAW.COM

866.TC.RUBIN

"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."

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13th Annual International Seminar



Attorney Brian Rubin
• Arc of Illinois Past President
• Director 2004-2019

9:10 a.m. – 10:10 a.m.

✓ **Guardianship & The Alternatives to Guardianship...**

One Size Does NOT Fit All:

- Illinois Health Care Surrogate Act
- Supported Decision Making
- Powers of Attorney
- Limited Guardianship
- Plenary Guardianship

✓ **Letters of Intent**
(Guidance to for the "Future Team")

✓ **ABLE Accounts ?**



Attorney Benji Rubin
• Arc of Illinois Past Treasurer
• Director 2014-2023

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Attorney Brian Rubin • Director • Arc of Illinois
2004-2019
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Benji Rubin • Benji Rubin • Benji Rubin

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Brian M. Rubin, Attorney at Law
Benji M. Rubin, Attorney at Law

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1

3/13/77 47 years

That's ME,
Grown MUCH
thinner,
with HAIR
& with
contacts!

BLAKE SNA
BLAKE SNA
BLAKE SNA

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1/27/81
44 years ago...

The day my life took a fork in the road...

BLAKE SNA
BLAKE SNA
BLAKE SNA

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Little/Big Brother Benji

BLAKE SNA
BLAKE SNA
BLAKE SNA

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Growing up as a "Sibling" ...

- Helps put things in perspective in life
- Different than parents...
- Vacations...
- Trips to the Store...
- Understanding our future responsibilities

SNA
SIBLING NETWORK
RUBIN LAW
PRACTICE

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

SIBLING LEADERSHIP NETWORK
SIBLING NETWORK
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snetwork.org
sisters
etwork

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IN LEADERSHIP WORK

ip.org

RUBIN LAW PRACTICE

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Back to dad...



Greetings

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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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STOP!
This means YOU.



- 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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Illinois Health Care Surrogate Act

(IF **NO** **decisional capacity**)



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(755 ILCS 40/ Health Care Surrogate Act.

1. LACKS DECISIONAL CAPACITY FOR MEDICAL HEALTH CARE

2. NO health care agent (i.e. No Health Care DPA), THEN

3. In order: (1) Guardian of Person... (2) spouse... (3) any adult children... (4) any parent... (5) any sibling.

But just MEDICAL/HEALTH!



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OPTION #2

IF DO HAVE

“Decisional Capacity”

then... 

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Supported
Decision
Making

SNA

Support Network
Association
Providence 2022-2025

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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.*

5. **“CLEAR AS MUD!”**

6. Provides a form.

7. Principal may revoke at any time.

8. **CANNOT MAKE DECISIONS** for principal.

9. **IF NO** decisional capacity then *guardianship is what is needed.*

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OPTION #3

AGAIN, IF **DO HAVE**

Decisional Capacity

then... 

SEARS

SNA

Produced in 2017-2018

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PowerS of

Attorney

(**IF** decisional capacity)

SEARS

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\$ FINANCIAL \$

1987

Print?

Mark?

Stamp?

Direct others to sign?

SEARS

SNA

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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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Rx

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?

DELEGATION OF RIGHTS TO
MAKE EDUCATIONAL DECISIONS
Illinois Statute 105 ILCS 27/42C.10

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[illegible]

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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...

SNA Notarized 2017-2024
RUBIN LAW Notarized 2017-2024
Notary Public - State of Illinois

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OPTION # 4

Guardianship...

SNA Notarized 2017-2024
RUBIN LAW Notarized 2017-2024
Notary Public - State of Illinois

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The Guardianship Law!
755 ILCS 5/11a

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

RUBIN LAW Notarized 2017-2024
Notary Public - State of Illinois

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Little/Big Brother Benji



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GUARD IANSHIP

- 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 IDO 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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GUARD IANSHIP

- 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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Professional 2022-2024

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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 a driver's license to allow the retention of any driver's license ~~and~~ issued to a person adjudged to be a person with a disability if the driver, who has previously been adjudged to be afflicted with or suffering from any mental or physical disability or disease.

Beware REQUEST FORM # 8

Even if DMV, NOT IF I

Ability - Insurance) d 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 the guardian have authority to act for more than 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://consent.illinois.gov/ask/askabout>

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

Click here for a list of disability related resources: <https://consent.illinois.gov/page.aspx?item=115099>

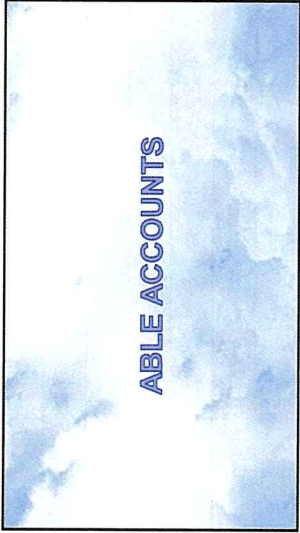
Guardianship Training Link:

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

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Barbara Rubin
Attorney at Law

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ABLE ACCOUNTS

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When to consider ABLE?

1. Excess SSI/SSDI/Earned Income... to avoid *resource/asset* issue:
 - **SSI** \$2,000 / **ABD Medicaid** \$17,500 / **HBMD Medicaid** \$25,000 + **OBs**
2. Short term savings
3. For beneficiary to be in control of "some" spending money
4. Small inheritances not correctly left to 3rd party trust
5. Court ordered divorce child support not to exceed \$19,000 in a calendar year
- **MAYBE?**
6. 2018 - Convert traditional 529 Account... up to \$19,000 limit (2025)...
7. Earned income still counts: ABLE not the answer for income!



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PRACTICE AREA: ESTATE PLANNING

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Back to dad...



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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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In EP Magazine
February 2018
Brian Rubin

In Pursuing
Special Needs
Jan/Feb 2014
Brian Rubin

In Next Life
Agents/Brokers
Newsletter
Edition 4 2013
Brian Rubin

Running SMART
How to stay on track

From The Center
Advisors



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QUESTIONS



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WHAT WE DO...

- Special Needs Trusts
- Government Benefits
- Guardianships
- Supported Decision Making
- Powers of Attorney
- Estate/Estate Tax Planning
- Wills & Trusts
- Estate Administration
- Probate Litigation
- Navigating the Illinois "MAZE" of Services
- Consulting on Litigation Settlements
- Consulting on Special Needs Family Divorces

NO travel needed... Consultations & document signing, ALL virtual, via Zoom, now permitted by Illinois law...

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