

RUBIN LAW A PROFESSIONAL CORPORATION

The Arc RISE 76TH ANNUAL CONVENTION
APRIL 29-30, 2026 | HYBRID

RUBIN LAW A Professional Corporation
Special Needs Legal & Future Planning
www.rubinlaw.com

866.TO.RUBIN
866.876.7826

"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."

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

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

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EMAIL@RUBINLAW.COM

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IT IS TIME TO START...

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1st,
a “little”
about the
speakers




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Brian Rubin
 An attorney since 1976, Brian is the Parent of 3 children, one of whom, Mitchell, has Autism.
 Brian's law firm, since 1982, when Mitchell was one year old, has been dedicated to serving the legal & future planning needs of his fellow families of children & adults with special needs.

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- Past President, The Arc of Illinois
- Former Commissioner, State of Illinois Guardianship & Advocacy Commission
- Past Chairman, State of Illinois, Department of Human Services, Statewide Advisory Council on Developmental Disabilities
- Past Chairman, State of Illinois Legislature's Autism Task Force
- Served on the State of Illinois Department of Human Services, Office of Inspector General, Quality Care Board ("over-sight" of Agency) - Abuse and/or Neglect of individuals with developmental &/or intellectual disabilities, or mental illness
- Past President, Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- Was a Charter Member, Academy of Special Needs Planners, a national organization of special needs planning attorneys




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- Former Director, DayOne Pact, special needs trusts' trustee, & guardian for individuals with developmental &/or intellectual disabilities
- Serves on the Board of Trustees of Life's Plan Inc., Trustee of both individual special needs' trusts & "Pooled" special needs trusts
- Continuing Legal Education Faculty (teaching other attorneys) on special needs trusts & special needs planning for Illinois Institute for Continuing Legal Education, Illinois State Bar Association, & American Bar Association
- Director, Clearbrook, since 1989, 37 years, an agency serving more than 8,000 children & adults with intellectual &/or developmental disabilities, including Brian's son, Mitchell
- Past Chairman, Special Leisure Services Foundation (SLSF), foundation for Northwest Suburban Special Recreation Association (NWSRA)
- Served as Founding Chairman of Foundation for Special Education District of Lake County Illinois (SEDOL Foundation)
- Former Director, Keshet & Northpointe Resources

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President since 2017-2022
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Then there is Brian's youngest son, Benji, who joined the firm after Law School in 2010...

J.D., LL.M. (Tax), now President of Rubin Law

NORTHWESTERN UNIVERSITY

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Benji Rubin (JD/LLM)

Having Mitchell as a brother profoundly shaped who Benji is today, & thus the area of law he chose to practice. His personal experiences as a sibling offer a unique perspective into the responsibilities that come with caring for a sibling with special needs, a concern that he shares with all brothers & sisters of individuals with special needs.

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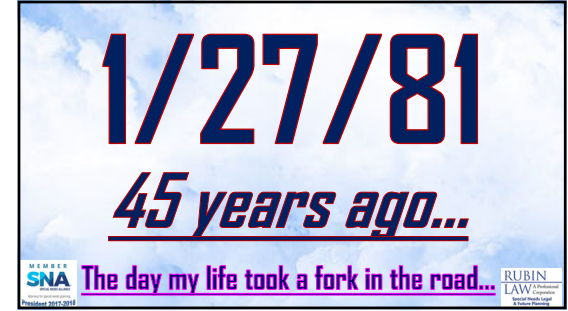
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- Former Director and Former Treasurer, The Arc of Illinois
- Past-President & Director, of S.I.B.S., the Illinois Chapter of Sibling Leadership Network (National Sibling Association)
- Vice-Chair, American Bar Association Elder Law & Special Needs Planning Group
- Past-Chair, American Bar Association Special Needs Planning Committee
- Director, Clearbrook, an agency serving more than 8,000 children & adults with intellectual &/or developmental disabilities, including Benji's brother Mitchell
- Director, DayOne Pact, trustee of special needs trusts & serves as guardian
- Director, SEDOL (Special Education District of Lake County) Foundation
- Director, NSSRA (Northern Suburban Special Recreation Association) Foundation
- Director, Special Needs Alliance, the national, non-profit, membership by invitation, organization of special needs planning attorneys
- Member of the national Academy of Special Needs Planners
- Continuing Legal Education Faculty Member (teaching other attorneys) of the Illinois Institute for Continuing Legal Education, as well as for the Illinois State Bar Association, & for the American Bar Association, on the topic of special needs trusts, and special needs legal & future planning

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→ 11:30 a.m. to 12:15 p.m.
Session # 2
Special Needs Legal
& Future Planning

=====

→ 2:00 p.m. to 2:45 p.m.
Session # 7
Guardianship & the
Many Alternatives...

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Little/Big Brother Benji



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MITCH



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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

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

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 800-391-7886 • Chicago • Oakbrook
 www.rubinelaw.com • www.siblis.com
 800-391-7886 • 1st Free 30-Min. Consult

DOCUMENTS TO BE SENT BY EMAIL (attach if boxes below)

1. Special Needs Affidavit "Special Needs Trust Checklist"
2. Letters of Intent ("Wishes & Information Form" for "future heirs")
3. Support on Income & Child Support or SSI & Medicaid
4. Waiver your Child or Child Health Insurance (over 18)
5. Guardianship & Alternatives (Power of Attorney, Supported Decision Making)
6. Special Needs Trusts & Special Needs Public Planning
7. Adult Sibling Group & Sibling Information for younger siblings
8. Report of Assets/Liabilities on Sibling's Income
9. Trusts & Special Needs Trusts
10. Trusts & Adult IRAS Waiver
11. Adult Affidavits
12. Pre-Need Funeral Arrangements Notes
13. Military Powers Benefit (SBA)
14. Please add marks to your list to receive your documents by email

Check appropriate box and complete the required information.
 Email address to _____ families.
 Email address to _____ families.
 Day time phone number (_____) _____ Email _____
 Home (_____) _____ Email _____
 Day time phone number (_____) _____ Email _____
 Home (_____) _____ Email _____

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 SIBLING LEADERSHIP NETWORK
 siblis.org

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When someone is **presumed** incompetent in Illinois, that person is **presumed incompetent...**

STOP!
This means YOU.



only **IF** a court determines otherwise, is that person 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...

STOP!
This means YOU.



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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
 1st 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.
055 ILCS 40/1 Sec. 1. Short title. This Act may be cited as the Health Care Surrogate Act. (Source: P.A. 87-749)
055 ILCS 40/5 Sec. 5. Legislative findings and purposes.

1. LACKS decisional capacity for MEDICAL/HEALTH AND
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




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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 have 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 2026**


- 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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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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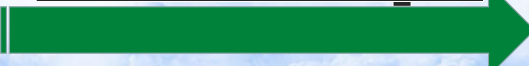

If he/she can't, or **WON'T SIGN** DPAs...
AND/OR if you determined that SDM, DPAs, or HCSA,
 are simply **NOT ENOUGH** to assist and/or protect
 him/her...
THEN, MAYBE... JUST MAYBE, "some form" of
GUARDIANSHIP would be appropriate to help, and to
 protect him/her, from himself/herself, and from
 others...



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OPTION # 4

Guardianship...

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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 PLENARY 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

Beware, REQUEST FORM # 8 the law!

Even If DMV, w... lity - Insurance}

NOT IF PL needed!

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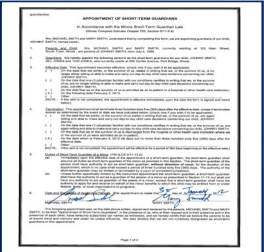
Why/When Limited Guardianship?

- ✓ 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!
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=116040>

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 all boxes below)

- Special Health Affidavit "Special Health Trust Affidavit"
- Letter of Intent ("Notice & Information Form" for "future heirs")
- Support on Income & Child Support or SSI & Medicaid
- Training your Child on CRIS Health Decision (over 18)
- Soundly & Affirmative Powers of Attorney, Supported Decision Making
- Special Health Trusts & Special Health Public Trusting
- Adult Sibling Group & Sibling Information for younger siblings
- Support of Affidavits on Sibling's Issues
- Trusts & Special Health Trusts
- Power & Adult Health Waiver
- ABA Affidavits
- Military Powers Benefit (SBA)
- The Adult Financial Arrangements Act
- Please add email to your list to receive your worksheets by email

Check appropriate box and complete the required information.

I am an individual, please send me materials by email the information requested above.
 Email address: _____
 Day time phone number: (____) _____ Email: _____




Please contact me (not 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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In EP Magazine February 2011
Brien Rubin

In Parenting Special Needs Jan/Feb 2014
Brien Rubin

In MetLife Agent/Broker Newsletter Edition 4 2013
Brien Rubin

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1000 Lakeside Drive, Suite 1000
Chicago, IL 60606
Tel: 312.299.7898 • Fax: 312.299.1330
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DOCUMENTS WILL BE SENT BY EMAIL, UNLESS IT BEGINS BELOW

- Special Needs Affidavit "Special Needs Trust Affidavit"
- Letters of Intent, Custodial & Information Form for "Future Trust"
- Impact on Donor & Child Support on SGL & Medicaid
- Funding for Child or Child Health Insurance (over 18)
- Guardianship & Alternatives (Plenary of Attorney)
- Special Needs Trusts & Special Needs Future Planning
- Adult Disability Benefit & IR, IRAP Information for caregiver siblings
- Impact of Guardianship on Donor's Lifetime
- Trusts & Special Needs Trusts
- Trusts & Adult IRIRA Withdraw
- ABLE Accounts
- Military Service Benefits (DRS)
- Pre-Fund Financial Arrangements Rules
- Please call rubin to your firm to receive your assessment by email

Check appropriate box and complete the needed information.

Do not contact us, just please send by email the information requested above.
Email address to _____

Please contact us first to schedule an "Initial Consultation".
Do this please contact _____ Email _____
Name(s) _____

Please contact us first to schedule a presentation to a group, organization, school, or agency.
Do this please contact _____ Email _____
Name(s) _____

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Email form To email@rubinlaw.com

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QUESTIONS



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Buffalo Grove - Chicago - Oak Brook
847-279-7999 - Toll Free 866.To.Rubin (866-867-8263) - Fax 847-279-0090



Brian Rubin - Mitchell Rubin - Benjamin Rubin

NO travel needed...
consultations & document signing,
ALL virtual, via zoom,
now permitted in accordance with Illinois law...

"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, Partner
Benjamin A. Rubin, Sibling

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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
- Letters of Intent
- 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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