



Legal & Future Planning
for children & adults with special needs...

**BRIAN
RUBIN**

**Attorney &
Parent**

**BENJI
RUBIN**

**Attorney &
Sibling**

**RUBIN
LAW**

A Professional Corporation

Special Needs Legal & Future Planning
Buffalo Grove • Chicago • Old Orchard
www.rubinlaw.com • email@rubinlaw.com
847 279 7999 • Toll Free 866.ToRubin

1

Benji Rubin

President
S.I.B.S.


Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network




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S.I.B.S. www.sibsnetwork.org


Supporting Illinois Brothers & Sisters
Illinois Chapter of the national Sibling Leadership Network

Sibling Leadership Network
www.siblingleadership.org

The Sibling Leadership Network (SIBS) is a nonprofit organization that provides support and resources for siblings of children with special needs. SIBS is a national organization with chapters in many states. The Illinois Chapter of the Sibling Leadership Network is a part of SIBS. We provide support and resources for siblings of children with special needs. We provide support and resources for siblings of children with special needs. We provide support and resources for siblings of children with special needs.

Join the network for free at www.sibsnetwork.org. Visit us on Facebook at The Sibling Leadership Network.

Request
Form
Item
7



www.siblingleadership.org

3

What YOU,
or "OTHERS", do
IMPACTS
Government Benefits

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How much?

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WHERE FROM ?

- ✱ Working ?
- ✱ Parent(s) ?
- ✱ Siblings ?

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The
"GREAT" STATE OF
ILLINOIS
NOT!

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Illinois Developmental Disabilities

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J.D. Attorney at Law
Special Needs Planning
EST. 1988

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Illinois Developmental Disabilities

WORK
FAMILY
INHERITANCES
GOVERNMENT

REQUIRES
SPECIAL
NEEDS
TRUSTS

8

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Illinois Developmental Disabilities

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EST. 1988

BEWARE...
SSI/SSDI
If living "residential" then only keep \$60 @ month for personal use...

BEWARE:
If turned down for Medicaid on application or lose Medicaid on redetermination, the State doesn't automatically then try one of the other "types".

Medicare TWO YEARS

Quarters - own record: 2020 \$1,410
Before 24 - 6 quarters on SSDI
• Retires and receiving SSA (new for 2017)
• Inability to Use Two Limbs

9

ECONOMIC IMPACT PAYMENTS

- Note for Supplemental Security Income (SSI) Recipients (From Commissioner of SSA):
 - Issuance of economic impact payments as quick and efficient as possible. We realize people are concerned, and the IRS will provide additional information on their web page when available. Please note that **we will not consider economic impact payments as income for SSI recipients, and the payments are excluded from resources for 12 months.**
 - We will continue to update Social Security's Coronavirus COVID-19 web page as further details become available."

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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.**

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Request
Form
Item
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"the attainment of the limiting age does not operate to terminate the hospital and medical coverage of a person who is handicapped if the occurrence of the limiting age is not of self-sustaining nature is dependent on the care of parents, or other care providers for lifetime care & supervision."

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WRONG WAY

X

WRONG WAY

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

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Special Needs Trusts

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Special Needs Trusts

3rd Party

Private & Pooled Versions

Self Settled

aka, OBRA, 1st Party, Pay Back...

Private (d4A) & Pooled (d4C)

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2 Versions, both...

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






16

2 Versions, both...

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






17

3RD PARTY TRUSTS

ORIGINAL - GOOD

- ➔ by Court Decisions 1982
- ➔ by Statute 1991




18

3RD PARTY TRUSTS

1st Version

INHERITANCES & GIFTS

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3RD PARTY TRUSTS

ORIGINAL - GOOD

➔ **by Court Decisions 1982**

➔ **by Statute 1991**

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3RD PARTY TRUST

INHERITANCE

GIFT

INSURANCE
IRA
401K

SPECIAL NEEDS TRUST

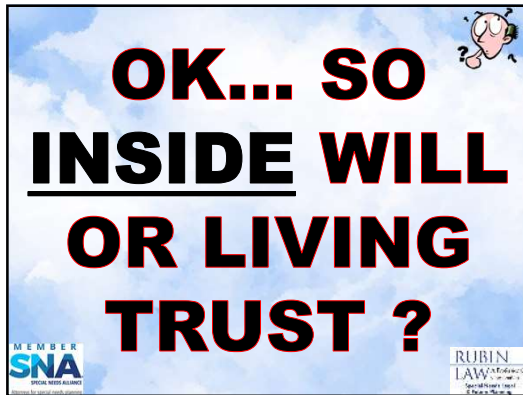
Beneficiary's own assets
Including child support (divorce)

THEN UPON BENEFICIARY PASSING...
PARENT(S) DECIDE:

FAMILY
CHARITY
GUARDIANS

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22



23



24

**BUT I STILL
DON'T GET IT ?**



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#1 So NO "Piggy Backing"
#2 NO "Grand Fathering"
**#3 NO Nursing Home
Impoverishment**
**#4 NO Place for
"large" gifts to go**

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**Again, spread the word...
NURSING HOME EXCEPTION
 BUT BEWARE...**

- Power of Attorney/Living Trust
- 3rd party trust with "required language"

**ANOTHER REASON FOR
 SNT NOT INSIDE YOUR
 WILL OR YOUR LIVING TRUST!**

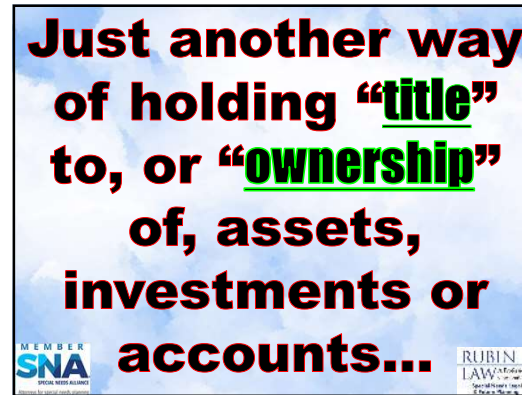
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28



29



30



How to put \$
in the Trust?
From your
& others'
Wills & Trusts

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EXTENDED FAMILY & FRIENDS

- Instruction letter
- Form Codicil
- Form Trust Amendment
- Trust Certification
- Consult with their Attorneys/Advisors

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3rd PARTY SPECIAL NEEDS TRUST

REMEMBER

3rd PARTY SPECIAL NEEDS TRUST

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But...
Beware of
absentee
parents &
grandparents



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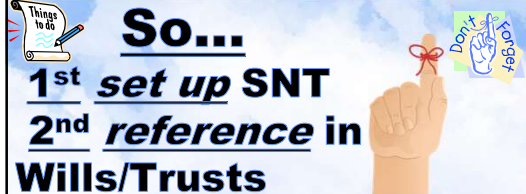


EX-SPOUSE
LETTER

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So...
1st set up SNT
2nd reference in
Wills/Trusts
3rd extended family
too

But... **But...**

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Change Beneficiaries

- ✓ Life Insurance
- ✓ IRA
- ✓ 401k
- ✓ Profit Sharing
- ✓ Etc.


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WHAT ABOUT GIFTS ?

- ☒ **NOT** Directly
- ☒ **NOT** ABLE (stay tuned!)
- ☒ **NOT** UTMA



3rd Party SNT

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So far just 3rd Party But what if...

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BENEFICIARY HAS ASSETS

Savings Bonds, UTMA Accounts AT 21, Large Gift, IRA - 401k, Excess SSI/SSDI, Inheritance, WILL/TRUST/BENEFICIARY

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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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If “not that much”

When to consider ABLE?

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issue? But if SSD not SSI... & working, consider HBWD Ist!
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 law suit settlements
7. 2018 - Convert traditional 529 Account... up to \$15,000 limit..
8. 2018 - Additional contribution of the lesser of earned income from employment for year & \$12,060, 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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ABLE SIDE NOTE

- New Illinois Statute...
- Not as advertised...
- No Pay Back is being “advertised” BUT
 - Doesn’t apply to all 9 Illinois Medicaid Waivers including DDD and DRS, and specifically CILA/ICFDD, SODC, HBSS
 - Doesn’t apply to even medical Medicaid post age 55
- Tax Deduction... so what
- Child Support... Feds say NO!

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Request Form Item # 11

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Otherwise
1st Party
Special
Needs
Trust

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

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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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1st Party SNT... "NOT" SO GOOD...

- ✗ Only if **NOT 65**
- ✗ Only by Parents, grandparents, Courts, guardians & self (new)... **NOT others**
- ✗ **SSA Position...**
- ✗ **Courts often require...**
- ✗ **Pay Back to day 1...**

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**1ST PARTY SNTS
ARE THE VERSIONS
REQUIRED
FOR CHILD SUPPORT
NOT
3RD PARTY SNTS!
& AS OF NOW
NOT ABLE!**

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Divorced? Child Support for Non-Minor Child

Request Form Item #3

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✓ So NOT directly

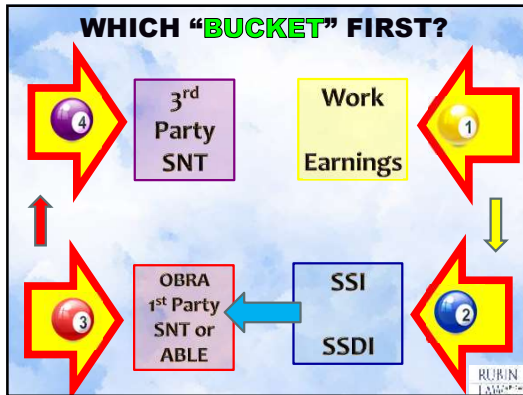
✓ All to 3rd Party SNT

✓ IF no alternative then, & only then,

✓ to ABLE or a 1st Party SNT...

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- ★ You say you **already have** a special needs trust?
- ★ Does it **qualify**?
- ★ Was it **approved** by SSA & HFS (Illinois Medicaid Agency)? AG? Will it be approved when it is submitted (It **must** be submitted to SSA & HFS)?

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COMMON ATTORNEY MISTAKES!

Calling it an SNT doesn't make it an SNT!

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COMMON ATTORNEY MISTAKES!

**No Grand-Fathering
Required
Language!**

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COMMON ATTORNEY MISTAKES!

**NO prohibition
of 1st Party
money in 3rd
Party Trust!**

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COMMON ATTORNEY MISTAKES!

**NO requirement
to use 1st Party
Trust money or
ABLE money prior
to 3rd Party Trust
money!**

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COMMON ATTORNEY MISTAKES!

**Not
100%
Discretionary**

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COMMON ATTORNEY MISTAKES!

**Permitting
Pay TO...**

*So SHOULD provide ability
to distribute to ABLE!*

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COMMON ATTORNEY MISTAKES!

**Over
Restrictive
Language...**

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COMMON ATTORNEY MISTAKES!

“No Trustee Powers to Correct” or terms not “broad” enough

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COMMON ATTORNEY MISTAKES!

No “Band Aid” or retro Language

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COMMON ATTORNEY MISTAKES!

No “Next Generation” Trustees...

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COMMON ATTORNEY MISTAKES!

**No “Contribution”
or
Gift Language
3rd Party**

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COMMON ATTORNEY MISTAKES!

**No
Termination
Provision...**

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COMMON ATTORNEY MISTAKES!

**No
“Contingent”
SNT for others**

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COMMON ATTORNEY MISTAKES!

**No
“Contingent”
SNT for others**

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COMMON ATTORNEY MISTAKES!

**NO
Nursing Home
Sub Trust for 50
States**

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COMMON ATTORNEY MISTAKES!

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

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COMMON ATTORNEY MISTAKES!

**NO Grantor(s)'
power to change
contingent
beneficiaries...**

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COMMON ATTORNEY MISTAKES!

**NO Trustee(s)'
power to change
contingent
corporate trustee...**

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COMMON ATTORNEY MISTAKES!

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

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COMMON ATTORNEY MISTAKES!

**Not modified for
new (1/1/20)
Illinois Trust Code**

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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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COMMON ATTORNEY MISTAKES!

**...and these are
just a few of the
attorney mistakes
that we see...**

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**Request
Form
Item
1
Handbook**

**Request
Form
Item
6
Reading
Material**

**Request
Form Item # 9
SNT/Taxes**

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ADMINISTRATING A Special Needs Trust
SNTs for Parents

76

The Parent(s)' Prayer

77

Who will be Guardian?

78

Who will be Guardian?



- Who will make all of the necessary decisions?
 - Medical?
- Government Benefits?
 - School Issues?
- Recreation & Social?
 - Employment?
 - Day Programs?
 - Residential?

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Who will be Guardian?



Who is going to fill our shoes?

- Can they understand?
- Job will outlast them!
- Other Children? Siblings? Grandparents? Friends?
- School District of Guardian?
- Married Couples?
- Same as Trustees?

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Guardians are nominated in parents Wills!



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(755 ILCS 5/11a-16)

Testamentary guardian

A parent of a disabled person may designate by will a person, corporation or public agency qualified to act... to be appointed as... successor guardian of the person or of the estate or both of that person...

If the court finds that the appointment of the one so designated will serve the best interests and welfare of the ward, it shall appoint the one so designated...

(Source: P.A. 81-795.)

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Short Term Guardian Declaration?

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You need to write it ALL down!

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



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WRITE IT DOWN!

- ✓ family information
- ✓ diagnoses, hospitalizations, medications, doctors, other

**Request
Form
Item # 2
Form & Articles**

funeral desires & related info... SNT,
✓ executive summary

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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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You need to write it ALL down!

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



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WRITE IT DOWN!

- ✓ family information
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**Request
Form
Item # 2
Form & Articles**

funeral desires & related info...
✓ executive summary

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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?**
- **Could he/she be vulnerable to or taken advantage of by others?**

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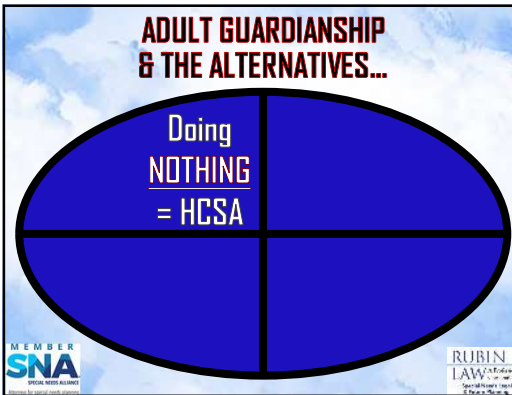
Before considering "Guardianship",
ALWAYS
first consider the
ALTERNATIVES

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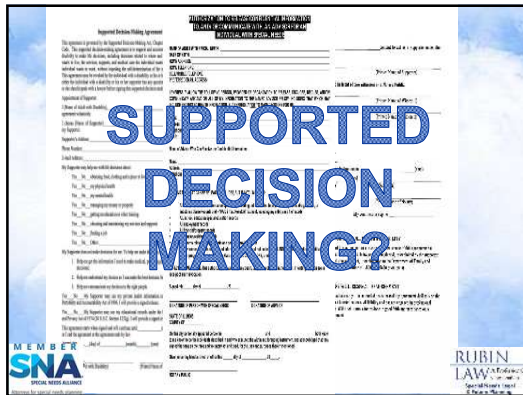
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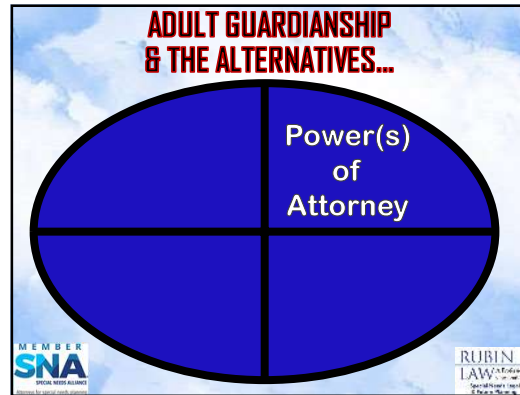
**Before considering
"Guardianship",
ALWAYS
first consider the
ALTERNATIVES**



[illegible]



97



98

Powers of Attorney

- ✓ Powers of Attorney
 - Financial/Property
 - Health Care/Medical/Living Will
 - Mental Health Treatment
 - Education
- ✓ Representative Payee

99

So, does he/she have
"capacity"
 to sign DPAs?

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ILLINOIS STATUTORY SHORT FORM
 POWER OF ATTORNEY FOR PROPERTY

Insert name and address of principal hereby revokes all prior statutory powers of attorney for property executed by me and agents.

Insert name and address of agent (NOTE: You may not name co-agents using this form.) as my attorney-in-fact (the "agent") to act for me and in my name (to any extent noted on particular powers) in the following powers identified in Section 4 of the Statutory Short Form Power of Attorney for Property Law" (including all amendments), but subject to any limitations on or additions to the specified powers outlined in paragraph 2 or 3 below.

(NOTE: You must strike out any one or more of the following categories of powers you do not want your agent to have. Powers to strike the title of any category will cause the powers described in that category to be granted to the agent. To strike out a category you must draw a line through the title of that category.)

(a) Real estate transactions.
 (b) Financial institution transactions.
 (c) Bank and bank transactions.
 (d) Tangible personal property transactions.
 (e) Safe deposit box transactions.
 (f) Motor vehicle and security transactions.
 (g) Retirement plan transactions.
 (h) Social Security, unemployment and military service benefits.
 (i) Tax matters.
 (j) Claims and litigation.
 (k) Contracting and other transactions.
 (l) Business operations.
 (m) Borrowing transactions.
 (n) Estate transactions.
 (o) All other property transactions.

(NOTE: Limitations on and additions to the agent's powers may be included in the power of attorney if they are specifically described below.)

2. The powers granted above shall not include the following powers or shall be modified or limited in the following particulars:

(NOTE: Here you may include any specific limitations you deem appropriate, such as a prohibition or restriction on the sale of particular stock or real estate or special rules on borrowing by the agent.)

Page 2 of 2

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Example **additional** Powers, when appropriate...

- Government Benefits
- IRS
- Residential
- Employment matters
- Funding/establishing self settled (d4A/C) SNTs and ABL Accounts
- HIPAA release
- UID/PW
- Copies

MEMBER SNA SPECIAL NEEDS ALLIANCE
 RUBIN LAW ADVOCATES Special Powers Unit

102

NOTICE TO THE INDIVIDUAL SIGNING THE DELEGATION
STANDARD DELEGATION FORM POWER OF ATTORNEY FOR HEALTH CARE

The use of your power of attorney cannot be used to sign any document that is not a health care decision for you. If you sign this document, you are giving the person that the medical decision power will be the person you want to make health care decisions for you. If you sign this document, you are giving the person that the medical decision power will be the person you want to make health care decisions for you. If you sign this document, you are giving the person that the medical decision power will be the person you want to make health care decisions for you.

1/1/16 revised

Print? Mark? Direct others to sign?

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103

DELEGATION OF RIGHTS TO MAKE EDUCATIONAL DECISIONS

MENTAL HEALTH

Print? Mark? Direct others to sign?

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

EDUCATION

SPECIAL ED POWER OF ATTORNEY 2007 LAW

Print? Mark? Direct others to sign?

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105

Social Security

**SSA
REQUIRES
THEIR OWN
FORM**

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106

THE STATE

**DHS/HFS
REQUIRES
THEIR OWN
FORM**

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107

IF he/she DOES have "capacity" for PAs...

- Will** he/she "sign" them?
- Will** he/she allow you to act, or will he/she terminate/void the PA as soon as... when...?
- Doesn't **prohibit** him/her from...
- Remain vulnerable?

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Will Powers be enough ?

- What if he/she is on computer buying things with mom's credit card.
- What if he/she announces that he/she is getting married or moving in with "friend".
- What if he/she refuses to have parents at IEP/504/ISP meeting, or is "tricked".
- What if he/she goes for driver's license test and you said no.
- What if he/she is being asked to sign ____ ?



109

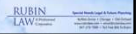
If he/she can't, or won't "sign" powers of attorneys... **AND IF** you determined that "powers" or other alternatives are simply **not enough** to assist and protect him/her... **then, maybe... just maybe,** "some form" of Guardianship could be appropriate to help, and to protect him/her, from himself/herself, and from others...



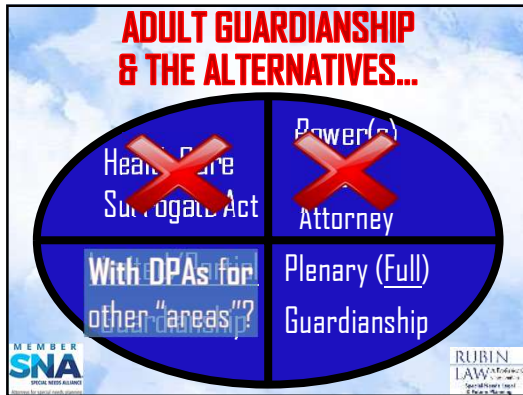
110

IF he/she **DOES** have "capacity" for PAs...

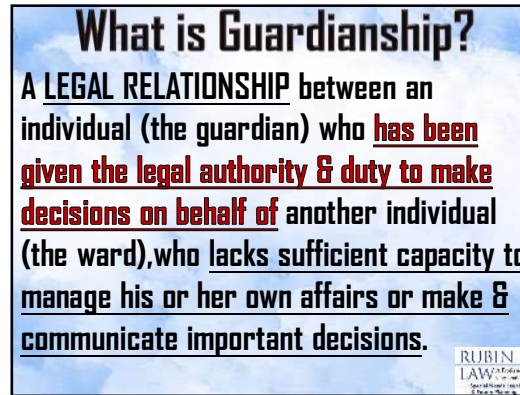
1. **Will** he/she "sign" them ?
2. **Will** he/she allow you to act, or will he/she terminate/void the PA as soon as... when...?
3. Doesn't **prohibit** him/her from...
4. Remain vulnerable?



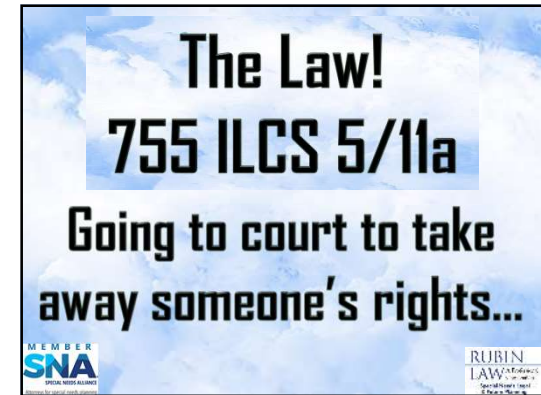
111



112



113



114

(755 ILCS 5/11a-7)

Venue

...the proceeding shall be instituted in the court of the county in which **(the ward)** resides.

(Source: P.A. 80-1415.)

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115

Must give NOTICE to certain people, in addition to the Ward!

(755 ILCS 5/11a-10)

Sec. 11a-10. Procedures preliminary to hearing... can't

(f) **Notice of the time and place of the hearing** shall be given by the petitioner by mail or in person to those persons... whose names and addresses appear in the petition and who do not waive notice, not less than 14 days before the hearing.

Specifically that means:

1. the spouse and adult children, if any, and if not the petitioners, and if none, then
2. **the parents and adult siblings (including & blood), if any,** and if not the petitioners and if none, then
3. the nearest adult kindred known to the petitioner.

(Source: P.A. 97-379, eff. 8-19-11; 97-1099, eff. 8-24-12; 98-49, eff. 7-1-13; 98-89, eff. 7-15-13; 98-756, eff. 7-16-14.)

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755 ILCS 5/11a GUARDIANS FOR ADULTS WITH DISABILITIES

- 755 ILCS 5/11a-5 Who may act as guardian.
- (a)
 - (1) has attained the age of 18 years;
 - (2) is a legal **resident** of the **United States**; *(that is not need be Illinois)*
 - (3) is not of unsound mind;
 - (4) is not an adjudged person with a disability
 - (5) has not been convicted of a felony, unless the court finds...
- (b) Any public agency, or not-for-profit corporation found capable by the court
- (c) Any corporation qualified to accept and execute trusts in this State may be appointed guardian of the estate of a person with a disability

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M.D. Report

(755 ILCS 5/11a-9)

Sec. 11a-9. Report.)

(a)... which contains:

(1) a description of the nature and type of the respondent's disability and an assessment of how the disability impacts...;

(2) an analysis... the respondent's mental and physical condition... which have been performed within 3 months of the date of the filing of the petition;

(3) an opinion as to whether guardianship is needed, the type and scope of the guardianship needed, and the reasons therefor;

(4) a recommendation as to the most suitable living arrangement... ;

(5) the name, business address, business telephone number, and signatures of all persons who performed the evaluations upon which the report is based, one of whom shall be a licensed physician...

(Source: P.A. 98-1094, eff. 1-1-15.)

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Service of Summons

(755 ILCS 5/11a-10)

Sec. 11a-10. Procedures preliminary to hearing... con't.

(e) ... the respondent shall be personally served with a copy of the petition and a summons not less than 14 days before the hearing...

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GAL

(755 ILCS 5/11a-10)

Sec. 11a-10. Procedures preliminary to hearing.

(a) ... The court shall appoint a guardian ad litem to report to the court concerning the respondent's best interests consistent with the provisions of this Section, except that the appointment of a guardian ad litem shall not be required when the court determines that such appointment is not necessary for the protection of the respondent or a reasonably informed decision on the petition... The court may allow the guardian ad litem reasonable compensation.

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Back to Court ?

(755 ILCS 5/11a-17(b))

"Filing reports..."

If the court directs, the guardian of the person shall file with the court at intervals indicated by the court, a report that shall state briefly: (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children; (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; (3) a summary of the medical, educational, vocational, and other professional services given to them; (4) a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; (5) a recommendation as to the need for continued guardianship; (6) any other information requested by the court or useful in the opinion of the guardian. **The Office of the State Guardian shall assist the guardian in filing the report when requested by the guardian. The court may take such action as it deems appropriate pursuant to the report.**

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NO MORE MAILING ANNUAL REPORTS! MUST NOW E-FILE

BUT... Cook County ☹

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County Specific Instructions Provided To Clients

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County Specific Instructions

For the County of Cook

1. The guardian of the person shall file with the court at intervals indicated by the court, a report that shall state briefly: (1) the current mental, physical, and social condition of the ward and the ward's minor and adult dependent children; (2) their present living arrangement, and a description and the address of every residence where they lived during the reporting period and the length of stay at each place; (3) a summary of the medical, educational, vocational, and other professional services given to them; (4) a resume of the guardian's visits with and activities on behalf of the ward and the ward's minor and adult dependent children; (5) a recommendation as to the need for continued guardianship; (6) any other information requested by the court or useful in the opinion of the guardian. **The Office of the State Guardian shall assist the guardian in filing the report when requested by the guardian. The court may take such action as it deems appropriate pursuant to the report.**

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Back to Court For "residential" placement!

(755 ILCS 5/11a-14.1)

Residential placement

No guardian appointed under this Article, except for duly appointed Public Guardians and the Office of State Guardian, shall have the power, unless specified by court order, to place his ward in a residential facility.

The guardian shall have a duty to investigate the availability of reasonable residential alternatives. The guardian shall monitor the placement of the ward on an on-going basis to ensure its continued appropriateness, and shall pursue appropriate alternatives as needed.

(Source: P.A. 90-250, eff. 7-29-97.)

Need to educate agencies!

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124

Back to court for sterilization!

(755 ILCS 5/11a-17.1)

Sterilization of ward

(a) A guardian of the person shall not consent to the sterilization of the ward without first obtaining an order from the court, not required for a procedure that is medically necessary to preserve the life of the ward or to prevent serious impairment to the health of the ward.

(c) The court shall appoint a guardian ad litem to report to the court consistent with the provisions of this Section.

(d) The court (1) may appoint counsel for the ward, and (2) shall appoint counsel upon the ward's request.

(e) The court shall order a medical and psychological evaluation of the ward.

(Source: P.A. 96-272, eff. 1-1-10.)

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125

GUARDIANSHIP

Health Care Surrogate Act – Guardian #1

Make medical treatment decisions including decisions to forgo or withdraw life-sustaining treatment.

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126

(755 ILCS 5/11a-22)

Trade and contracts with a disabled person

(b) Every note, bill, bond or other contract by any person for whom a plenary guardian has been appointed or who is adjudged to be unable to so contract is void as against that person and his estate, but a person making a contract with the person so adjudged is bound thereby.

(Source: P.A. 91-357, eff. 7-29-99.)

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BUT, EVEN IF A PLENARY GUARDIAN IS APPOINTED... HE/SHE CAN STILL VOTE... FOR THIS IS ILLINOIS!

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DMV does NOT follow the law!

Request Form Item # 8 Guardianship & Driver's License

Even if DMV allows D. letter, DON'T! Liability Insurance? NOT PLENARY Sure... Limited ?

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What if:

- He/she needs a Guardian, **but** won't cooperate? or
- He/she will be "driving"? ... then **try** "Limited" Guardian?

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(755 ILCS 5/11a-14)

Legal disabilities of ward

(a) An order appointing a limited guardian of the person under this Article removes from the ward only that authority... which is specifically conferred on the limited guardian by the order.

(b) An order appointing a limited guardian of the estate under this Article confers on the limited guardian the authority... not specifically reserved to the ward.

(c) The appointment of a limited guardian under this Article shall not constitute a finding of legal incompetence.

(d) An order appointing a plenary guardian under this Article confers on the plenary guardian of the person the authority provided under Section 11a-17 and on the plenary guardian of the estate the authority provided under Section 11a-18.

(Source: P.A. 81-795.)

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- Is the Guardian ready for the job ?
- Ready to be on call **24/7/365** ?
- If he/she is a danger to others &/or to property? **Could Guardian be "liable"?**
- Can the Guardian limit any liability by only seeking "emergency/temporary" or "partial/limited" Guardianship?
- Can the family hire a "company" to act?
- What if needs a Guardian, but no one steps forward? Public Guardian(s)

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132

Co-Guardians ?

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

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ADULT SHORT TERM GUARDIAN DECLARATION

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

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GUARDIANSHIP

- Move out of State
- Move out of County? *(Depends on County)*
- Why some parents/siblings decline?
- Then what?
- State Guardian/Private?

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137

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 shall
- File with court a certificate of completion within one year, EXCEPT... "the court may, for good cause shown, exempt from this requirement..."
- However, only applies to 101 of the 102 Illinois counties...

NOT applicable to Cook County?!?! *Don't ask...*

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138

Office of State Guardian
Guardianship Training

Click on the links below to find out more about the training that will be available for you. The training is available for you to watch at any time. The training is available for you to watch at any time. The training is available for you to watch at any time.

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OFFICE OF STATE GUARDIAN

- OSG Regional Offices
- OSG Service Profile
- OSG
- Find More Guide to Adult Guardianship in Illinois
- FAQ
- Guide to adult guardianship in Illinois
- Guardianship Fact sheet
- Guardianship FAQ
- Guardianship Training
- Online intake form
- OSG Case List
- OSG Info
- Volunteer guardianship advocate program information and tools

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 National Organization for Special Needs Education

RUBIN LAW
 LAWYERS
 Special Needs Law Center
 1000 N. Dearborn St.
 Chicago, IL 60610
 Tel: 312.467.1000

139

Guardianship Training Link

Click on the links below to find out more about the training that will be available for you. The training is available for you to watch at any time. The training is available for you to watch at any time. The training is available for you to watch at any time.

Click on the links below to find out more about the training that will be available for you. The training is available for you to watch at any time. The training is available for you to watch at any time. The training is available for you to watch at any time.

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Request Form Item # 5 Guardianship & Alternatives

Click on the links below to find out more about the training that will be available for you. The training is available for you to watch at any time. The training is available for you to watch at any time. The training is available for you to watch at any time.

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 Chicago, IL 60610
 Tel: 312.467.1000

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Special Needs Planning is:

NOT JUST special needs trusts, NOT just documents...

- **Not just** additional special provisions in Wills, Living Trusts, & Powers of Attorney
- **Not just** extended family instructions & forms
- **Not just** planning for probate court avoidance
- **Not just** federal & state estate tax (death tax) avoidance or minimization planning
- **Not just** at 18 guidance & advice on guardianship & alternative options to guardianship
- **Not just** assistance & forms for changing titles & naming beneficiaries
- **Not just** guidance on navigating the PUNS system & the Illinois maze of children & adult services, including home based & residential options
- **Not just** guidance & forms for "Letters of Intent", guidance for the "future team"
- **Not just** consulting & planning on the impact of divorce on SSI & Medicaid
- **Not just** consulting & planning on the impact of litigation settlements on SSI and Medicaid
- **Not just** advice & consulting on the proper or appropriate use of ABLE accounts
- **Not just** assistance navigating a move to another State due to different laws & programs
- **Not just** assistance & intervention with Government Benefits issues & responding to correspondence from SSA & HFS (the State Medicaid Agency)
- **Not just** telling you of new laws, regulations, policies, & options impacting your planning
- **Not just** parent to parent & sibling to sibling mentoring

❖ **But ALL of the above & much, much more**

❖ **It is a RELATIONSHIP that should not end with the signing of your documents & should continue, always available, without an additional "meter running"... without any additional attorney fees!**

142

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Special Needs Legal & Future Planning
A Family Law Firm
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Chicago, IL 60610
Phone: 312.329.1100
Fax: 312.329.1101

MEMBER SNA
Special Needs Alliance
Attorney for special needs planning

MEMBERSHIP INFORMATION

DOCUMENTS WILL BE SENT BY EMAIL (select the boxes below)

- ☐ Special Needs of Your Special Needs Trust (Nursing)
- ☐ Letters of Intent (200 pages) to be prepared by the client (see below)
- ☐ Request for Letters & Social Security of SSI & Medicaid
- ☐ Long term Care of SSI (see below) (see below)
- ☐ Understanding of the law (see below) (see below)
- ☐ Special Needs Trust & Special Needs Future Planning
- ☐ Risk of future disability or income loss for your children
- ☐ Impact of guardianship on future's income
- ☐ Trusts & Special Needs Trusts
- ☐ Trusts & Adult Abuse Waiver
- ☐ ABLE Accounts
- ☐ ABLE Accounts (ABLE)
- ☐ Financial Future Planning for you
- ☐ Attorney and family to prepare the documents and to prepare them

Check appropriate box and complete the needed information.

1. The legal documents, SNA will send by e-mail the information on the next page, and will be sent to you.

2. Please complete your address in the table below.

Name: _____ Email: _____

City/State/Zip: _____

3. Please complete your address in the table below.

Name: _____ Email: _____

City/State/Zip: _____

Email form
To
email@rubinlaw.com

143

Family to Family

{We live it...}

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Special Needs Legal & Future Planning
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Chicago, IL 60610
Phone: 312.329.1100
Fax: 312.329.1101

"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 entire area of practice."

ATTORNEYS

Sharon Rubin (**Parent**) ←

Benjamin (Benji) Rubin (**Sibling**) ←

Judith Lurie; Smith ←

Natalie Hoffman ←

Jodie Koster (**Sibling**) ←

SUPPORT STAFF

Bill Yarnes; Paralegal ←

Nina Rosenfeld, Legal Assistant & Office Manager (**Sibling**) ←

Jada Rubin, Legal Assistant (**Parent**) ←

Karen Kuschel, Legal Assistant ←

Carmen Guzman, Administrative Assistant (**Parent**) ←

Michael (Mike) Rubin, Chief Support Officer & Lurie's son, Benji's and Natalie's father, who has autism ←

Attorney membership includes the Special Needs Alliance and the Academy of Special Needs

144

We hope that you found this virtual zoom presentation beneficial. Be safe... Be well...

This concludes the presentation.

Contact Brian and Benji at:
email@rubinlaw.com
866.to.rubin or 847-279-7999

145
