



# 2 Presentations

**6:25 – 6:55 Introduction to Special Needs Trust(s) & ABLE Accounts...  
Why, What, When & How**

**7:05 – 7:35 Introduction to Guardianship as well as the “alternatives”...  
(Supported Decision Making, Powers of Attorney, & Illinois Health Care Surrogate Act)  
One Size Does NOT Fit All!**

**RUBIN**  
**LAW** A Professional Corporation  
**Special Needs Legal  
& Future Planning**

**WWW.RUBINLAW.COM**  
**EMAIL@RUBINLAW.COM**  
**866.TO.RUBIN**

## **An overview of:**

- **6:25 – 6:55 - the need for & the use of:**
  - ✓ **Special Needs Trusts (3rd party & 1st party)**
  - ✓ **ABLE Accounts**
  
- **7:05 – 7:35 - Guardianship (Plenary & Limited) & the Alternatives:**
  - ✓ **Supported Decision Making**
  - ✓ **Powers of Attorney)**
  - ✓ **Letters of Intent**



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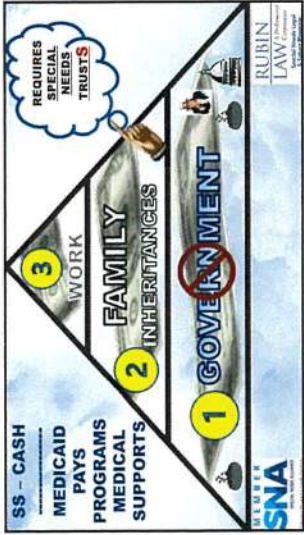
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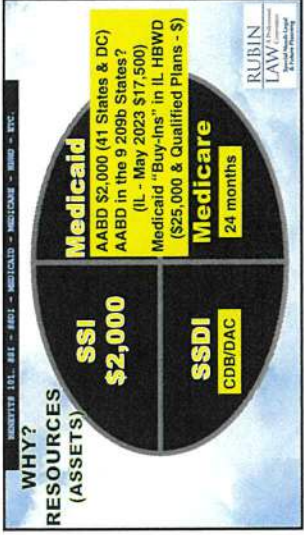
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**PARENTS' HEALTH INSURANCE!**

- 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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**X**

WINDING WAY

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

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**Special Needs Trusts**

😊 **3rd Party**  
Private & Pooled Versions

😞 **Self Settled**  
aka, OSBA, 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

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**3RD PARTY TRUSTS**  
**ORIGINAL - GOOD**

➔ by Court Decisions **1993**

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

GIFTS INHERITANCES **NOT** OWN 1st Party!

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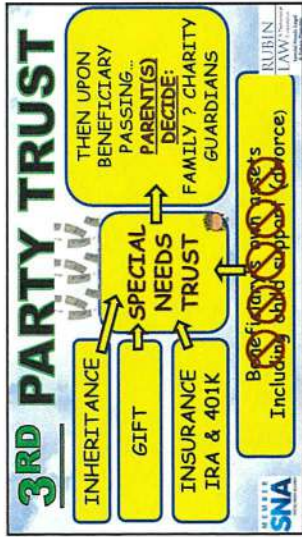
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**BUT I STILL DON'T GET IT?**  
**Just what IS a Trust?**

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**Just another way of holding "title" to, or "ownership" of, assets, investments or accounts...**

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**3rd PARTY SPECIAL NEEDS TRUST**

So what's all the *paper* for?

- ✓ Instruction Manual
- ✓ "Rules of the Road"

*Who can use it?*

- ✓ Parents
- ✓ Siblings
- ✓ Grandparents
- Anyone...
- ✓ **EXCEPT BENEFICIARY**
- Remember - 3rd Party
- Parents & Family as Trustees...

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What **YOU**,  
AND what "**OTHERS**", do, even  
**UNintentionally, IMPACTS**  
Government Benefits

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

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**EXTENDED FAMILY & FRIENDS**

- **Instruction letter**
- **Form Codicil to Will**
- **Form Trust Amendment**




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**But... Beware of absentee parents & grandparents**




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**EX-SPOUSE LETTER**

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

Icons: "Help Me" scroll, "Don't Forget" hand, "RUBIN LAW" logo

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Change  
 Beneficiaries

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

Icons: "Don't Forget" hand, "Help Me" scroll, "RUBIN LAW" logo, "SNA" logo

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So far just  
 3<sup>rd</sup> Party  
 But  
 WHAT IF...

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**BENEFICIARY HAS ASSETS**

529? **NOT!** **IRA - 401k** **UTMA Accounts at 21** **Large Gift** **Large Stay Settlement** **Inheritance WILL TRUST/BENEFICIARY** **Child Support - Divorce**

Excess SS/SSDI

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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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When to consider ABLE?

1. Excess SSI/SSDI/Earnings to avoid \$2,000 issue? But if SSD not SSI... B working, 1st consider Medicaid "buy-in" like Illinois' HBWD 1st, B now IL S17,500!
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. Small law-suit settlements
6. Since 2018 - **ADDITIONAL CONTRIBUTION ONLY BY BENEFICIARY** of the lesser of **EARNED INCOME** for year B **federal poverty level amount**, **IF no contribution** by an employer to **retirement saving plan**. However, the earned income will still be counted for purposes of eligibility.

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**Illinois Statutes - ~~Not~~**

- "No Pay Back" is
- 1. Per Feds (CMS Illinois Medical specifically CI)
- 2. Also, per Feds medical Medici
- Tax Deduction...

apply to all 9  
i DRS, and  
can't apply to any

**#11**

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**Otherwise**

**1<sup>st</sup> Party**

**Special Needs Trust**

**Federal Law 8/10/83**

**Illinois 1/1/96**

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**1<sup>st</sup> Party SNT**

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

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

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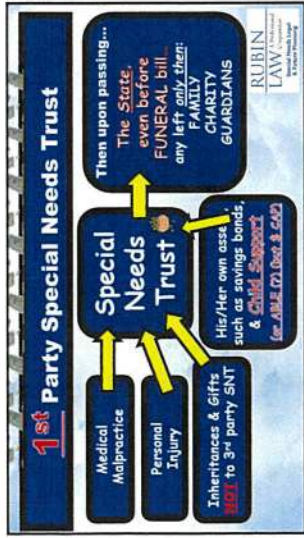
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**1st PARTY SNTS ARE THE VERSIONS REQUIRED FOR CHILD SUPPORT NOT 3RD PARTY SNTS! OR ABLE / MAYBE ???? (BUT \$ CAP)**

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THE FOLLOWING IS A SUMMARY OF THE PROVISIONS OF THE 2012 ACT... (text continues in columns)

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

★ Does it **qualify**?

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

Will it be approved when it is submitted (it **must** be submitted to SSA & Medicaid / 10 days)?

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**COMMON ATTORNEY MISTAKES!**

- >>> NO Grand-Fathering Required Language (Party Trust)
- >>> NO requirement to use 1st Party Trust money or ABLE money prior to 3rd Party Trust money!
- >>> NOT 100% Discretionary
- >>> PERMITTING Pay TO... (So... SHOULD provide ability to distribute to ABLE!)
- >>> OVER RESTRICTIVE Language...
- >>> NO Trustee powers to correct or terms not "broad" enough
- >>> NO "Next Generation" Trusts
- >>> NO "Contribution" or Gift Language 3rd Party
- >>> NO "Contingent" SNT for others
- >>> NO Nursing Home Sub-Trust for ALL 50 States
- >>> NO TRUSSRS/Military/Police/Fire & other "public" Pensions Sub Trust
- >>> NO language where there to change corporate trustee...
- >>> NO Change of State Provision.
- >>> NO Illinois Trust Designated Representative provision

and more... (SNA)  
[www.specialneedsalliance.org](http://www.specialneedsalliance.org)

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**COMMON ATTORNEY MISTAKES!**

**Other Documents**  
**Need SPECIAL Language**

- ★ Wills "Guardians for post 18" ...
- ★ Living Trusts upon incapacity...
- ★ Powers of Attorney...

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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, Attorney & Parent*

*Benjamin A. Rubin, Attorney & Sibling*

# **NO travel needed...** **consultations** **EVEN** **document signing,** **ALL can now be** **virtual, via zoom,** **now permitted in** **accordance with** **Illinois law...**

# 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.To.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. 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)



## Attorney Brian Rubin

**Brian**, the founder of Rubin Law, a former IRS Agent, and former IRS Attorney, has been a practicing attorney since 1976 and is the parent of three children, one of whom, Mitchell, has Autism.

Brian's law practice, for over four decades (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 (2017-2018) of the Special Needs Alliance, the national, non-profit, association 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 text book 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 same 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 President of The Arc of Illinois (2007-2011), served on The Arc of Illinois Board for 15 years (2004 -2019), is a past Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities (2002-2004), is a past Chairman of the State of Illinois Autism Task Force (Chairman 2005-2015) established by the Illinois Legislature in 2005, 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 many other State of Illinois Committees and Commissions.

Brian 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 Trusts and individual Special Needs Trusts, served as a member (past Chairman) of the Board of Directors of the Special Leisure Services Foundation, a foundation supporting the Northwest Suburban Special Recreation Association (NWSRA), and served as the founding Chairman of the Board of Directors of the Foundation of The Special Education District of Lake County (SEDOL Foundation).

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



## Attorney Benjamin (Benji) Rubin

**Benji**, Brian's youngest son and Mitchell's "little/big" brother, has been a member of the Law Firm since 2010 and is now President of the professional corporation. 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 is a member of the Academy of Special Needs Planners, 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, American Bar Association Elder Law and Special Needs Planning Group, prior Chairman of the American Bar Association Special Needs Planning Committee, 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.

Benji has served as treasurer and as a member of the Board of Directors of The Arc of Illinois and has served as a member of the Clearbrook Associate Board, an organization serving more than 8,000 individuals with disabilities, including his brother, Mitchell. He currently serves on the Board of Directors of the NSSRA (Northern Suburban Special Recreation Association) a foundation which facilitates and provides year-round recreation programs and services to individuals in Deerfield, Glenco, Glenview, Highland Park, Kenilworth, Lake Bluff, Northbrook, Northfield, Wilmette, and Winnetka; Highwood and Lake Forest, and Riverwoods.

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) and 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 and text book Author for the Illinois Institute for Continuing Legal Education (IICLE) on the topic of special needs planning, as well as a Speaker for the American Bar Association and the Illinois State Bar Association on those topics. Having Mitchell as a brother 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.

### **INFORMATION REQUEST FORM**

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

1.  Special Needs Alliance "Special Needs Trust Handbook"
2.  Letters of Intent ("Guidance & Information Form" for "future team")
3.  Impact on Divorce & Child Support on SSI & Medicaid
4.  Keeping your Child on YOUR Health Insurance (past 26)
5.  Guardianship & Alternatives (Powers of Attorney)
6.  Special Needs Trusts & Special Needs Future Planning
7.  Adult Sibling Group & Sib Shop information for younger siblings
8.  Impact of Guardianship on Driver's License
9.  Taxes & Special Needs Trusts
10.  Taxes & Adult HBSS Waiver
11.  ABLE Accounts
12.  Military Pension Benefit (SBP)
13.  Pre-Paid Funeral Arrangements Rules
14.  Please add me/us to your list to receive your newsletters by email

**Check appropriate box and complete the needed information.**

1.  Do not contact me/us, just please send by email the information requested above.

Email address is: \_\_\_\_\_

2.  Please contact me (us) to schedule an "Initial Consultation".

Day time phone number: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name(s): \_\_\_\_\_

3.  Please contact me (us) to schedule a presentation to a group, organization, school, or agency.

Day time phone number: (\_\_\_\_) \_\_\_\_\_ Email: \_\_\_\_\_

Name(s): \_\_\_\_\_

**NO TRAVEL NEEDED...**

**Consultations and document signing (by request) - via ZOOM.**