

What is a “Special Needs Planning Lawyer” and how do I find the “right” one for my family?

So, let me begin by asking you a question. If you needed heart surgery would you go to a general practitioner or an Internist? Of course not, you wouldn't even consider a general surgeon or an Internist to perform heart surgery. Likewise, when you need special needs planning, you shouldn't be considering a general practitioner, an attorney that practices in many areas of law. Further, you shouldn't be considering a traditional “estate planning attorney”, unless they have considerable experience in special needs planning.

So what is Special Needs Planning? Estate and Gift Planning by means of a Special Needs Trust(s) is just the beginning. The attorney should be experienced not only in drafting the two kinds of Special Needs Trusts, but also be experienced dealing with the Social Security Administration and the State when they review the Trusts upon application for SSI and Medicaid, or upon redeterminations. The attorney should also be familiar with Guardianship and the alternatives to Guardianship, as well as how to navigate successfully the State's Children and Adult services system, or if you will, “maze”. In addition you should want an attorney that will know, and advise you promptly, when new laws, rules, or procedures occur that impact your planning. You also want to find an attorney or firm that can assist you, with compassion and understanding. Many Special Needs Planning Attorneys are themselves parents or siblings of individuals with developmental disabilities, intellectual disabilities and/or mental illness, and “get it”.

I suggest that the first place to visit is www.specialneedsalliance.org, The Special Needs Alliance (SNA) is a national, not-for-profit, association of experienced Special Needs Planning Attorneys, a majority of whom are fellow parents or siblings. Membership is by invitation. I am honored to serve as Vice President of that national organization. In fact three of our four attorneys, including my son, Benji, are invited SNA Member Attorneys, and the fourth is an Affiliate SNA Member attorney.

Another source is www.specialneedsplanners.com, The Academy of Special Needs Planners (ASNP), a national group, owned by three attorneys, that is open to all attorneys, regardless of experience. I was a Charter Member of that group, and my son, Benji, an SNA Member Attorney and my partner, remains a member of that group. There are many excellent special needs planning attorneys that are members of ASNP.

If you are considering an attorney who is not a member of SNA, I suggest you ask some questions such as:

1. How many “third party special needs trusts” have you prepared in the past month, six months?
2. How many “first party special needs trusts” have you prepared in the past month, six months?
3. If the Social Security Administration or the State of Illinois has questions about the trust(s) you drafted, will you “handle” those questions without any additional cost/fees?
4. How many Adult Guardianships have you handled, and Powers of Attorney have you drafted, for individuals with special needs in the past year?
5. What other areas of practice does that attorney handle (check his or her web site). That is, are they also doing business law, traffic, divorce, bankruptcy, personal injury, etc.? If they are practicing in other areas of law, then they will not be able to adequately “keep up”, keep current, with the constant changes that take place in the area of special needs planning.

Finally, you are not just looking for someone to draft a document(s), but you are looking for a relationship with a firm that will be going down that road to peace of mind with you, for many years.

Brian Rubin: A practicing attorney since 1976, is the parent of three children, one of whom, Mitchell, has Autism. Brian's law practice, since 1982, when Mitchell was one year old, has been dedicated to serving the legal and future planning needs of his fellow families of children and adults with intellectual disabilities, developmental disabilities, and/or mental illness. Brian has been elected as a Fellow of the American College of Trust and Estate Counsel (ACTEC), and has received the Martindale-Hubbell AV® Preeminent™ Rating. Brian is the Immediate Past President of The Arc of Illinois; has been a member of the Board of Directors of Clearbrook (serving more than 7,000 individuals with developmental disabilities) since 1992; is Past Chairman of the Board of Directors of the SLSF, the foundation supporting the Northwest Suburban Special Recreation Association (NWSRA); served as the founding Chairman of the Board of Trustees of the Foundation of The Special Education District of Lake County (SEDOL Foundation); served on the Board of Directors of KESHET (Jewish Parents of Children with Special Needs); served on the Board of Directors of Pact, Inc. (PAS/ISC Agent for DuPage County, also available to serve as Trustee of Special Needs Trusts, as well as available to serve as Guardian); served on the Board of Directors of Northpointe Resources; serves as an Officer on the Board of Directors 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 & Text Book Author for the Illinois Institute for Continuing Legal Education (IICLE). Brian is also the Past Chairman of the State of Illinois Statewide Advisory Council on Developmental Disabilities; Chairman of the State of Illinois Autism Task Force since it was established by the Illinois Legislature in 2005; serves as a member of the State of Illinois Guardianship & Advocacy Commission; served on the State of Illinois Department of Human Services Office of Inspector General Quality Care Board; served on the State of Illinois Department of Human Services, Division of Developmental Disabilities Strategic Plan Team; served on the State of Illinois Disabilities Services Advisory Committee (The State of Illinois "Olmstead" Committee); and served on the State of Illinois, Department of Human Services, Division of Developmental Disabilities Quality Committee, among many other State of Illinois Committees and Commissions. Brian also serves on the Advisory Council of Encompass, a joint venture of the Jewish Federation of Metropolitan Chicago, the Jewish Child and Family Services, and Keshet, regarding residential and day programming for adults with intellectual and developmental disabilities. Brian is a former IRS Agent and a former IRS Estate Tax Attorney. Brian served by appointment on the American Bar Association's Sub-Committee on "Special Needs Trusts and Other Protective Vehicles". Brian has served by appointment of the President of the Illinois State Bar Association on that Association's "Section Council" on Estate Planning, Probate and Trust Law. Brian also has served, by appointment, on that Association's "Standing Committee" on the mentally disabled. Brian feels the tremendous responsibility of not only being the parent of a child with special needs, but also as an attorney with the knowledge and ability to assist others in special needs future planning... needed to secure the future of children and adults with special needs.