

## **Creating a Legal Plan for Your Child's Future**

There is no 'one size fits all' approach that parents of a child diagnosed within the "autism spectrum" should take as the child approaches their eighteenth birthday. The abilities and the needs of each child are unique and should be evaluated to create the best legal plan tailored for that child's future. When a child reaches the age of majority and becomes a legal adult it is an exciting and scary time for both the parent and the child. Parents and children are excited about the new possibilities that lie ahead and the opportunity for the child to spread their wings and fly.

As parents we trust that we have created a solid foundation of ethics, morals and decision-making skills for our children to take with them out into the world. These same hopes and fears are experienced by families where a loved one has Asperger's or Autism.

I recommend to parents that before they meet with an attorney experienced in special needs planning that they discuss with each other their child's abilities, challenges and limitations:

### *Financial Responsibilities & Intellectual Abilities:*

1. What is the highest level of math the child completed in school?
2. What is the child's reading and comprehension level?
3. What is the highest grade level completed by the child and how did the child perform?
4. Will the child be attending college or, a vocational school?
5. Will the child be employable?
6. What are the child's strongest financial related skills (i.e. maintain and balance a checkbook, read a bank statement, handle banking transactions, make investment decisions)?
7. Is the child able to correctly make change at a store?
8. If your child receives wages or, Social Security benefits is he/she able to responsibly handle money?
9. Do you think your child would be susceptible to undue influence from others and be financially exploited?

### *Personal Care Decision-Making:*

10. Could the child have a conversation with a physician about a diagnosis (i.e. cavity) and understand the prognosis and the possible treatment plans? Can the child give informed consent?
11. Can the child live independently or, does he/she require a supervised supportive environment?

12. Can the child drive a car?
13. Can the child differentiate between a safe and unsafe situation? Does the child know how to protect him/herself (physically and emotionally)?
14. Can the child learn how to vote and appreciate the consequences of their decisions?
15. Would it be appropriate for the child to enter into a marriage?
16. What is the child's ability to perform activities of daily living by themselves (i.e. bathing, dressing, toileting, feeding, transferring, grooming)?

This exercise can make your initial meeting with an attorney effective and efficient. I suggest to parents who call my office that they bring their child with them to the meeting. I enjoy meeting with the child and it is an opportunity for me to assess certain skills and level of capacity, and determine the best course of action to recommend. *Plan to meet with a special needs attorney approximately two months before your child's eighteenth birthday so there is sufficient time to explore the options.*

There are potentially three options the special needs attorney will discuss with you for creating a legal plan for your child's future:

1. **Legal Documents**: If your child is high-functioning or, has a high level of capacity the attorney may be able to prepare legal documents for your child to sign that creates a medical and financial management plan. Legal 'capacity' means the ability to understand, reason, to appreciate the consequences of one's actions. A high level of capacity is required for financial decision-making; a lower level of capacity is required for medical/personal care decision-making. The documents that are important for all young adults to have are:

(a) **Durable Power of Attorney**: The document identifies a trusted person(s) who has legal authority to make various financial decisions when a person is incapacitated. For example: paying bills; handling banking transactions; filing a tax return.

(b) **Designation of Health Care Surrogate**: The document identifies a trusted person(s) to make various medical and residential decisions when a person is unable to give informed consent. For example, authorize a medical procedure; authorize transfer and discharge from a hospital or, facility; change residence.

(c) **HIPAA Authorization**: The document states that the health care surrogate is authorized to access confidential health information under the HIPAA medical privacy law.

The benefits of the documents are the child chooses who to name to assist them, they are private (not a public record), and serve as an alternative to a court supervised proceeding.

2. **Guardian Advocate Proceeding**: The goal of this court supervised proceeding is to have a parent or, family member appointed as a Guardian Advocate to assist and support a person with a developmental disability (in Florida Autism is considered a developmental

disability) in making decisions. I like this legal option since it allows the adult child to attain their highest level of independence possible. The adult child retains their legal rights and the Guardian Advocate has legal authority to assist in medical and/or financial decision-making. This may not be the appropriate option for your child if you are concerned about financial exploitation because if the child signs a contract it will be binding.

**There is a caveat:** if the child has a mental health diagnosis in addition to the Autism or, Asperger's diagnosis the Court may not permit you to file a guardian advocate proceeding. It will depend on whether the Autism or Asperger's diagnosis compared to the mental health diagnosis is the primary cause of the adult child's incapacity. For example, I recently represented a parent of a young adult diagnosed with Asperger's as well as bipolar disorder. The evidence and medical testimony established that the bipolar disorder was the cause of the child making poor financial and personal care decisions (i.e. not monitoring the diabetes and taking insulin, associating with untrustworthy individuals, frivolous spending habits). Consequently, the Court would not allow us to proceed with a guardian advocate proceeding and ordered that we file for a guardianship.

3. **Guardianship Proceeding:** The purpose of this proceeding is to appoint a legal guardian to make financial and/or medical decisions for an adult whose ability to make decisions is affected due to physical, cognitive or mental incapacity. Some or all of a person's rights are removed and delegated to the Guardian (the guardianship should be tailored to the needs of the individual). These rights include:

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| (a) the right to vote                   | (b) the right to marry                         |
| (c) the right to contract               | (d) the right to apply for government benefits |
| (e) the right to make medical decisions | (f) the right to determine social environment  |
| (g) the right to determine residence    | (h) sue and defend lawsuits                    |
| (i) seek or retain employment           | (j) manage real or personal property           |
| (k) make any gift                       |  |

Once you have consulted with a special needs attorney take the time to consider all options carefully. Educating yourself enables you to make an informed decision that is in your child's best interest.

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