

HOW TO “CONTEST PROOF” YOUR WILLS

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PROBATE COURT FOUR (4)

HONORABLE CHRISTINE BUTTS, PRESIDING

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Houston, Texas

INTRODUCTION

See notes below at the Judge's discretion.

OUTLINE

- **I. What is a Will?**
- **II. Contest Issues**
- **III. Client Relations - Multi-Party Representation**
- **IV. Drafting**
- **V. Execution**
- **VI. Probate**

New Breed



"You've inherited your uncle's penguin ranch. It's all here in black and white."

I. What is a Will?

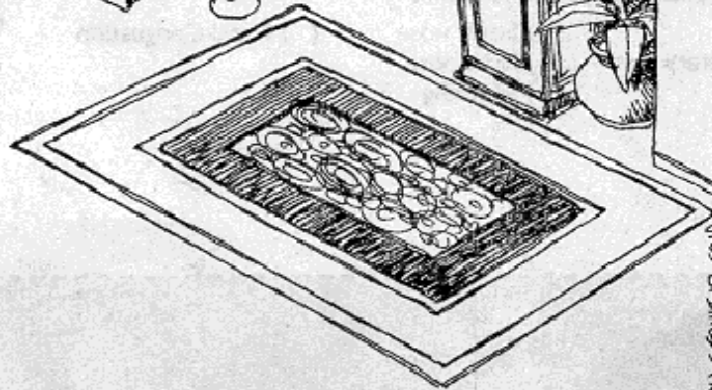
- **A. Requisites Of A Valid Written Will (TPC § 59,60)**
- **B. Oral (Nuncupative) Will (TPC § 64, 65)**
- **C. Requisite For Probate (TPC § 81)**

Non Sequitur

THE IMPORTANCE OF
WRITING WITH CLARITY...



COAT
AND
TIE
REQUIRED



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II. Contest Issues

- **A. Testamentary Capacity**
- **B. Undue Influence**
- **C. Forgery**
- **D. Execution And Solemnity**
/Anomalies Of The Will
- **E. Persons With Standing To Contest A Will**

Suggestions:

“III. Client Relations

C. Evaluating Capacity”

- 3. Ask the questions usually asked by a Physician in the Mini-Mental State Exam (MMSE) that is frequently administered by medical Doctors and Clinical Psychologists with specialties in the area of neurological evaluations of elderly patients or others suspected of neurological or mental deficits. This exam is sometimes referred to as the Folstein Test in reference to its developer. It is suggested that these questions be asked both at the time of the Client interview and the review and execution of the Documents. This is in no way a suggestion that the Lawyer practice medicine or psychology unless he or she is licensed in those areas of specialty, but it is clear that if the Client is unable to respond to these simple questions that further determination by a medical professional is warranted.

MINI-MENTAL STATE EXAM
(MMSE)

Patient Name: _____ Date: _____

Patient
Score

Possible
Points

ORIENTATION:

- | | | | |
|-------------------|---------|-------|---|
| 1. What is the - | Year? | _____ | 1 |
| | Month? | _____ | 1 |
| | Day? | _____ | 1 |
| | Date? | _____ | 1 |
| | Season? | _____ | 1 |
| 2. Where are we - | State? | _____ | 1 |
| | City? | _____ | 1 |
| | County? | _____ | 1 |
| | Office? | _____ | 1 |
| | Doctor? | _____ | 1 |

REGISTRATION:

3. Name three (3) objects, taking one (1) second to say each.
Then ask the Patient to name all three (3) objects.
Give one (1) point for each correct answer of the first try.
Repeat the names without scoring until the patient learns
all three (3). EXAMPLE: book, pen, door.
- _____ 3

ATTENTION AND CALCULATION:

- 4. Serial sevens. Give one (1) point for each correct answer, stop after five (5) answers.
Alternates: (Spell WORLD backward, or count backward by two's (2's)).

_____ 5

RECALL:

- 5. Ask to repeat objects from question three (3) above, One point for each correct answer.

_____ 3

LANGUAGE:

- 6. Point to a pen and paper. Have the Patient name them as you point to them.

_____ 2

- 7. Have Patient repeat, "No ifs ands or buts".

_____ 1

- 8. Have Patient follow a three (3) stage command: "Take paper in right hand, fold paper in half, and hand paper back to you with right hand."

_____ 3

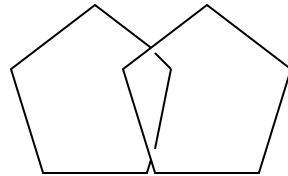
9. Have patient read and obey the following:

CLOSE YOUR EYES

10. Have Patient write a sentence of his/her choice and read it back to you. The sentence should contain a subject and verb, and should make sense. Ignore spelling errors for score.

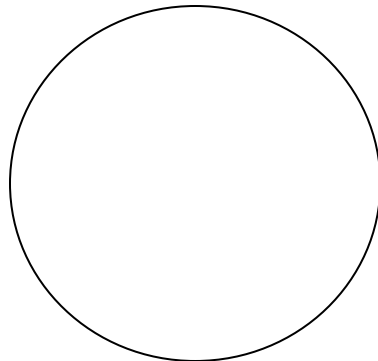
_____ 1

11. Have the patient look at the design below. The Patient should be able to copy design by memorization. Give one (1) point if all sides and angles are preserved and if the intersecting sides form a quadrangle.



_____ 1

12. Fill in the circle to make a clock:



_____ 1

Total Patient Points: _____

Total Possible Points: 30

Score $\leq 23 \neq$ Normal

III. Client Relations

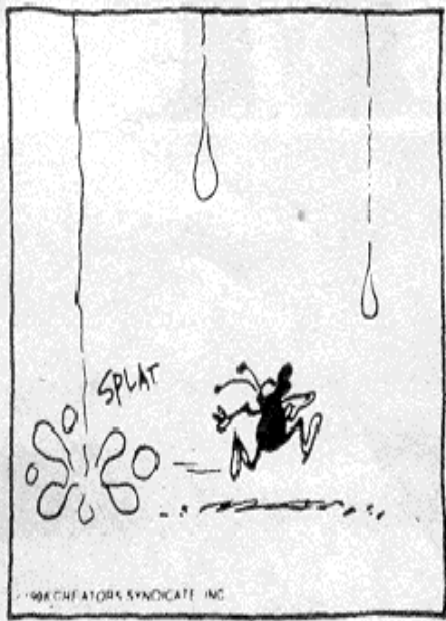
- **A. Who Is The Real Party In Interest**
- **B. Heirs And Devisees**
- **C. Determining The Possibility Of Undue Influence, Duress, Or Other Disqualifying Influence**

Wizard Of Id



IV. Drafting

- **A. Self Proving Affidavit**
- **B. No Contest Clause - "In Terrorem"**
- **C. Designation Of Alternates Or Successors**
- **D. Subsequent Marriages And Mixed Families**
- **E. Unequal Distributions**
- **F. Common Sense Precautions**
- **G. Contractual Wills**



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MANA

V. Execution

- **A. Solemnity**
- **B. Procedure**
- **C. Capacity - Video Or Not**
- **D. Safekeeping Of Documents**

WILL SIGNING PROTOCOL

1. Schedule signing

- Reserve time for client to review final documents
- Client's final review - make any necessary changes
- Remind them to bring picture identification (Driver's License)
 - Reserve thirty (30) minutes for appointment to sign documents
- Arrange for Notary
- Arrange for qualified witnesses (Remind them to bring Picture identification (Driver's License))

2. Print final documents (Consecutive sheets of Bond Paper)

- Will
- DPOA (Durable Power Of Attorney)
- MPOA (Medical Power Of Attorney)
- DTP (Directive To Physician)
- DNRO (Do Not Resuscitate Order)
- Designation of Guardian before Need
- type in Organ Donor Card with name and phone number

WILL SIGNING PROTOCOL (2)

3. Prepare folder with label(s).
4. Prepare Client letter to go with documents
-Print a protocol checklist
5. Prepare Organ Donor Cards if appropriate
6. Meet with client to review documents
-Make any required changes
7. Have client initial all pages of each document (in blue ink)
DO NOT SIGN
8. Assemble client(s), all witnesses and Notary
9. Review requirements with witnesses to insure they are qualified before the signing begins
(see questions below).

WILL SIGNING PROTOCOL (3)

10. PROCEDURES FOR EXECUTION

Check to make sure that all documents are prepared in final format, that sufficient blue ink ball point pens are available, that organ donor cards are prepared, that the Notary has his or her Notarial Record available and that everyone has the required identification.

DO NOT have the documents signed in front of less than all the Witnesses or have additional Witnesses sign at a later time. This can invalidate the documents.

-Thank everyone at the proceeding for their help and interest.

-Remind everyone of the importance of the occasion.

-Have each person (Testators and Witnesses) introduce themselves to the group.

-Notary - “Swear in” all participants – **Do you swear that the testimony, both oral and written, that you are about to give is true so help you God?**

Alternatively – Do you avow that the testimony, both oral and written that you are about to give is true and correct?

WILL SIGNING PROTOCOL (4)

TESTATORS:

-Ask them to identify themselves to the Witnesses by FULL NAME.

Questions:

-Is this your Will, Durable Power Of Attorney, Medical Power Of Attorney, Directive to Physician, and Do Not Resuscitate Order (optional – Organ Donor Card)?

-Have you read, or have these documents been read to you in their entirety?

-Are you executing these documents of your own free will and for the purposes stated therein, without any undue influence or duress?

-Are you asking the individuals here today to be Witnesses to your documents?

-Are you over the age of eighteen (18) years?

WILL SIGNING PROTOCOL (5)

- Are you declaring that you are of sane mind today?

If there is any question concerning sanity, engage the Testator in sufficient conversation to insure that the Witnesses can come to their own conclusion that the Testator is sane.

Ask the questions that may later be asked of the Witnesses in Court:

- Do you know the nature of the transaction that is taking place?
- Do you know the persons that are named as the Agents (Executor, Trustee, Beneficiary, Attorney in Fact, and other offices) in your Documents?
- Do you know the extent and scope (bounty) of your estate as set forth in the your Will and other Documents being signed today?

WILL SIGNING PROTOCOL (6)

If there is any question concerning the Testator's awareness of their estate, engage the Testator in sufficient conversation to insure that the Witnesses can come to their own conclusion that the Testator is aware.

- Have you been provided with the disclosure statements explaining the effect of these documents, and have you read those disclosure statements?
- Are any of the Witnesses here today agents that you have appointed in your documents?
- Have you previously initialed the pages of these documents?

WITNESSES: Questions (Reference § 59 of the TPC):

- Are you over the age of eighteen years [fourteen (14) years if only a Will is being executed]?

WILL SIGNING PROTOCOL (7)

- Are you an agent appointed in these documents? That is, an Executor, Trustee, Attorney in Fact or other personal representative?

- Are you related to the Principal by blood, marriage or adoption?

- As far as you know, are you entitled to any of the Principle's estate either under the Will
or as an heir of law or descendent?

- Do you have any claim against the Principal's estate?

- Are you an attending Physician, direct health care provider, residential care provider, employer of a health care provider, the operator of a community care center, an employee, an officer, director, partner, or business office employee, or involved in the financial affairs of or an operator of a health care facility, or parent organization of any health care facility?

WILL SIGNING PROTOCOL (8)

- Are you a patient in any health care facility where the Principal is a patient?
- Has the Principal(s) asked you to be the Witness of his/her/their Document(s)?
- Do you believe that the Principal(s) is/are of sound and disposing mind?

1. SIGNATURES

Have the Client sign:

- Will (2 signatures – Signature Line and Self Proving Affidavit)
- DPOA (Durable Power Of Attorney)

(two signatures – Disclosure and POA)

the Attorney in Fact should sign the DPOA if they are present

- MPOA (Medical Power Of Attorney)
- DTP (Directive To Physician)
- DNRO (Do Not Resuscitate Order)
- Organ Donor Card(s)
- Notary book.

WILL SIGNING PROTOCOL (9)

Have the Witnesses sign:

All of the documents with their addresses, (remember that they must sign both the Attestation Clause and the Self Proving Affidavit on each Will), fill in their names in each acknowledgment, and sign the notary book with ID.

11. Make two (2) copies of all the documents.

Distribution of documents:

Original – Client.

Copy – as outlined in the “Keep Letter”.

Copy – for office file.

While copies are being made,

12. Go over the Keep Letter with the Client

-Wills

Originals- safety deposit box with a second signer on the account/ fireproof safe at home.

Copies- home

office

WILL SIGNING PROTOCOL (10)

-DPOA (Durable Power Of Attorney)

Originals- home for proof box or safe

Copies- safety deposit box

Attorney in Fact (Attorney in Fact should sign the document-Blue Ink)
office

-MPOA (Medical Power Of Attorney)

Originals- home for proof box or safe

Copies- safety deposit box

Attorney in Fact
office

-DTP (Directive To Physician)

Originals- home for proof box or safe

Copies- safety deposit box

Attending Physician (discretionary)
office

WILL SIGNING PROTOCOL (11)

-DNR (Do Not Resuscitate Order)

Original-home for proof box or safe

Copies-safety deposit box

Attorney in Fact

office

Copy to Attending Physician (discretionary)

-Organ Donor Cards

Original with identification (Wallet or Purse)

Copy with Original Documents

Sticker on Driver's License

VI. Probate

- **A. Testamentary Capacity - Burden Of Proof**
- **B. Right Of Executor To Defend Will Against Subsequent Challenge**