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COURT QUALIFIED DOCUMENT EXAMINER

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During my years in business, I have had the unfortunate opportunity to encounter forged wills in many forms. In an effort to save others from the same fate, I have compiled a list of suggestions for those in the business of preparing wills and trusts. Because so many in the public sector have asked for this information, I include the suggestions here for the general public.

Disclaimer: This information is provided as a resource only. Ann Mahony is not an attorney nor licensed to practice law. Please consult with your attorney or legal professional when seeking legal advice. Ann Mahony claims no responsibility for your use of this information.

**Preparing and Protecting Wills and Trusts** ©

For many individuals, the most important document they will ever create will be a Will or trust to allocate and distribute a financial legacy which took a lifetime to create. For attorneys, it's an enormous responsibility to advise a client as to how to best structure this document to carry out their client's intentions. To have these documents later compromised is heartbreaking. An attorney may have invested hours of careful planning and thought into executing the most precise and thorough document for his client, assessing every contingency to safeguard an estate's distribution to heirs. Yet preparation of the physical instrument itself may be left open to compromise.

I have seen everything from substituted pages, to bleaching, tracing, simulated forgery, simple forgery, impersonation of the testator, undue influence, false videotaping of will signings, forged witness signatures, multiple "genuine" wills, and more. In an effort to assist attorneys in being as thorough with their preparation of the actual document itself as with its contents, I offer the following:

1. Prepare the document on company letterhead that is hopefully 20-25% rag content with a visible watermark. (watermarks have a date code embedded in them) Store this paper by the ream, and use all sheets from the same ream. If changes need be made, reprint the entire document on consistently stored/stacked paper to prevent page substitution. Savvy forgers have learned to leave the genuine signature intact, while altering the terms of the will on other pages.
2. Maintain standard settings (margins, spacing, indentations, type fonts, etc. for all wills and trusts. If possible, use one printer. Again, when changes need to be made, do not insert updated pages in an old document. Rather, reprint the entire document and have everything re-signed.
3. If the document is a codicil to the will, and the person is elderly or in ill health, check to see if any radical change in handwriting has occurred from the time the original will was signed, which is not uncommon. If the new signature shows signs of age, on a separate sheet of paper, have the testator provide an additional handwriting sample on a separate sheet of paper, and sign and date it. i.e. "My name is John Jones and this Codicil dated April 12, 2011 is attached to my will of May 4, 2005."

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4. Take care when having clauses “initialed”. People often write their initials differently than they write their name, and if something is brought into question later, rarely are there exemplars of initials available for comparison.
5. To avoid substitution of one page for another, have the client sign and date every page. You may think I’m going overboard here, but in today’s computerized world, it is getting easier than ever to create (bogus) computer generated documents. One instance I encountered involved an executor substituting pg. 3 of a genuine will with a new pg. 3, which the beneficiary of a beautiful lakefront property to himself. The will retained a genuine testator signature and witness signatures. The signatures were genuine, but the document – in its entirety- was not.
6. To prevent page substitution, have the client write a sentence such as “This is page two of my Will. I hereby sign it on (date) and in the presence of (witness A) and (witness B), “thereby making the document extremely difficult to forge. At the very least, have the testator sign and date every page.

Whether the testator write his name and sentence at the top of every page, at the bottom or along the side, have your typist leave extra room in the margin, so that your testator will not have to compromise his normal handwriting, condensing it vertically or horizontally to squeeze it in a too tight space, creating unnatural angularity or condensed letterforms.

7. To further prevent page substitutions, have the testator select a coded typing error, for example the third time the word “the” appears on the page, the first two letters “th” will always be transposed. A typist can override a spell check program to accomplish this. Why do this? An individual attempting to “slip in” a disingenuous page will make every effort to have everything “perfect”, and will undoubtedly be ignorant of this “mistake” code.
8. Some clients have two signatures – one formal, one informal. If this is the case, have the testator sign both signatures on every page. Some clients have told me they have a “legal” signature and their regular signature. They say they do this in an attempt to “thwart” forgers. Unfortunately, what I have found is that if the time comes when a document examiner is needed, the heirs can rarely find adequate exemplars of the “legal” signature for comparison.
9. A particularly important or possibly controversial provision might also contain a handwritten notation from the testator (i.e. “this is my wish”) whether it be bequest or exclusion.
10. DOCUMENT ASSEMBLY: Some attorneys like to have the will assembled and stapled before it is signed to insure that nothing can be added later without leaving visible signs of tampering or re-assembly. Depending on the number of pages in the document, I have found that this is not only awkward for the writer, but prevents the document from lying flat, compromising a comfortable hand and pen position for the writer.

Instead, I recommend having the document presented in one aligned stack of sequential pages, allowing the testator to write comfortably on each page, before setting it aside.

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This also allows the writer maximum “air space” to wield the pen as he normally would, approaching the paper at an angle that is most comfortable and natural to him.

In addition, with the papers stacked, (the same position the Will would be in if it had been assembled and stapled pre-signing) it allows for an invisible imprint of the signature executed on the top page to sink into the following page underneath. If ever necessary, these invisible imprints may be “lifted” through ESDA testing, further authenticating the sequence of pages, exposing unauthorized insertions.

If you feel uncomfortable presenting an unstapled instrument, the testator can not only sign every page, but add a page number, assuring the authenticity of page sequence.

11. Assemble the will so that it will be obvious if it is disassembled. Staple holes can rarely be matched exactly through several sheets of paper, but if you can find a permanent fastener system that must be “broken” to access individual pages, do so. This will safeguard against page substitution or “slip sheeting”.
12. **WRITING POSITION:** I had clients tell me that after reviewing everything, they were asked to sign the Will while seated across from the attorney in a chair that may have be nice and “cushy” but was too low to the desk, and they felt they had to reach upward uncomfortably to a desk that was higher than the chair. Find a chair/tabletop combination that is comfortable for your client, with plenty of room to move his arm, so that we obtain a naturally executed signature.
13. Ball point is a better choice than felt tip or liquid ink found in a roller ball. The oil viscosity in a ballpoint pen may allow for date-testing at a later date if needed. In addition, felt tip pens leave a softer edge, which can often hide evidence of tracing, as well as hesitation, pen lifts, or the tremor of old age or ill health
14. Witnesses should be impartial and reliable. It is advisable to have witnesses who are young enough that they will survive beyond the demise of the testator so they may be called upon if necessary. It is helpful to include their address, phone and e-mail. The most desirable situation would be to have them provide this information in their own handwriting, if not on the signature page, in a supplementary page. If this appears to be nit-picking, ask your client how important it is to him to have someone speak for him after he is gone if the will is challenged.
15. Wills have been examined and found to contain a testator’s signature that is genuine, but witness signatures that were forged! How? In one instance, the testator wanting to change his will without anyone knowing about it, so he created a new will and forged the witnesses’ signatures. (This is a true story.)

With the aforementioned in mind, it is helpful to include 3-4 additional signatures of the witnesses on an attached page at the end. A document examiner cannot authenticate witnesses’ signatures without standards for comparison.

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The reason I suggest witnesses also handwrite their address and e-mail is that a forger will pay attention to the details in a signature. Rarely do they give attention to how a person dates something, their style of numerals, word spacing, etc. The more comparative handwriting you provide, the more material the document expert has for authentication of the document if needed. All of this takes very little time, but can make or break your case.

16. Even if there are no changes to the document, send your client an Annual Update Card to sign. Indicate they include a sentence such as: “The document created on (date) continues to be the most current will reflecting my wishes. I have read and understood it, and originally signed it in the presence of (witness A) and (witness B).

The Annual Update Card will provide a valuable resource for handwriting comparison if a document examiner is ever needed. A system for sending reminder cards can automatically be entered into a computer program. Include a SASE and a three week tickler reminder if the card has not returned. Note any drastic changes in handwriting due to advanced age, ill health, stroke, medication etc.

HIDDEN BONUS: Several attorneys have told me that sending this simple card has brought them more referral business than they could have imagined. It not only keeps your name in front of the client, but clients have called to arrange further business, and referred friends to their detail oriented “conscientious” attorney. (One attorney admitted “Who knew Ann Mahony’s nit-picking would me look so good?”)

17. Either you or your client should provide updated contact information for the witnesses annually as well. If witnesses were employees from your office, be sure to update their contact information, including any changes in married name. Nothing is more tragic than a contested will where the witnesses cannot be found.
18. If you are unfamiliar with the person coming to you for a will or trust, ask for at least two types of identification. Avoid becoming the victim of subterfuge. (I recently worked on a case where buildings in San Francisco were sold by a person who had stolen someone’s identity.)
19. If a client arrives with a companion, whether spouse, caregiver, girlfriend, son, daughter, grandchild, friend, etc. excuse the individual to a waiting room to interview the client privately. Ascertain if possible if there is confusion or undue influence.



**AVOID**

20. Do not have several assistants prepare the will or insert corrected pages over a period of time. Try to keep the document a single execution of one typist and one printer.
21. **DO NOT have your signature page existing as a separate page apart from the document,** A separate signature page makes it very easy to attach it to a spurious document, or to replace in a genuine document.