alert
Personal Wealth, Estates and Trusts Practice
Saul Ewing LLP
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Unsigned copy of Will admitted to probate in New Jersey

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SUMMARY

New Jersey Appellate Division affirms lower Court's admission of unsigned copy of Decedent's Will to probate as a writing intended as a Will under N.J.S.A. 3B:3-3.

On June 29, 2012, the New Jersey Appellate Division continued to relax the formalities required for admission of a Will to probate, holding that the unexecuted copy of Decedent's Will, which had purportedly been executed by the Decedent and sent to his attorney-executor for safe-keeping, sufficiently represented the Decedent's final testamentary intent allowing for the document to be admitted to probate as a writing intended as a Will under N.J.S.A. 3B:3-3.

The Decedent in this case was ironically a trusts and estates attorney in Burlington County, New Jersey for over 50 years. After his death, a nephew uncovered an unexecuted copy of Decedent's Will which he sought to probate. The trial court appointed a temporary administrator and ordered a thorough search of Decedent's home and law office for any other Wills of Decedent to no avail. The unexecuted copy proffered by Decedent's nephew was a detailed 14-page document entitled "Last Will and Testament," which was prepared by the Decedent and written on traditional legal paper, with Decedent's name and law office address in the margin of each page. The document did not contain the signature of Decedent. It did, however, include a notation in Decedent's handwriting on the cover page, "Original mailed to H.W. Van Scriver, 5/20/2000," an attorney who was the named executor under the Will. Van Scriver predeceased the Decedent and an original executed copy could not be located.

On a motion for summary judgment, the trial court admitted the unexecuted Will to probate, finding that Decedent's handwritten notation on the cover page of the Will provided clear and convincing evidence of Decedent's final assent that he intended the original document to constitute his Last Will and Testament.

Relying on its recent interpretation of the harmless error doctrine under *In re Probate of Will and Codicil or Macool*, 416 N.J. Super. 298, 311 (App. Div. 2010), the Appellate Division affirmed the trial court's decision, holding that a writing need not be signed by the testator in order to be admitted to probate. In order to be admitted as a writing intended as a Will under N.J.S.A. 3B:3-3, the proponent must prove by clear and convincing evidence that "(1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it. Absent either one of these two elements, a trier of

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fact can only speculate as to whether the proposed writing accurately reflects the decedent's final testamentary wishes." *Macool,* 416 N.J. Super at 310. The Court found that the review and preparation of the document by Decedent coupled with the mailing of the document to the executor, even if not signed, reflected Decedent's final assent of his intention that the document act as his Last Will and Testament.

All of the costs, expenses and delays associated with the process could certainly have been avoided had Decedent taken the proper precautions in safekeeping his original Will in a fire proof box in his house or office. To learn more about how you can combat a Will contest, please feel free to contact any member of the Personal Wealth Trusts and Estates Department.

This Alert was written by Ronald P. Colicchio, a member of the firm's Personal Wealth, Estates and Trusts Practice. Ronald can be reached at 609.452.3133 or rcolicchio@saul.com.