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A A R E B C

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■ Bulletin #99

Why in the world did we ever keep original wills?

Well, it seemed like a good idea at the time. Our medium-sized firm had plenty of room in the office, we already had a fireproof cabinet, and we would spare clients from renting their own safe deposit boxes. We hoped that the service would help us compete with similar services in other firms, and our senior members believed that the practice would pay off in probate work. So I didn't think too much about retaining original estate planning documents for clients.

But, one day I left that medium-sized firm and started my own firm. In the spirit of tradition and mindlessness, I too decided to store clients' original estate planning documents. That meant buying a fireproof filing cabinet (price \$1,000) and arranging to have all 800 pounds of it moved into my new office.

The problem grows with the practice

As time moved on, my practice grew, and I ended up moving to a nicer, larger space. This, of course, required moving my 800-pound fireproof filing cabinet. Many times I wondered whether using a regular filing cabinet would be good enough, but it just didn't seem wise, even in my weakest moments (moving day). As my practice grew even more, so did the problem. I had to purchase yet another cabinet (another \$1,000, another 800 pounds). Soon I had no room in the second filing cabinet and scarcely any room in my office.

At that point, I couldn't stomach the thought of moving again just to make space for more 800-pound monsters, so I made two radical decisions. First, I would no longer keep original client documents (no surprise - this one was easy). Second, I would return the original documents that I had previously held (a good decision, but, as the saying goes, 'I had no idea'). The fun was about to begin.

Backing out is costly

This project took six months and at least \$1,000 (my favourite figure). The cost of returning the documents came from copying them (I wanted to keep a file copy), staffing (I had to hire temporary personnel), and postage (I sent them by certified mail). In addition, my legal assistant spent hours writing to clients to announce our new procedure, talking to them on the phone, arranging for file

pick-up, obtaining clients' signatures, writing receipts for files, and doing other record keeping. Although this task was overwhelming for awhile, I'm happy we did it. I now feel completely released from bondage — my 800-pound Darth Vadars were removed, and we now have space for a wonderful client meeting area. Since I was forced to think this problem through, I want to tell you what I learned.

1. Since my clients never had to get a safe deposit box, they never knew that I was saving them money by keeping their documents. My goal of being appreciated for saving my clients the bother never materialized.
2. Stress to your clients the importance of safeguarding their original wills. One lawyer I know discovered his deceased client's will in the man's dresser drawer. Another decedent apparently had a will, but it could not be found. His brother thought it had been kept in the rolled-up window shade in the decedent's apartment! Perhaps it was removed by a relative. Other clients have home safes that are not fireproof or waterproof and can easily be carted off by a thief. Tell your clients that a bank safe deposit box is the best place for an original will.
(Before releasing an original will to the client, photocopy the fully executed will and place the copy in the client's file. It's possible to admit a copy to probate in certain cases, although this should not be relied upon.)
3. Times have changed. Many clients are uncomfortable having the lawyer keep *their* original documents. They feel (correctly) as if the lawyer is trying to retain control of something that is theirs. This feeds the fuel of suspicion that prompts the chant: Don't let lawyers and probate eat up your hard earned money!
4. Tell your clients how important it is to maintain the integrity of the original will. I've had several clients who marked up their wills before they became public documents during probate. In one case, the client had written slanderous remarks about her 'uncaring and selfish' children in the margins, so I was loathe to provide those children with copies.

It's common for clients to cross out specific bequests or add new provisions on the original will. If a new will is never made, the insertions are likely to bring into question the validity of the marked-up will. The moral: When entrusting original documents — especially wills — to the client, clearly mark both the original and the copy and stress the importance of maintaining the integrity of the original. Also, the copy should state the location of the original. I generally type "Original" on the backer but am considering stamping the first page as well.

5. The practice of keeping original wills is a nightmare for the person who ends up trying to close your practice when you die or become disabled. That person will have to return all of the documents. Most people move every 7 years; many of those people don't think to let their lawyer know their new address. As a result, the person closing your practice may have trouble finding the testators. Because wills have to be kept for so many years, this problem may end up being a burden even to your personal representative's personal representative!

If you're a member of a firm and breathing a sigh of relief — thinking this doesn't apply to you — think again. My former firm eventually split up. Someone ended up with the albatross of dealing with all those original wills.

6. Perhaps most important, I discovered that keeping the original estate planning documents may actually make it difficult for your client, or your client's family. The client may have left the area, yet the estate documents will be with you. You will have to be found, and the documents will have to be mailed. You may decide to change firms, leave the area, or stop practicing law. Any of these choices may make it difficult for your client, or your client's family, to find you.

In short, if I had to do it again, I would never incur the expense and liability of retaining original documents. I hope this testimonial helps new lawyers get on the right track and inspires the rest of you to stop keeping those documents. I can assure you that in the long run it is worth it!

Adapted from an article in the Oregon State Bar's professional liability fund newsletter, In Brief, issue 74, March 1999.

■ Bulletin #100

E-mail neglect

Please note that assigning e-mail addresses to lawyers who don't use the technology could mean some messages are never read. If there are lawyers in your firm who do not check their e-mail messages, it may be preferable to delete their e-mail addresses, or configure your system so their messages are automatically forwarded to their secretaries for print-out and manual delivery.

Felicia S. Folk, Practice Standards Advisor, Law Society of British Columbia.

■ Bulletin #101

Sending disks to clients or other lawyers

If you send documents on disk to clients or other lawyers, use fresh disks. A recipient could accidentally or intentionally retrieve even 'deleted' files from a used floppy. These files might be earlier drafts of the subject document, or unrelated information about other clients. The simple and relatively cheap solution is to use a new disk every time.

Felicia S. Folk, Practice Standards Advisor, Law Society of British Columbia.

■ Bulletin #102

Vacations can cause headaches

Holidays are on the horizon. In theory, two weeks relaxing in the sun. In practice, two weeks of panic trying to get files up-to-date before departure, two weeks on holiday worrying about what's going on at the office, and two more weeks on return trying to sort out the chaos created in your absence.

So you don't have to budget for the extra time and expense of a professional negligence claim on top of your holiday:

1. Leave your practice with someone who understands the kind of legal work you do.
2. Leave notes on the file that summarize the problem and the steps already taken.
3. Put a checklist on each file that includes critical dates and future steps needed.
4. Use clear diary entries that detail what action has to be taken.
5. Take time to discuss your files with the person taking over while you're away.

These preventive measures will help you relax, both on your holiday and on your return to work.

In part from an article in 28 May, 1998 GAZETTE, a publication of the Law Society of England and Wales.

■ Bulletin #103

Y2K and your word processing software

The following commonly used word processing programs may not be year 2000 compliant: WordPerfect 5.1, 6.0, 6.1, and MS Word 6.



Tests indicate that files may be lost or unrecoverable after 2000, and some features may no longer be reliable, so you should immediately upgrade these word processing programs. For more information, see the UVIC Year 2000 resource centre at: <http://helpdesk.uvic.ca/how-to/support/y2k/opsystems.html>.