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Does a New Jersey Will Need To Be Signed?

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Louise Macool, a resident of New Jersey, had a 1995 Will and a 2007 Codicil. She met with her attorney about preparing a new Will. She had written that, among other things, she wanted to add her niece as a beneficiary and keep the house in the family.

Macool's attorney dictated the Will and his secretary typed a rough draft while his client was in the office. Unfortunately, however, Macool left the office and died one hour after the appointment.

The niece (who was an added beneficiary under the proposed new Will) brought an action to admit the draft Will to probate. The trial court found that the draft Will could not be admitted. New Jersey law requires a Will to be signed and acknowledged by two witnesses in order to be valid (NJSA 3B:3-2), and the document failed that test. New Jersey law also allows a non-compliant document to be admitted as a Will if the proponent can show by clear and convincing evidence that the document was intended to be a Will. NJSA 3B:3-3. The trial court found that, although it was proven that Macool intended to change her Will, there was insufficient evidence to conclude that Macool intended the actual draft document to be her Will. The trial court also held that a Will must be signed in some fashion in order for it to be admitted to probate.

In a September 16, 2010 opinion, the Appellate Division agreed with the trial court that the Will draft was inadmissible as a Will. The Appellate

Division also rejected the part of the trial court's ruling that a Will must bear the testator's signature. Thus, it appears that in New Jersey, a document which is unsigned may still be admitted to probate as a decedent's Will.

This case concerns an attempt to have a court accept a non-compliant document as a Will. Obviously, the best practice is to have properly executed documents. Perhaps the lesson is that Will formalities, difficult as they sometimes are, really do matter.

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