

Lights, Camera, Action—Video Will Executions

by Herb E. Tucker

This article explores how modern video-recording technology can assist the drafting attorney in ensuring that a client's wishes regarding the distribution of his or her property at death are carried out. It also discusses case law and state statutes regarding the admission of videos depicting will executions, evidentiary issues, tips regarding the video will execution, the use of professional videographers, and the pros and cons of video will executions.

There are a number of steps the drafting attorney can take to reduce the risk of a will contest. One way a drafting attorney can insulate a client from a will contest is to videotape the will execution.¹ However, there are a variety of reasons an attorney may—or may not—want to video a will execution.

Given the explosion of social media and digitized video technology, it is likely that videos of will executions will become more prevalent. Conceivably, cell phone cameras could be used to create a video memorializing the testator's will execution, which then could be uploaded to SkyDrive, Dropbox, or other cloud storages.

Overview of Video Will Executions

Estate planning lawyers frequently ask probate litigators, when they anticipate will contest litigation, whether they should videotape the execution of a client's will. Generally, probate litigators view video will executions as a risky proposition. On the one hand, a video of the will execution could help the proponent establish the testator's testamentary capacity and intent, as well as dispel any notion that there was undue influence or forgery. On the other hand, the video could be used by the contestant and the contestant's forensic expert as further evidence that the testator lacked testamentary capacity or that the will was a product of undue influence. The fact that the lawyer arranged for the video will execution could raise red flags that the video was a deviation from the drafting attorney's normal routine and that there was a concern that the client may lack capacity. It also alerts others that the drafting attorney anticipated that the will might be challenged at the client's death.

One person's perception of the video could be quite different from another's, resulting in opposite conclusions being reached. One risk is that jurors who spend their working hours in front of a computer monitor and non-working hours looking at a television screen could arrive at a conclusion regarding capacity and undue influence exclusively from the video and ignore other persuasive circumstantial evidence.

For example, in *King v. Brown*,² the Georgia Supreme Court affirmed the Georgia Appellate Court, which upheld the jury verdict finding the will invalid for reasons of undue influence and lack of capacity. In this case, the testator Rufus Bell had six children. In 2002, Bell executed a will leaving his entire estate, consisting of a ranch, livestock, and equipment, to two of his children equally and disinheriting the rest. The drafting attorney, recognizing the likelihood of a will contest, videotaped the 2002 will execution. In 2003, Bell executed another will, which also was videotaped, leaving all his money to one son, King, who had worked on the ranch for years, and excluding the rest of the children. One of the testator's disinherited sons, Brown, challenged the 2003 will on the basis that his father lacked testamentary capacity and that the will was a product of King's undue influence. After review of both videos, the jury found the 2003 will invalid. Brown filed a motion requesting judgment notwithstanding the verdict (JNOV). The trial court denied the Motion for JNOV. The Georgia Court of Appeals and Supreme Court upheld the trial court's finding that the jury could watch the video and draw their own conclusions.

An opposite result occurred in *Peterson v. Glinn*,³ when a jury, after review of a videotaped codicil execution, concluded that the testatrix had capacity despite numerous deficiencies evidenced in

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the video. The jury reached its decision even though the testatrix misstated her age by two years, and made mistakes regarding the year her house burned down, the year her husband died, and the acreage of her ranch. One witness testified that during the taping, the testatrix had her head down and eyes closed and appeared to be sleeping. The director of the nursing home testified that she was reluctant to witness the codicil because she believed the testatrix did not know what she was doing. However, the jury concluded that the testatrix generally knew the nature and extent of her property, who her heirs were, that the document she was signing was a codicil to her will, and why she favored one son over the other.

Historical Background

Video technology is constantly evolving. Videotaping was perfected in 1956 by the Ampex Corporation. It became increasingly available to the public during the 1960s. In the mid-1970s, the general public was able to purchase reasonably priced VCR, VHS, and Betamax recorders. Now, almost everyone owns a digital camera, digital recorder, or cell phone camera. Professional videographers have state-of-the-art digital, tapeless, high-definition (HD) cameras that produce crisp and clear HD pictures.⁴

Historically, courts have demonstrated a willingness, in criminal cases, to rely on videos and tape recordings as evidence of: (1) defendants' statements and confessions; (2) criminal lineups; (3) law enforcement wires on paid informants; and (4) taps on phones in sting operations. However, civil courts have been reluctant to expand the introduction of videos of will executions with respect to testamentary instruments, recognizing restrictive statutory and evidentiary requirements. With wills, as with contracts, it is the writing itself that must meet the burden of proof. Probate judges regularly invoke the "four corners" doctrine to exclude parol or extrinsic evidence supplementing facts that are clear on the face of the document.⁵

Case Law and Legislation

There are a handful of cases from other states that discuss video will executions. The earlier cases discuss the admissibility of video will executions without addressing the contents. The later cases address the content of the video will execution as evidence in support of claims of undue influence and lack of testamentary capacity. Only two states—Indiana and Louisiana—have statutes that specifically address the admissibility of video recordings of will executions.

Case Law

In *In re Estate of Reed*,⁶ the Wyoming Supreme Court stated:

The use of tape recording or other type of voice print as a testamentary instrument is a decision for the legislature to make. The [courts] will not enlarge, stretch, expand or extend the [state] holographic will statute to include a testamentary device not falling within the express provisions of the statute.

In *Reed*, the proponent attempted to admit a video of a will execution as a holographic document. The video was sealed in an envelope. The testatrix wrote on the envelope "open at my death" and signed it. The Court rejected the creative argument of the proponent's attorney finding that the video and envelope did not comply with the Wyoming statute requiring that the material provisions of a holographic will be in the testator's handwriting. An interesting

question is whether the video and envelope could meet the requirements of a "writing intended as a will" under CRS § 15-12-503.⁷

There are several early cases from other states discussing the admission of evidence that the drafting attorney considered videotaping the will execution and abandoned that idea or evidence that the video was destroyed. In the 1979 case of *Estate of Robertson v. Gallagher*,⁸ the Florida Court of Appeals upheld the trial court's decision that the proponent of the will had not exercised undue influence over the testator. Without discussing the contents of the video, the court record indicated that there had been testimony regarding the testator's attorney arranging for a videotaped will execution ceremony. In *Wall v. Hodges*,⁹ the Alabama Supreme Court reversed the trial court's finding of undue influence. The Alabama Supreme Court discussed the trial court's admission of evidence of the testatrix's decision to undergo a psychiatric examination in lieu of a videotaped will execution. The Kansas Supreme Court, in *In re Estate of Raney*,¹⁰ upheld the trial court decision, which permitted evidence of a will execution ceremony that had been taped, but the tape had been destroyed by the attorney's brother-in-law after the drafting attorney and testator died.

Since the late 1980s, there have been four cases involving videotaped will execution ceremonies.¹¹ Each of these cases involved a determination, through review of the video, of whether the testator had testamentary capacity or was subjected to undue influence.

In the *Estate of Seegers v. Combrink*,¹² the videotape showing the interaction between the testator and the various witnesses, who also were beneficiaries, demonstrates how a video can become *prima facie* evidence of undue influence. The proponents testified at trial that the testatrix had requested that they remain in the room during the execution of the will to remind her of the disposition of her mineral rights. The drafting attorney testified that he told the proponents to leave the room, but they refused to leave. Depicted in the videotape is the proponents' interference with the execution. The testatrix is depicted in the video with a magnifying glass attempting to read her will. The drafting attorney became impatient and directed her to the last page of her will, which listed twenty-six names of beneficiaries. Her attorney then directed the testatrix where to sign.

After signing, one of the proponents reminded the testatrix that she forgot to ask about her mineral rights. At that point, the attorney motioned to the proponents to be quiet and another attorney in the room picked up the testatrix's cane and shook it at the proponents. The drafting attorney admitted at trial that the execution was rushed because he and his associate were in a hurry to get to another appointment. The trial court, relying on the video as *prima facie* evidence of the proponents' undue influence, set aside the will.

The Delaware Chancery Court, in *Stotlar v. Cook*,¹³ consolidated several will contests and reviewed two videos of two will executions and a later non-videotaped codicil. The trial court upheld the first will, even though the video of the first will execution indicated that the testatrix was unaware of her investments despite being reminded of them several times by the attorney. The second video indicated that the attorney failed to ask his client what her assets were. Based on the fact that the codicil was not videotaped and the proponent was actively involved in its execution, the judge inferred that the codicil was procured through undue influence. The Delaware Supreme Court affirmed the chancery court's findings that the proponent had tainted the execution by his involvement in the execution of the second will and codicil.

Legislation

Indiana and Louisiana are the only states that currently have statutes specifically addressing the admissibility of video recordings of the will execution ceremony.¹⁴ The Indiana statute provides:

Subject to the applicable Indiana Rules of Trial Procedure, a videotape may be admissible as evidence of the following:

- 1) the proper execution of a will;
- 2) the intentions of the testator;
- 3) the mental state or capacity of a testator;
- 4) the authenticity of a will; and
- 5) matters that are determined by a court to be relevant to the probate of a will.

The Indiana statute does not require that a specific procedure be followed in the video during the will execution process. Any part or all of the will execution may be filmed, giving lawyers a great deal of flexibility.

Admissibility and Foundation

An attorney seeking to admit a video will execution must lay the proper foundation. Generally, the following foundation requirements are necessary to properly authenticate and admit the video:

- 1) relevance;
- 2) fairness and accuracy; and
- 3) probative value that outweighs any prejudice.

The videographer, as well as the witnesses to the will, may need to be called to testify that the video is true and accurate and has not been tampered with. The attorney who is present at the execution may need to testify as to the chain of custody of the original video.

Because videos are simultaneous recordings of audio and visual events, the rules of evidence related to the admissibility of tape recordings and photographs apply. Colorado Rule of Evidence (CRE) 901, regarding authentication, and CRE 1002, regarding originals, should be followed.¹⁵

Each jurisdiction is different and the Federal Rules of Evidence may differ from state rules. The Federal Rules of Evidence permit the admission of “writings and records consisting of letters, words

or numbers or the equivalent set down by . . . photography, magnetic impulse, mechanical or electronic records.” Under California law, a writing equals every means of recording on any tangible thing or any form or communication or representation.

Hiring Professional Video Services

The drafting attorney has two options with regard to videotaping a will execution. One is for an attorney to purchase video equipment and videotape a will execution himself or herself. The other is to hire a professional videographer. Advantages of the second option are that professionals understand the complicated workings of audio/visual equipment and have the training to enhance the quality of the video. They use their skills to capture the subject at the correct angle in optimal lighting and with crisp, clear audio.

The attorney should not hire just any videographer. A professional videographer in the legal field is referred to as a certified legal video specialist (legal videographer). Legal videographers are proficient at their job and well versed in legal procedures and protocol. Legal videographers follow guidelines set by the National Court Reporters Association.

A legal videographer usually can be hired through court reporting services at a relatively low cost (\$200 to \$300 for two hours). Legal videographers have specialized equipment, including lighting, microphones, and HD digital cameras, to enhance the quality of the video. Legal videographers, who understand the legal process, can greatly assist with the authentication of the video.

Accuracy of Recording Equipment and Competence

Although a legal videographer typically would be the best witness regarding the operation of the video equipment, it is conceivable that he or she may be unavailable to testify years after the video is made. To avoid this problem, the legal videographer should provide a short narrative at the beginning or end of the video will execution. This narrative can state the date and time and identify persons in the room. The legal videographer also should attest to

the fact that the equipment was operational and accurately recorded the events depicted in the video. The legal videographer also can state his or her training and technical knowledge that enables him or her to properly operate the equipment.

Most important is the fact that the legal videographer can certify that the video is an original and has not been altered in any way. This certification can greatly assist the lawyer who must lay the proper foundation to get the video admitted into evidence. Alternatively, those participating in the video, including the drafting attorney and witnesses who observed the events and recording, can testify that the video is a true and accurate depiction of what took place.

Authenticity and Correctness

The video should be in focus and the audio loud enough to be heard by the viewer. A legal videographer can testify as to the fact that audio portion was true and accurate, as well as identify the voice of the testator. CRE 901(5) provides:

Voice identification: Identification of a voice, whether heard firsthand or through mechanical or electronic transmission or recording, by opinion based upon hearing the voice at any time under circumstances connecting it with the alleged speaker.

Before the video is admissible, it must be shown that there were no changes, additions, or deletions. A legal videographer can save the recording on a disk that cannot be altered.

Chain of Custody

A legal videographer can testify that he or she delivered a final video to the drafting attorney, which was sealed and to be opened only at trial. The drafting attorney may need to testify that the original video was kept in the firm's safe deposit box. If the original video is given to the client, he or she should be told to put it in a safe deposit box, where entry to the box is documented.

Evidentiary Objections

An attorney seeking to admit a video will execution should anticipate a number of evidentiary objections from opposing counsel. These include objections based on hearsay, as well as competency under the Colorado Dead Man's Statute.

Hearsay

Acknowledgment by the witnesses of the testator's execution in a self-proving attestation clause may be helpful in overcoming hearsay objections.¹⁶ However, the proponent should be prepared for hearsay objections to the statements of witnesses to one another and statements of the drafting attorney to witnesses, because they may not fall under any recognized exception to the hearsay rule. With court supervision, a video can be edited to exclude inadmissible hearsay or incompetent evidence, such as conversations between the decedent and witnesses, who also might be beneficiaries.

Because a video is a recording of unsworn testimony of the testator, who is not subject to cross-examination, counsel for the contestant may oppose the testator's statements as hearsay. A hearsay objection to the video can be overcome if the attorney can show that the out-of-court statements fall under one of the recognized exceptions to the hearsay rule, which are discussed below.

State of mind. Declarations of the testator made at or near the time of a will execution generally are admissible to show the testa-

tor's state of mind and lack of undue influence. Under CRE 803(3), statements of the testator made contemporaneously with the execution of his or her will are admissible.¹⁷

Residual exception. If the court is unwilling to admit the video under the state of mind exception, it could be admitted under the residual exception under CRE 807. This exception provides a statement not specifically covered in CRE 803 or 804, but having the equivalent circumstantial guarantees of trustworthiness, is not excluded if the court determines that:

- 1) the statement is offered as evidence of material facts;
- 2) the statement is more probative on the point for which it is offered than any other evidence the proponent can procure through reasonable efforts; and
- 3) the general purpose of these rules and the interests of justice will be best served by the admission of the statement into evidence.

A copy of the video must be provided to opposing counsel well in advance of trial. CRE 807 provides that the proponent of the statements must disclose: (1) the statements to the adverse party in advance of trial to provide the adverse party a fair opportunity to prepare to meet it; (2) the proponent's intention to offer the statement; and (3) the particulars of it, including the name and address of the declarant.

Dead Man's Statute

The admission of a video will execution may raise competency issues. The Colorado Dead Man's Statute¹⁸ precludes oral statements between the decedent and a "party" or "a person in interest with a party," unless those oral statements can be corroborated through material evidence of an "independent and trustworthy nature." It is conceivable that a video could be used as corroborating evidence of an independent and trustworthy nature to circumvent the disqualifications of a party or persons in interest with a party from testifying. The video could open the door to otherwise incompetent witnesses testifying as to similar oral statements of the decedent. For example, a decedent in the video of the will execution states that the reason he is leaving his estate to his daughter rather than to his son is because he made substantial gifts to the son during his lifetime. The daughter's counsel, as proponent of the will, can then make a compelling argument that because the video corroborates the daughter's testimony, she is now competent to testify to similar statements made to her by the decedent.

Tips Before the Video Execution Ceremony

The client must be familiar with how the will is to be executed and videotaped. The client also should be familiar with the terms of the will and be comfortable with reading the document. The client should be told that everything he or she does or says will be recorded, and should be cautioned to avoid going off on tangents or looking to others for guidance during the execution. The witnesses should be instructed to refrain from making any statements to the client other than attesting to the execution, capacity, and lack of undue influence as set forth in the attestation clause of the will.

The equipment operator should be consulted to ensure that everything is ready in the room where the video will execution is to be recorded. The client should be brought into the room after the witnesses are seated. In a hospital setting, the recording should not be started until everyone is situated in the room and the micro-

phones are in place. Typically, only the client, the attorney, two witnesses, a notary, and the equipment operator should be present. To help prevent claims of undue influence, beneficiaries should not be present during the recording. Persons coming and going should be eliminated until after the execution ceremony is completed.

Tips for the Video Will Execution Ceremony

The following tips may help an attorney conduct a video will execution ceremony:

- The room and table should be uncluttered to avoid confusion or distractions for the client, witnesses, and notary.
- The room should have good lighting. There should be no direct sunlight or shadows in the room.
- The client should be told to avoid asking for direction from or questions to the attorney or witnesses concerning the terms of the will.
- The attorney, if recording, or the legal videographer should state in the video the place, date, and time. A time and date generator should be used to dispel any claim of tampering.
- The attorney should identify each person in the room and his or her role in the execution process.
- The client should state that he or she is executing the will voluntarily and free of undue influence. The video should canvas the room to dispel any speculation that beneficiaries are directly or indirectly involved in the execution of the will.
- The legal videographer should focus on the dialogue between the client and the attorney. If possible, the client should identify

himself or herself and the witnesses. The client should state that the will is the final disposition of his or her property at death and that it revokes all previous wills or codicils.

➤ Ideally, the entire will should be read by the client. (At the very least, the client should read a summary of the dispositive provisions, excluding the boilerplate.) If the client, because of mental or physical limitations, is incapable of reading the dispositive provisions, the lawyer should ask the client to affirm each provision. However, leading questions diminish the persuasiveness of the video.

➤ The client should state that he or she understands the terms of the will and agrees with the dispositive provisions and administrative provisions concerning the appointment of a personal representative.

➤ The attorney should ask the client to identify his or her family members, heirs, and devisees. The client also should identify family members who are deceased or divorced. The client should identify all of his or her children and where they live.

➤ A client who is disinheriting a family member should explain why. If the client is leaving his or her property to a charity, he or she should explain his or her affiliation with that charity.

➤ If unusual dispositions are made to care providers or other employees, especially those in a confidential or fiduciary relationship, the client should explain in detail why he or she wants to make the devise, that the devise is made voluntarily, and that the person receiving the devise had no involvement, directly or indirectly, in the preparation or execution of the will.

➤ The attorney should ask the client non-leading questions to explain each of the four elements of testamentary capacity. For example: What are the nature and extent of your assets and what are their approximate values? What are the names of your children and grandchildren and their birth dates? Where do they live? How do you want to distribute your estate? What are you signing?

➤ The client should explain that he or she is executing the document voluntarily and is not under any pressure to leave property to anyone.

➤ If the client has physical or mental disabilities, he or she should explain what those disabilities are and that they have no impact on his or her capacity to understand the execution and disposition of the estate.

➤ The client should explain why he or is making a video of the will execution, as well as concerns of a possible will contest. If the will contains an *in terrorem* clause, the client should read the clause to warn devisees of the risk of forfeiture of their inheritance if they challenge the will.

➤ The attorney should ask the client if he or she requests the witnesses to attest to the signing of the will. The witnesses should be seated next to the client so they can observe the client signing the will and initialing each page.

➤ The camera should focus on the will and should zoom in on the client signing and initialing each page of the will. If the client is unable to sign the will and directs another to sign, that should be clearly demonstrated by both the audio and video.

➤ The will should have a self-proving attestation clause and a notary should be used to notarize the testator's and witnesses' signatures.

➤ The attorney should read the attestation clause aloud. The camera should carefully follow the witnesses executing the attestation clause. To avoid any claims that pages of the will were substituted, the witnesses should initial each page. The video should record each witness initialing each page.

➤ The legal videographer should attest either at the beginning or end of the video that his or her equipment is in good working order and functioning properly. The legal videographer should state the place, date, and time the video was concluded and that original sealed video disk will be delivered to the attorney.

➤ The attorney should get a copy of the video so he or she can review it for accuracy. The original video should remain sealed. The original sealed video should be placed in the firm's or the client's safe deposit box.

Benefits of the Video Will Execution Ceremony

Attorneys who are unfamiliar with rules of evidence and burdens of proof may create videos that are ineffective and self-serving. For example, the drafting attorney might ask leading questions and the video may appear stilted and rehearsed. It may be helpful for the drafting attorney to consult with a probate litigator to ensure that the video is properly done. A properly prepared video of the will execution ceremony can be useful to show:

- 1) due execution of the will;
- 2) testamentary capacity;
- 3) testamentary intent; and
- 4) lack of undue influence, fraud, or forgery.

Historically, courts had to rely on circumstantial evidence for claims of fraud and undue influence, recognizing that undue influence "is an intangible thing which only in the rarest instances is susceptible of what may be termed direct or positive proof."¹⁹

A video will execution also may have the following benefits:

➤ In theory, the video should eliminate the risk of a will contest. It should prove that the will was properly executed, that the testator had testamentary capacity, and that the testator was not under any undue influence at the time of the execution.

➤ The video should eliminate the need to find witnesses who may be unavailable at the time of trial or who have no memory of witnessing the will.

➤ The video provides direct evidence to the trier of fact of the testator's intent without testimony from the attorney, witnesses, or family members.

➤ The video preserves valuable nonverbal evidence of the testator's demeanor, voice tone, and inflection, as well as facial expressions and gestures, all of which may resolve questions concerning capacity and freedom from undue influence.

➤ The video provides direct evidence that the testator's signature is genuine.

➤ The testator can explain why he or she is excluding family members in favor of third parties. What may appear to be eccentric or nonsensical dispositions can be clearly and accurately explained.

➤ The video preserves the contents of the will and the number of pages, thereby providing protection against alteration.

➤ The video camera equipment can establish the date and time the will was executed.

➤ The video can greatly assist in the admission of holographic and nonconforming wills.²⁰ Wills prepared by a third party at the testator's direction or where the testator's signature is guided or assisted can be captured on video. The video also can provide valuable evidence if the testator is unable to sign and instead leaves his or her mark.

Drawbacks of the Video Will Execution Ceremony

Anyone contemplating a video will execution should be aware of the problems that may be confronted at trial. The video may do more harm than good at trial. The video can expose the client's and the lawyer's shortcomings to the trier of fact. An accurate picture of the testator may lead a judge or jury to rely solely on the video and ignore other persuasive circumstantial evidence.

Following are several additional drawbacks that a video will execution may have:

➤ If the video is of poor quality or is destroyed, numerous factual, evidentiary, and ethical issues arise. If the video is erased or deleted, it could be considered spoliation of evidence entitling the contestant to a negative inference instruction to the jury.²¹ Under such circumstances, the jury could infer that the testator lacked capacity or was induced through undue influence to prepare and execute his or her will.

➤ It is unclear whether ethical rules or the rules of civil procedure require the attorney to disclose to opposing counsel that a video will execution was attempted but abandoned.²² A video will execution that is attempted but abandoned may render the executed will suspect.

➤ A video will execution is a staged event and, therefore, arguably self-serving. If an attorney has to make four or five attempts to perfect the video, it may not carry any evidentiary weight with the trier of fact. If the lawyer needs several takes before perfecting the video, he or she may have an ethical duty to preserve and disclose each take.²³

➤ A witness to the will execution who is cross-examined at trial as to the fact that the testator was given a script may directly draw into question the testator's memory and ability to recall without coaching. If a written script is provided to the client, ethical rules and the rules of civil procedure may require the attorney to preserve it and disclose it to opposing counsel.²⁴

➤ The client's physical appearance may create a bias. The client may, for example, be grossly overweight or emaciated from the later stages of cancer, which may prejudice the jury. The video also could show particular prescriptions or medical equipment, such as a morphine drip, which could lead the viewer to reach the conclusion that the testator was in a very fragile and weakened condition.²⁵

➤ The fact that the drafting attorney chose to videotape the client's will execution, deviating from his or her normal routine, may suggest concerns that he or she feared a challenge to the client's capacity or susceptibility to undue influence.

➤ The interaction of the witnesses depicted in the video may provide significant clues of undue influence.

➤ The Colorado Probate Code provides that a will can be revoked through a subsequent will, which revokes prior wills, or a revocatory act, such as burning, tearing, canceling, obliterating, or destroying the will or any part of it.²⁶ The destruction of a video or a missing original video could support an argument that the decedent intended to revoke his or her will.

➤ The audio portion of the video may render it useless. The testator may have a thick accent that is difficult to understand.

➤ A video may be erased. The video also may be altered through editing and dubbing. However, a legal videographer can burn a final disk that cannot be altered, which indicates a continuous display of the time and date, significantly reducing the possibility of tampering.

➤ A contestant's forensic expert who never met or treated the testator can view him or her at the time of the will execution and observe the testator's demeanor, facial expressions, and voice inflection, which may bolster the expert's opinion as to lack of testamentary capacity and susceptibility to undue influence.

➤ The attorney's failure to ask the appropriate questions may be captured in the video. An attorney who neglects to ask his client what the nature and extent of his property is or who his family members are could prove fatal to the probate of the will and expose the attorney to malpractice claims.

Conclusion

There is no question that the modern trend is to liberalize the rules governing the requirements to create wills.²⁷ It is likely that more states will pass laws permitting the introduction of video will executions. In the future, video wills could operate as oral wills to render the written will requirement unnecessary.²⁸ Nevada and Tennessee have passed laws permitting electronically signed wills.²⁹ Someday, a video will execution could serve as an electronically

signed will. That said, currently, the Colorado Probate Code prohibits electronic signatures on wills.³⁰

Given the advances in modern technology with respect to video equipment, video will executions may become a prominent part of will drafting in the years to come. However, before the lights go on and the recording starts, the estate planning attorney should carefully weigh the pros and cons of videotaping a client's will execution. The client should be fully advised by his or her estate planning attorney of the risks associated with making a video of the will execution.

Notes

1. See Stone and Ross, "Bombproofing the Estate Plan to Anticipate and Avoid Litigation," *44th Annual Philip E. Heckerling Institute on Estate Planning, University of Miami Law Center* (2010).
2. *King v. Brown*, 632 S.E.2d 638 (Ga. 2006).
3. *Peterson v. Glinn*, 439 N.W.2d 516 (Neb. 1989).
4. Beyer, "Videotaping the Will Execution Ceremony—Preventing Frustration of the Testator's Final Wishes," 15 *St. Mary's L.J.* 1, 51-52 (1983); Buckley and Buckley, "Videotaped Wills," 89 *Case & Comment* 3, 4 (Nov./Dec. 1984).
5. See Wade, *Colorado Law of Wills, Trusts and Fiduciary Administration* Chap. 32 (5th ed., Supp. 2011).
6. *In re Estate of Reed*, 672 P.2d 829, 833 (Wyo. 1983).
7. See Tucker *et al.*, "Holographic and Nonconforming Wills: Dispensing with Formalities—Part I," 31 *The Colorado Lawyer* 57 (Dec. 2002) and "Part II," 32 *The Colorado Lawyer* 53 (Jan. 2003).
8. *Estate of Robertson v. Gallagher*, 372 So.2d 1138, 1140-42 (Fla.DCA 1979).
9. *Wall v. Hodges*, 465 S.2d 359, 661 (Ala. 1984).
10. *In re Estate of Raney*, 799 P.2d 986, 989-90 (Kan. 1990).
11. See also *King*, *supra* note 2; *Peterson*, *supra* note 3.
12. *Estate of Seegers v. Combrink*, 733 P.2d 418, 421-22 (Okla.App. 1986).
13. *Stotlar v. Cook*, 1987 W.L. 6091 (Del. Ch.) *aff'd without opinion*, 542 A.2d 358 (Del. 1988).
14. Ind. Code Ann. § 29-1-5-3.2. Louisiana's Code is LA Code Civ. Pro. Art. 2904.
15. *People v. Saiz*, 32 P.3d 441 (Colo. 2001); *People v. Robinson*, 908 P.2d 1152 (Colo.App. 1995).
16. CRS § 15-11-504.
17. *Morrison v. Bradley*, 655 P.2d 385 (Colo. 1982); *Murphy v. Glenn*, 964 P.2d 581 (Colo.App. 1998). See also Tucker and Mieras, "'Dead Men Don't Lie': Applicability of the State of Mind Hearsay Exception in Probate Litigation," *CBA Trust and Estate Section Council Notes* (March 2007), available at www.wadeash.com/PDF/Articles/Dead%20Men%20Dont%20lie.pdf.
18. CRS § 13-90-102.
19. *Blackman v. Edsall*, 68 P. 790 (Colo.App. 1902).
20. CRS §§ 15-11-502, 15-11-503, and 15-14-411.
21. *Aloi v. Union Pacific R.R. Corp.*, 129 P.3d 999 (Colo. 2006).
22. Colo. RPC 3.3; CRCP 26(a)(1).
23. Colo. RPC 3.3; CRCP 26(a)(1).
24. Colo. RPC 3.3; CRCP 26(a)(1).
25. See Emily, "Jury convicts man for trying to swindle Swiss Avenue home from dying Dallas socialite," *The Dallas Morning News* (June 21, 2012), available at crimeblog.dallasnews.com/2012/06/jury-deliberates-in-case-against-man-accused-of-swindling-swiss-avenue-home-from-dying-dallas-socialite.html.
26. CRS § 15-11-507.
27. CRS §§ 15-11-502 and -503.
28. Ind. Code § 29-1-5-4 (Indiana statute permits oral wills under very limited circumstances).
29. *Taylor v. Holt*, 134 S.W.3d 830 (Tenn.App. 2003). See also Boddery, "Electronic Wills: Drawing a Line in the Sand Against Their Validity," 47 *Real Property, Probate and Trust L.J.* 197 (2012).
30. CRS § 15-10-201 (47.5)(a) and (b). ■