

The Weekly Scenario: Witnesses and Wills

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Some clients ask why all the formalities when we execute estate planning documents such as a Will. When a client comes in to sign a Will, we always assist the client with witnesses and a notary. In many states, a Will is not valid if not witnessed by at least two individuals.

A DC case from the D.C. Probate Division illustrates this point. The probate court allowed the probate of a Will that had been signed without any witnesses. D.C. law requires two witnesses to sign a Will in order to be legally valid. In this case, the court admitted certifications from people who had personal knowledge of the circumstances surrounding the execution of the Will.

When the case went to the Court of Appeals, the Court held that there is no getting around the requirement to have two witnesses for the Will to be valid. The distinction is that the court said the law could allow a Will to be admitted to probate even if the two witnesses could not be reached at the time the Will was probated. Nevertheless, it was not a substitute for having actual witnesses.