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Case Highlights Need to Use an Estate Planning Expert

If you are going to draw up a will or estate plan, it pays to have it done by an attorney who is well-versed in this area of the law. A recent Washington, D.C., court decision is a reminder of this: the court found that an attorney who drafted a will as a favor to friends, despite having no estate planning experience, incompetently represented the person making the will and engaged in a conflict of interest. *In re Long* (D.C., No. 04-BG-883, July 20, 2006).

Attorney J. Sinclair Long was friends with an elderly woman, Lessie Lowery, and her relative and caretaker, Wilbert Harris. In 1996, Mr. Harris asked Attorney Long to draft a will in which Mrs. Lowery would leave all her assets to Mr. Harris. Attorney Long agreed, even though his professional legal career was in government service and criminal law and he had no experience in estate planning. The pertinent facts, as stated in the court opinion, were as follows:

At some point in the spring or summer of 1996, Harris approached Long with a form book in hand, and requested that Long draft a will in which Mrs. Lowery would leave all her assets to Harris. Long agreed to draft the will, despite his having no experience in estate planning. Long edited the form will in an attempt to comply with the requirements of District of Columbia law. He did not seek the advice of other attorneys more experienced with estate planning nor did he perform any legal research on the subject. Long prepared two drafts of the will, the second of which he submitted to Harris for his approval. After correcting a few errors, Long gave the final draft to Harris, instructing him to have Mrs. Lowery sign the will in front of two witnesses.

Sometime before Long produced the final draft of the will, he spoke with Mrs. Lowery at her home. Long remarked that he understood that she intended to “turn[] over the farm to Mr. Harris.” Mrs. Lowery responded, “yes, [h]e’s been taking care of me.” Long did not become knowledgeable about the existence or identity of Mrs. Lowery’s other relatives, he had no specific knowledge of her finances, and he did not discuss her intentions in anything more than this perfunctory manner. He took no special precautions in light of Mrs. Lowery’s advanced age and medical condition in anticipation of a challenge to the will. Long charged Mrs. Lowery \$75 for preparing her will, which she paid for by a check dated August 15, 1996.

Ten days later, Mrs. Lowery signed the will in the presence of two witnesses.

Attorney Long used a "form will," changed it somewhat, and gave it to Mrs. Lowery to sign. He did not ask her whether there were any other relatives who might be upset by her testamentary plans. While the will was being prepared, Attorney Long was also assisting Mr. Harris with an Adult Protective Services inquiry into whether Mrs. Lowery was being exploited and neglected. As part of his assistance to Mr. Harris, Attorney Long drafted a power of attorney for Mrs. Lowery to sign giving Mr. Harris full control of her assets. The Court found that "In [assisting his aged family friend], he had no self-serving intent; his actions reflected his desire to be helpful. The only money Long ever received from either of them was the \$75 that Mrs. Lowery paid him to prepare her will."

Following Mrs. Lowery's death, several nieces and nephews contested the will that Attorney Long had drafted. The case was eventually settled, with Mr. Harris receiving only 40 percent of the estate and Mrs. Lowery's other heirs receiving the rest.

Attorney Long also paid a price. A board that oversees the conduct of lawyers in the District of Columbia found that he had incompetently represented Mrs. Lowery and had engaged in a conflict of interest by also representing Mr. Harris. The board recommended that Attorney Long be suspended from the practice of law for thirty days. Noting that "Long's foray into estate planning represented a one-shot event of a personal nature" that is unlikely to happen again, the District of Columbia Court of Appeals did not suspend Attorney Long but rather placed him on probation.

Prospective clients will often contact a lawyer and ask "What do you charge for a simple will?" As this case points out, a "simple" will rarely is. Any estate planning document, including wills and trusts, may create family problems if the family circumstances are not considered in the design of the plan documents. Our firm uses an information questionnaire to gather information about the client, the client's family, and the client's ultimate objectives for the plan. With this information, and after discussing the options with the client, we can ensure that the plan will achieve the client's goals.

For experienced estate planning advice, contact us at 601-987-3000, or toll-free at 866-ELDERLAW(373-3752), or by email at rcourtney@frascourtlaw.com.