



Storing Clients' Wills: PBA Formal Opinion 2021-300

By **Rebecca Sallen, Esq.**
Vice-Chair, Probate and Tax Section

On March 25, 2021, the Pennsylvania Bar Association's Legal Ethics and Professional Responsibility Committee issued a formal opinion that affects attorneys and firms who create and store their clients' wills.¹ The Committee concluded a will is a property, therefore it must be treated similarly to other types of a client's property by adopting New York State Bar Association Ethics Opinion 1182 ("Disposition of Wills"). Under Pa. R.P.C. 1.15, an attorney is required to safeguard client property, keep it separate from his or her property, and take appropriate steps to safeguard these documents. Pa. R.P.C. 1.15 (c) additionally requires attorneys to preserve client property "for a period of five years after termination of the client-lawyer/fiduciary relationship or after distribution/disposition of the property, whichever is later." The Committee concluded that an attorney would be required to maintain original wills until they 1) were given to the client, the client's executor, or an authorized person, 2) are notified that the client no longer needs the will to be stored, or 3) are authorized by statute, rule or other procedure to dispose of the documents.

The Committee did not state whether the same requirements would be applied to copies of a will or if similar guidance would apply to a trust or other estate planning documents.

The Committee did make several recommendations for attorneys who store their clients' original wills. Attorneys are strongly advised to 1) review their files for signed wills and other original documents, 2) take steps to obtain and confirm current contact information for every client whose will they possess, 3) notify clients that they are in possession of their will, 4) notify their clients if the attorney moves or changes contact information, and 5) obtain guidance from clients to determine if the attorney should continue storing the documents, return them, or meet with the clients to review and revise their wills.

Because wills are deemed to be treated as client property, this Opinion from the Committee underlines the duties that attorneys have to their clients and the safeguards that the attorney must abide by when they agree to store their clients' wills. ■

¹ *Formal Opinion 2021-300*; <https://www.pabar.org/members/catalogs/Ethics%20Opinions/formal/F2021-300.pdf>