

Response to “I just need you to review my Nolo Willmaker docs”

I recently went to a pro bono event where we answered questions regarding estate planning in a first come first serve basis. For the last week, I've gotten several do-it-yourself people asking me to review their estate planning documents instead of having me draft them. I'm curious as to the collective's usual response to such inquiries? Do you take the case and charge the same as you would if you were drafting a plan? Do you flat out decline? What do you say to the PC so they understand that Estate Planning is darn complicated and do-it-yourself plans are generally a bad idea?

"I do not charge to draft wills or basic powers of attorney. However, I cannot draft (or review) documents without a thorough consultation. Otherwise, I would have no idea what I'm reviewing for!

I do, however, charge a consultation fee for estate planning. I'd be happy to review your existing will, whether it's executed or not - and draft a new one if appropriate - after meeting you for a consultation. My fee for a consultation, where there is no indication of a need for trust drafting or complex tax planning, is \$X.

When would you like to schedule your consultation?"

-Rick

Richard J. Rutledge, Jr., North Carolina

Over time a great deal of time, effort, and exposure is spent on such tasks. I find that people typically seek "comment" so that they can mark up existing documents (free of charge) consistent with what they think they heard. This same type of situation is found in other areas of the law, including, believe it or not, appeals. Yes, I had someone ask me to advise them on how to make their five-page handwritten appellate brief "acceptable to the court" after it had been tossed as nonconforming. Keep in mind that they did not want me to write the brief, just to fix theirs so that it was acceptable. I was told that it shouldn't take much time or effort because I know how it is supposed to be done...I need not know anything about the case, just reformat their failed submission.

My two cents is to deal with it as if they said they had a will prepared by an attorney a while ago and they want your advice. They are likely in need of estate planning education. It seems that people often do not take into account that attorneys spend a great deal of time in education and practice to learn what need to be done based on an individual's circumstances.

Very truly yours,

William M. Driscoll, Massachusetts

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At a pro bono clinic you're basically going to get only 'all to spouse' or 'all to children' situations; no one is going to have any money, and the goal is to see as many people as possible in your allotted time. In this context I wouldn't look unfavorably at documents which folks prepared as best they could on the computer.

Rick Bryan, New York

This type of request is, I think, typical of all areas of practice. I occasionally get calls requesting a review of family law related documents -- settlement agreements, parenting plans, etc. -- that are not drafted by the caller's attorney, or they might be from the caller's opposing counsel. Doesn't matter where they come from. When you read a single document 'out of context' . . . without knowing the entire background of the case, what the guardian ad litem's report says, what the doctors said about future ability to earn income as it relates to child support . . . about all you can do risk-free is check for spelling and dangling participles.

I could review a parenting plan and say, "Yes, it is a parenting plan."
But no way could I say, "My professional opinion, based on the parenting information form I have my clients complete, and the Guardian ad Litem's report, and all the motions leading up to the parenting plan, and the hearing on parenting . . .".

CJ Stevens Montana

Pro bono clinic was fine actually. It is the follow-up phone calls that I am getting regarding amorphous wills drafted on a computer that I find problematic. Quite a few folks I saw at these clinics had a moderate amount of assets (many owned homes) even though they were not rich. I know of more than a few who wanted to disinherit children etc.

If they were truly without monies, they would have qualified for a pro bono attorney to draft their documents. The reason they call me is because they actually have assets. Under those circumstances I despair of a Will drafted through Legal Zoom et al.

Ling Chu

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I generally try to make analogies to medicine. They seem to work. Here's an example:

I know you mean well, and you are trying to be frugal and responsible. And, I really appreciate that you understand the importance of having a proper estate plan. However, your question is hard to answer. Let me explain why... Suppose you aren't feeling very well. You're tired all the time, getting headaches, and so on. So, you go to the local pharmacy and pick out a pill. You didn't get any help in choosing the pill. So, just to be sure, you go to the doctor. Without telling him what's wrong, you hand him the pill and ask him, "do you think this will work?"

What do you think the doctor would say?

Cheers,

David Allen Hiersekorn, California

There is a very old story about a man who takes a machine to be fixed. The repairman makes an adjustment to a screw inside the bowels of the machine and presents the man with a bill for \$50. The man is outraged and complains that the price is too high for such a simple adjustment and requests an itemized bill. It reads: Turning screw: \$5; Knowing how far to turn screw: \$45.

There was a similar story recently about "No, you can't pick my brain for free. It costs too much to maintain."

Bill Richards

I tend to be quite blunt and to the point about this sort of thing (any sort of DIY estate plan).

I'm sorry, I make my living from drafting wills and estate plans; if you want to hire me to draft yours I'd be happy to, but I simply don't review other peoples documents.

Now, it depends; if they ask "Can you review my old will another lawyer drafted/an out of state will I drafted years ago" then I'll do it; but I won't 'fix' them; I'll either tell them they're sufficient or draft new wills.

Ronald Jones, Florida

Can I just say that I think that responding to NOLO documents as if they were prepared by an attorney, namely reviewing and telling them if they are sufficient or need to be redrafted is the way I think I would go if I did T&E.

The reason I say this is that when I was in-house I frequently had to review agreements drafted by non-lawyers who had no idea what they were doing. While it was clear there were usually major issues with the document, the good thing about them was that they would at least be a starting place for understanding what the client needed because the client had put their own thoughts down in writing. I can't begin to tell you all the number of times that I had to pull the business issues of a deal out of a client when all I wanted was for them to write down their thoughts on what the deal was so I could then draft it properly and more effectively. When they would write it down it made my life so much easier. It gave me a real starting place for a real discussion with them about what was going on.

They are wrong if they think they just need you to review their documents, but explaining to them why they are wrong yet using what they did as a starting point may help you both develop a better document.

Susan F. Zinder, New York

Can I just say that I think that responding to NOLO documents as if they were prepared by an attorney, namely reviewing and telling them if they are sufficient or need to be redrafted is the way I think I would go if I did T&E.

The differences (at least two of the differences) between reviewing a lawyer prepared doc and a DIY plan is this; I can be reasonably sure the lawyer executed the document correctly; and the lawyer drafted document is finalized; it's already done, I got final document to review. DIY stuff, there's NO guarantee they're going to execute it correctly even assuming the document is fine, and there's NO guarantee they won't decide to 'tweak' the DIY document after I've looked at it and they leave the office.

Quick story, I haven't told in a while.

Back when I first opened up my practice, one of the very first cases I saw was this woman who had come to me with a sales contract, what she describes over the phone as a 'rent to own contract' for some property; the buyer wasn't performing. Fine, I tell her to bring the document to me, and she does. It's some DIY 'fill in the blank' "lease with option to purchase'. It was OK as printed, not what I would do but it was adequate. But the problem

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was, she and the buyer had marked it up. They'd crossed stuff out, they'd filled in terms that didn't make any sense read in context of the contract, they'd put in mutually inconsistent terms, it was the biggest mess I had ever seen, and have ever seen for a DIY legal job. And I told her that; I told her that it was a complete mess, that I couldn't determine what the intent of the parties was, whether she was selling it or renting it. It was that bad. She got all indignant over that; and said she had run it past another local lawyer and he said it was OK. I asked if she had run the completed contract past him and she says, "no, I just showed him the blank form". Ding, Ding, Ding. That's the problem, what may be an adequate form as drafted can turn to a stinking pile of cow manure if a client doesn't know what they're doing when they fill it out, and they never DO know what they're doing. Trust me on this.

And don't get me started on people screwing up the executions; Florida law is straightforward but it has to be done right; very specific way; if it's not, I don't care how great the document is, it isn't a valid will. Or trust, in Florida.

I'd be very leery of giving my OK to ANY DIY estate plan.

And I understand trying to sell them on my own wills, but at least in my experience, few people who DIY their estate plans are interested in paying me; they're convinced their plan is fine. Engineers are the WORST.

Susan Zinder

About a month ago a woman retained me to prepare her Will. great. she then proceeded to provide me a Will she prepared earlier because she was having surgery and really didnt expect to survive the surgery. 96 yrs old but mentally sharp!.. she gave her typed will to me to use as a guide of what she wanted to do. HOWEVER, her Will was not Witnessed!.. so good thing she made it thru surgery, otherwise, she would have died intestate and the people she DID NOT want to inherit, would have under the MD intestacy statutes.

Joyce Ann Williams

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I think there are serious liability issues raised by reviewing a computer will or some other attorney's documents for that matter...

I've spent a long time making sure that my documents say what I want them to say and do what I want them to do. In reviewing someone else's work, its so easy to not notice that they omitted something etc. I simply don't want the liability - and that's what I tell them.

They ask because NOLO and Susie Ormann and some others actually say they will be able to find a lawyer to look it over. I think they feel it helps with THEIR liability to make the money and then say "see a lawyer." But the fact is that, to the customer's frustration, they have a lot of trouble finding a lawyer who will do it.

I look at the inquiry as a business opportunity. I explain why my approach is better than Susie or NOLO and turn them into a client if I can.

David Rubin, Missouri

It's a little different with leases. People bring me leases to review all the time and while I'm happy to start from scratch, if they have tenants in place they usually need to make adjustments to the current document for those tenants, and use a new lease for new tenants. Tenants with a lease are often hesitant to sign something that looks and feels totally different. And some landlords are attached to their lease. They are willing to make a few changes but not start over. I can usually accommodate that.

Emilie Fairbanks, Washington, D.C.

Focusing on the NOLO docs, or distinguishing between wills prepared by a lawyer or not, is the wrong focus, IMO.

On occasion, clients will ask me to review and revise agreements they have prepared (often after litigation over those agreements). It might be an employment agreement, or a contractor's agreement with a customer. There is absolutely nothing wrong with a client asking a lawyer to review something that the client prepared.

The real problems, which most people hit on, is where the PC is looking for some free legal advice to finish their DIY project, or where the PC isn't willing to pay what it costs to perform the services. Think about it this way. If the PC walked in, signed a retainer agreement for you to do a full estate plan and paid the full fee up front, and said "BTW, I have a draft of my will that I did through NOLO if that helps." You wouldn't heap disdain upon them and show them the door.

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The message is not that PC is an idiot or a scoundrel for trying to DIY, but that starting down the DIY road doesn't really help all that much when you go to a professional to do it right.

There is also a big tire-kicker reaction here, I think. I fully recognize that, if I had people calling all the time asking me to review some DIY will, I'd probably have little patience with them

Patrick W. Begos, Connecticut

But, if a lawyer prepared it, odds are the client paid them; it's not in fact DIY; it's they got questions whether it is appropriate or whether it is still appropriate (i.e., will prepared out of state and they moved to Florida). But, at least within the estate planning context, if people are asking you to review a DIY will, it's very nearly always because they're too cheap to pay me to draft it; my usual response is, no, I charge for wills. They ask "How much" and I give them a quote; their response is "Boy, that's expensive" (and in my market, my fees aren't expensive; they're on the low end). I could quote them a fee for reviewing it and in fact I did, initially; but it's as expensive as me drafting a will from scratch in most cases.

Ronald Jones

Can't do it without an extensive interview to determine the facts and your objectives:

1. You know the facts and objectives. That's why I need you.
2. I understand the significance of the facts and how to achieve your objectives, that's why you need me.

John Page, Florida

We as lawyers need to explain to people that there is no simple answer to a legal question -- it all depends on the facts and circumstances. "But I just want to know if..."

William M. Driscoll

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Isn't it the case that reviewing a DIY will is generally more expensive than starting from scratch?

After all, a lawyer starting from scratch knows (or should know) what is in his or her baseline forms and the reasons for all the language in those forms. Starting from someone else's form - particularly a non lawyer's - that has been modified and customized to reach ends not yet articulated to any lawyer seems likely to require significant time in research and analysis that would not be required if the lawyer just started from his own forms and followed his normal drafting process.

F. Joseph Gormley, Maryland

I understand that the DIY will is a red flag suggesting someone is looking to get by on the cheap.

My point is that the problem is someone trying to get by on the cheap, not coming in with a DIY will. If Warren Buffett walked in your office, and said he had a DIY will and would pay you \$1,000,000 flat fee to review and revise it, I can't imagine you would throw him out because he started with a DIY will.

Patrick Begos

if warren buffet gave me a million bucks to review and revise his DIY will i would tell him i would do one from scratch for \$500k,!

Joyce Ann Williams

Yeah, but Warren Buffet isn't going to be in here. Just doesn't happen.

Patrick; look, you do what you do; you're very good at it. Litigation.

I've done maybe 2,000 will interviews and drafted that many wills. I'm good at this.

Trust me. Someone comes in with a DIY will, asking me to "review" it, they're doing this on the cheap. Anybody with any sense is going to see a lawyer in the first place. Including other lawyers (who, I must say, are WORSE than engineers at DIY wills; unless you are an estate planning attorney, don't draft your own fricking will; go see someone who does this for a living)(I MEAN that; non estate planning attorneys who draft their own wills very frequently screw it up). Mind you, I'm not talking about someone who comes in with written notes or suggestions; I'm not talking about someone who has tried a DIY will, and realizes that they need a lawyer; I'm talking about the guy who calls up or comes in to the office and says, Gee,

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I got this will off the internet/down at the stationary store/copied it from my buddy's will/did this from software and I just want you to look it over and tell me if it's all right. They're doing it on the cheap. That's why they did it DIY.

And, not only are they doing it on the cheap, they think they know what they're doing. They aren't necessarily going to tell me what I need to know because they already figured they know as much or more than the dang lawyer.

I just got done will interview with a couple; I've known them for years. No mutual kids. I asked if they had kids by prior relationships. Both of them said Yes; both of them said "one" child. Fine. Then I waited a moment, and the wife speaks up and says, oh, well, you know, I really have TWO children but I don't want to mention the other one. I explained that we really should mention the other child and explicitly cut them out. Then, Hubby goes, oh, well, I have two kids, My other child is a son, so and so, but I haven't talked to him in 45 years.

Ronald Jones

Several years back I worked for someone else who did estate planning. We always were pulled in to witness docs. Once she had two women clients (a lesbian couple) who hired her to have wills prepared, but they were really cheap, so they created DIY documents for the ancillaries *and brought them to the signing so they could be witnessed and notaraized. *They had some questions about the ancillaries they brought, but* *the drafting attorney refused to "look them over." It didn't help that the formatting was all screwed up and the documents were printed in about an 8 point font.

Carla Peevey, Texas

I'm jumping in late on this one, but speaking from 38 years of experience, I want to second everything that Ron Jones has said in his posts on this thread. And I'll add yet another dimension to the discussion: Two weeks ago, a client asked me to "look over" a power of attorney that he had purchased from a California cousin of Nolo (which, for purposes of this post, shall remain anonymous), and had his mother sign. I immediately pointed out to him that the Power of Attorney was not in the format prescribed by the NY General Obligations Law, and advised that, as such, he could encounter resistance from local banks and financial institutions, which are used to seeing and dealing with the statutory format. In fact, both the instructions that accompanied the document and on the document itself, contained a printed caveat that the Power of Attorney may not be accepted, and to check in advance with the bank or financial institution before attempting to use it. In addition, there was a further disclaimer of sorts advising that the power of attorney was a legal document, and that if the purchaser had any questions, etc, he/she should consult with an attorney! I told my client that there was a good reason why the purveyor of the form did not use the NY statutory format and loaded its own form with caveats and disclaimers:

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If it were to disseminate the statutory format with instructions, it could well be cited by the NY Attorney General's Office for the unlicensed practice of law in NYS. So, instead, it developed its own "near form" - but loaded it with caveats and disclaimers, and then advised the purchaser to go see an attorney! My client had also been provided with 5 variations of the power of attorney, differing re scope of powers (limited vs unlimited), duration (durable vs non-durable), effective date (immediate vs springing); and condition precedent to effectiveness (ie, with or without medical certification as to incapacity). My client, not being familiar with either the terms or the concepts, had his mother sign all of them! I explained to the client the significance of the terms and concepts and advised that by having Mom sign all 5 differing and conflicting variations, it could be determined that each one effectively revoked the others - and, consequently, she could well be deemed to have no power of attorney at all! Throw in the fact that there are already questions and disputes within the family as to the degree of Mom's present mental capacity, her having executed 5 different and conflicting powers of attorney does not help re that issue ... My client is not a dolt: he is an educated man with a college degree and a responsible position. But he is incredibly cheap - to the potential detriment of his own mother.

Rod Klafehn, New York

Agreed; I do litigation also. Just had my will updated and all associated docs done by a lawyer friend here - all executed last Friday, original in my safe box, copy mailed to my sister. All set! For a day way in the future, hopefully :)

Sharon Campbell, T4exas

At risk of getting in trouble for price-fixing, I should point out that \$1 million would not nearly cover the fee for Warren Buffett's estate.

Let me give you a mental experiment to help you think through the cost of doing a plan for Warren Buffett. Suppose I tell you that I'm going to do an estate plan for someone with \$50 billion. Suppose I tell you I want to buy a single premium malpractice insurance policy to cover my liability arising out of that transaction. How much do you think that malpractice premium would cost?

If I'm going to take professional responsibility for a transaction with billions of dollars at stake, then I'm going to need to be paid an amount of money that makes sense. That's why one buffet would only go to the largest law firms, and probably several of them.

I actually know an attorney who charged and collected a \$1 million estate planning fee. The estate was under 300 million, and there was more than one law firm involved.

Cheers,

David Allen Hiersekorn

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This kind of reminds me of arguments that a late colleague and I would have. After about an hour, we would both realize that we actually agreed with each other.

I don't disagree with anything you say. Maybe I was trying (unsuccessfully, apparently) to split too fine a hair. I was thinking of newbie or inexperienced lawyers who are reading the thread, and say to themselves, "any time someone walks in with a self-drafted document, I should throw them out the door." My point was that people DIY all sorts of things all the time. Sometimes (often) they end up needing legal help, or revision of the document they so haplessly drafted. If they are not a tire-kicker, and are actually looking for sound legal advice and willing to pay for it, the fact that they walked in with a document shouldn't disqualify them. Certainly, it may cost more to review and revise a DIY than to just start over, but if they understand that, they can be mighty fine clients.

I fully appreciate that if you've been in the T&E business for multiple years, you can spot a problem walking in the door. And often the "tell" is that they come bearing a DIY will. I guess I was trying to say that the DIY will was the symptom of the underlying disease of trying to get legal advice for cheap/free. And newbies (or even oldies) should make sure that they are correctly diagnosing the disease and not just focusing on the symptom. (As doctors say, when you hear hoofbeats, you should think horses, not zebras. But sometimes it is zebras)

Patrick W. Begos

Random analogy alert:

I just thought of another one to describe the "review my DIY will" request. "Mr. Clientperson, that's like asking me to grade a book report on a book I haven't read."

I don't know that it has marketing effectiveness or whether it would persuade anyone. But, it's pretty dang accurate.

Cheers,

David Allen Hiersekorn

Or for that matter, I see powers of attorney purchased on-line or from Staples which are clearly based on the New York short form POA. They really don't work in Massachusetts. In Massachusetts, the law is that if the power is not in the POA, you can't exercise it. My POA is about 8 pages long -- more if I'm throwing in nominations for guardians of children or pets. Under the Massachusetts Uniform Trust Code, an attorney in fact can only modify or revoke a principal's trust if both the trust and the power of

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attorney grant that power. So I throw that in as well. Or then the DIYer who downloads a trust (which doesn't really conform with MUTC provisions) thinking that he'll avoid probate that way, then fails to fund the trust.

Oy.

Sasha Golden, Massachusetts

hat is a good analogy.

In the litigation world clients sometimes state, "I'll hire you if you will win my case..."

William M. Driscoll
