

## Sharing Draft Docs with Client

Today an estate planning client - one whom I believe genuinely intends to pay me - asked if I would be willing to share the draft documents with him in advance of our signing ceremony so that the meeting could be a little faster. I'm not inclined to do this for several reasons, but I'm curious to know whether you share docs with clients before they come in to sign (and pay for) them.

If you do share draft docs, what do you do to prevent the unscrupulous client from independently executing them and not paying you?

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From what I have learned as a paralegal and what every lawyer tells me now, I should always get paid first before doing anything for a client. Once the client is paid, you can share drafts for review.

In your particular case, you could put a watermark behind the text saying DRAFT across each page and only send .pdf files.

That is just my take on the situation. I am sure more experienced fellows have better ideas.

Alexandra Kleinfeldt, Florida

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I tell clients that I want to go over them in person and do not share them in advance. My preference is to allow the client time to review, by either my pointing out key issues or allowing them to read the entire pack of documents on their own, before signing.

On rare occasions where I have previously made an exception, I was fully paid first. As a practical matter, sending out drafts tends to delay getting them signed up, and estate planning clients in particular have plenty of delays built in.

If I encounter reluctance, I tell clients they can call back/reschedule with questions. Maybe once or twice (in 25 years) I changed something afterwards (without added charge).

Darrell G. Stewart, Texas

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What she said about paying. My agreement used to say that my fee was half earned upon presentation of drafts, half on execution or after 30 days, unless I was the cause of the delay. Now, after I believe a client "ran off with the drafts" and didn't pay the second half, I'm making it all earned on presentation of drafts (since rarely does much change after that), and it must be prepaid before I will start drafting.

Watermarks can help discourage use of drafts, but it doesn't prevent anybody from retyping, and even so, a decent scan and OCR can ignore a watermark.

You'll *\*never\** recognize the unscrupulous client in advance...

Richard J. Rutledge, Jr., North Carolina

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Um... how do you /not/ share drafts with the client to review? I /always/ provide draft documents to the client. Now, to be fair, I provide them in PDF format with a big "DRAFT" watermark across the page.

And they have little red diamonds (merge field markers) in the places where the dates and witness names go. But an unscrupulous client could take the PDF, convert it to Word, remove the watermarks, and just run with it. Heck, maybe that has happened to me before. Ah well: I would not want to associate with someone that dishonest anyway.

Michael Koenecke, Texas

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I always, whenever possible, send draft docs to client prior to execution. I want them to read them, understand them, make sure I have names, spellings, etc. right.

Basic will trans letter is:

Enclosed please find a copy of your proposed will. Please examine it and make sure you understand it, and that I have the names and spellings right; if you don't understand something or if something is not right, or if you have any questions please call me. Once you are satisfied with the document please call me to schedule the signing.

I instruct them to call me when they receive them and then let me know if they are ready to execute them and if there are any problems. If there are any problems or changes, I make the changes and send them the newest draft.

Then when they come in, I've printed out 'good' copies, We sit around the conference table and I have my notary and before each and every document I ask "Mr. Smith, This is your Will (power of attorney, living will, revocable trust, whatever). I have prepared them at your direction, I have sent you a copy, I have answered your questions (and made changes if any were made). You've read them, you understand them, they do what you want, right?"

Client may want to look at the docs for a moment; that's fine. And client says "yes". Then we execute the docs.

Once or twice we've had cases where client said "no". In one case it was clear client had dementia and did not know what was going on; in another case it was clear docs had been intercepted by beneficiary who dragged client to my office; in those cases, we didn't sign the docs.

Why do I do it like this? Because I've done thousands of wills, deeds, poa's and whatever. I don't remember any particular signing with any particular memory. I don't. IF I am ever questioned "how do you know client knew what he was doing and knew what he was signing" I can say "Because I asked. I always send client docs before signing, and here's a copy of the letter I sent them; I tell them to review it, to contact me if they have any questions or problems and they came in. Because I asked them if they read them, they understood them and if they did what they wanted. Because I ALWAYS do it that way".

Is there a risk client is going to sign this on their own? Yes. Is it likely? No. Nearly all of my clients get back to me to sign; if they don't then frankly I don't chase them down; that's up to them.

One thing you can do, which I did in the past, was 'watermark' the draft copies as "DRAFT". You can do that in your printer settings more than likely. It was a PITA to remember to change them back when I printed the 'real' docs which is why I stopped doing that but it could be done which would lessen the odds of client executing them. Wouldn't stop them but it's sort of a risk you take.

You're going to have a certain amount of "Loss" in this business; people who set appointments who don't show up; people who do show up and don't buy; people who have work done which doesn't get completed. You try to minimize that but it's going to happen; and frankly I'm not going to waste my time or energy chasing those people down. There's things you can do to minimize that; i.e., some pre-appointment screening but I'd rather move on and make another sale than spend time trying to salvage someone who isn't going to follow thru.

Ronald Jones, Florida

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Big huge draft watermark over the docs.

Erin Schmidt

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Different area of practice, but I offer to send the docs to my clients in advance so their filing appointments are faster.

My retainer requires me to get paid up front, money is held in trust account until docs are ready for client to review. At that point, fee is earned.

To answer your question, you can say "sure, cl, I can e-mail them to you.

However, the rest of your fee is due at the time you receive the paperwork, so I will need the full fee prior to e-mailing the docs to you."

Corrine Bielejeski, California

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What everyone else said - get paid for work done prior to handing over the drafts. If hourly, require that your hourly time spent to date is paid prior to sending drafts (and put watermarks on them and convert to pdf).

If fixed fee, require full payment before sending or handing over the draft. Put it in your fee agreement.

Cynthia V. Hall, Florida

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I am going to add on to what Ronald says - I put a typo in my draft. If the client catches the typo, then I know they read the document. If they don't, then I fix the typo, spend a little more time going over it in our execution meeting, and we sign everything.

I also send some of the drafts without the signature page.

Justin Meyerm, Florida

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I almost always (i.e., it is my regular practice to) have the clients come in for a "review meeting" prior to the signing meeting. We go over the drafts, I explain them, they can tell me if they've changed their mind, or if they want to add additional alternates to their AHCD or POA, want to change specific distributions, etc. Then they take home the drafts (paper copies with "DRAFT" watermark and large bold "\*\*\*DRAFT\*\*\*" where the dates and signatures go) to review as much (or as little) as they want. They can e-mail or call me with additional changes, and/or questions (I ask that they do all changes by 48 hours prior to signing, but that doesn't always happen - sometimes (UGH!) they come to the signing and say, "We've decided to change our 'executor'" or

similar. I usually make it happen and we still sign that day. I have great staff standing by for signing meetings.)

SOMETIMES a client will ask to have drafts e-mailed before the review meeting, or between review and signing if they've made significant changes at the review meeting. MOST of the time I agree (if I don't, I offer them an additional review 'sit down'). The ones who want drafts before the review I will say yes or no, on a case-by-case basis. I've only had ONE client, in 10+ years of practice, 'take the drafts and run'. I \*doubt\* she executed them, I think it was just a case of procrastination and delay gone very bad (she was a very overwhelmed single mom). In fact, I believe she WILL come back someday; I know she's still on the island and still busy with several small kids. In any event, I got half of her payment and am not upset about it.

I have a practice model that seems a bit odd, when I read about others'. I generally have FOUR meetings with my EP clients (sometimes 3, and occasionally more). Initial consultation, detailed "Design Meeting", review meeting, and signing. Then I send a follow-up letter offering a consultation regarding funding (no extra charge) to help with filling out forms, going over account changes and beneficiary designations, etc. About 10% take me up on that and it usually takes about 20 minutes. I believe that over 50% of the trusts I create are fully funded (probate assets under the 'small estate' threshold of \$100,000 and no probate real estate) within 6 months of signing. (Now, whether they stay that way, who knows?)

Sometimes I combine the design meeting with the initial consult, if the clients are ready to 'hit the ground running' and know what they want.

Sometimes I combine review and signing, but usually only for fairly simple will plans or clients in a hurry who have fairly simple trusts, have had trusts before, etc. So in maybe 15-20% of cases we have 3 meetings. A small percentage have two (or more) design or two review meetings (usually more complex plans, higher net worth clients, etc.).

I have recently added an additional charge (equal to a little less than one hour of my time) if more than 4 months passes between any two meetings. I haven't had to charge this yet (added it to the engagement letter about 2 months ago), but I realized that it takes some time for me to get back 'up to speed' with the "zombie" clients (who rise from the 'dead' months, or

sometimes years, after their initial, or review, meetings). If I know that they had a "good excuse" (e.g., someone died or got very sick), I will of course waive the extra fee (just as I waive my \$50 fee for a late reschedule of a signing meeting, if I believe that they have a good, unforeseeable reason for the postponement).

Cynthia Hannah-White, Hawaii

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I do a lot of estate planning. I have always sent drafts of documents to clients ahead of the signing conference. This does save a lot of time at the signing conference. I have not experienced abuse by my clients who have received preliminary drafts. The drafts are labeled drafts. In addition, the clients have signed a contract promising to pay my fees in full when the documents are ordered. I do not require advance payment.

Jim Winiarski

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I usually just upload files for clients to a Web page set up with a login and password. The login is sent to the clients by email, and the password is something we agree on and put in the legal services agreement. It looks like this: <http://koeneckelaw.com/clients/Doe> . The file listing is done by PHP script, so setting up the page is pretty quick and easy.

The issue about "zombie" clients has been really bothering me lately.

For example, I just sent my third reminder to clients who received their drafts months ago, and the response was "I'll get to the documents within the next couple of weeks." I have tried putting suggested deadline dates on my agreement, but frankly that has not accomplished much. Would you share the language you use on your agreement? I'm open to any ideas about how to get these matters moving.

Michael Koenecke

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I did not previously point out that I have already had extensive prior discussion with client regarding plan prior to any drafting. Typically, they fill out questionnaire and I spend a couple of hours with them going over things before drafting to make sure choices are understood. As a result, sign-ups are usually simple.

Darrell G. Stewart

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I currently have three cases "in progress". They are from 1 month after drafts to six months. I usually send a reminder at about 2-3 months, but I don't push them. This seems to be normal for my clients. A few want them done in 2-3 weeks, and many take 3-4 months. I have adjusted to it. The client is always right.

Ed Burcham, Kentucky

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When I sent drafts, it just elongated the process. After meeting(s) with client I am generally confident as to desires. I switched to scheduling them to sign up rather than sending drafts. They show up, either read it word for word or listen to my explanation, sign and life moves on. Rarely will significant changes surface, and I can always reschedule them if major changes pop up.

I tried other approaches, with draft documents and so forth. My current approach works best here.

Darrell G. Stewart

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I always send drafts and often have a meeting prior to the execution meeting to discuss the drafts because I want to make sure my clients fully understand the documents and have a chance to request changes or corrections prior to execution. I have clients who do not do well "under pressure" of sitting in a meeting and having to digest all of the terms of their documents and think of questions they may have. I don't watermark the drafts. I have been incredibly lucky that in my years of practice, I have not been stiffed by an estate planning client. Now I probably just bachi-ed myself.

Naomi C. Fujimoto, Hawaii

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Nah, it's just the aloha spirit.

Whatever 'bachi-ing' is, I probably just did it too.

Cynthia Hannah-White

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I believe it's like failing to knock on wood.

And we got paid half upon being hired and the other half at signing. I emailed the documents for review before making an appointment to sign.

Never had anybody run off.

Marilou, retired legal clerk/secretary, Virginia

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Bachi is usually doing something that will cause something bad to happen to you- sort of like karma but in a negative sense.

Naomi C. Fujimoto

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I'm with those that send drafts. I wouldn't think of doing it any other way. I have maybe one or two in my entire career that "sit" on drafts and perhaps went and had them signed. I give a free consult and then flat fee the work. I think I have a pretty good handle on the clients after that meeting. I might take extra precautions if I thought I might be taken.

And perhaps I have, but like I said, once or twice.

My secretary gives a very basic idea of my flat fees upon screening (with the caveat they may be more depending and they will know at the end of the first meeting). The riff raff must get weeded out by the screening, I guess.

My fees are also below the going rate in the areas around me, but it is what my area can bear.

Bret Cook, California

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Thanks to everyone who took the time to respond. This has been an interesting discussion, as it seems that there is some diversity in how folks handle the estate planning workflow. My own practice sounds similar to the way Darrell handles things: when a new client calls, I schedule the initial meeting and e-mail an estate planning worksheet for the client to complete. This worksheet is pretty comprehensive and, if completed, it provides the information I need in order to draft the documents. At the initial meeting, we'll go over the worksheet in detail and I'll take lots of notes to make sure I understand their wishes. Before they leave the first meeting, we schedule the signing ceremony. Then, I draft the docs; they show up, we go over the content, I make sure the client understands and agrees to it, and we execute them. Once or twice I've had to make a small change at the last minute, but it's a rare occurrence.

I do things this way because I believe it moves the process along to its conclusion more efficiently. I can't help wondering if sending drafts to the client actually slows things down: not only is it an extra step in the process, but it seems like there might be some psychological effect of giving drafts to the client (e.g. "Now I have the docs, which means that the task is 90%

complete. Since it's mostly done, there's no real urgency to finish the job.") I know it's irrational, but clients often are, and I wonder if those same clients would have procrastinated so long if they hadn't been given the drafts.

One key takeaway from this discussion is that I should expect at least part of the payment up front. Sometimes that's not possible since I do a fair amount of estate plans for legal insurance clients, and the insurance only pays on completion. But, I'm kind of embarrassed to admit that I typically defer payment until the signing ceremony. So far, I've never drafted docs for which I haven't been paid, but maybe that's just because I haven't been doing this long enough to get burned.

Thanks again!

Andrew C. McDannold, Florida

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Fruitful discussion. I've enjoyed it too. I am a one-woman show. I don't have a secretary or help of any kind. So when I have signings, I have to call in witnesses. I pay my witnesses a nominal fee for signings, and they expect to be in and out. Therefore, I want to make sure that everything is perfect at the time of signing. My clients are there to sign, not to review.

For this main reason, I provide drafts to all clients. I want everything taken care of before the signing. I'm certain this slows down the process, but that is acceptable to me. My drafts are all PDF with a large "draft" water stamp that spans the entire page.

I get 1/2 of my flat fee up front and 1/2 upon completion. I have never had a person stiff me, even when I've collected nothing up front. However, I only advertise in 55+ communities and my clientele tends to be responsible and considerate.

I do have a handful of clients that have dragged me out for a very long time. Honestly, I'm too busy to care.

My final comment is that I immensely dislike signings. It is my least favorite part of my practice. It is the only part of my practice that I can't do myself, and I have to bring others in. It's a ton of paperwork for me to do alone and witnesses aren't always reliable. For this reason alone, I have considered hiring someone at my office, but I've yet to take that step.

Lani Candelora, Florida

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One additional point that I did not express in my earlier posting. When we send out drafts of estate planning documents, the cover letter is very important. It emphasizes the importance of the client carefully reading the documents ahead of the signing conference. It urges the clients to pay particular attention to the names of all beneficiaries and loved ones set forth in the estate planning documents, including their relationship to the testator. This is probably the most common error I see in estate planning documents- names misspelled and relationships misstated. We insist upon the use of full legal names, including middle initials. We also insist on identifying non-relatives by their current addresses. In my experiences, guys are particularly prone to using nicknames and often do not know the correct legal names of loved ones.

Jim Winiarski

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Couple of thoughts:

First, I tend to do it like Bret Cook: Meet with client, do interview, send docs, have client come in for signing; and largely do it on 'flat fee' and a little bit below market rates.

Now, the overwhelming majority of my EP is middle class "I love you" wills; All to spouse, then to kids in equal shares, typically no trust. There are variations of course, sometimes a child is excluded, sometimes stepkids are included; sometimes there are no kids/no spouse but by and large we're not

talking trusts or taxable estates; IF it becomes apparent that we need something more complicated, then I'll tell client during the interview. But some of this is based on my clientele; overwhelmingly retired senior citizens with competent adult children.

I don't remember the last time I used one though; Based on my experience I know what to ask and where to probe: I have a very specific interview technique. The problem with checklists is, clients don't necessarily understand the questions; and over reliance on those checklists can lead to problems (i.e, do you have any children on questionnaire. That's simple question, right? Either you do or you don't. Client says "no" and you rely on that. Whereas you ask the client do you have any children and you WATCH the client while they answer; IF there is any hesitation, a little jerk of the head, the eyes moving; then probe. Do you have any children? uh, No. Sir, are you sure you don't have any children? Well, I had a kid years ago but I haven't seen her in years..... I had a kid, got divorced and husband adopted the child. Are you sure they were adopted? You were served with court papers? Uh, no. I just assumed that she was adopted but no I never got any papers on it. How many kids do you have? Wife, 2, Husband, kind of hesitates. I ask husband how many children do you have. He says, Uhm, Three. Wife starts staring at him and he says Uh, Honey, We need to talk. Oooooookaaaaayyy.

Or, are you married? Any hesitation, evasion, eye darting? Uh, are you sure you're not married? Oh, I don't consider myself married; I was married years ago but we're "legally separated" (there is NO Legal Separation in Florida). Oh, I was married, but we split up in 1987. Have you ever received divorce papers? Uh, no. Do you know if she's still alive? Oh, she must be dead, it's been 20 years. But you don't KNOW that she's dead, right? Uh, No. Or, the all time potential Cluster F: You two are married? (to a couple). Very brief hesitation before "Yes". Something is going on here. You two are married TO EACH OTHER? Uh, no, we're both married but to different people. Oookaaay. It just got complicated. Or, you're married, right? Uh, yes. Hmm. You're actually married, had a ceremonial marriage with a marriage license and a priest? Uh, no, but we're common law husband and wife, we consider ourselves married. There is no common law marriage in Florida.

Look, I'm not telling to use a pre interview questionnaire or not but I am saying don't trust those answers. Some of this is experience and if you don't have experience then the questionnaires are good back up. I was very fortunate because I was an AFDC intake caseworker prior to becoming a lawyer and did a couple of thousand interviews that largely covered the exact same ground as EP; marital status, children, family relationships and assets.

As far as prepayment goes, I don't generally demand it, particularly for lower cost stuff. I tell client to pay me when they come back. Yeah, there's a risk I'm not going to get paid; however, in my experience it is pretty low risk; nearly all do come back. And if they don't come back, I don't spend a lot of time chasing them down; a couple of weeks after I send them the docs if they haven't contacted me I might rip off a 1 sentence letter: Mr. Smith, did you receive my docs, do you have any questions, and please contact me to sign them if they're acceptable. 90% of the time that gets them to call. If they don't then fine.

Now, as far as to WHY I don't have them come in and go over it; because I typically have multiple clients here signing docs with clients witnessing each other's wills. Typically, at least three clients two of whom are witnessing the thirds will and so on and so forth. If I'm really busy I can schedule 5 or 6 or one time 8 clients in succession; I don't have the time to spend 30 minutes per client going over docs and also it avoids breaching confidentiality.

Typical signing goes like this; say wills and POA/HCS, for a couple and a single person. I introduce everyone, explain they're going to be witnessing each other's wills and then sign the wills FIRST. Because I and my notary can witness everything except for wills; Notary of course can't notarize her own signature and she can't notarize mine. But we can act as un notarized witnesss on deeds, POA, HCS, Living wills, etc. just NOT will (because of self-proving affidavit).

Then I do my little spiel about signing wills.

OK, folks this is how we sign wills; each of you will be signing your own will and the others will be acting as witnesses. Now this is a bit complicated in that each of you sign twice. I'm going to explain this with Franks will because I have Franks will in my hand but this is the way we will do each of these. I am going to ask Frank to sign his last will and testament, and then I'm going to ask you, Bob, and you, Mary to sign as witnesses. Then, I am going to ask what

seems to be a very stupid question, I am going to ask you, Frank, whether you just signed your last will and testament, and ask you, Bob, and Mary, whether you just signed as witnesses and whether you did sign in the presence of each other in spite of the fact that we're all sitting around the same table and all know that you just signed the will. Everybody say "Yes". One time I had some joker say "No" and I don't want to have to explain to a probate judge that someone was joking when they said that. Say "Yes" so my notary can hear it. Then everyone signs again and it goes to my notary to notarize it. The reason we do it like this is, the first time you sign it makes a valid will; the second time you sign you are swearing that you signed the wills in the presence of each other; this is to make it easier to get the will admitted after death; in Florida the witness the will either has to do this at the time of signing the will or we have to track you down and have you go in front of a Judge to swear to the will when we probate it; it's a lot easier to do it now rather than have to track you down years later and drag you in front of a judge; you might move, you might be dead, so this is why we do it now. OK? Any Questions.

So, I do my exhibit will to client, ask if I've prepared it his direction, if he's received it, read it, understands it, if he has any questions and if it does what he wants. Affirmative Yes. Frank, please sign here. Bob, sign here, Mary, sign here. OK, Now, Frank you just signed your last will and testament and Bob and Mary you just signed as witnesses and you all do swear or affirm that you just signed and that you all signed in the presence of each other? Wait for audible "Yes" from all. If need be glare at person who hasn't said Yes. Get a Yes.

OK, so, Frank, you sign here on the affidavit, and Bob and Mary, You sign here. thank you very much, you're such good clients, and let me give this to my notary, who also happens to be my Mother (usual "oh, you're his mother; you must be so proud of your son") Mom notarizes it.

Then we do round robin for as many wills as we got; then we do other docs, POA's, deeds, whatever; I ask I've prepared this doc at your direction, etc. Yes? Ok, Sign here. I witness, hand it to mom for her to witness and notarize, get all docs, tell client I need one more signature, the one on their check, and then put the docs in a Custom Budco Bank Bag with my name, attorney at law, address and phone number on it, available [HERE](#):

<https://budcobank.com/AWSCategories/p/454/Leatherette-Zipper-Wallet-Bank-Bag>

I buy 100 at a time, because there's considerable price break at that point. Budco also runs sales and maybe you can google discount codes. Anyhow Clients LOVE these bank bags. And it is GREAT marketing; first off, when client dies it stands out to heirs; it screams "LOOK IN HERE", and it also screams "CALL THIS LAWYER FOR THE PROBATE". Trust me on this, I can't count the number of times I've had people walk in my office holding one of these things and ask "are you Mr. Jones?" and I say, Yes, and I'm thinking, I got a probate.

I hate loose leaf binders; clients take stuff in and out and the little punch holes tear thru and they lose pages and complete docs, Fancy file folder, eh, stuff falls out. Bank Bag, stuff stays in and clients actually go OOOH and Ahhh when they see them.

Ronald Jones

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When I was first looking for a unique way of packaging up the client's documents, I happened upon these red leather-ish portfolios at Office Depot (<https://www.officedepot.com/a/products/263810/Office-Depot-Brand-Polyurethane-Expanding-Wallet/>) and thought they were perfect. They have five pockets, one for each document, and I also add a clear, self-adhesive business card pocket (<https://goo.gl/3qboiD>) to the inside flap, in which I put two business cards. I love that they're bright red because they stand out. I explain that family members often have trouble finding important documents, but these will be easy to spot; just tell your family to look for the red portfolio.

Additionally, Ron makes a great point about estate planning packaging leading to probate work. To facilitate such conversion, I've created promotional rack cards entitled "What is Probate?" which I include in the will pocket of the portfolio. Whoever pulls the will out of the pocket will also see the card, and it will hopefully encourage them to call me.

Andrew C. McDannold

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I share. I send drafts that are locked for editing and/or in pdf, watermarked, and per Solosezzer David Hiersekorn's advice, the signature lines are all "\_\_\_\_\_DRAFT\_\_\_\_\_." Each step makes it more unattractive to try to copy.

Andrew McDannold

If an unscrupulous client decided to copy and sign, they'd have to re-type every document word-for-word, and if they have that kind of time and dedication to unscrupulousness, then so be it.

Julie S. Mills, Ohio