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LET'S GET "WRITE" TO IT...

Eliminating Cursive Writing from Public School Curriculum and its Potential Effect on Estate Planning Documents



LEGAL PERSPECTIVES

By Jessica R. Grater, Esq., Wolf, Baldwin & Associates, P.C.

I know, that is a really bad pun, but I could not resist using it. As an Estate practitioner, on an almost daily basis, I meet with folks for the sole purpose of executing estate planning documents such as Wills, Power of Attorneys, and Living Wills. Most of the time, those appointments are pretty routine. I review the documents with the clients, answer their questions, and once the clients are satisfied and understand the documents, they sign their names where they are instructed to sign. Oftentimes, to break the awkward silence, we engage in small talk as the documents are being signed, and we poke fun at our own signatures. As an attorney, having to sign my name countless times over the years, my once perfect penmanship and signature has devolved into a bunch of scribbles that resemble random pen strokes made by a toddler.

Recently, a recurring topic of conversation during these signing sessions has been about the elimination of cursive writing from public school curriculum. That one day, if this becomes more widespread, we will have a generation that will not know how to sign their names, that they will print their names instead of using a cursive signature. I had heard about this, and admittedly I initially dismissed it, because cursive is taught at the public school where my children attend. I figured it was some sort of "fake news" spread on social media like the nonsense about pledging allegiance to the flag in classrooms is being eliminated because people were finding the act to be offensive. (Truth be told, it's not being eliminated and is actually a required practice in Pennsylvania schools, so please people, stop posting those memes). However, the topic of teaching cursive writing has come up so frequently that I thought it merited more investigation on my part, and there is truth to this.

I came upon an article from April 4, 2013 in the *Washington Post* by T. Rees Shapiro, which discussed how cursive is being eliminated in public schools, because some consider it to be obsolete. Students take

notes on laptops and tablets. They do not write notes, but send text messages or e-mails. And, with the adoption of the Common Core, which does not require the instruction of cursive writing, local schools are left to decide whether it will be taught. The schools who decide not to teach it cite to time management and resources as the reason for its elimination. Shapiro's article states that proponents of cursive argue that the younger generation will not be able to understand documents written in cursive, including historic documents such as the Declaration of Independence or the Constitution, but that argument is countered in the article by an expert who basically says, meh who really reads that stuff anyway?

More recently, however, the Associated Press published an article on March 3, 2017 by Karen Matthews about how cursive is making a comeback in elementary schools. It discussed that Alabama and Louisiana passed laws in 2016 mandating cursive proficiency in public schools, the latest of 14 states that require cursive. (Pennsylvania has adopted Common Core, so it is up to the individual school districts in our state.)

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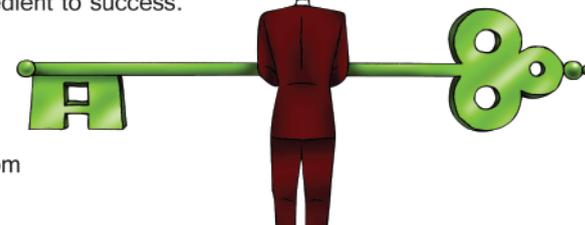


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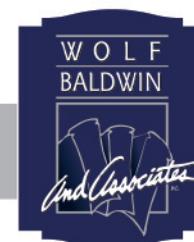


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LEGAL PERSPECTIVES

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And last fall, the 1.1 million-student New York City schools, the nation's largest public school system, encouraged the teaching of cursive to students, generally in the third grade. So, this begs the question, what made the educational powers that be change their minds? The article implies that the reason for this (or at least part of it) is what this article is about—signing legal documents. Truthfully, people need to be able to sign their names for a number of reasons on many types of documents. Particularly, if you want to do a Will, you must be able to sign your name.

In Pennsylvania, a Will is "required to be in writing and shall be signed by the testator at the end thereof..." 20 Pa.C.S. § 2502. If, for some reason, a person cannot sign the document, Pennsylvania law allows for someone to sign by "mark": "if the testator is unable to sign his name for any reason, a will to which he makes his mark and to which his name is subscribed before or after he makes his mark shall be as valid as though he had signed his name thereto: Provided, that he makes his mark in the presence of two witnesses who sign their names to the will in his presence." 20 Pa.C.S. § 2502 (2).

If we have a generation of people who do not know how to write in cursive, this may lead to an increase in litigation about proper

execution of a will, the genuineness of a signature, and forgery of a signature. If the genuineness of a signature is in dispute (and please know that the original will needs to be presented at the time of probate, otherwise the presumption is that the original will was revoked by the testator) under the law, this is a question for the jury (folks like you) to decide. How would you decide if everyone's writing pretty much looks the same if we all used block printing? In cases where there are no witnesses to the signing of the will, two witnesses who are acquainted with the handwriting of the testator may attest to the testator's signature (these are called non-subscribing witnesses). Would this be acceptable if the testator used block printing? Is block printing a "mark" or a signature?

What is a "signature" anyway, (legally speaking)? The law uses the ordinary definition of what a signature is, and it does not require perfect penmanship, so the random looking pen strokes that are my signature are acceptable. When the statute was written, the legislature contemplated that a person's signature is made when that person takes pen to paper and writes his or her name in a manner in which only that person is capable of writing, normally in cursive or something that is supposed to look like it.

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LEGAL PERSPECTIVES

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A "mark" is oftentimes thought of as a simple "X" on the signature line. There is nothing particularly unique about an "X." My "X" and anyone else's "X" probably look the same. Due to the potential for fraud and forgery with signing a will by a mark, the legislature required that the signature by mark be witnessed by two people to help prevent the fraudulent execution of a Will.

Moreover, a signature and a mark are not the same thing under Pennsylvania law. The mere fact there are two separate sections in the Decedents, Estates, and Fiduciaries Code, one relating to signatures and the other to a "mark," is evidence that they are not the same thing in the eyes of the law. Therefore, we must ask: is printing your name in block letters the same as a "mark?" Is one person's printing that much different than the printing of another? If everyone uses block printing, how difficult would it be to prove that a signature was forged? In Pennsylvania, when forgery is alleged, the burden of proving it rests on the party making the allegation, and it must be proven by clear and convincing evidence. This burden of proof is a higher standard to meet in civil cases, because the person needs to prove what they are alleging is substantially

more likely than not to be true. How would a forgery be proven under this standard if our signatures became block letters?

As you can see, there are many real-world implications to the elimination of cursive writing from public school curriculum. Aside from other reasons and studies showing there are other benefits to teaching cursive, when it comes to legal documents, (particularly a will) being able to write in cursive is a very valuable (arguably essential) skill. It has a lifetime of applications. I use cursive writing on a daily basis. Honestly, I can't say the same thing about trigonometry or physics, and I'm quite certain I haven't diagrammed a sentence in several decades, but that does not mean there is no value in this knowledge, or that these subjects should be eliminated from public school curriculum. The same should apply to cursive writing.

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