

Mary Vandenack : [The Matter of the Estate of Skip Beach](#)

“In [The Matter of the Estate of Skip Beach](#), the Supreme Court of North Dakota determined that material portions of a holographic will were not in the testator’s handwriting. Many Estate planners have been encouraging the use of holographic wills since the COVID-19 pandemic started. Doing so makes sense in many situations given restrictions on visitors to specific locations and vast differences in state laws on remote witnesses and notaries. For those encouraging clients to use holographic wills when other options are challenging, consideration needs to be given to helping the client ensure the validity of the will or helping beneficiaries address possible issues with a holographic will.”

Mary E. Vandenack provides readers with commentary on the North Dakota Supreme Court Case, [The Matter of the Estate of Skip Beach](#), in which the North Dakota Supreme Court ruled that the district court did not err in finding that material portions of a purported holographic will were not in the testator’s handwriting.

Mary E. Vandenack, J.D., ACTEC, CAP®, COLPM®, is founding and managing member of **Vandenack Weaver LLC** in Omaha, Nebraska. Mary is a highly regarded practitioner in the areas of tax, trusts and estates, private wealth planning, asset protection planning, executive compensation, business and business succession planning, tax dispute resolution, and tax-exempt entities. Mary’s practice serves businesses and business owners, executives, real estate developers and investors, health care providers, companies in the financial industry, and tax-exempt organizations. Mary is a member of the American Bar Association Real Property Trust and Estate Section where she serves as on the Planning Committee, Nominations, and Council. Mary is a member of the American Bar Association Law Practice Division where she currently serves as Secretary. Mary has been named to ABA LTRC Distinguished Women of Legal Tech, received the James Keane Award for e-lawyering, and serves on ABA Standing Committee on Information and Technology Systems. Mary is a frequent writer and speaker on tax, benefits, asset protection planning, and estate planning topics as well as on practice management topics including improving the delivery of legal services, technology in the practice of law and process automation. Mary hosts a podcast called Legal Visionaries. <https://www.vwattys.com/resources-vw-podcasts/>

Here is her commentary:

EXECUTIVE SUMMARY:

In the case, [*The Matter of the Estate of Skip Beach*](#),¹ Clark Beach, brother of Skip Beach submitted a purported holographic will of Skip Beach for probate. The court denied the petition to probate the holographic will on the basis that a material portion of the holographic will was not in the handwriting of the testator.

FACTS:

At the time of Skip Beach's death, Skip was survived by one daughter and seven siblings. One of Skip's siblings, Clark Beach, submitted a petition to probate a holographic will of Skip Beach. The purported will read:

My Last Will and Testament

Skip Beach

I leave to Clark Beach

Everything I own

P.S. Bury me in Carlyle

4-8-04

At the hearing on the petition in November, 2020, seven witnesses testified that the signature and all of the document were in the handwriting of Skip Beach.

The district court denied the petition for formal probate of the holographic will. The court concluded that the signature was Skip Beach's signature but that the clause "everything I own" was a material provision of the holographic will and was not in the decedent's handwriting. The court noted that the phrase was written in different ink and had a different appearance from the rest of the document. The court also noted that none of the witnesses were handwriting experts. As a result, Clark Beach failed to meet his burden of providing that a material portion of the purported holographic will was in the testator's handwriting.

Clark Beach appealed to the North Dakota Supreme Court arguing that the district court erred in its determination that a material portion of the will was not in the testator's handwriting.

The Supreme Court stated that the proponents of a will have the burden of establishing prima facie evidence of due execution in all cases.ⁱⁱ

Clark Beach argued that all of his witnesses testified that the will was in the writing of the decedent and that such evidence was not contradicted by personal representatives or witnesses. The Court noted that contradictory evidence is not required if testimony is not credible. The Court noted that the district court found sufficient differences in the material term “everything I own” to conclude that such provision was not in Skip Beach’s writing. The clause was in smaller text, written in only printed letters and was lighter in appearance than other parts of the document.

COMMENT:

In general, to be valid, holographic wills must be entirely in the handwriting of the testator, signed by the testator, include the basic components of a will and witnessed if possible. Typically, the holographic will must contain sufficient material provisions expressing donative and testamentary intent.

A holographic will is to be distinguished from a “simple will” in that a simple will may refer to a statutory will (following the requirements of a statute for a typical will) while a holographic will is one entirely in the handwriting of the testator.

While holographic wills have become more common since the beginning of the pandemic, it is important to note that not all states permit holographic wills and the rules related to validity vary from state to state.

To the extent you advise a client to consider a holographic will in those circumstances where it is difficult to execute a will in accordance with the usual statutory requirements, it is important to review whether the state of the residence recognizes holographic wills. Advise the clients on the specific rules with respect to holographic wills in their state of residence.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

Mary Vandenaack

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CITATIONS:

ⁱ [*In the Matter of the Estate of Skip Beach, 2022 ND 13.*](#)

ⁱⁱ N.D.C.C §30.1-15.07