

Meeting Notes
Oregon Law Commission
E-Wills Workgroup
July 27, 2026

I. Call to Order

Attendees of this meeting were Lane Shetterly, Eric Foster, Matt Schrumpf, Lori Anne Sills, Heather Gilmore, Tara Hendison, Ben Orzeske, Victoria Blachly, Kris Kolta, Professor Susan Cook, Stephanie Carter, Amy Zubko, and Jared Rumsey.

II. Discussion

Mr. Shetterly welcomed the workgroup and noted that the participants from the Oregon Judicial Department would not be attending and the group would therefore forego discussion of what constitutes an “original” will for an electronic will and how the courts would receive one in filings. The group then discussed a rewrite of the bill’s section 8 drafted by Ms. Sills. The rewrite addressed the concept of a “self-proving” will, which is not a specific term in Oregon law. It set forth that a properly executed electronic will executed simultaneously with appropriate affidavits of attesting witnesses would have equal status to a properly executed paper will submitted with appropriate affidavits of attesting witnesses, meaning it could be expedited through probate if there was no contest. The section then describes the form for an affidavit of attesting witnesses, and the process should someone initiate contest having received notice of the proposed will. This process largely mirrors that of ORS 112.238.

Ms. Sills added that an electronic will can only go through the simple estate affidavit process (see generally ORS 114.505 to 114.560) if executed with a simultaneous affidavit of attesting witnesses. She wondered exactly how that worked in practice for paper wills without an affidavit

of attesting witnesses. Clarification was sought as to the overall meaning of the section, which Ms. Sills provided. Mr. Shetterly pointed out that much of the language here was an attempt to match up with current paper will law, including references to an original will, which doesn't perfectly match the actual process of a probate proceeding as it starts with the filing of a PDF copy of the will. Ms. Gilmore asked if the rule was that the original paper will must be filed within five days of the PDF. It was confirmed that yes, per court rules that is the case. (Note: UTCR 21.070(3)(h)(ii) provides seven business days as the time limit.) Ms. Gilmore highlighted the importance of the issue that of original electronic wills when filing with the courts, acknowledging that it would be addressed at a future meeting.

Mr. Schrumpf noted that he generally agreed with the proposed revision of section 8. He felt that subsection (1)(a) left him unclear as to what exactly a will's proponent should do, particularly in regards to filing. He opined that perhaps a certified paper copy pursuant to section 9 might be required, but acknowledged that would be discussed later. His second question regarded subsection (3), the wording of which he initially found confusing. He proposed moving "include an acknowledgement of the testator" from the subsection (3) intro down to (3)(c). Mr. Orzeske suggested beginning subsection (3) with "the electronic will and affidavit" to emphasize the simultaneous requirement. Both proposals would be considered by Ms. Sills. On the whole, the group agreed with the proposed rewrite.

Mr. Shetterly then moved the discussion to harmless error. He noted that Andrea Meyer was unable to attend today, but that she advocated for including harmless error for e-wills. Ms. Blachly noted that harmless error is applied in "crazy" ways including allowing holographic wills, which are not expressly contemplated in Oregon. She has no issue excluding e-wills from harmless error because of potential ease of undue influence. Prof. Cook noted that clear and

convincing evidence is a high standard that should protect it, but also agreed with Ms. Blachly. Ms. Blachly also recognized that the testator's intent is the main purpose of law regarding wills, and e-wills have the advantage of access for rural areas. Mr. Shetterly pointed out a research memo by one of OLC's Legal Research Aides, Gracie Schweitzer, which concluded there was no consensus among the states for harmless error's application to e-wills. Mr. Orzeske confirmed this commenting that the tradeoffs are clear. Mr. Shetterly opined that allowing an e-will to get through probate without a simultaneous affidavit of attesting witnesses was a form of harmless error. Mr. Foster opined that it was more like an application of the process than harmless error, to which Mr. Shetterly agreed.

Mr. Foster then asked for clarification on the application of the clear and convincing evidence standard in courts, which Ms. Blachly described as the "wild west" due to a lack of many appellate decisions describing what harmless error means, which leaves trial court attorneys often attempting a spaghetti-at-the-wall approach for a will contest. Ms. Gilmore concurred with Ms. Blachly's assessment because the structure somewhat incentivizes that kind of approach as evidenced by attorneys taking some contests on contingency. Mr. Shetterly eventually suggested that a tactical approach, due to already proposing a technologically advanced change to the law, might be to leave harmless error out to avoid strong opposition to the bill. The group agreed with the suggestion, opting to wait for further percolation in the courts on the issue before allowing harmless error for e-wills.

Mr. Shetterly then moved on to some pending policy decisions the workgroup needed to make in order for drafting to proceed. Ms. Sills noted that one of the larger questions left was whether or not to allow remote attestation for a will as is done for other attestations in ORS 42.141. Others were whether to allow a notary to substitute for the two witnesses and whether to require a

custodian as Washington state does. The group did not seem to lean towards either approach due to its preference to match law for e-wills as much as possible with current law.

Mr. Schrumpf commented that it seemed that the gold standard for an e-will was a tamper-evident document such as a digitally signed PDF guarded by SHA-256 as was previously demonstrated to the workgroup. He wondered if it would be prudent to include in the bill a requirement that a proponent of an electronic will provide an expert declaration that the submitted electronic file has not been tampered with since its signing. Mr. Shetterly appreciated the origin of the idea, but shared that his response was that the suggestions conflicted with one of the main goals of the overall bill which is to allow for better access to the legal service of will execution. He provided the comparison that Oregon does not require a paper will proponent to provide an expert declaration on the authenticity of a wet signature.

III. Scheduling

Ms. Zubko mentioned that the workgroup should respond to the poll sent out in regards to an additional meeting in early September. Upcoming meetings are August 24th, September 28th, and October 26th. Mr. Shetterly asked for clarification on a drafting deadline, which Ms. Zubko clarified was ideally before the November 20th full Commission meeting, though she noted there would be another Commission meeting in January 2027 if needed. Mr. Shetterly hoped the next meeting would resolve the rest of the issues to allow Ms. Sills to provide a clean new draft for the workgroup to review in the following meetings.