**26.11 FRAUD**

No instruction.

Use Note

An instruction should be given when fraud is an issue.

Comment

The Alaska Supreme Court has not had occasion to formulate a definition of fraud as applied to wills. Consequently, no pattern instruction is provided. The parties must formulate their own definition and instruction to propose to the judge. Professor Page's comments may be of some assistance:

Fraud which causes testator to execute a will consists of statements which are false, which are known to be false by the party who makes them, which are material, which are made with the intention of deceiving testator, which deceived testator, and which caused testator to act in reliance upon such statements.

. . . .

Though the similarity between fraud and undue influence has often been pointed out, there is a very clear-cut difference between the two concepts. Undue influence consists in exerting sufficient pressure or influence upon the testator to break down his will power and overcome his free agency or free will so that he is unable to keep from doing that which he would not otherwise do. Such undue influence need not involve the use of false and fraudulent representations or untrue statements. Unrelenting importunity that employs the use of perfectly true and accurate information may become so overbearing as to constitute undue influence, though such could not by any means constitute fraud.

Fraud on the other hand need not involve the overpowering of the testator's free agency or will power, though it is by no means impossible that false statements may be used to harass the testator to the point that he is both tricked and deprived of his will power. The basic ingredient of fraud however is that the testator is deceived through the use of false information, so that his free will or free agency, of which he is not deprived, is exercised upon the basis of false information.

1 Bowe-Parker, Page on Wills 14.3 (rev. ed. 1960).

Fraud may either be in the execution or in the inducement. Fraud in the execution occurs if a testator is "induced to execute an instrument of whose nature or contents he is ignorant, by willfully and intentionally false statements of fact which are made to him by a beneficiary under the will which testator is thus induced to execute, or by someone who is induced by such beneficiary to make false statements, with intent to deceive him, and which actually deceive him." Page on Wills 14.4. Fraud in the inducement "consists of willfully false statements of fact other than those relating to the nature of the contents of the instrument, made by a beneficiary under the will which is thus induced, which are intended to deceive testator, which do deceive him, which induce him to make a will, and without which he would not have made such will." Id. 14.6.

For principles applicable to fraud and misrepresentation in other contexts, see Article 17 (tort fraud) and Article 24.08E (contract fraud).