**26.10A UNDUE INFLUENCE**

The Contestant claims the will is invalid because the Maker signed it when [he] [she] was under the undue influence of [name of alleged influencer].

You must decide if it is more likely true than not true that [name of alleged influencer] so influenced the Maker that [he] [she] made a will that [he] [she] would not have made if left to the free exercise of [his] [her] own judgment and wishes. Mere general influence is not undue influence.

In determining the issue of undue influence, you should consider all of the surrounding circumstances, including such factors as:

(1) the Maker's age and mental condition;

(2) whether the relationship between them was one in which the Maker put special confidence and trust in [name of undue influencer];

(3) whether [name of alleged influencer] was the dominant party in the relationship;

(4) [name of alleged influencer]'s opportunity to exercise undue influence;

(5) whether [name of alleged influencer] participated in the drafting and signing of the will;

(6) whether the will seemed to have been executed for [name of alleged influencer]'s benefit or profit; and

(7) whether [name of alleged influencer] had possession of the will after its execution.

If you decide that it is more likely true than not true that there was undue influence, you must return a verdict for the Contestant. Otherwise, you must find that there was no undue influence and return a verdict for the Proponent.

Use Note

This instruction is given when undue influence is an issue, but the evidence is not sufficient to give rise to a presumption of undue influence. A presumption of undue influence arises when the alleged influencer (1) was the principal or sole beneficiary under the will; (2) participated in the drafting of the will; and (3) had a confidential relationship with the testator. When such evidence is presented, Article 26.10B should be used.

The list of factors in this instruction is not exclusive. Eliminate any factors which do not apply.

Comment

Undue influence exists when "the testator was virtually compelled to make a will which he would not have made had he been left to the free exercise of his own judgment and wishes." In re Kraft's Estate, 374 P.2d 413, 417 (Alaska 1962). This instruction uses the definition of undue influence that was used in the jury instruction at issue in In re Estate of McCoy, 844 P.2d 1131, 1135 (Alaska 1993).

In Paskvan v. Mesich, 455 P.2d 229, 233 (Alaska 1969), the court concluded that the presumption of undue influence was a strong one because of the age and mental condition of the testator, the existence of a fiduciary or confidential relationship between the testator and the alleged influencer, the influencer's opportunity to exercise undue influence because of his or her handling of the testator's affairs, the fact that the alleged influencer appeared to be the dominant party in the relationship, the influencer's participation in the procurement of the will, the fact that the influencer was the sole beneficiary under the will, the influencer's possession of the will after its execution, and the fact that the will seemed to have been executed for the influencer's benefit or profit.