02.21A CLOSING INSTRUCTIONS — PRESUMPTIONS — NO REBUTTAL EVIDENCE

You have heard evidence about (insert fact that the party relying on the presumption has tried to prove). If you decide this underlying fact is more likely true than not true, then the law requires that you also accept as true the following fact: (insert presumed fact). If you decide the underlying fact is not true, you should evaluate all the evidence according to my instructions in order to decide whether it is true that: (insert presumed fact).

 Use Note

This instruction should be given when a party relying on a presumption has offered sufficient evidence for a jury to find the existence of an underlying fact that triggers the presumption (which often is referred to as the proved or basic fact), and no evidence sufficient to create a jury question has been offered to rebut the presumed fact. If rebuttal evidence has been offered, then Instruction 02.21B should be used instead.

This instruction should not be given at the outset of the instructions, but should accompany the instructions on the substantive law issue to which it is addressed.

 Comment

When no rebuttal evidence is offered as to the presumed fact, Alaska R. Evid. 301 indicates that the presumed fact is to be taken as true once the underlying fact is proved. If the underlying fact is proved so persuasively that no reasonable juror could reject it, or if the underlying fact is not contested, the trial judge should instruct the jury that it must accept both the proved and the presumed fact to be true. In the usual case in which a reasonable jury could reject the underlying fact, this instruction tells the jury that if it finds the underlying fact to be more likely than not true, then the law requires the presumed fact to be true.

Alaska R. Evid. 301 indicates that the word "presumption" should not be used before the jury, and this instruction avoids the word.