**26.10B PRESUMPTION OF 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 whether it is more likely true than not true that:

(1) [name of alleged influencer] was the principal or sole beneficiary of the will; and

(2) [name of alleged influencer] and the Maker had a confidential relationship; and

(3) [name of alleged influencer] participated in the drafting of the will.

A "confidential relationship" existed between [name of alleged influencer] and [name of testator] if [name of testator] placed special trust and confidence in the integrity and fidelity of [name of alleged influencer] so that the [name of alleged influencer] was, in fairness and good conscience, bound to act in good faith and with due regard to the interests of [name of testator]. Examples of some relations that are confidential include that of attorney and client, doctor and patient, and a person holding a power of attorney over someone else's property.

[If you decide that all three of these things are more likely true than not true, then the law requires that you also accept as true that the Maker made [his] [her] will under the undue influence of [name of alleged influencer] and you must return a verdict for the Contestant.]

[If you decide that all three of these things are more likely true than not true, then you may infer that the Maker made [his] [her] will under the undue influence of [name of alleged influencer]. However, you are not required to do so.]

If you decide otherwise, you must evaluate all the evidence in order to decide whether [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 this issue, 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 should be given when there is evidence that 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.

The first bracketed paragraph should be used when the Contestant has offered sufficient evidence for a jury to find the existence of the facts that trigger the presumption, and no evidence sufficient to create a jury question has been offered to rebut the presumed fact. If rebuttal evidence has been offered, then the second bracketed paragraph should be used.

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

Comment

In Paskvan v. Mesich, 455 P.2d 229, 233 (Alaska 1969), the court held that a presumption of undue influences arises "when the principal or sole beneficiary under a will, who had a confidential relationship with the testator, participated in the drafting of the will." A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. Id. at 232. Consistent with Alaska Evidence Rule 301, the presumption of undue influence shifts only the burden of production, not the burden of persuasion, to the proponent of the will. Matter of Estate of McCoy, 844 P.2d 1131, 1135 (Alaska 1993). Accordingly, the above instruction requires the Contestant to prove that it was more probable than not that there was undue influence.