**26.05 EXECUTION OF A HOLOGRAPHIC WILL**

The Contestant claims that the will is invalid because it was not written and signed in the way the law requires. In order to find that the will was written and signed in the way the law requires, you must decide that each of the following things is more likely true than not true:

(1) the parts of the Maker's will which dispose of [his] [her] property are in the Maker's handwriting; and

(2) the signature on the will is in the Maker's handwriting; and

(3) the Maker was at least eighteen (18) years old when [he] [she] made the will.

If you decide that each of these three things is more likely true than not true then you must find that the Maker made [his] [her] will in the way the law requires and [return a verdict for the Proponent] [decide some additional matters that I will explain to you]. If you decide that the any one of these requirements has not been satisfied, then you must return a verdict for the Contestant.

Use Note

This instruction should be given only when the validity of a holographic will is at issue. The instruction for ordinary attested wills is provided in Instruction 26.04.

Comment

Section 13.11.160 of the Alaska Statutes provides:

A will which does not comply with AS 13.11.155 [ordinary attested wills] is valid as a holographic will, whether or not witnessed, if the signature and the material provisions are in the handwriting of the testator.

(Emphasis added). As with the provision on ordinary attested wills, Alaska Stat. 13.11.155, this statute has been adopted from Uniform Probate Code (UPC) § 2-503. The commentary to this UPC section offers some insight into the provisions:

By requiring only the "material provisions" to be in the testator's handwriting (rather than requiring as some statutes do, that the will be "entirely" in the testator's handwriting), a holograph may be valid, even though immaterial parts such as date or introductory wording be printed or stamped. A valid holograph might even be executed on some printed will forms if the printed portion could be eliminated and the handwritten portion could evidence the testator's will.

ALI-ABA Committee on Continuing Professional Education, 1 Uniform Probate Code Practice Manual § 2-503 (2d ed. 1977). The quoted commentary from the UPC is perhaps more relevant and helpful than cases decided before its enactment by the Alaska legislature. However, for pre-statehood material, see Lovskog v. American Nat'l Red Cross, 111 F.2d 88, 9 Alaska 670, (1940); In re Holland's Estate, 10 Alaska 557 (1945); In re Lanart's Estate, 9 Alaska 535 (1939).

Section 13.11.150 of the Alaska Statutes stipulates that "[a]ny person 18 or more years of age who is of sound mind may make a will." This requirement has also been adapted from the UPC, § 2-501. While age requirements to make a will are usually discussed under the rubric of testamentary capacity, it is included here with the other statutory requirements for which the proponent has the burden of persuasion.