**26.04 EXECUTION OF ORDINARY ATTESTED WILL (OTHER**

 **THAN A HOLOGRAPHIC OR NUNCUPATIVE WILL)**

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

(1) the Maker was at least eighteen (18) years old when [he] [she] made the will; and

(2) the will is in writing; and

(3) the will is signed [by the Maker] [by someone other than the Maker who signed the Maker's name in the Maker's presence and at the Maker's request]; and

(4) the will is signed by at least two other persons, each of whom must meet one of these three requirements:

(a) the person saw the Maker sign the will or saw someone other than the Maker sign the will in the Maker's presence and at the Maker's request; or

(b) the Maker either told the person that the Maker signed the will or told the person that someone else signed the will at the Maker's request; or

(c) the Maker told the person that the will was the Maker's will.

If you decide that each of these four 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 things that I will explain to you]. If you decide that 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 execution is in issue. It should not be used when the contest involves a holographic or a nuncupative will.

Comment

Section 13.11.155 of the Alaska Statutes states that:

Except as provided for nuncupative wills within AS 13.11.158, holographic wills, writings within AS 13.11.210, and wills within AS 13.11.175, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by the testator's direction, and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgment of the signature or of the will.

(Emphasis added.) Instruction 26.04 reflects the requirements of this statutory section, which has been adapted from Uniform Probate Code § 2-502.

AS 13.11.155 provides four permissible ways to validly witness a will. They are: (1) the witnesses see the testator sign the will; (2) the witnesses see someone else sign the will at the testator's direction; (3) the testator acknowledges to the witnesses his/her earlier signature of the instrument, which had been signed out of the witnesses' presence, or that someone else signed it at his/her request; or (4) the testator acknowledges to the witnesses that the instrument is his/her will.

"Proponents of a will have the burden of establishing prima facie proof of due execution in all cases . . ." Alaska Stat. 13.16.170.