



**WICKENS  
HERZER  
PANZA**

## **ESTATE PLANNING SERIES – UNDUE INFLUENCE. Part 3: What Happens if You Would Like to Bring, or are Confronted with, an Undue Influence Claim?**

By [Wilbert V. Farrell IV, Esq.](#) and [Malorie A. Alverson, Esq.](#)

*This article is the third installment of a three-part series that discusses best practices during the estate-planning process to avoid an undue influence claim. The first installment addressed the definition of undue influence, discussed how much influence may be too much, and provided relevant examples of common undue influence claims that we see in our trust, estate, and probate litigation practice. The second installment examined practical pitfalls to avoid to best protect your estate against the prospect of an undue influence claim. This installment discusses what happens if someone would like to bring, or is confronted with, an undue influence claim, including related litigation considerations.*

Undue influence disputes present unique challenges, requiring mastery of an often complex set of individualized facts, an understanding of the potential interplay and resulting impact of dependency and other vulnerabilities, including cognitive difficulties, and a great deal of strategy, and tactical implementation, to reach successful resolution.

Oftentimes, the central issue in an undue influence challenge is the allocation (or reallocation) of funds. Undue influence cases are distinguishable from more commonplace commercial disputes, however, because the dispute is rarely **only** about the money. By their very nature, trust and will contests frequently involve inextricably intertwined, longstanding, and complicated family relationships that carry with them all the motivations and emotion inherent within those longstanding relationships. Such motivations can include sheer envy, competition for the perceived affection of the deceased relative, anger, and old-fashioned sibling rivalry, among others. Such concerns are often heightened because the aging parent generation may leave spouses and children (and, thus, potential beneficiaries) from multiple marriages, which can result in more complex relationships and multi-faceted trust or estate disputes.

Once filed with the Court, undue influence cases can present a challenge due to their complex, fact-intensive nature. Because undue influence cases frequently involve circumstantial evidence, it is not uncommon, and often necessary, for each side to present their respective cases from entirely contrasting perspectives. During the discovery process, medical or financial experts can be helpful to perform valuable post-death assessments based upon medical records, financial records, fact-witness testimony, and other discovery sources.

For the individual seeking enforcement of an estate plan, a simple and straightforward approach can be highly effective. This is because the law presumes that the decedent (1) understood the meaning of the document(s) they signed; (2) possessed the requisite capacity to make estate-planning decisions; and (3) was **not** operating under undue influence when making those estate-planning decisions. Thus, the

2385983.docx

individual seeking enforcement often focuses upon discreet intervals, including the execution of amendments to an estate plan when third parties are available to confirm testamentary capacity based upon statements made by, and in the presence of, the decedent and the decedent's apparent knowing and voluntary execution of the questioned document(s). For the individual contesting enforcement, however, demonstrating that an existing estate plan must be adjusted can be considerably more difficult, as circumstantial evidence frequently must be woven together to provide sufficient contextual background to undermine the creation of the challenged document(s). This challenger will often present a set of circumstantial facts that, taken together over time, tend to establish the vulnerabilities of the decedent, the changes in estate-planning intentions of the decedent, secretive actions of a proponent of the challenged document(s), increasing dependence, and the like.

If you would like to bring, or are confronted with, an undue influence claim, sophisticated and experienced trust, estate, and probate litigation counsel should be consulted to help effectuate successful resolution.

*This article provides an overview and summary of the matters described therein. It is not intended to be and should not be construed as legal advice on the particular subject.*