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ESTATE PLANNING SERIES – UNDUE INFLUENCE. Part 1: What is Undue Influence – and How Much is too Much?

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Bill Farrell and Malorie Alverson, of Wickens Herzer Panza's [Trust, Estate, and Probate Litigation](#) practice group, invite you to join them for a three-part series discussing best practices during the estate-planning process to avoid an undue influence claim. The first installment will address the definition of undue influence, discuss how much influence may be too much, and provide particularly relevant examples of common undue influence scenarios that Bill and Malorie often see in their practice. The second installment will examine practical pitfalls to avoid to best protect against the prospect of an undue influence claim. The third installment will discuss what happens if someone would like to bring, or is confronted with, an undue influence claim, including related litigation considerations.

Oftentimes, a family member of a deceased will contact us convinced that the decedent must have been unduly influenced at the time the decedent executed or amended their will or trust. So, what is undue influence? The elements of undue influence are: (1) Susceptible testator or settlor; (2) Another's opportunity to exert such influence; (3) The fact of improper influence exerted or attempted; and (4) The results showing the effect of such influence. Undue influence to invalidate a will or trust is defined as that influence which substitutes the wishes of another for those of the testator or settlor. The alleged undue influencer's acts must be so controlling that the testator or settlor could no longer make decisions for herself and the influencer's acts must bear directly upon the testator or settlor's decisions to transfer and dispose of their property.

Influences to induce a person's estate plan may be specific and direct without becoming undue, as it generally is not improper to ask, suggest, persuade, recommend, or even attempt to guilt a person into action, so long as the conduct does not abuse the relationship or otherwise subvert the will of the individual. In the most general sense, influence is undue if such persuasion abuses the relationship. Undue influence may be exerted by improper persuasion, but more often it takes the form of unfair persuasion in the context of an abused relationship. Frequently, one of the parties occupies a position of power over the other due to elevated status, higher education, emotional ties, or the like.

Undue influence most commonly occurs when a more powerful person exerts influence over a less powerful person in order to achieve the influencer's desired outcome. Common examples that we often see include potential undue influence between child and parent, beneficiary and trustee or other fiduciary, stepparent and spouse, and caregiver and elder, among others.

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.