

PROBATE CORNER

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ARTICLE: “Substantial Beneficiary” Defined

There is a presumption of undue influence when the undue influencer: (1) occupies a confidential relationship with the decedent; (2) is a *substantial beneficiary* under the will; and (3) was active in procuring the will.

To determine who is a *substantial beneficiary* under a will, you need to do more than just compare the size of the bequest to the total value of the estate; you should also consider the discretionary powers given to the personal representative, prior bequests, and the amount given to each of the beneficiaries.

As a general rule, an attorney who is not a beneficiary, but is named as a personal representative in a will drafted by him for his client is not a substantial beneficiary under the will. *See Zinnser v. Gregory*, 77 So. 2d 611 (Fla. 1955); *Rand v. Giller*, 489 So. 2d 796 (Fla. 3rd DCA 1986). However, if the attorney/PR has absolute discretion to distribute the bulk of decedent’s estate, he is endowed with sufficient collateral benefits to make him a “substantial beneficiary” under the will. *See Allen v. Estate of Dutton*, 394 So. 2d 132 (Fla. 5th DCA 1980); *In re Estate of LeVin*, 419 Pa. Super. 89; 615 A.2d 38 (Pa. Super. 1992).

A beneficiary is not considered a “substantial” beneficiary: (a) if he is receiving the same or less than he would have received under the prior non-contested will(s) [*See Carter v. Carter*, 526 So. 2d 141(Fla. 3rd DCA 1988)]; or (b) if he is receiving the same amount as the other beneficiaries named in the contested will [*See In re Estate of Yelvington*, 280 So. 2d 497 (Fla. 1st DCA 1973)]. The rationale being that the influence must have resulted in an added benefit to the beneficiary. *See Murrey v. Barnett National Bank of Jacksonville*, 74 So. 2d 647 (Fla. 1954).