

860.00 WILLS - INTRODUCTORY STATEMENT BY COURT (OPTIONAL).

Members of the jury, this proceeding is called a [probate in solemn form of the will of (*name deceased*)] [caveat to the will of (*name deceased*)]. (*Name deceased*) may hereafter be referred to as the deceased. A writing was offered for probate as the will of (*name deceased*) before the Clerk of Superior Court of this county and proved before the Clerk upon the testimony of the supporting witnesses. Thereafter, the [heir(s)] [(*name other interested party(ies)*)] of (*name deceased*) filed what is known as a caveat. The matter has now been transferred to this court for a determination by you as to whether this writing, and every essential part thereof, is the will of (*name deceased*).

(*Name propounder*) is called the propounder of this writing. The propounder seeks to establish the writing as a valid will. (*Name caveator*) is called the caveator. The caveator contests that this writing is a valid will for certain legal reasons. The writing at issue has now been marked as propounder's exhibit (*state number*).

You will hear evidence and decide certain issues in this case.¹
These issues are as follows:

(*Here charge the following issues as appropriate.*)

[Was the propounder's exhibit (*state number*) executed according to the requirements of the law for a valid attested will? (*See N.C.P.I.-Civil 860.05.*)]

[Was the propounder's exhibit (*state number*) executed according to the requirements of law for a valid handwritten will? (*See N.C.P.I.-Civil 860.10.*)]

[Did the deceased lack sufficient mental capacity to make and

execute a will at the time the propounder's exhibit (*state number*) was executed? (*See N.C.P.I.-Civil 860.15.*)]

[Was the execution of the propounder's exhibit (*state number*) procured by undue influence? (*See N.C.P.I.-Civil 860.20.*)]

[Was the execution of the propounder's exhibit (*state number*) procured by duress? (*See N.C.P.I.-Civil 860.22*)]

[Is the propounder's exhibit (*state number*), and every essential part thereof, the will of (*name deceased*)? (*See N.C.P.I.-Civil 860.25.*)]

(Here charge on the appropriate issues.)

1. If several writings are offered as the last will and testament of a deceased, the trial may be bifurcated, that is, the issues pertaining to only one of the writings- usually the latest in time- may be submitted to the jury. *In re Will of Mason*, 168 N.C. App. 160, 163, 606 S.E.2d 921, 923 (2005); *In re Will of Hester*, 320 N.C. 738, 743, 360 S.E.2d 801, 804 (1987) (internal citations omitted):

"A bifurcated trial is particularly appropriate where separate submission of issues avoids confusion and promotes a logical presentation to the jury, and where resolution of the separated issue will potentially dispose of the entire case. The better practice is to retain the same jury for all issues, even though it may hear the issues at different times."