S T A T E O F N E W Y O R K

2661

2009-2010 Regular Sessions

I N S E N A T E

February 26, 2009

Introduced by Sen. VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to the attorney-client privilege

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraph 2 of subdivision (a) of section 4503 of the civil practice law and rules, as added by chapter 430 of the laws of 2002, is amended to read as follows:

2. Personal representatives. (A) For purposes of the attorney-client privilege, if the client is a personal representative and the attorney represents the personal representative in that capacity, in the absence of an agreement between the attorney and the personal representative to the contrary:

(i) No beneficiary of the estate is, or shall be treated as, the client of the attorney solely by reason of his or her status as beneficiary; [and]

(ii) The existence of a fiduciary relationship between the personal representative and a beneficiary of the estate does not by itself constitute or give rise to any waiver of the privilege for confidential communications made in the course of professional employment between the attorney or his or her employee and the personal representative who is the client; AND

(III) IF THE PRIVILEGE FOR CONFIDENTIAL COMMUNICATIONS IS ASSERTED BY THE PERSONAL REPRESENTATIVE OR THE ATTORNEY, OR HIS OR HER EMPLOYEE, THE TRIER OF FACT MAY DRAW THE STRONGEST INFERENCE AGAINST THE PERSONAL REPRESENTATIVE THAT THE OPPOSING EVIDENCE IN THE RECORD PERMITS.

(B) For purposes of this paragraph, "personal representative" shall mean (i) the administrator, administrator c.t.a., ancillary administrator, executor, preliminary executor, temporary administrator or trustee to whom letters have been issued within the meaning of subdivision thir-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD09460-01-9

ty-four of section one hundred three of the surrogate's court procedure act, (II) A TRUSTEE ACTING UNDER A LIFETIME TRUST, and [(ii)] (III) the guardian of an incapacitated communicant if and to the extent that the order appointing such guardian under subdivision (c) of section 81.16 of the mental hygiene law or any subsequent order of any court expressly provides that the guardian is to be the personal representative of the incapacitated communicant for purposes of this section; "beneficiary" shall have the meaning set forth in subdivision eight of section one hundred three of the surrogate's court procedure act and "estate" shall have the meaning set forth in subdivision nineteen of section one hundred three of the surrogate's court procedure act.

S 2. This act shall take effect immediately.