

PSYCHOLOGICAL FACTORS IN T&E LITIGATION SETTLEMENT

When dealing with clients on evaluating and settling estate and trust litigation, attorneys need to be cognizant of some psychological factors that may inhibit their clients from rationally acting or evaluating the case in their own self-interest. A recent article in the Estate Planning Journal discusses some of these factors. With knowledge of these factors, the attorney can better understand what may be motivating his or her client, and also work to reduce the influence of factors that are distorting client perceptions and evaluations.

1. ENDOWMENT EFFECT. A client under the influence of the endowment effect will exaggerate the value of his or her position simply by reason of ownership of items involved, or by holding such a position for a period of time. That is, things take on more value if they are actually owned or the longer they are held or owned, than would otherwise be the case.
2. PASSIONS. Obviously, client emotions and passions influence judgment. In estate and trust litigation, these passions will include grief, guilt, sibling rivalry and other jealousy, hostility towards second (or subsequent spouses), etc.
3. UNDERVALUE OF COSTS. Litigants tend to overly discount the likely future cost of litigation.
4. SELF-SERVING BIAS. Litigants will tend to view situations in a way that make themselves look correct and as acting from good motives, while viewing opponents as wrong or acting with bad intent.

Pointing out these factors to clients may help them in being more objective and to help diffuse the impact of such distortions. The author also notes that in regard to self-serving bias, bringing this to the attention of a litigant may not be enough. In that case, the author believes that asking the client to list the weaknesses in his or her own case will help reduce the impact of this bias.

Helsing, Howard M., *Advising the Trust or Estate Litigant: When to Raise or Fold*, Estate Planning Journal (WG&L, July 2010)

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