

Preparing Client for T & E Litigation

Eric Vasquez



Commitment • Service • Value • Our Bond

MATTERS WE ARE TALKING ABOUT

- Breach of fiduciary duty claims
- Trust and Will contests
- Fiduciary Removal Actions
- Fiduciary Surcharge Actions
- Accounting actions
- Any matter that involves families and family wealth

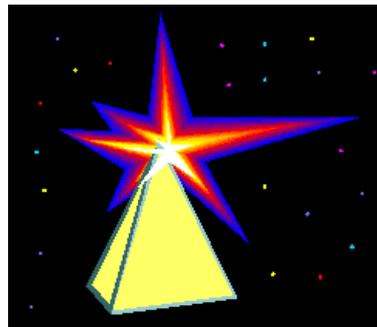
COMMON THEMES AND PROBLEMS

- The relationship between fiduciary and beneficiary
- Sibling rivalry
- Family Dynamics – jealousy, disappointment, abandonment, grief, guilt
- Ego, power struggles, sense of entitlement
- Lack of communication
- Caretaker Issues
- Second Marriages



THINGS TO KEEP IN MIND WHEN YOU ARE GETTING TO KNOW YOUR CLIENT

- There are least three sides to every story – usually more
- Emotions color clients' view of the world
- People see the world through a self-serving prism
- No such thing as an open and shut case
- History between parties affects perception of facts and motivations



EXPLAIN VARIABLES INHERENT IN PROBATE DISPUTES

- Very rarely is there a “win”
- No such thing as an open and shut case
- Court delays are common
- Everyone lacks some objectivity
- Can not predict behavior of parties, lawyers or courts
- Avoid promises
- Things will likely get worse before they get better, but they will usually get better



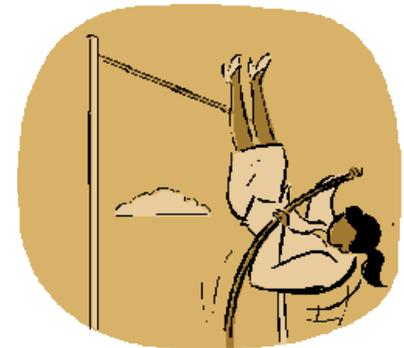
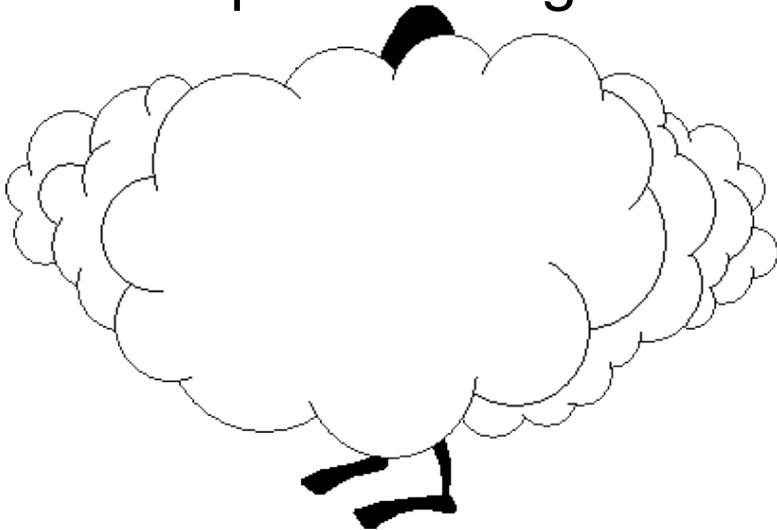
ENGAGE OTHER PROFESSIONALS

- Psychologists and therapists
- Family business consultants
- Business brokers
- Real estate brokers / appraisers
- Accountants
- Professional fiduciaries
- Elder care experts



DEAL WITH THE BAD FACTS

- Encourage disclosure and cooperation
- Take the “we have nothing to hide approach” – if that is indeed the case
- Give tough love when necessary
- Explain the high standards that come with fiduciary duty



DEBUNK ASSUMPTIONS ABOUT THE COURTS

- Courts rarely function with the efficiency, focus and drama seen on TV
- Judges do not look at files unless the parties give them a reason to
- Judges are likely not “on the take”
- Judges have seen and heard it all and are not likely to be outraged



DISCUSS FEES AND BILLING

- Fee are dependent on many variables
- Convey that you want to deliver value and are sensitive to the relationship between amount in controversy and potential cost
- Bills are impacted greatly by the nature and frequency of communications between the attorney and client
- Invite questions



BILLING DISPUTES

- Bill regularly – usually monthly and at the same time each month
- Address billing issues upfront
- Be calm



SEND A WRITTEN ENGAGEMENT LETTER

- Scope of services
- Fees charged
- How retainer works
- When payments are due
- Challenges of the particular matter
- Variables inherent in litigation
- How disputes can be addressed
- Other requirements of the jurisdiction



FOSTER COMMUNICATION

- Remember that client service and “bed side manner” are particularly important in probate disputes
- Respond to emails, phone calls
- Pick up the phone as much as possible
- Avoid legal mumbo jumbo
- Explain court procedures



EXPLAIN THE RELATIONSHIP WITH THE OTHER LAWYERS



- Better to have a pro on the other side
- Sometimes opposing counsel is a demon; usually he or she is not
- Scheduling accommodations and extensions are typical and “what goes around comes around”
- Try not to make the other lawyer a character in the play – unless of course he or she is



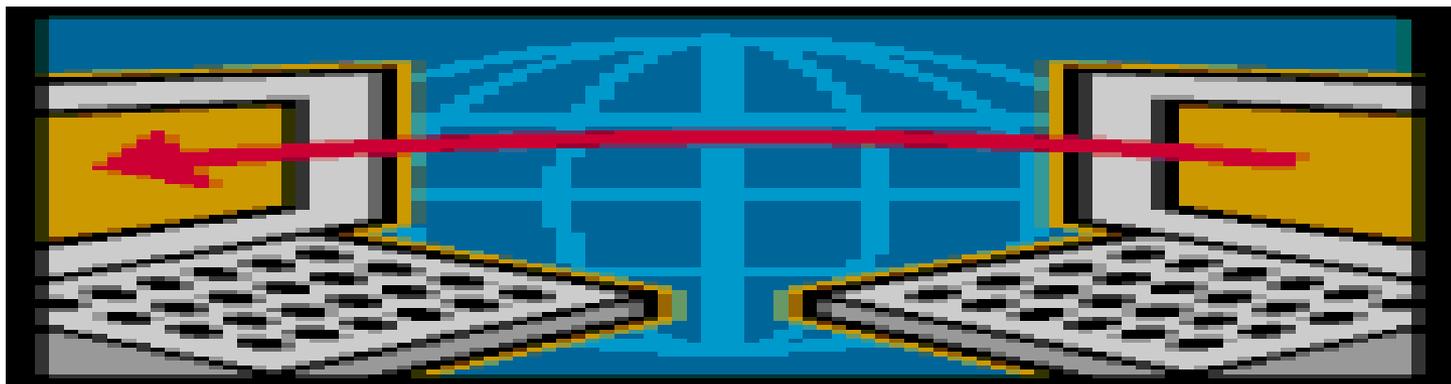
EXPLAIN THERE IS STUFF THE LAW CAN'T FIX

- Not all moral issues are legal issues
- The law can rarely stop badmouthing
- The law can't give a bad guy good character
- Thanksgiving may never be warm and fuzzy



PUT THE KIBOSH ON SOCIAL MEDIA

- Never a good idea for parties to talk about litigation via social media
- Electronic communications can escalate emotions and minimize legitimacy of a legal position
- Imagine everything as “Exhibit A”



SETTLEMENT CONSIDERATIONS

- Settlement gives parties control over situation
- “Mark of good compromise is when no one is happy. . .”
- Some sense of finality
- High cost of further litigation

PROBLEMS LETTING GO OF THE FIGHT

- Many litigants are so invested in the fight, particularly when legal issues are entwined with long-standing family issues
- Fighting defines view of world or at least family
- Blind spots about the economics of the matter
- “Happy to take your money, but. . . .”
- Sometimes it just takes time



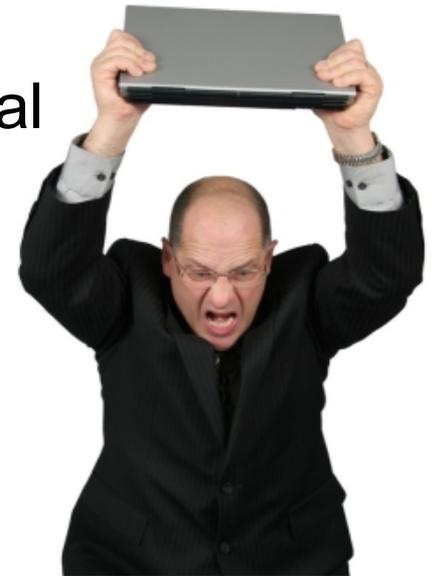
DEALING WITH A DIFFICULT OPPOSING ATTORNEY

- Try to start every relationship in a cordial and professional way
- Keep cool
- Kill 'em with kindness
- Give in on the stupid stuff
- Vent to colleagues
- Don't channel the worst part of your client



THE UNCOOPERATIVE, DEMANDING OR UNREASONABLE CLIENT

- Listen and empathize
- Realize that chances are the client is very upset
- Often there is a reason client is involved in litigation
- Document, document, document
- Try not to let relationship become adversarial
- Don't overpromise or oversell



THE UNCOOPERATIVE, DEMANDING OR UNREASONABLE CLIENT (CONT'D)

- Be brutally honest about unpredictability of any court proceedings
- Provide regular updates, even “no update updates”
- Do what you say you are going to do
- Meet in person
- If necessary, move to withdraw

