

▼ **Taxable Damages**

A short-lived respite on the taxation of damages recovered for emotional distress apparently has been closed. Prior to 1996, the issue of taxation of damages for emotional distress was unresolved. In revisions to the Tax Code that year, Congress amended §104(a)(2) of the Internal Revenue Code to explicitly provide that damages recovered for emotional distress are taxable, unlike those recovered for physical injuries, which are excluded from taxation. In 2006, the Court of Appeals for the D.C. Circuit, in a decision that surprised and even shocked many observers, held that it was unconstitutional to tax damages for nonphysical injuries. *Murphy v. IRS*, 460 F.3d 79 (D.C. Cir. 2006). That decision, however, was reversed last summer when the court, sitting *en banc*, rejected all aspects of the constitutional claim and held that "a tax upon such damages" is within the taxing power of Congress. *Murphy v. IRS*, 2007 WL 1892238 (D.C. Cir. 2007). The ruling highlights the importance for claimants to allocate as

much damage as possible to physical injuries in asserting and settling claims. It also is useful to develop supporting documentation for the "physical" nature of the injuries, which may range from photographs to medical verification. If adequate documentation exists, the payor of the settlement may not be averse to apportioning damages to "physical" injuries, which may reduce the total amount of settlement sought by a claimant by averting taxes imposed on the "physical injury" component of the claim.

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▲ **Ethics for Prosecutors**

Criminal defense attorneys are advocates for their clients and must zealously represent their interests. Prosecutors, on the other hand, have a responsibility to be ministers of justice and are not only advocates. Comment 1 to Rule 3.8 of the Minnesota Rules of Professional Conduct recognizes as

much. Simply put, a defense attorney has the obligation to deliver a win for his or her client, and a prosecutor has the obligation to see that justice is done. It is unethical to prosecute a case that is not supported by probable cause. If a case has irreparably broken down, a prosecutor has an ethical and legal obligation to dismiss the case.

Maintain the respect of your colleagues and judges

by consistency in adhering to the highest ethical standards. The goal of a prosecutor is not simply to win a conviction; the goal is to win justice. At times the goals will intertwine—the art in successful prosecution is in knowing when they do not.

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homeowner's association is delinquent in paying assessments and the property goes into foreclosure, voluntary or otherwise, the association can seek recovery by

suing for a breach of the covenants in the Declaration, regardless whether or not a separate lien statement has been prepared, served, and filed.

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▲ **Homeowner Association Liens**

Attorneys and nonattorneys alike are prone to misunderstand homeowner association liens, which are perpetual from the time the Declaration is first filed/recorded in the property records. Under the Minnesota Common Interest Ownership Act, the serving and filing of an assessment lien statement is not required, but many attorneys will prepare them nonetheless because the document itself encourages the property owner to bring their account current. If the property owner in a

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