



By Dave F. Senger



Dave F. Senger is a member of our business law and wealth preservation and estate planning practice groups. He works extensively with individuals and businesses in connection with their estate, business, and succession planning. He also spends considerable time negotiating business acquisitions and sales and other commercial contracts. He may be reached at SengerD@moss-barnett.com or 612.877.5262.



IN THIS ISSUE

Page 1:

What's Wrong With Being Right?

Page 4:

Identifying and Dividing Non-Marital Property: A Challenge in Dissolutions

WHAT'S WRONG WITH BEING RIGHT?

As I sat down to write about estate, business, and succession planning, I felt called to write about the importance of the core values involved in these and other legal matters. My mind kept returning to this thought: "What gets in the way of individuals completing estate, business, or succession planning?" Often, I believe, it is "the need to be right."

I can personally attest to the economic and emotional cost of this very human need to be right. Early in my legal career, I was in business with several partners (we were not associated with our law firm). A dispute arose with a key employee over options to buy into the business. We could have immediately resolved the dispute when the employee offered to pay us something less than required by our contract, but as a "matter of principle," we did not think we could let the employee off the hook. That decision ended up costing us almost 47 times as much as she offered, following a lawsuit.

It is not uncommon that during the process of estate or business planning everything stops because of a disagreement, often over truly insignificant matters. The parties become unwilling to compromise, leading to no plan at all, which is far worse for all concerned than a plan that is less than perfect.

Another human tendency is to take inflexible positions. For example, parties in litigation often take strong stands early, not interested in settlement. After paying legal fees and experiencing the emotional stress of the ongoing conflict, they become willing to negotiate a resolution without going to trial. If we could recognize earlier the costs of needing to be right, we might achieve a solution satisfactory to both parties and save money and aggravation.

Early in my career, my client was selling her business to a well-known family in the Twin Cities, represented by a well-known business lawyer. When negotiations bogged down, the parties and their lawyers met around a large

conference table. I knew of the other lawyer's reputation and that several people would be part of the negotiations, so I came well prepared with persuasive arguments on my client's position. As we started going through the roughly 15 open issues, the other lawyer simply gave in on many of the issues without any argument. I did not realize at the time that this lawyer knew that getting the deal done was more important than being right. I learned a valuable lesson from this wise lawyer that has paid my clients many dividends over the years.

Several years later, I was involved in another transaction where, at 7 p.m., after several hours of fruitless negotiations, we were at impasse. We had focused on insignificant issues, and seemed to be more interested in winning arguments and being right than coming to an agreement. I walked out of the room in frustration and noticed a jar of miniature Hershey candy bars on the receptionist's desk. I reached for a handful of the candy bars, went back into the room, handed them out, and suggested that we all needed a different taste in our mouths. Within 15 minutes, the parties shook hands on the deal.

In approaching potential disputes, I find it helpful to ask questions such as:

- What is preventing me from agreeing with the other party?
- What is the motive for my position?
- How important is this issue to my ultimate goals?
- What difference is this going to make in my life one hour from now, one week from now or one year from now?

There is always an emotional and economic cost when we need to be right. Be aware of that cost and weigh that cost carefully — and don't forget to try the chocolates!



ED WINER ONCE AGAIN NAMED TO WORTH TOP 100

For the second year in a row, Ed Winer, co-chair of our family law practice group, has been named by *Worth* Magazine as one of the Top 100 attorneys who provide counsel to clients on a variety of personal matters, from bequeathing assets and values to future generations to protecting wealth through hardships such as divorce.

The Top 100 attorneys are selected through nominations from *Worth* readers, gathering factual information about each nominee, and soliciting opinions from the nominees on legal trends and other issues related to their legal practice. *Worth's* stated goal in making its final selections is to "choose those who truly stand apart."

We are proud to have a talented and dedicated professional such as Ed as part of our firm.

CHERYL RIGGS RECEIVES PAUL VAN VALKENBURG AWARD

The 2007 recipient of the Paul Van Valkenburg Award was Cheryl Riggs, a legal assistant in our family law practice group. As an active member of North Heights Lutheran Church in Roseville, Cheryl has performed mission work in Guatemala and Costa Rica, supporting the medical and other needs of local orphanages and abused and abandoned children

The Paul Van Valkenburg Award is awarded annually to recognize an employee for service to the larger community. Paul is one of our former attorneys whose involvement with several organizations exemplifies the qualities honored by this award.



Cheryl Riggs and Jim Rubenstein, Chair of the Paul Van Valkenburg Award Committee



FAREWELL TO CONNIE SCHOLFIELD

We recently bid farewell to long-time paralegal Connie Scholfield. Connie, who has been with us for 27 years, working in the litigation practice group, has taken on a new challenge, serving as executive director of **Red Pine Camp for Girls**, a traditional residential summer camp serving girls ages 7-16, located in Minocqua, Wisconsin.

Connie has a long association with Red Pine, from camper to counselor to supporter. She was instrumental in a recent successful effort to preserve the camp and protect its land from development. The opportunity to take on the role of guiding the future of Red Pine and its campers was one she could not resist.

We will all miss Connie. She has been a major contributor to the success of our firm. But we are very excited for her and for Red Pine and wish her success and happiness as she assumes this new position.

To learn more about Red Pine Camp for Girls, go to www.redpinecamp.com.

Employment Law Alert:

NEW LAWS IN 2008

A number of recently enacted Minnesota laws relating to employer policies and procedures will become effective in 2008. These new laws involve procedural changes in how employers are to handle unemployment insurance payments and distributions and various prohibitions/limitations on an employer's use of employees' social security numbers. Employers are advised to change their policies and procedures to comply with these new laws.

Changes in Unemployment Insurance Law. The applicability of various procedural changes to the unemployment insurance law varies depending on the number of employees. Employers should review the changes in this law to determine how they apply to the employer's situation. For example, effective January 1, 2008, all employers, not only large employers, are required to pay unemployment insurance quarterly, and all employers of at least 50 or more employees must make unemployment payments electronically. In addition, the definition of "employee" has been amended to include owner-operators of vehicles. Also, the law now makes benefits available to employees who terminate employment due to loss of child care.

Protecting Employee Identity. In an effort to safeguard individuals' social security numbers ("SSN"), the Minnesota Legislature enacted the Social Security Shield Law, which becomes effective July 1, 2008. Under this new law, employers will be restricted in how they can use their employees' SSNs. Employers will be prohibited from "publicly post[ing] or publicly display[ing]" employees' SSNs. "Public posting" and "public display" include printing the SSN on an access card, requiring an individual to transmit his or her SSN over the internet or to use it to access an internet web site, knowingly printing the SSN on any materials that are mailed, assigning or using as an account identifier a number that incorporates an individual's complete SSN, and selling SSNs obtained from anyone (including employees) in the course of business. Additionally, the employer is required to restrict access to SSNs only to those employees who require the numbers as part of their job (for example, employees handling payroll or similar matters).

In our November 2007 newsletter, we described a new requirement that employers provide new hires with information about rights and remedies under the Minnesota Review of Personnel Record by Employee law. That law was effective January 1, 2008.

We encourage you to contact your Moss & Barnett attorney for guidance in complying with these laws.

"EXCELLENCE" REPORT RECOGNIZED

We are pleased to report that our *2006 Report to Clients* ("Excellence") has been recognized for achievements in printing and marketing.

Shapco Printing was awarded "Best in Class" in the Corporate Brochure and Annual Report Division of the Printing Industry of Minnesota's 2006 Star of Excellence competition. Criteria for the award include print quality, content and creative design. More than 300 entries from around the state were entered in this competition.



In addition, Moss & Barnett and Spangler Design Team were awarded Third Place in the Promotional/Collateral Materials and Web Sites category of the *2007 Your Honor Awards* of the Minnesota Chapter of the Legal Marketing Association. This category focuses on brochures, annual reports, announcements, newsletters or alerts, other printed materials, and web sites. The entries were judged by legal and marketing professionals and evaluated according to achievement of strategic objectives of the firm, creativity and originality, and quality of execution.

**Look for our 2008 Report to Clients
in the fall of 2008.**



IDENTIFYING AND DIVIDING NON-MARITAL PROPERTY: A CHALLENGE IN DISSOLUTIONS

Are you planning to marry and own a business or a professional practice or have other assets that you would want to retain in the event the marriage were to end? Or are you considering a divorce and wish to retain property that you inherited or received as a gift? The resolution of these issues depends upon whether assets are considered to be “marital property” under Minnesota’s marriage laws.

If you are not yet married, the issue can usually be resolved in a prenuptial agreement. Such agreements need to be carefully planned and structured, and your spouse should be represented by separate legal counsel. If all of the legal requirements governing such instruments are not met, your prenuptial agreement may not be enforceable.

If you are already married and do not have such an agreement, your efforts to retain property you consider to be yours may present a significant challenge. Minnesota law presumes all property owned during a marriage is “marital” property and must be “equitably” divided. Usually, this requires equal or almost equal value division between the parties. But if you brought the property into the marriage as premarital property, it may qualify as “non-marital” and be exempt from sharing with your spouse. Further, how an asset is titled does not prevent it from being marital or non-marital property subject to division in a dissolution.

What is non-marital property? Property owned prior to marriage, or later acquired property received by inheritance or gift from a third party, certain components of personal injury recovery, increases in the value of non-marital property, and property excluded by valid prenuptial or postnuptial agreements may all qualify.

In some cases, however, an asset may have both marital and non-marital components. For example, if marital funds are used to pay for improvements to property brought into the marriage by one of the parties, or to pay a mortgage against the property, the property could be considered both marital and non-marital. In such a case, the marital and non-marital portions would need to be identified and valued.

Or, if a non-marital asset has increased in value due to efforts made by either spouse during the marriage, the increase in value is usually deemed to be marital. For example, a business brought to the marriage by one party and in which that party works during the marriage would likely be found to be both non-marital and marital. The value at marriage plus appreciation unrelated to a marital effort would likely be non-marital, while growth attributable to marital efforts would be classified as marital property. Accordingly, increases in the value because of marital effort of non-marital property held by one party such as investment accounts, retirement accounts, unvested stock options and pensions may be found to be marital property.

If you face these issues, prenuptial agreements, postnuptial agreements, certain estate planning tools, and other contractual solutions may be available to protect your rights. Members of Moss & Barnett’s family law and other practice groups frequently assist clients in addressing these difficult issues.

*By Edward L. Winer and
James J. Vedder*



Edward L. Winer is co-chair of our family law practice group. He is consistently included in Best Lawyers in America and consistently listed as a “Super Lawyer” in Minnesota Law & Politics. Ed counsels individuals on various family law issues, including complex dissolutions, antenuptial/post-nuptial agreements, and custody proceedings. He may be reached at WinerE@moss-barnett.com or 612.877.5295.



James J. Vedder also practices in our family law practice group, counseling individuals regarding dissolutions, antenuptial/post-nuptial agreements, paternity proceedings, and custody proceedings. Jim has been listed as a “Rising Star” by Minnesota Law & Politics every year since 2003. He may be reached at VedderJ@moss-barnett.com or 612.877.5294.



Kevin Busch and Rick Johnson

ELECTION OF NEW DIRECTORS

Kevin Busch was recently elected as a new member of our board of directors. Also reelected was **Rick Johnson**. Kevin is chair of our commercial department, and Rick is a member of our administrative law practice group. Each will serve a three-year term.

They join returning directors **Susan Rhode**, **Dave Senger**, **Tom Shroyer**, and **Curt Smith** and adjunct directors **Ben Henschel** and **Mike Nixt**.



ELECTION OF NEW SHAREHOLDERS

We recently elected six attorneys to shareholder status: **Cindy J. Ackerman** of our wealth preservation and estate planning practice group, **John P. Boyle** of our litigation practice group, **Anthony A. Dorland** of our real estate and administrative law practice groups, **Sheila Engelmeier** of our employment law practice group, and **Anthony M. Marick** and **Christopher D. Stall** of our business law practice group.

Congratulations to all of these individuals who contribute to the success of our firm.

*Back Row (from left to right): Sheila Engelmeier, John Boyle and Tony Marick
Front Row (from left to right): Cindy Ackerman, Tony Dorland and Chris Stall*

MOSS & BARNETT CONGRATULATES ITS LAWYERS
LISTED IN *2008 RISING STARS*



Yuri B. Berndt • Jana Aune Deach • Elizabeth H. Kiernat • Matthew P. Kostolinik • Christopher D. Stall • James J. Vedder • Terese A. West

IMPORTANT NOTICE

This publication is provided only as a general discussion of legal principles and ideas. Every situation is unique and must be reviewed by a licensed attorney to determine the appropriate application of the law to any particular fact scenario. If you have a legal question, consult with an attorney. The reader of this publication will not rely upon anything herein as legal advice and will not substitute anything contained herein for obtaining legal advice from an attorney. No attorney-client relationship is formed by the publication or reading of this document. Moss & Barnett, A Professional Association, assumes no liability for typographical or other errors contained herein or for changes in the law affecting anything discussed herein.

www.moss-barnett.com

Facsimile 612.877.5999

Telephone 612.877.5000

Toll Free 877.494.MOSS

Minneapolis, MN 55402-4129

90 South Seventh Street

4800 Wells Fargo Center

Moss & Barnett

