



## Your Law Practice: A Marital Asset in Divorce

By Kathleen Newman, Esq.

Kathleen M. Newman has experience in all aspects of marital dissolutions, and has represented individuals on complex matters involving business ownership, valuing professional practices and financial analysis. Kathy sets herself apart through her strong advocacy of custody, support and parenting agreements. A board certified trial advocate in family law, a skilled mediator and a certified life coach, Kathy is also a fellow in the American Academy of Matrimonial Lawyers. Among her accolades, she has been consistently named a Top 40 Super Lawyer for family law and one of the Best Lawyers in America in family law. For more information, please visit [www.kathynewmanlaw.com](http://www.kathynewmanlaw.com).



**M**arital property is defined as all property acquired during a marriage through a couple's joint efforts (Minn. Stat. Sec. 518.003 Subd. 3b). In a divorce proceeding, all marital property is divided equitably. Equitable does not necessarily mean equal, but in the majority of dissolutions, both marital assets and marital debt are assigned equally.

### Valuing Shareholder Interests

Assets valued in a divorce proceeding also include the marital value of professional practices. Often, the value of a shareholder's interest in a law firm (organized as a corporation) is determined by a shareholder agreement the lawyer signed with his/her firm. As valuation of these interests is relatively straightforward, there are generally few disputes over valuation of this type of an ownership interest.

### Valuing a Law Practice Can Be Challenging

Law practice valuation issues can, however, become very complex when the lawyer is a sole practitioner or a member of a very small firm. Minnesota courts have held that the value of a law firm includes hard assets, such as office furniture and equipment, shareholder's equity, accounts receivable and work in progress. *Peterson v. Peterson*, 367 N.W.2d 90 (Minn. Ct. App. 1985). The value of a firm may also include contingency fees for work in progress that began before the valuation date. *Stageberg v. Stageberg*, 695 N.W.2d 609 (Minn. Ct. App. 2005).

If a law practice was formed prior to the marriage, it will have both a marital and non-mari-

tal component. The law practice would then be valued twice. First, the non-marital portion of the value would be determined as of the date of marriage, and the marital portion would be determined as of the date the dissolution was commenced. The difference between the two would constitute marital property.

### You Might Need a Valuation Expert

Valuation can be based on the fair market value of a practice, the book value or the liquidation value. In order to set a value, a business valuation expert is usually retained. As mediation and/or other ADR processes are favored by the courts, parties will often agree to retain a neutral appraiser to value a law practice.

### Choosing the Right Expert

The valuation expert should have experience in the valuation of professional law practices, as there are significant differences in valuing a different type of business, such as a retail or manufacturing business. Some valuations include the calculation of goodwill, marketability and minority discounts. Generally personal goodwill of an individual attorney is not included in a valuation. However, goodwill attributable to the practice

or the firm brand, may have a value. Many solo practices derive a significant number of their referrals based upon the reputation of the practitioner. As reputations are not transferable per se, this type of goodwill is not included in a law firm's value. There are, however, some smaller firms that have an independent reputation in a specific area (such as a bankruptcy firm where all of the attorneys focus exclusively in that field), and in that case, firm goodwill might be included in the practice valuation.

### Your Accounts Receivable are Assets

In the case of *Huntley v. Huntley*, 1989 WL 109318 (Minn. Ct. App. 1989) the lawyer/husband claimed that his firm's accounts receivable should be considered delayed income, but the court determined it was part of the total value of the business. "Whether the business be carried on as a family corporation or a partnership or a

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sole proprietorship, income earned during the marriage, whether distributed or undistributed and reinvested in the business, is marital property." *Nardini v. Nardini*, 414 N.W.2d 184, 195 (Minn. 1987). As a law firm's receivables are an important component of value, substantial attention should be given to the collectability of the receivables. As the likelihood of collecting past due receivables drops dramatically with the passage of time, this must be discounted accordingly. According to the Commercial Collection Agency Association, the successful collection of a receivable older than a year drops to only 22.8 percent.

### Best Practices for the Solo Practitioner

The best practice for a solo practitioner involved in a divorce proceeding is to retain counsel with experience in divorces involving a professional practice, and, through your divorce lawyer, to retain a business valuation expert with experience in that area as well. From a cost and settlement perspective, this is best accomplished by retaining a neutral valuation expert and negotiating a settlement during mediation based upon the neutral's opinion. Litigation, and a possible battle between experts, is not only financially costly, but emotionally draining. For a solo practitioner, a dispute such as this takes away from the focus necessary to be competitive in today's challenging marketplace.

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612-349-6969 • [anthonyostlund.com](http://anthonyostlund.com)  
90 South 7th Street, Suite 3600 • Minneapolis, MN 55402

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