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NEVADA FAMILY LAW REPORT

Volume 20, Issue 1 Winter 2007

COUNCIL OF COMMUNITY PROPERTY STATES SYMPOSIUM ON ALIMONY

By Christopher D. Carr, Esq.

For the first time since 1998, Nevada will host the annual Symposium of the Council of Community Property States at the **Paris Las Vegas Hotel on May 3-5, 2007**. The topic is the interrelation of alimony with community property awards, to be addressed by delegations from each of the nine community property states. The 2007 symposium promises to provide top-notch presentations on a topic faced daily by family law practitioners.

Matters of law, public policy, and tactical arguments for both obligors and recipients will be presented from the perspective of each state, providing the attendees with useful insights-- and citations-- from throughout the community property system. The presentations will include:

A. Theoretical role and purpose of an award of alimony (vs. community property award)-- economic, fault related, or other?

B. Impact of temporary spousal support award on final property distribution.

C. Timing: is alimony determined before, during, or after the allocation of community property between spouses, and how does the order affect the outcome?

D. Alteration in approaches to alimony in high- or low-value community property cases.

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CCPS Symposium on Alimony

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The CLE presentations will be presented in one full day, Friday, May 4, and have been accredited for **nine CLE hours**. An optional half-day roundtable on Saturday will address recent developments in community property law throughout the community property system. A brochure and sign-up form should be delivered by the time this article is printed; and anyone wanting another can contact the CLE department of the State Bar, at **1-800-254-2797** or at ***www.nvbar.org***.

See below for information on how to register, or see page 8 for more on CCPS. ***

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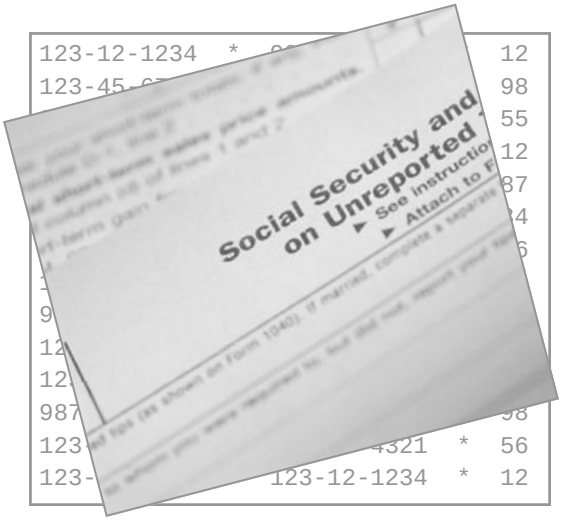
SSNs IN QDROs

by Marvin Snyder



Beginning on January 1, 2007, a new law took effect in Nevada concerning Social Security Numbers in court documents. Assembly Bill 334 was enacted in the 2005 session of the Nevada State Legislature to protect Social Security Numbers ("SSNs"); the Clark County Clerk's Office has announced that they will require a certificate that documents filed with the court do not contain SSNs. A similar form is used in Washoe County.

The Clark County Clerk's Office suggests that when SSNs appear in official documents, such as tax returns, affidavits of financial condition, or even traffic accident reports, the SSNs should be redacted before filing any such document with the court.

When it comes to Qualified Domestic Relations Orders (QDROs), this desired and mandated protection of SSNs will lead to administrative issues that have to be resolved. The QDRO— with some special exceptions— must contain the SSNs of the parties. The Plan Administrator must have the SSNs in order to process the benefit request. This applies to all types of savings and retirement plans: corporate, governmental, military, pension, 401 (k), etc.

One particular exception to the required SSN information in a QDRO is the Western Conference of Teamsters Pension Plan. This plan requires a separate confidential attachment to a QDRO. The attachment lists the parties' SSNs and it is not to be filed with the court with the QDRO but kept apart until the court-certified QDRO is sent to the plan.

Employee benefit plans need to have the SSNs in QDROs for many purposes:

- Identification of the plan participant;
- Filing tax forms reporting the plan distribution to the alternate payee;
- Notifying the financial institution of the monetary transactions to take place (such as, Fidelity, Principal, Hartford, ING, and so on);
- Transferring of funds to the alternate payee's IRA or other plan.

A plan that requests the SSNs specifically to appear in a QDRO-type order is the Armed Forces Retirement System for military members, active or reserve. This plan prefers the SSNs of the parties to be placed on the upper-right-hand corner of every page of the pension order.

The Clark County Clerk's Office plans to provide a suggested form of affirmation, before December 31, 2006, as a model for what may be attached to orders filed with the court. The affirmation will declare that no SSNs appear on or in the order.

Drafters of QDROs will have to use their ingenuity and creativity to structure orders that do not contain the SSNs of the parties. When a retirement plan provides a sample or model QDRO, the SSN portion will have to be removed from its suggested format and be placed at the end in a separate attachment. When filing the QDRO with the plan, the SSN issue should be mentioned in the forwarding letter.

The attachment showing SSNs and the mention of it in forwarding the QDRO to the plan should become general policy for QDROs when the Clerk of Court mandates, with suggested format, the required treatment of Social Security Numbers in documents. ***

Marvin Snyder is a consulting pension actuary for valuations of pensions in divorce and the preparation of QDROs. He can be reached at 702-869-0303.

2006 UPDATE
Nevada Notable Domestic Relations Cases

By Fred C. Page, Esq.

The last few months have been relatively active. Some new useful opinions have come out concerning annulments, contempt, District Court jurisdiction over child custody while the matter is on appeal, and the entering of *nunc pro tunc* divorces. Hopefully, these summaries will make it easier for practitioners to keep up with the latest opinions. We will also try to incorporate these summaries into the MARREN/PAGE NEVADA NOTABLE DOMESTIC RELATIONS CASES case summaries by March, 2007.

Mason v. Cuisenaire, 122 Nev. Adv. Op. No. 6 (February 9, 2006)

The parties were married 11 years. The husband sought a divorce in North Carolina, which was granted September, 1999. The decree stated that "there are no pending claims for post-separation support, alimony, or equitable distribution." The husband was then stationed at Nellis Air Force base in Las Vegas and the mother returned to Belgium. In February 2002, the mother moved the District Court for post-decree child support, alimony, division of assets, and attorney fees. The mother sought child support arrears from the date of the North Carolina judgment's entry to the date her motion was filed. She also sought the equitable division of the parties' marital estate as it existed at the time of the divorce. The District Court determined that Nevada was the proper venue for child support determination. The District Court further determined that the North Carolina court never addressed child support and that, under NRS 125B.030, the District Court could award up to four years of past support.

The court also found that some omitted assets were not adjudicated in North Carolina, including the father's military retirement benefits, the proceeds from the sale of a marital home in Louisiana, marital personal property, and a survivors benefit plan from the military. The District Court concluded that the mother was entitled to a portion of the father's military retirement benefits and set the father's future child support payments at $500 per month. The District Court awarded the mother $300 per month in child support arrears from October 1999, the month after the North Carolina decree was entered, to February 2002, and $500 per month from March 2002 to July 2002, plus statutory penalties and interest. The award of child support arrears totaled $10,678.69, and a wage withholding was approved in order to collect the arrears. The District Court set an evidentiary hearing with respect to the allocation of debts or assets of the marital estate and denied the mother's request for alimony. The father appealed before the evidentiary hearing was held. (The father passed away during the pendency of the appeal.)

The Supreme Court affirmed in part and reversed in part. The court concluded that the District Court abused its discretion in applying NRS 125B.030 because the statute was inapplicable to the parties. The court further concluded that "separated," as used in NRS 125B.030, did not include parties who had previously been adjudicated as divorced but attempt to recover child support for a period after their divorce became final.

The court did conclude though that an award of retroactive child support was proper because the North Carolina decree was entitled to full faith and credit. The court also concluded that a divorce judgment that did not include an amount for child support did not constitute a support order. The court further concluded that the District Court did not err in affording the North Carolina divorce judgment full faith and credit and that a retroactive award of child support was proper from the date of the North Carolina decree. The court held that an award of child support arrearages under NRS 125B.030 was not proper, and reversed the District Court's order pertaining to child support arrears. The court remanded to determine the appropriate amount of child support arrears, applying North Carolina child support guidelines.

In re Guardianship of Person, Estate of N.S., 122 Nev. Adv. Op. ___, (March 16, 2006), 130 P.3d 657

While incarcerated for prostitution, Y.S. gave birth to N.S. The mother tested positive for amphetamine and methamphetamine. The child was placed into the protective custody of the Division of Child and Family Services (DCFS). Proceedings under Nevada's abuse and neglect statute, NRS Chapter 432B. Because the grandmother was taking care of the mother's other five children, Child Protective Services recommended that N.S. be placed elsewhere. The child was made a ward of the state and was placed with a foster family. The grandmother visited regularly along with the siblings. When N.S. was approximately four months old, the grandmother petitioned the District Court to appoint her as the child's guardian.

The grandmother obtained a larger house and made other preparations necessary to accommodate her sixth grandchild. DCFS opposed the grandmother's petition, arguing that she would be unable to care for another child and protect the child from its mother. It was further argued that the child had bonded with the foster family and was thriving. At the evidentiary hearing, evidence was produced as to where the grandmother was living, and the support network she had.

The District Court held that while it recognized that there was a parental preference, it was in N.S.'s best interest to stay with the foster parents because she had already lived with them for a period of eight months, and it noted that "to disrupt that would be unfair to the child." The District Court concluded that there were adequate grounds for overcoming the familial preference. The grandmother appealed.

DCFS filed a petition to terminate the mother's parental rights. While the petition was pending, the grandmother petitioned the court for visitation. The same day that the District Court held an evidentiary hearing to determine grandmother's visitation rights, it entered an order terminating Y.S.'s parental rights to N.S. The District Court denied the grandmother's request for visitation. The grandmother filed another appeal. The appeals were consolidated.

The Supreme Court reversed. The court reviewed the standard for a writ of mandamus and concluded that her petition warranted further review and warranted intervention by way of extraordinary relief. The court reviewed NRS Chapter 432B. The court concluded that the grandmother was a person with a special interest and was eligible for preferential consideration for placement. Because the District Court failed to ensure that the grandmother was involved in and notified of the plan for N.S.'s placement, she was not given the benefit of the familial preference, as required. The court also held that the foster parent's testimony was improperly determinative in the District Court's decision to deny the grandmother's visitation petition.

Irving v. Irving, Nev. 122 Adv. Op ___ (May 25, 2006), 134 P.3d 718

The parties were married in 2002, and from June 2002 to October 2002, they lived together as hus-

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CASE LAW UPDATE
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band and wife. The wife never became pregnant despite their continued efforts. In October 2002, the wife was diagnosed with tuberculosis and moved out of the husband's residence, in part because the husband was concerned that the disease was contagious. In November 2002, the husband filed a complaint for annulment, alleging that his consent to marriage was induced by fraud because the wife had misrepresented that she wanted to conceive his child. The District Court ordered an annulment for fraud based on its findings that the husband had relied on the wife's representations that she would conceive his child and that there were no "allegations of the normal reasons as to why parties separate." The wife appealed.

The Supreme Court reversed. The court noted that the level of proof required to establish fraud for an annulment in Nevada was one of first impression. The court went though its statutory interpretation analysis. The court concluded that the statute was ambiguous because the language "fraud has been proved" was susceptible to two or more reasonable interpretations regarding the burden of proof and it should look to the Legislature's intent for assistance in interpreting. The court concluded that public policy was in favor of marriage and against annulment, and held that a clear and convincing burden in annulments based on fraud was required. The court further held that no substantial evidence supported a finding of fraud by clear and convincing evidence that the wife had misrepresented that she wanted to conceive his child.

Houston v. Dist. Ct., 122 Nev. Adv. Op. No. 51 (June 15, 2006)

The petitioner was representing the wife against her husband, who was in proper person. The wife filed a motion for temporary spousal support and interim award of attorney fees. However, no affidavit of financial condition was attached as required by Eighth Judicial District Court Rule 5.32(a). A discussion ensued between the District Court and counsel as to the requirement for the affidavit of financial condition being filed and that without an affidavit of financial condition being filed, the hearing would have to be continued. The wife's attorney was sanctioned $500 and found to be in contempt. The petitioner appealed implicitly contending that the language in NRS 22.030 "the court or judge shall enter an order," which "[r] ecites the facts constituting the contempt" required a written order.

The court reviewed its decision in *State, Division of Child & Family Services v. District Court*, 120 Nev. 445, 92 P.3d 1239 (2004). The court observed that it had noted in that case that there was nothing that precluded a court from summarily punishing a party who committed contempt in the court's immediate presence citing to NRS 22.030. The court went through its statutory interpretation analysis looking at the statute's plain language, and if the language is ambiguous, then as to which reason and public policy would indicate the legislature intended. The court concluded the language in question in NRS 22.030 was ambiguous. The court noted that statute's structure and language, as well as common sense and the purpose of the statute, and indicated that the court's verbal order was enforceable to punish the contempt and restore order. The court held that verbal order was immediately enforceable, but that a written order had to be promptly entered.

The court further held that a written summary contempt order must set forth specific facts concerning

the conduct found to be contemptuous. The court noted that the order entered did not indicate what particular comments were held to be contemptuous, and it was not clear from the transcript which comments or actions the District Court intended to sanction. The court further noted that the transcript did not include any nonverbal conduct that may have impacted the District Court's contempt finding, such as body language, tone of voice, or volume. The court held that the order entered by the District Court was not sufficiently specific. The court additionally held that the District Court should be permitted to enter an amended order that satisfied the standard announcement describing the conduct that it believed was contemptuous.

Mack-Manley v. Manley, 122 Nev. Adv. Op. No. 75 (July 20, 2006)

The parties had two minor children. During the divorce proceedings, the mother was granted temporary primary physical custody. At the trial regarding custody, the District Court heard from 12 witnesses over a four day period and appointed a psychologist to conduct an evaluation. The psychologist recommended that the father be granted sole legal custody. The District Court found that by clear and convincing evidence, the father had committed at least one act of domestic violence. The District Court further found that the father had rebutted the presumption that joint custody was not in the children's best interests as the father did not have a history of domestic violence and that the eldest child had been absent from school 25 times and late 43 times while in the mother's care. The court awarded primary physical custody to the father and gave the mother liberal visitation. The mother appealed.

While the appeal was pending, the mother took one of the children to the emergency room because of a bruised knee. Child Protective Services was contacted and the children were taken away from the father for two days, but the allegation was dismissed as being unsubstantiated. The father responded by requesting that the mother be held in contempt for refusing to comply with custody and moved for sole legal custody. A hearing was held and concluded that there was adequate cause for there to be an evidentiary hearing on the issue of contempt. The hearing was held and the mother was found to be in contempt of the "anti-alienation" provision of the decree. The mother was sentenced to three days in jail which stayed if she would comply with the custody orders. The father was awarded sole legal and physical custody and attorney's fees. The mother appealed from these orders as well.

The court framed the issue as to whether or not a District Court retained jurisdiction, after an appeal has been perfected, to decide a motion to modify child custody when the custody issue is on appeal. The court noted that a properly filed notice of appeal divested the District Court of jurisdiction to consider any issues that are that were pending appeal. The court concluded that when a custody issue was on appeal the proper procedure to follow was for a remand under *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978) and it was error for the District Court to have concluded that it retained jurisdiction over any child custody modification requests. However, in the interests of judicial economy, the court affirmed the post-decree order.

As to contempt, the court concluded that the District Court did have jurisdiction to rule on contempt because a lower court has the power to enforce its provisions pending appeal citing to *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d 1380, 1382 (1987); *Smith v. Emery*, 109 Nev. 737, 740, 856 P.2d 1386, 1388 (1993); and *Huneycutt*, 94 Nev. at 80, 575 P.2d at 585. The court further held that "prior to a child being interviewed for the purpose of obtaining an expert opinion" meant that a child could not be interviewed by a private investigator before obtaining court approval for an interview. For attorney's fees, the court concluded that the District Court could award attorney's fee as part of its continuing jurisdiction, and that an award under NRS 18.010(2)(b), could be reviewed under an abuse of discretion standard. The court concluded there was no abuse of discretion.

McClintock v. McClintock, 122 Nev. Adv. Op. No. 73 (July 20, 2006)

The parties met while they were still married to other people. The husband obtained a divorce from his present wife. The fiancé filed a joint petition for divorce on behalf of herself and her then-husband on September 2, 1993. On September 3, 1993, the parties married. The fiance's joint petition was not signed by the District Court until September 21, and was not filed until September 23, 1993.

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CASE LAW UPDATES
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The parties believed themselves to be lawfully married and held themselves out as husband and wife. In November 2002, the wife filed for divorce. The husband then discovered that the wife was still married to her former husband at the time of their marriage. The husband counterclaimed for annulment claiming that the 1993 marriage was void. The husband also filed a motion for summary judgment. The parties signed a stipulation agreeing that they were never married and that their marriage was void. The wife then filed a motion seeking to set aside the stipulation claiming that her prior attorney had not had her permission to sign the stipulation and that the matter should be heard on its merits.

In reliance upon the stipulation, the husband remarried. The wife then moved the District Court for *nunc pro tunc* entry of the divorce decree to September 2, 1993. The husband filed a motion to intervene. The husband was permitted limited intervention to demonstrate how *nunc pro tunc* motion would materially affect the outcome of his position in his divorce proceeding. After an evidentiary hearing, the District Court granted the wife's request, finding that the decree could have been filed one day later or three weeks later and that these acts were *pro forma* clerical functions that effectively legitimated the parties' marriage, and the husband's new marriage.

The Supreme Court reversed. The court noted that a District Court could amend a judgment *nunc pro tunc* if "the change will make the record speak the truth as to what was actually determined or done or intended to be determined or done by the court," citing to *Finley v. Finley*, 65 Nev. 113, 119, 189 P.2d 334, 337 (1948). The court further noted in *Finley* that a District Court could not change a judgment that it "neither rendered nor intended to render." Id. at 118, 189 P.2d at 336. The court distinguished *Finley* by concluding that the District Court's decision to approve a petition for divorce was not equivalent to a clerical duty. The court held that the District Court abused its discretion by modifying the date of the decree *nunc pro tunc* to a date before the matter was adjudicated.

Marquis & Aurbach v. Dist. Ct., 122 Nev. Adv. Op. No. 97, November 30, 2006

The opinion dealt with whether or not a law firm may charge a contingent fee for a post-divorce matter. The parties divorced in 1973. The document termed the property settlement agreement provided that the husband would purchase the wife's interest in the community property of $650,000 to be paid by a $50,000 cash payment within six months and a promissory note for $600,000. The wife could have demanded principal payments, but never did. By 1998, the monthly payments were over $8,500, for an annual total of over $100,000, and the total payments over the years were more than twice the note's original amount. The husband filed a complaint against the wife, asserting claims for breach of contract, breach of good faith and fair dealing, violation of usury statutes, reformation based on mutual mistake, or alternatively, reformation based on unilateral mistake, unconscionability, and fraud.

The wife hired an attorney who offered a $5,000 retainer or a one-third contingency fee to obtain an accounting of amounts refundable under these claims. The wife insisted on the contingency fee. The law firm negotiated a settlement of $600,000. Shortly after the settlement agreement was reached, the wife died. The conservator of the wife's estate initiated a fee dispute with the State Bar. Eventually, the fee dispute committee concluded that the contingency fee was reasonable.

The court reviewed the language of Supreme Court Rule 155(4)(a). The court noted that not every contingency fee agreement in a domestic relations matter violated the rule, because the fee depended on the modification of a property settlement agreement that pertained to both community property and alimony SCR 155(4)(a) was violated. The court concluded the plain language of the rule, that the post-divorce matter was a domestic relations matter and that the agreement dealt with the modification of property or alimony. The court further concluded that because the contingency fee agreement was prohibited by the rule, it was unenforceable. ***

Fred C. Page, Esq., co-author with the Hon. Terrance P. Marren on Nevada ***Notable Domestic Relations Cases*** published by the State Bar of Nevada in 2006, and long time contributor to the ***ABA Family Law Quarterly*** (case updates), is an associate with BREMER, WHYTE, BROWN & O'MEARA, LLP can be reached at 7670 West Lake Mead, Las Vegas, NV 89108. His phone number is (702) 258-6665. Fax is (702) 258-6662. E-mail can be directed to Page1v@msn.com.

COUNCIL OF COMMUNITY PROPERTY STATES OFFERS DIFFERENT PERSPECTIVE

by Xavier Planta, Esq.

The Council of Community Property States (ACCPS) was formed in 1990, so attorneys from each of the nine "community property" states could discuss and share information on issues. Since 1990, attorneys have come together once a year for this national conference.

"You gain a perspective of community property law beyond the parochial confines of your daily practice; you can see things from an entirely different perspective when you learn how things are done in courts with similar laws, but different procedures and precedents," says Marshal S. Willick, Esq., of Las Vegas.

Last year's symposium was held in Phoenix, Ariz.; the symposium rotates annually among the member states, each of which is expected to present a comprehensive paper on its law for the particular issue chosen. The nine jurisdictions participating are Louisiana, Wisconsin, Washington, Nevada, California, New Mexico, Idaho, Arizona, and Texas.

The 2007 symposium is scheduled for **May 3 - 5 in Las Vegas.** Attendance is expected to be in the hundreds (the last Las Vegas seminar, in 1998, had some 300 attendees). The written materials should be substantial, as usual. The Saturday morning roundtable is an opportunity to find out what is new or changing in each community property state, and to plan the next year's symposium. ***

The precedents, arguments, and policies gleaned from the last fifteen years of seminar materials have been extremely useful in keeping on top of evolving community property principles. We expect the same this year. Many of the prior years' Nevada materials are posted at http://willicklawgroup.com/page.asp?id=40. Previous topics include:

1990	San Francisco, CA	First Annual Community Property States Symposium" (overview of community property laws)
1991	Santa Fe, NM	Inter-Spousal Tort Claims and Divorce
1992	Seattle, WA	Ownership and Distribution of Benefits in Community Property States
1993	New Orleans, LA	Post-Dissolution Accounting Between Spouses
1994	Coeur D'Alene, ID	Community Property Valuation and Division
1995	Milwaukee, WI	Pre-Nuptial and Post-Nuptial Agreements: Practical Consideration for Community Property States
1996	San Antonio, TX	Characterization Questions in Community Property States
1997	Phoenix, AZ	Where Will the Money Go? (Temporary orders and dealing with community debt)
1998	Las Vegas, NV	Cohabitant Relationships and Community Property
1999	San Francisco, CA	Donor's Remorse: When a Gift is Not a Gift—Recovery of Contributions of Property During Marriage
2000	Santa Fe, NM	Breach of Fiduciary Duty and Community Property Man agement
2001	Seattle, WA	Characterization, Valuation and Division of Intangible Assets
2002	New Orleans, LA	Matrimonial Agreements: Requirements for Validation
2003	Coeur D'Alene, ID	Everything You Wanted to Know About Retirement but Were Afraid to Ask
2004	Madison, WI	Divorce and the Family-Owned Business: Practical Con siderations for Community Property States
2005	Fort Worth, TX	Disproportionate Property Awards and Economic Contri bution
2006	Phoenix, AZ	Management of Joint, Common and Community Assets During Marriage and a Divorce Proceeding

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BUSINESS VALUATION APPROACHES AND METHODS BOILED DOWN - THE BASICS

by Bob Cerceo, Esq.

Nevada has only a few reported cases on the valuation of a wholly owned business. *See Robison v. Robison*, 100 Nev. 668, 691 P2d 451 (1984), *Wilford v. Wilford*, 101 Nev. 212, 699 P.2d 105 (1985), *Ford v. Ford*, 105 Nev. 672, 782 P.2d 1304 (1989). Much more case law has been devoted to the "apportionment of a business started prior to marriage" issue, which the cases are related, but only tangentially.

With the fundamental question being "How do we value the business?", the sources of law must first be examined. As Nevada law does not provide specifics on approaches and methods, guidance in the valuation field is provided, at least initially, IRS rulings in the valuation of stocks and bonds. Rev. Rul. 59-60 provides the broadest scope of review, and in §4, eight factors are enumerated which form the scope of the work. As this ruling was initially conceived for estate computations, it was later expanded for valuation for all tax purposes under Rev. Rul. 65-193. Additional guidance has been provided by the addition of Rev. Rul. 68-609 for calculation of goodwill by capitalizing "excess earnings," a subset of the overall valuation scheme.

With the balancing of IRS rules, GAAP,[1] USPAP,[2] and the individual needs of each going concern, business valuation has developed into a highly complex endeavor, and it is now a recognized specialized field of knowledge with several national certifying agencies. NRS 50.275. Although there are many books and articles on the subject, it is widely acknowledged that one of the leading authorities on business valuation is Dr. Shannon P. Pratt, and his most recent authoritative text on the subject is *Valuing a Business: The Analysis and Appraisal of Closely Held Compa-*

nies, Fourth Ed., Shannon P. Pratt, Robert F. Reilly and Robert P. Schweihs, McGraw Hill (2000), ISBN 0-07-135615-0.[3] Nationally, there is no uniform rule for fixing value of a going concern, the method used to value a company depends upon its unique status, and it is incumbent upon the appraiser to inform and educate the Court on the details of the methodology. Pratt at 840, 841.

Boiled down to its most basic framework, below is a brief overview of approaches (general) and methods (specific within each general approach):[4]

Virtually all business valuation reports can be understood within this frame work of approaches and methods, but each valuation will be tailored to the particular facts and circumstances of each case.

Equally important, but beyond the scope of this article are: the Standard of Value used, as Fair Market Value and Fair Value (or Marital Value) are not equivalent terms; and, the question of Applicable Discounts.

***

Approaches and Methods Overview

1. Asset Approach-- Valuation on the basis of assets and liabilities.
    a. Liquidation Value Method - "at sale"
    b. Net Asset Value Method - tangible assets plus any non-balance sheet assets

2. Income Approach - valuation on the basis of some form of economic stream.
    a. Capitalization of Earnings Method-- capitalization rate applied to a period of earnings
    b. Discounted Cash Flow Method-- project earnings and apply a discount; be aware of the "double-dip" with alimony.[5]

3. Market Approach - Valuation by reference to other transactions.
    a. Comparable Companies Method-- compare to guideline companies
    b. Actual Sales of Stocks-- a recent arm's length sale as an indicator
    c. Industry Formulas-- "rule of thumb" or "ballpark" ranges

Footnotes

[1] Generally accepted accounting principles promulgated by the AICPA.

[2] Uniform Standards of Professional Appraisal Practices by the ASA.

[3] A condensed review is published by the American Bar Association, the *Lawyer's Business Valuation Handbook: Understanding Financial Statements, Appraisal Reports, and Expert Testimony*, Shannon P. Pratt ABA Section of Family law (2000), ISBN 1-57073-829-7. This is a "handbook" style overview of the practice, but not the authoritative text.

[4] Pratt at 821 through 823.

[5] There is a direct correlation between the projected earnings of a close held business and the alimony/spousal support orders, which if not addressed at the time of the issuance of the order, can result in two awards from the same stream of income, commonly referred to as the "double dip."

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TO SUBMIT ARTICLES TO THE MARCH NFLR, please have them to Bob by February 23, 2007.

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To what agency will the chain of command assign YOU?!

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