NFLR
NEVADA FAMILY LAW REPORT

Volume 29, Issue 3 Summer 2016

Four Simple Rules to Remember When Defending a Deposition

By Bruce Shapiro

Other than court, the only place that lawyers get to really "play" being a lawyer is in a deposition. You have a small, informal setting, a court reporter and a couple litigants basically being imprisoned and forced to suffer the worst in human behavior. Depositions are boring and often a waste of time, but what we lose sight of is that they are expensive and uncomfortable for clients. Whether it is out of boredom, or career insecurity, many lawyers cannot help but embarrassing themselves.

Rule Number One: There's no one to impress.

We must keep in mind that there is no judge, no jury and few, if anyone, are likely to read the transcript. The court reporter has probably seen it all and opposing counsel is generally reading the paper or checking emails and will not be impressed either. The litigants, probably their first real taste of the American justice system may be intimidated, but more likely irritated at your behavior. There is no need to be rude or unprofessional.

Rule Number Two: When Defending a Deposition, see how long you can go without speaking.

Make it a game and challenge yourself. No speaking objections, no argument, no trying to "educate" opposing counsel about the law or the facts of the case. The less you speak, the shorter the deposition will last, the more money you save your client and the least likely your client is to say something that hurts his or her case. When defending a deposition, you are not the star of the show. In fact, you should not even have a supporting part. You are an extra at best. Show that you know the rules by keeping quiet.

Know that your basis for objecting at a deposition is narrow. Unless the questioning attorney is harassing your client or infringing upon the attorney client privilege, shut up. Inappropriate objections not only add to the cost of litigation, but also obstruct the opposing party's right to the disclosure of evidence. Many attorneys "forget" that virtually every objection is preserved for trial.

Rule Number Three: Be professional

The most impressive referral an attorney can receive is from an opposing party. No matter how good you are, no matter how professional you are, you are still not likely to obtain a referral from an opposing party if you are rude and obnoxious. It is possible to be professional and respectful to the opposing party and the opposing attorney while zealously representing your client. In fact, attorneys have the ethical obligation to be professional. If you are not going to instruct your client not to answer the question simply object to the form and say no more.

Rule Number Four: Make friends, not enemies

The object of any deposition is to gather infor-

(cont'd. inside on page 3)

IN THIS ISSUE:

EDITOR'S NOTES
Page 2

HOW ARE BUSINESSES APPRAISED DURING DIVORCE
Page 4

Nevada Family Law Report

Editors:
Jason Naimi and
Margaret Pickard

Family Law Section
Executive Council

Jessica Hanson Anderson, Chair
Reno
Shelly Booth Cooley, Vice–Chair
Las Vegas
Amber Robinson, Secretary
Las Vegas
Sarah Hardy-Cooper, Treasurer
Las Vegas

Rayna Brachmann, Reno
Kristine Brewer, Las Vegas
Michael P. Carman, Las Vegas
Michelle Hauser, Las Vegas
Josef M. Karacsonyi, Las Vegas
Hon. Michael Montero, Winnemucca
Jason Naimi, Las Vegas
Margaret E. Pickard, Las Vegas
Kimberly M. Surratt, Reno
Hon. Chuck Weller, Reno

Design/Production
Robert Horne, State Bar of Nevada

NEVADA FAMILY LAW REPORT is an electronic publication of the Family Law Section of the State Bar of Nevada. To subscribe, please send a request to: publications@nvbar.org.

The *NEVADA FAMILY LAW REPORT* is intended to provide family law–related material and information to the bench and bar with the understanding that neither the State Bar of Nevada, Family Law Section editorial staff nor the authors intend that its content constitutes legal advice. Services of a lawyer should be obtained if assistance is required. Opinions expressed are not necessarily those of the State Bar of Nevada or the editorial staff.

This publication may be cited as Nev. Fam. L. Rep., Vol. 2X, No. X, XXX at ____.

The Nevada Family Law Report is supported by the State Bar of Nevada and its Family Law Section.

A Note from the Co-Editor

By Jason Naimi

As Co-Editor of Nevada Family Law Review (NFLR) with Margaret E. Pickard, Esq., we strive to put together an edition of this publication that you will find informative and insightful. With a little hope, it may even motivate you to choose a topic you feel is important to the practice of family law and submit an article that can help us all improve the way we practice.

With that, we have two feature articles in this edition of the NFLR. First, Bruce Shapiro, Esq. discusses his *Four Simple Rules When Defending a Deposition*. Mr. Shapiro offers very sound advice in how we should conduct ourselves when our clients are deposed. Next, Russ Duckworth, CFA, JD, provides his expert insight on business valuation. This article is a very informative summary of how businesses are appraised in the divorce process.

We hope you enjoy this Summer edition of the NFLR. Remember, you can find past editions like this one on the State Bar of Nevada website.

We also encourage members of the Family Law Section to submit articles that may be of interest to family law practitioners in Nevada. If interested, please feel free to reach out to us to find out how you can contribute to future editions of our publication.

Have a wonderful summer!

Jason Naimi is a board certified family law specialist and principal of the Standish Naimi Law Group. Jason also serves as a faculty member of the National Family Law Trial Institute and as a member of the Executive Council for the Family Law Section of the State Bar of Nevada. He can be reached at 1635 Village Center Circle, Suite 180, Las Vegas, Nevada 89134; Telephone: 702-998-9344; Email: jason@standishnaimi.com.

Deposition

cont'd. from page 1

mation. Intuitively, witnesses are more likely to open up to a friendly persona and are likely to be more guarded toward a hostile one. Try to put the witness at ease and have a conversation. The information will flow much more smoothly. Save the aggressive cross examination for trial.

In sum, you cannot "win" a deposition. It is more impressive to be seen and not heard and allow the deposition to be completed as soon as possible.

Bruce I. Shapiro attended the University of Nevada, Las Vegas, and received his bachelor's degree in 1984 and his master's degree in 1986. He graduated from Whittier College School of Law in 1990, magna cum laude. He has practiced in family law since 1990 and has served as a Domestic Violence Commissioner, pro tempore, URESA/Paternity Hearing Master, Alternate, Municipal Court Judge, Alternate, Judicial Referee, Las Vegas Justice Court, Small Claims. Shapiro has written several articles in the area of family law and has served on the Nevada Children's Justice Task Force, Clark County Family Court Bench-Bar Committee, State Bar of Nevada, Child Support Review Committee, the State Bar of Nevada Southern Nevada Disciplinary Board, State Bar of Nevada Standing Committee on Judicial Ethics and Election Practices and the Continuing Legal Education Committee. Shapiro also served on the Board of Governors for the State Bar of Nevada from 2003-2005 and 2008 -2010.

We Need Your Articles!

The Family Law Section is accepting articles for the Nevada Family Law Report. The next release of the NFLR is expected **Sept. 30, 2016**, with a submission deadline of **Aug. 30, 2016**.

When submitting an article to the NFLR, please note that automatically embedded footnotes/endnotes do not carry over into the State Bar of Nevada's publishing program. As such, if at all possible, we would ask that you utilize endnotes that are not automatically embedded. Please do not use the Footnote/Endnote function of your word processing program.

Please contact Jason Naimi at jason@standishnaimi.com or Margaret E. Pickard at nevadamediator@gmail.com with your proposed articles anytime before the next submission date. We're targeting articles that are between 350 words and 1,500 words, but we're always flexible if the information requires more space.

Nevada Family Law Practice Manual 2013 Edition

This recently revised manual provides up-to-date information on timely, modern day family law issues such as:

MILITARY DIVORCES
including how military divorces differ from non-military divorces and what extra steps need to be made

ARTIFICIAL REPRODUCTIVE TECHNOLOGY
including definitions of terms used in discussing Artificial Reproductive Technology

DOMESTIC PARTNERSHIPS
including how partnerships are recognized in other jurisdictions

Family Law Section Members Receive a **15% discount.**

Call the bar at **702-382-2200** for more information!

Business Appraisal in Divorce

An overview of valuation theory and Nevada law

By Russ Duckworth, CFA, JD

For a divorce business appraisal, it is essential to determine which standard of value and valuation adjustments are permissible in the state where the divorce is being litigated. These crucial legal issues should be assessed at the beginning of the appraisal process. Unfortunately, there is no comprehensive legal treatise on these topics to assist with the analysis. Although the popular business valuation treatises contain chapters on divorce valuation, they tend to be written from the perspective of an academic rather than a legal practitioner seeking a practical analysis of the law and valuation theory. This article attempts to fill the gap and assist you with analyzing the issues of standard of value and valuation adjustments for Nevada divorce proceedings.

I. VALUATION TERMS

We begin with a review of key valuation terms, including standard of value, valuation approach, valuation method and valuation adjustments.

A. Standard of Value

Because the word "value" means different things to different people, appraisers seek to define what is meant by that word through a concept known as the *standard of value*. Standard of value attempts to define the type of value being sought by answering the question of "value to whom?" and "under what circumstances?"[1] It usually reflects an assumption as to who will be the buyer and who will be the seller in a hypothetical or actual transaction regarding the subject property.[2]

The three major standards of value for purposes of business appraisal are fair market value, fair value and investment value.[3]

B. Valuation Approaches and Methods

Where standard of value is a set of assumptions under which a valuation is performed, *valuation approach* describes the way in which value is determined. The three major valuation approaches are *income approach*, *market approach* and *asset-based approach*.[4] For each valuation approach, there are different *valuation methods* that are specific methodologies used to implement an approach.[5] Each approach and its primary methods are described below.

Income Approach. The income approach is a general way of determining business value by using a method that reduces future economic benefits generated by the business to a single present value.[6] The two primary valuation methods within the income approach are the *discounted cash flow* method and the *capitalization of income* method.[7]

Market Approach. The market approach determines business value by using a method that compares the subject business to similar businesses that have been sold.[8] This is a comparable transactions concept. The two primary methods within the market approach are the *guideline public company* method and the *guideline transactions* method.[9]

Asset-Based Approach. The asset-based approach determines value by subtracting liabilities from assets to arrive at business equity value.[10] Because the asset-based approach is viewed through the lens of the balance sheet, this approach as a practical matter is generally better suited to valuing holding companies rather than operating businesses. An operating business is typically better assessed on the basis of its future income stream. The primary method within the asset-based approach is the *asset accumulation* method.[11]

C. Valuation Adjustments

Valuation adjustments are discounts or premiums that are applied to preliminary calculations of business value. Valuation theory calls for valuation adjustments when the business interest being appraised has characteristics that are different than the data from which the interest's preliminary value is derived.[12] This principle is

(cont'd. on page 5)

Business Appraisal

cont'd. from page 4

illustrated by the two classic valuation adjustments: control adjustments and marketability adjustments.

Control Adjustments. Because there are benefits from the ability to control a company, investors place a higher value on controlling interests compared to minority interests.[13] As shown in Figure 1, control adjustments are expressed either as a control premium or minority discount.[14] A control premium is applied when a controlling interest is preliminarily appraised on the basis of minority interest valuation data (typically publicly traded stocks). A minority discount is applied when a minority interest is preliminarily appraised on the basis of controlling interest valuation data (typically mergers and acquisitions transactions).

Marketability Adjustments. Investors desire liquidity from their investments. We live in an uncertain world where unexpected investor expenses arise, company managements change and industries deteriorate, which are reasons why liquidity — the ability to easily turn an investment into cash — is highly desirable. As a result, investors require higher rates of return when their investments do not have liquidity in order to compensate them for the extra risk of being locked into an investment.[15] Higher required rates of return translate into lower valuations. Therefore, all else being equal, a liquid investment will command a higher valuation than an illiquid investment.

Publicly traded stocks have the highest degree of liquidity, as they have a regular trading market in which company shares are turned into cash within three days after the sale. Private companies do not have a liquid market in which an investor can exit his or her investment. As a result, investors place higher valuations on public companies compared to private companies. Thus, when preliminary values for private companies are developed using public company valuation data, a marketability adjustment is necessary. This adjustment, shown in Figure 1, takes the form of a marketability discount. It reduces the preliminary value that was derived from public data and provides a private company value.

Integral to Valuation. Both control adjustments and marketability adjustments are integral to developing values and are applicable regardless of whether the holder of

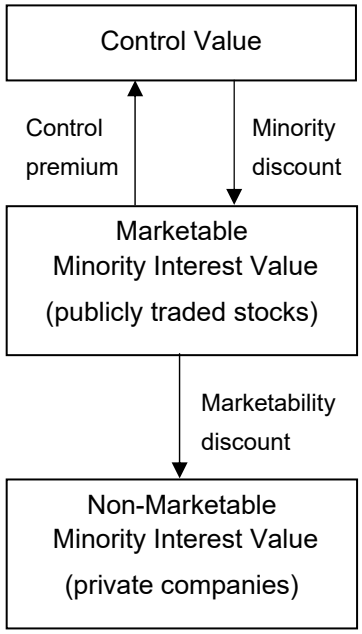

Figure 1. Levels of Value

a private company interest has plans to sell it. For example, it is often erroneously argued that a discount for marketability is applicable only if the holder has plans to sell his or her interest in the business. This view is based on the mistaken belief that a marketability discount is a form of transaction cost that is only incurred when the business is sold. Instead, the applicability of the marketability discount is driven by the source of the valuation data and is therefore an inseparable part of the valuation process.[16] The same is true with control premiums and minority discounts.

II. STANDARDS OF VALUE

Having explored basic valuation terminology, we now review the three major standards of value in business appraisal.

A. Fair Market Value Standard

Fair market value is the most widely recognized and accepted standard of value. It is the standard that applies to all federal and state tax matters and numerous other valuation situations.[17] Fair market value is defined as "the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able

(cont'd. on page 6)

Business Appraisal

cont'd. from page 5

seller, acting at arm's length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts."[18]

The fair market value standard does not require an actual or contemplated transaction. Instead, the standard represents the cash or cash equivalent price at which a transaction *could be expected to take place* under conditions existing as of the valuation date.[19] An appraisal conducted under a fair market value standard tells us how much the business interest would likely bring if it were to be sold. It is irrelevant whether the owner of the business interest plans to actually sell it.

Courts sometimes fail to recognize the difference between the fair market value *standard* and the market *approach*. The market approach examines sales transactions of comparable businesses. Courts often label comparable market transactions exclusively as "fair market value," failing to recognize that the fair market value standard also includes the use of the income approach. Valuing a business on the basis of its projected income using a capitalization of income method would be a valuation performed on a fair market value standard if the value is calculated using capitalization rates derived from the market (typically the public securities market). Therefore, evaluating comparable transactions is just one way of valuing a business using the fair market value standard.

B. Fair Value Standard

Fair value is a standard of value that is used in corporate law in the context of shareholder litigation related to dissenting shareholder rights and judicial dissolution.[20] In these legal actions, the shareholder seeks to exit his or her investment in the company through the litigation process. Fair value is the standard of value used by the court in establishing an exit price for the shareholder's interest in the company.

Although every state is different, many states disallow the use of minority and marketability discounts in defin-

(cont'd. on page 7)

Business Appraisal

cont'd. from page 6

ing fair value. Delaware disallows these valuation adjustments with respect to dissenting shareholder actions, which often involve a minority shareholder being "squeezed out" by the majority through a cash-out merger transaction at a price that the minority views as too low. In the hallmark case of *Cavalier Oil v. Harnett*, the Delaware Supreme Court disallowed minority and marketability discounts, reasoning the intent of the appraisal statute is to deliver shareholders their proportionate interest in the firm valued as a whole and not valued on the basis of distinct minority interests.[21] The court further stated that if the shares were instead valued as distinct minority interests, which would necessarily take into account minority and marketability discounts, the resulting lower valuation would inequitably provide a windfall to the majority shareholders.[22] Nevada's corporation law takes a similar approach and disallows both the use of minority and marketability discounts in dissenting shareholder appraisals.[23]

C. Investment Value Standard

Investment value is a standard of value that considers value to a particular investor based upon that investor's unique investment requirements.[24] Where value calculated on a fair market value standard is impersonal and detached, appraisals developed using an investment value standard are subjective and personal.[25] An appraisal prepared using the two standards would reach the same number only if the assumptions used in developing the investment value figure would be accepted by a consensus of market participants.[26] Some of the typical differences between a particular investor and the market include:

- Differences in estimates of the future earnings power of the subject business.
- Differences in the perceived degree of risk of the subject business.
- Differences in tax status between the investor and the market participants.
- Synergies with the investor and the subject business that are not available to market participants.[27]

The investment value standard is often used by strategic buyers in valuing acquisition candidates.

III. WHAT DOES NEVADA LAW REQUIRE?

A. Standard of Value

For business appraisal in divorce, Nevada law provides no guidance on the applicable standard of value. In fact, there is not much guidance on the standard of value applicable to valuing any property in divorce — either real or personal. Although NRS 125.150 instructs district courts to divide community property, the statute does not specify the standard to be used in valuing the property. The Nevada Supreme Court has provided no guidance on property valuation standards other than to say that personal property valued at trial must fall "within a range of possible values demonstrated by competent evidence."[28]

B. Valuation Adjustments

Nevada case law contains no decisions that discuss the applicability of valuation adjustments in divorce business appraisals. Therefore, absent guidance from the Nevada Supreme Court, the use of valuation adjustments is a discretionary issue for district courts.

IV. GUIDANCE FOR THE PRACTITIONER

With Nevada having no requirements with respect to standard of value or valuation adjustments, how should

(cont'd. on page 8)

Business Appraisal

cont'd. from page 7

these issues be addressed in divorce appraisals? I offer the following guidance based on my analysis of the law and valuation theory.

A. Standard of Value

In my view, the appropriate standard of value for a Nevada divorce depends on whether a professional practice is being appraised.

1. Professional Practices

In *Ford v. Ford,*[29] the Nevada Supreme Court held that goodwill in a solo-practitioner's professional practice is divisible in divorce even though it cannot be sold.[30] The court reasoned that the non-professional wife contributed to the development of the goodwill during the marriage and therefore the asset was community property even if the goodwill was personal to the professional husband and only had value in his hands.[31]

Although *Ford* did not explicitly discuss standard of value, a popular valuation treatise concludes the decision implicitly adopts an investment value standard for business appraisals in Nevada divorce actions.[32] Discussing *Golden v. Golden*,[33] a similar California case, the authors reason that when courts value non-transferable assets, such as personal goodwill, courts must be relying on a standard other than fair market value because the fair market value standard would result in no value for such assets.[34] The fair market value standard assumes asset transferability.[35] They conclude that because such non-transferable assets only have value in the hands of the professional spouse, such courts must instead be relying on a "value to the holder" or investment value standard.[36]

In my view, *Ford* does not imply an investment value standard. There is logic to the conclusion that a pure fair market value standard would result in zero value for personal goodwill and therefore not achieve the policy goals set forth in *Ford*. However, investment value is an illogical standard to carry out those goals. Under the investment value standard, business risk is assessed from the

(cont'd. on page 9)

Business Appraisal

cont'd. from page 8

perspective of the holder of the business interest.[37] Therefore, applying that standard in a divorce appraisal would require the business risk to be assessed from the perspective of the professional spouse and not the market. This means the capitalization rate used in an income approach would be determined based on the risk preferences of the professional spouse. Thus, the professional spouse would tell the appraiser the appropriate capitalization rate to use and would effectively be valuing his or her own practice. Such an outcome would be unacceptable to a trial court because the valuation would not be objective.

Ford is better characterized as permitting trial courts to consider the use of an income approach to value personal goodwill when a market approach yields no comparable transactions. An income approach is the only approach available to value a non-transferable asset like personal goodwill, as comparable transactions necessarily do not exist. In my view, the trial court in *Ford* recognized this when it valued the goodwill based on earnings.[38]

A modified fair market value standard is a better way of implementing the policy goals of *Ford*. Non-transferable assets like personal goodwill can be valued using a fair market value standard by making an assumption that non-transferable assets can be transferred. Such an assumption would be a hypothetical condition under the Uniform Standards of Professional Appraisal Practice (USPAP).[39] This modified fair market value standard allows the appraiser to value non-transferable assets like personal goodwill using an income approach with capitalization rates derived from the market. Such a modified fair market value standard was used in *Hamby v. Hamby*, which is a North Carolina divorce case in which the court valued a non-transferable insurance agency contract owned by the husband.[40] This modified fair market value standard is my choice when appraising a professional practice in a Nevada divorce.

2. Other Businesses

In the case of a business that is not a professional practice, where the business sells products or provides services that are not substantially provided by the spouse, a traditional fair market value standard is appropriate. Such businesses do not have personal, non-transferable assets of the type at issue in *Ford* and therefore no special conditions to the fair market value standard are necessary.

Publicly traded companies are routinely valued in divorce based on a fair market value standard using a market approach – the closing price on a stock exchange. An interest in a similar business that happens to be private should be valued under the same fair market value standard. Of course, for a private business, the full array of valuation approaches should be considered – income, market and asset.

B. Valuation Adjustments

As discussed earlier, valuation theory applies valuation adjustments to preliminary calculations of value in order to prevent apples to oranges comparisons. As previously noted, it would be inappropriate to value an illiquid private business interest on the basis of liquid public securities valuation data without adjusting for the illiquid nature of private interests. The discount for marketability adjusts the preliminary value to reflect how investors price liquidity.

In Nevada divorce appraisals, my approach to valuation adjustments is simple. Apply valuation adjustments when valuation theory calls for them. Attorneys are not unbiased practitioners of financial and economic theory, however. They are advocates who often argue against the use of valuation adjustments in contradiction to valuation theory, particularly when disallowing such adjustments provides a better outcome for their clients. Courts in other states have accepted and rejected various arguments made by attorneys regarding valuation adjustments in divorce. Although a review of the various decisions is beyond the scope of this article, it is useful for you to be familiar with two of the most common arguments.

First, it is often argued that valuation adjustments such as minority and marketability discounts are only applicable if the spouse owning the business interest has plans to sell it. As discussed previously, this argument represents a misunderstanding of the reason why valuation theory uses such discounts. Attorneys making this argument are attempting to characterize valuation adjustments as transaction costs that are only incurred if the business interest is sold. Valuation adjustments are not transaction costs. They are an inherent part of the ap-

(cont'd. on page 10)

Business Appraisal

cont'd. from page 9

praised value, which is determined irrespective of whether there is an imminent sale of the business. A sale is not necessary to determine the value of property.

Second, it is often argued that the fair value standard from corporate law, which typically disallows the use of minority and marketability discounts, should apply as a matter of policy to all divorce business appraisals. Those making this argument reason that the spouse continuing to own the business after divorce is analogous to a majority shareholder in dissenting shareholder and judicial dissolution actions. A fair value standard, they argue, is needed because minority and marketability discounts create a windfall to the propertied spouse at the expense of the non-propertied spouse.

The flaw in this reasoning is that corporate disputes involve controlling interest appraisals that are not universally found in divorce cases. Dissenting shareholder and judicial dissolution actions require courts to value transactions in which the company as a whole is being appraised, such as mergers, recapitalizations and liquidations. These appraisals are so called control level valuations in which valuation theory does not apply minority and marketability discounts.[41] As shown previously in Figure 1, such discounts only apply to minority interest appraisals. Therefore, the policy of disallowing minority and marketability discounts in corporate disputes is consistent with valuation theory.

Divorce, however, involves a much broader set of situations in which both controlling interests and minority interests are routinely appraised. Therefore, a policy of universally denying minority and marketability discounts in divorce does not make sense from a valuation theory standpoint. Minority interests can be significantly overvalued when those discounts are not applied and valua-

(cont'd. on page 11)

Business Appraisal

cont'd. from page 10

tion theory calls for them. Thus, an across the board application of the fair value standard in divorce would lead to inequitable results when minority interests are appraised.

V. CONCLUSION

Determining which standard of value and valuation adjustments are permissible in divorce appraisals are critical legal issues for attorneys and appraisers to resolve together at the beginning of any engagement. In Nevada, district courts have wide discretion over those issues. On standard of value, a fair market value standard is the most practical approach. A slight modification to the fair market value standard is needed when appraising professional practices in order to value personal goodwill.

With respect to valuation adjustments such as minority and marketability discounts, letting valuation theory decide when they are appropriate is the most equitable and theoretically sound way to value a business interest.

Endnotes

1. Shannon P. Pratt et al., *Valuing a Business: The Analysis and Appraisal of Closely Held Companies* 41 (5th ed. 2008).
2. *Id*.
3. Intrinsic value is another standard of value that is used by securities analysts in the appraisal of publicly traded securities. *Id*. at 41-47.
4. American Society of Appraisers, *ASA Business Valuation Standards* 9-13 (2009).
5. *Id*.
6. *Id*. at 10-11 (BVS-IV: Income Approach to Business Valuation).
7. *Id*. at 10.
8. *Id*. at 12-13 (BVS-V: Market Approach to Business Valuation).
9. *Id*. at 12.
10. *Id*. at 9 (BVS-III: Asset-Based Approach to Business Valuation).
11. Pratt, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies, supra* at 349.
12. American Society of Appraisers, supra at 16 (BVS-VII: Valuation Discounts and Premiums); Shannon P. Pratt, *Business Valuation Discounts and Premiums* 2 (2nd ed. 2009).
13. Pratt, *Valuing a Business: The Analysis and Appraisal of Closely Held Companies, supra* at 385.
14. Figure 1 is adapted from Z. Christopher Mercer, *Quantifying Marketability Discounts* 19 (1997).
15. Pratt, *Business Valuation Discounts and Premiums, supra* at 7-8; Mercer, *supra* at 15-18.
16. Pratt, *Business Valuation Discounts and Premiums, supra* at 2 (explaining the purpose of discounts is to adjust against a base value with the end result effectively imbedded in the implied rate of return on the investment).
17. College of Fellows of the American Society of Appraisers, Defining Standards of Value, *Valuation*, Volume 34, Number 2, June 1989 at 6.
18. American Society of Appraisers, *supra* at 27 (defining fair market value).
19. College of Fellows of the American Society of Appraisers, Defining Standards of Value, *supra* at 6.
20. *Id*. at 7. There is also another "fair value" standard that is used when business interests are valued for purposes of financial reporting. FASB ASC 820, *Fair Value Measurement* (formerly SFAS No. 157). Because this standard of value does not have relevance to divorce valuations, it has been omitted from the discussion.
21. *Cavalier Oil Corp. v. Harnett*, 564 A.2d 1137, 1144 (Del. 1989).
22. *Id*.
23. NRS 92A.320.
24. College of Fellows of the American Society of Appraisers, Defining Standards of Value, *supra* at 8.
25. *Id*.
26. *Id*.
27. *Id*.
28. *Alba v. Alba*, 111 Nev. 426, 427 (1995).
29. *Ford v. Ford*, 105 Nev. 672 (1989).
30. *Id*. at 679.
31. *Id*. at 680-681.
32. Jay E. Fishman et al., *Standards of Value: Theory and Applications* 413 (2nd ed. 2013).
33. *Golden v. Golden*, 270 Cal.App.2d 401, 75 Cal.Rptr. 735 (1969). This case also involved a sole practitioner professional practice and was cited in *Ford*.
34. Fishman, *supra* at 253-254.
35. *Id*. at 22.
36. *Id*. at 253-254.
37. College of Fellows of the American Society of Appraisers, Defining Standards of Value, *supra* at 8.
38. *Ford* at 680.
39. The Appraisal Foundation, *Uniform Standards of Appraisal Practice* 3 (2016-2017 Ed.) (defining hypothetical condition as "a condition, directly related to a specific assignment, which is contrary to what is known by the appraiser to exist on the effective date of the assignment results, but is used for the purpose of analysis.").
40. See *Hamby v. Hamby*, 143 N.C. App. 635, 547 S.E. 2d 110 (2001); See also T. Randolph Whitt, CPA, ABV, Commentary on Hamby: The Courts Got It Right, *Family Forum*, North Carolina Bar Association, Volume 24, June 2004 at 12 (appraiser in the case explaining the insurance agency was valued on a fair market value basis using a hypothetical condition of transferability).
41. Minority discounts are not relevant in the case of control level valuations. Moreover, marketability discounts should be zero in the case of control level valuations because the rationale for marketability discounts does not exist for control owners who have access to the cash flows of the business. See Mercer, *supra* at 325-344; cf. Pratt, *Business Valuation Discounts and Premiums, supra* at 200-212 (arguing some amount of discount for marketability exists for control level valuations, while acknowledging the topic is controversial within the business appraisal community).

Russ Duckworth, CFA, JD is a business valuation consultant and member of the Family Law Section. Duckworth & Company, LLC offers business appraisal and litigation consulting services in Reno, Las Vegas and throughout Nevada. He can be reached at (775) 376-5600 and Russ@DuckworthLLC.com.