

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2017

PHILADELPHIA, THURSDAY, SEPTEMBER 21, 2017

An **ALM** Publication

FAMILY LAW

Arbitration May Be Warranted in Some Divorce Cases

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Often when clients hire an attorney they believe their issues are so difficult, they will most likely end up in court. But attorneys can provide alternatives to their clients. One such alternative for complex divorce or support issues is private arbitration. This alternative to court can be extremely beneficial to clients in a divorce.

Arbitration may be warranted in many different instances. Perhaps one party owns a business and does not want information regarding the business to be public or scrutinized by a judge. Another reason for the arbitration would be if there are very complex issues involving multiple forensic experts or appraisers. Finally, arbitration is helpful when the parties want to conclude their matters without waiting for hearing dates, appeals and multiple trials.

First, arbitration allows parties to provide confidential financial information to a fact-finder without the



fear personal information regarding income, revenues or debt will be disclosed to third parties. Divorce filings in most counties are public record and unless an order to seal the record is granted, basically anyone can view the file. Executives are wary about having their income and benefits publicly revealed and don't like that their personal tax returns might be reviewed by anyone who might ask to see the file.

If a case has many complex issues relating to appraisals, tax ramifications or complex income issues arbitration might be a good alternative for the client. The court either may not have the sophistication or the time to review volumes of papers and reports. On the other hand, the parties may select an arbitrator who has the financial background to review complex reports and summaries. An arbitrator also might be

able to get to the heart of the matter thereby saving the parties time and money. For instance, in court an attorney will have to start from the beginning, identifying witnesses, their credentials and each step the experts took in coming to their conclusions. Whereas the arbitrator who is provided the financial information well in advance of the hearing, can narrow the issues in the dispute or only ask questions which may need clarification, thereby saving the parties significant attorney fees.

Arbitration may also help the parties because most jurisdictions in the five-county area have a two-tiered divorce system. Instead of trying the case initially in front of the divorce master and then again in front of the court if exceptions are filed, the parties can agree to be bound by the decision of the arbitrator. Additionally, this will cut the cost of the parties filing an appeal and waiting for months, if not years, for a decision. If the parties also have a contested custody case, which must be heard in front of a judge, removing their financial issues out of court will allow the judge to focus solely on the custody issues and not be involved in their financial affairs. Additionally, courts will often schedule multi-day trials over a number of months due to time constraints. An arbitration, on the other hand, can be scheduled for several days in a row in advance to expedite matters.

Arbitrators also can be used for other issues, which the court may be too tied up to deal with at the time. One such issue, which often becomes a problem, is the division of personal property. Most often the court does not have the time to review pieces of furniture or other tangible items with the parties. The parties can select an arbitrator who will help equitably divide the personal property whether it has sentimental value or significant monetary value.

Another reason parties may select an arbitrator would be to resolve the date of separation. Often the court may just be too busy to hear the details regarding the parties' separation. Date of separation is an important issue that can have an impact on the financial distribution. In many cases, it is worthwhile to have an arbitrator decide this issue; which in turn may result in a resolution of the financial issues.

Some attorneys may not like to use an arbitrator because they feel some clients may just need their day in court to resolve their dispute. Other parties may not want to spend the money to hire an arbitrator while having to also pay their attorneys. An arbitrator may not be a good choice in a case where there has been little cooperation and completed discovery.

Selection of the arbitrator also may lead to a dispute. Some arbitrators might be better with business

evaluators but not as qualified with real estate appraisal. An arbitrator may not want to dedicate the time to go through volumes of financial information and narrow the issues but instead will rely on the attorneys to present their cases from beginning to end. Finally, arbitrators may be too costly for some parties.

Arbitration is a great alternative to litigation in court. In the right cases, arbitration can save time and money for the client and resolve the issues without the stress of appeals and court delays. Arbitration provides a swift resolution to complex issues and helps the parties finalize their matter.

Special to the Law Weekly Carolyn R. Mirabile, a partner at Weber Gallagher Simpson Stapleton Fires & Newby and head of the firm's family law group, counsels clients in family law matters including divorce, support, custody, property distribution and drafting of marital settlement and prenuptial agreements.