

ARBITRATION AND FAMILY LAW AN ALTERNATIVE PATH TO THE END OF THE ROAD

BY RYAN P. NOWLIN

What is family law arbitration? The concept of arbitration is ancient. For thousands of years, people have resolved disputes by agreeing to have a private neutral arbiter hear the facts of the argument and render a binding decision. Arbitrated disputes may include how to end a marriage. Today, family law arbitration is an important tool that is perhaps under-utilized in Ohio, but that doesn't need to be the case. Arbitration can be a cost-effective and time-efficient way to resolve your client's domestic relations matter.

Family law arbitration in Ohio

Family law arbitration is permitted in Ohio pursuant to O.R.C. Section 2711.01, which states in part: “[A]ny agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the agreement to submit, or arising after the agreement to submit, from a relationship then existing between them or that they simultaneously create, shall be valid, irrevocable, and enforceable, except upon grounds that exist at law or in equity for the revocation of any contract.” Rule 15(B)(1) of the Rules of Superintendence for the Courts of Ohio also states: “The judge or judges or a division of a court of common pleas having domestic relations or juvenile jurisdiction may, at the request of all parties, refer a case or a designated issue to arbitration.” All disputes involving domestic relations matters may be arbitrated, with one notable exception: while issues involving child support may be arbitrated, custody and visitation matters may not, as the Court has the sole ability to resolve those issues under the doctrine of *parens patriae*. See *Kelm v. Kelm* (2001), 92 Ohio St. 3d 223, 2001-Ohio-168.

How does family law arbitration work?

The process begins with the parties agreeing to arbitrate their domestic relations dispute. Next, the parties need to select an arbitrator. Ideally, the arbitrator will have an expertise in family law, perhaps specifically tailored to the issues involved in the case (for example, an attorney with rich experience with complex business valuation issues might be well suited to hear a matter involving a manufacturing company owned by one of the divorcing parties). The arbitrator “shall have no interest in the determination of the case or relationship with the parties or their counsel that would interfere with the impartial consideration of the case”; further, the arbitrator “is not required to be an attorney.” Sup. R. 15(B)(1).

After all potential conflicts of interests have been disclosed and vetted, the arbitrator meets with the parties and counsel for an introductory conference. The arbitrator then drafts the Arbitration Agreement, which is the document setting forth details such as the scope of the arbitration, the arbitration venue (e.g., the arbitrator's office, the Bar Association, or a conference room at a hotel), general process (for instance, what type of record will be used or whether there will be a settlement conference prior to the final hearing), what type of law will apply, discovery procedures, whether there can be a reconsideration of the award, post-award modification process, and the allocation of fees and costs. The arbitrator conducts a pre-arbitration conference, which may be followed by the arbitrator issuing his/her interim directives (addressing items like temporary support, discovery disputes, interim attorney fees, and any necessary deadlines). Ultimately, the arbitrator conducts the hearing as agreed by the parties, and finally files his/her report and award with the clerk of court within thirty days of the hearing. Sup. R. 15(B)(4) and Sup. R. 15(A)(2)(c). That “report

and award, unless appealed, shall be final and have the legal effect of a verdict upon which judgment shall be entered by the court.” *Id.* Any party may appeal the award to the court within thirty days after the filing of the award with the clerk of court. Sup. R. 15(B)(5) and Sup. R. 15(A)(2)(d).

Why choose arbitration in Ohio?

Arbitration is rooted in a contractual process — the parties to the arbitration can choose many of the procedural and substantive details, including the scope of discovery, exhibits and the testimony at the arbitration. It can be relatively easy for the parties to have an arbitrator hear and rule on interim issues like discovery disputes (potentially, a discovery dispute could be raised and disposed of by a telephone or Zoom hearing within days of the impasse arising). The parties can agree on a deadline for the issuance of an award. For parties concerned about confidentiality and privacy, arbitration provides a way for certain matters to stay off a publicly accessible docket. Of course, there are drawbacks to arbitrating family law matters in Ohio (for instance, cases involving the disputed custody of minor children will need to be at least partially litigated in court, and rounding up third party witnesses who are resistant to participating in the process may also require judicial intervention), but the limitations may be far outweighed by the benefits referenced here.

What is the future of family law arbitration in Ohio?

While Ohio currently lacks a statutory framework which addresses the specifics of domestic relations matters, many other states have adopted the Uniform Family Law Arbitration Act (“UFLAA”), most recently including Pennsylvania. The UFLAA

“provides a roadmap for the proper resolution of unique family law issues and guardrails for vulnerable family law participants”, providing specific guidelines for the arbitration process and review of arbitration awards. Carolyn Moran Zack, *Family Law Arbitration: An Underutilized ADR Option*, *Family Advocate*, Volume 46, Number 2, Fall 2023. The UFLAA also dictates that arbitration awards regarding child custody or child support cannot be confirmed unless the court finds that the award complies with applicable law and is in the best interests of the child.

See Linda D. Elrod, *Arbitration of Child-Related Issues and the Uniform Family Law Arbitration Act*, *Family Advocate*, October 9, 2023. Should Ohio adopt the UFLAA, family law practitioners would have an all-encompassing option to offer clients looking to resolve domestic relations conflicts, including highly specific procedures and rules for family law arbitration. In doing so, Ohio would only improve this alternative path to the resolution of such disputes and give Ohioans another effective way to reach the end of their marital road.



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