

TEXAS FAMILY LAW ARBITRATION

Family law arbitration is an alternative to court litigation. The normal procedure in a Texas divorce after the filing of a petition, is to either have a hearing or reach an agreement on temporary orders, exchange discovery, and either mediate or litigate to reach a final resolution of the issues in the divorce. During the divorce, if discovery is required and the parties are not sufficiently responsive, it is also necessary to go to court and get an order to compel a party to comply with discovery requests.

Arbitration is commonly used to resolve employment and commercial disputes. The arbitration process for family law disputes has become popular due to its ease and economy of use. While the process of arbitration can be very similar to a court room setting there are many substantial ways in which the process is different.

Family arbitration allows the parties to, effectively, choose their own judge. They can choose an arbitrator who has extensive experience with family law cases and is board certified in family law by the Texas State Bar. Most arbitrators can and will set aside enough time to properly hear the case. In some instances an arbitration can be more efficient as most arbitrators are more accessible than a judge with an overcrowded docket. Generally, most arbitrators allow telephonic hearings for issues which do not require much time. An arbitration can also be preceded by presenting a position paper explaining the facts and issues of a case which allows the arbitrator to begin the case with a factual history and, if needed request documents to review before starting a hearing or trial. Most importantly, any hearings or "trial" of the case are private and confidential.

In contrast, judges are initially, randomly assigned to family law cases. The judge assigned to a case may have scant or no experience with family law. In some jurisdictions, judges will impose strident time restrictions to any hearing or trial of a family law case. Since family law cases are more fact specific than most other cases, strident time restraints prevent the parties from being fully heard on the unique issues of their situation. Further, few judges have the time to review every motion on their docket in order to understand what issues the parties are attempting to address before the matter is heard by the judge. If a judge does not have all the information needed to make a good decision, she/he will seldom ask for such information so as not to appear as a less than neutral fact-finder. Finally, a hearing or trial in a courthouse is open to the public and most documents filed in a case can be viewed by the public.

Although arbitrators must be paid by the parties, arbitration can still be more economical than going to court. The cost savings in arbitration is the result of reducing delays caused by heavy court dockets. An attorney must prepare for any hearing or trial. Depending on the issues, the preparation time can be extensive. When a case is delayed due to an overcrowded court docket or a preceding trial running longer than anticipated, the delay is seldom revealed to the attorneys until they show up at court prepared to argue their case. When the case is moved to the next month, the attorneys must again prepare their case before the next date. Arbitration can also allow a less strict adherence to the rules of evidence and procedure. Another advantage, saving

both time and costs) is that a case can be heard in an uninterrupted manner, rather than a day here and day next week as many judges are forced to do when their dockets become overwhelmed. And arbitration also allows for a less formal setting which generally reduces the stress of the parties and the feeling that the litigant's "performance" on the stand is critical.

A key component to the growing use of Family Law Arbitration is the fact that the process is agreement driven. The parties must agree to arbitration, agree to the arbitrator and, to some extent, agree to the parameters of the process. To begin the resolution process with agreements reduces the polarization of the parties participating and allows the process to be less acrimonious and destructive to the parties and the attorneys as well. It is also becoming more frequent that parties, after having been through the court process, agree to resolve any future dispute by arbitration.