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Divorce During a Pandemic: Arbitration as a Potential Answer

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Special to the Legal

All family law attorneys have likely heard a client say at one time or another, “I want my day in court.” But as the pandemic moves into its “second wave,” and as more and more courthouses close due to COVID, a client’s access to their day *in* court is becoming less available. Burdened by limitations and delays caused by the pandemic, many couples are turning to arbitration as a way to expeditiously and responsibly resolve disputes.

In a Nutshell

Family law arbitration is a private dispute resolution process where the parties jointly appoint an arbitrator (a neutral third party) to resolve a dispute. Arbitrators are usually seasoned family law attorneys or retired judges. Each party presents their respective positions to the neutral third party arbitrator, who then makes a decision on how certain issue(s) will be resolved. Arbitrators have full jurisdiction over a divorce matter, and his/her decision is as binding as any other court. The arbitration process can be adapted to suit the parties’ needs—the parties can mutually agree upon their arbitrator, which issues need to be decided, and the time and place for the arbitration.

Who Uses Arbitration

Even before the pandemic slowed down the public justice system, many couples used arbitration to reach divorce solutions in a way that is faster, more cost efficient and certainly more private. Now, with courts in Pennsylvania experiencing significant closures, many family law clients are “on hold” subject to emergency applications. Seeking creative options and alternate methods to finalize divorce related issues, more couples are



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turning to arbitration in order to mitigate pandemic related delays.

The Perks

Arbitration can be a more efficient process to reaching the finish line in a divorce matter. Overcapacity and lack of judicial resources can mean that even during nonpandemic times, cases are not heard on the date scheduled, are repeatedly continued, and are tried piecemeal over a period of many months. In contrast, arbitration gives counsel and parties the ability to control scheduling of hearing dates and times. Because arbitrators have smaller caseloads and flexibility, they are more apt to use informal methods of case management or schedule hearings and conferences telephonically or by Zoom, outside of usual court hours and well before issues become motions or petitions for special relief. Arbitrating a case allows families to never see the inside of a courthouse, thereby alleviating any additional stress caused by appearance in a formal courtroom.

By choosing arbitration, parties can mutually agree upon their “judge,” whereas in a public route, a judge is often assigned to a case randomly. This allows parties to intentionally select seasoned family law attorneys as their triers of fact. Arbitration is much more private than trying a case in open court. Every document filed in court immediately

becomes public record (unless a case is sealed). In cases involving high profile parties or facts that parties may want to keep out of the public domain, arbitration is an excellent option.

Finally, arbitrating cases can ultimately be a more cost effective way for parties to divorce. Arbitration can result in a shorter, and thus, less expensive divorce trial. Although arbitrators typically charge per hour, the streamlined process means clients might pay less in the long run than what they would pay in legal fees for a protracted trial.

The Caveats

Unlike the public judicial process, arbitration is binding and final. If one party is unhappy with the outcome of the arbitration, there are no automatic procedures for review. While this may seem like a precarious option, the notion of an ongoing appeal can be scary as well. In most judicial proceedings in Pennsylvania, a trier of fact’s ruling is subject to review by a higher authority. In theory a litigious spouse could tie up a final divorce decision for years to come whereas arbitration is final upon the issuance of an arbitration award.

Has the Pandemic Changed the World of Matrimonial Litigation?

Given how effective arbitration can be in the right case, it is likely that in a post COVID-19 world, family law attorneys will see a continued use of arbitration as a way to resolve divorce and financial remedy proceedings. Arbitration may not be suitable in all cases. When one party is belligerent or has been violent, the decorum and formality of a courtroom may be more appropriate. With the lack of in-person trials for the foreseeable future, alternative means of resolving or even trying matters should be considered.