DELAWARE STATE BAR ASSOCIATION

CONTINUING LEGAL EDUCATION

ARBITRATION TRAINING CERTIFICATION IN DOMESTIC RELATIONS 2022

DSBA WEBINAR VIA ZOOM

SPONSORED BY THE DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, APRIL 13, 2022 | 10:00 A.M. TO 12:00 P.M.

2.0 Hours of CLE credit including 0.5 hour in Enhanced Ethics for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

Experienced arbitrators in the area of Family Law will provide attendees with wisdom and insight as to the best practices for handling arbitration in divorce ancillary matters in the Family Court of the State of Delaware.

CLE SCHEDULE

Topics

Family Court Civil Rule 16.3

Model Family Law Arbitration Act

Advantages and Disadvantages of Arbitration in Divorce Ancillary Matters Methods and Options for Conducting a Family Law Arbitration Hearing Ethical Considerations in Family Law Arbitrations

Speakers

Leslie B. Spoltore, Esquire
Obermayer Rebmann Maxwell & Hippel LLP

Julie H. Yeager, Esquire
The Yeager Law Firm LLC

adr SERVICES

Visit https://www.dsba.org/event/arbitration-training-certification-in-domestic-relations-2022/ for all the DSBA CLE seminar policies.

Please note that the attached materials are supplied by the speakers and presenters and are current as of the date of this posting.

Speakers

Leslie B. Spoltore, Esquire
Obermayer Rebmann Maxwell & Hippel LLP

Julie H. Yeager, Esquire
The Yeager Law Firm LLC

Leslie B. Spoltore

PARTNER

Email 302.274.3062

vCard Print to PDF

LOCATED IN
Wilmington, DE

MEET LESLIE MORE

Delaware Family Law and Commercial Attorney.

Leslie focuses her practice on family law along with commercial and corporate litigation.

In her family law practice, Leslie assists clients with divorce, adoptions, child support and alimony, custody and guardianship, pre-nuptial and post-nuptial agreements, litigation, and property division, including the valuation of closely-held businesses. In addition to her work as a family law litigator, Leslie also serves as a neutral assessor, mediator, and arbitrator.

In her commercial and corporate litigation practice, Leslie focuses on breach of contract actions, books and records demands, matters involving fiduciary duties and corporate governance, non-competition

MEET LESLIE EXPERIENCE ACTIVITIES & HONORS NEWS & INSIGHTS

supportive divorce lawyer and became an attorney to help families through difficult times. While she naturally brings a personal touch to family law matters, she also makes a point to bring the same attention to her commercial and corporate litigation practice. Leslie proudly serves the Wilmington area along with all of Delaware.

family, baking, hiking with her dog, genealogy, and listening to U.S. Supreme Court and Delaware Supreme Court oral arguments.

Who'd play you in a movie about your life?

Sandra Bullock

What are you listening to right now?

Kenny Chesney

What's your favorite quote?

Be the person your dog thinks you are.

– J.W. Step

Education

Delaware Law School, JD

Ursinus College, BA

Admissions

Delaware

United States District Court for the District of Delaware

Related Capabilities

Family Law

Adoption

Divorce

Domestic Abuse

Mediation

Paternity

Litigation

Appellate

Commercial Litigation

Labor & Employment

Employment Litigation

Labor Arbitration

Industry Focus

Financial Services

Health Care

Individuals & Private Clients

International Businesses

Local Governments & Municipal Authorities

Nonprofit Organizations

Real Estate & Construction

Universities & Secondary Schools

Join Our Team

Locations

Doylestown, PA

Harrisburg, PA

New Haven, CT

New York, NY

Philadelphia, PA

Pittsburgh, PA

West Chester, PA

West Conshohocken, PA

Wilmington, DE

Attorney Profiles

Julie H. Yeager, Esquire

Delaware Family Law Attorney

Expertise

Julie H. Yeager, Esquire provides skilled and knowledgeable counsel to clients in all types of civil family law cases. She is a tough litigator with thousands of hours of experience inside the courtroom.

Julie is a certified mediator and arbitrator in divorce and child custody cases and an instructor for family law mediation training seminars offered by the Delaware Family Court. Clients can voluntarily choose mediation or binding or non-binding arbitration versus having a judge decide their case. Julie helps clients address the issues they need to resolve in order to separate and/or divorce, including support, custody/visitation, and property division, without ever going to the Courthouse or having to appear before a judicial officer.

Julie has practiced family law for more than a decade and earned several distinctions within her field. Julie was named a Top Lawyer in 2018, 2019, and 2020 for Family Law and in 2021 for Family Law and ADR

Divorce & Custody Mediator

> "This is a firm that truly cares about the clients they serve."
>
> — Shanika Sanchez

> "Working with Mrs. Yeager was a delight. I would recommend the firm to anyone needing family legal advice/representation."
>
> — Denise Miller

> "The firm has been very proactive and helpful. Working with Julie Yeager has been a pleasure."
>
> — Cary Rosenthal

Mediation by Delaware Today. From 2009 to 2018, she represented parents with children in foster care as a State-contracted parent attorney. From 2015-2018, Julie held a position on the Court Improvement Project Steering Committee, which works to ensure that children in foster care are safe, healthy and experience permanency. From 2017 to 2018, Julie spearheaded a Parent Engagement Project.

Education and Prior Experience

Julie earned her Bachelor of Arts degree from Villanova University, graduating cum laude from the Honors Program in 2002. She was awarded her Juris Doctor from Temple Law School in 2005 and is admitted to practice law in Delaware, Pennsylvania and New Jersey. Julie established The Yeager Law Firm LLC in 2011.

Professional Associations and Memberships

Julie is an active member of the Delaware law community. She was elected to serve as the Chair of the Family Law Section of the Delaware State Bar Association in 2017, Vice Chair in 2016 and Secretary in 2015. She has been an active Member at Large on the Executive Committee of Melson-Arsht Inn of Court since 2015. Julie has presented at Continuing Legal Education seminars on various topics, such as Mediation, Alimony, Adoption, Best Practices in School Choice Custody Cases, and Leading Practices in Dependency/Neglect Proceedings. She is the leading contributor for the firm's Blog.

From 2014-2020, Julie served as a co-chair on the planning committee for the Combined Campaign Cup, a charitable golf tournament that raises necessary funds for Delaware's three non-profit legal services organizations. She enjoys golf, curling and pickle ball in her spare time.

ARBITRATION TRAINING CERTIFICATION AS A FAMILY LAW ARBITRATOR

- Leslie B. Spoltore, Esquire
- Obermayer Rebmann Maxwell & Hippel LLP

- Julie Yeager, Esquire
- The Yeager Law Firm

Alternative Dispute Resolution Family Court Civil Rule 16.3

Provides for ADR, including arbitration.

Arbitration may be binding or non-binding.

- Pursuant to (g)(1), “If the parties stipulate in writing that the decision shall be binding, the case shall be removed from the Court’s docket.”

Family Court proceedings are closed. Parties to an Arbitration may want the Arbitrator to sign a confidentiality agreement.

Why Arbitrate Family Law Matters

Privacy

Expediency/Scheduling

Cost

Ability to Select a Decision Maker

Codes of Conduct Can Serve As Good Guidance

Delaware Judicial Code of Conduct

American Arbitration Association Code of Ethics

JAMS - https://www.jamsadr.com/arbitrators-ethics/

Organizing Your Arbitration

- Retention
  - Disclosure of any potential conflicts
  - Hourly; flat rate; half day or full day
- Scope of the Arbitration
  - Agreement to Arbitrate
- Pre-Arbitration Conference
  - Written Pre-Arbitration Submissions
    - Narrative
    - Ancillary Pretrial Stipulations
  - Court Reporter
  - Space
  - Experts
  - Technology
  - Exchanging Exhibits and Witness Lists
  - Format of Decision

Helpful Tools

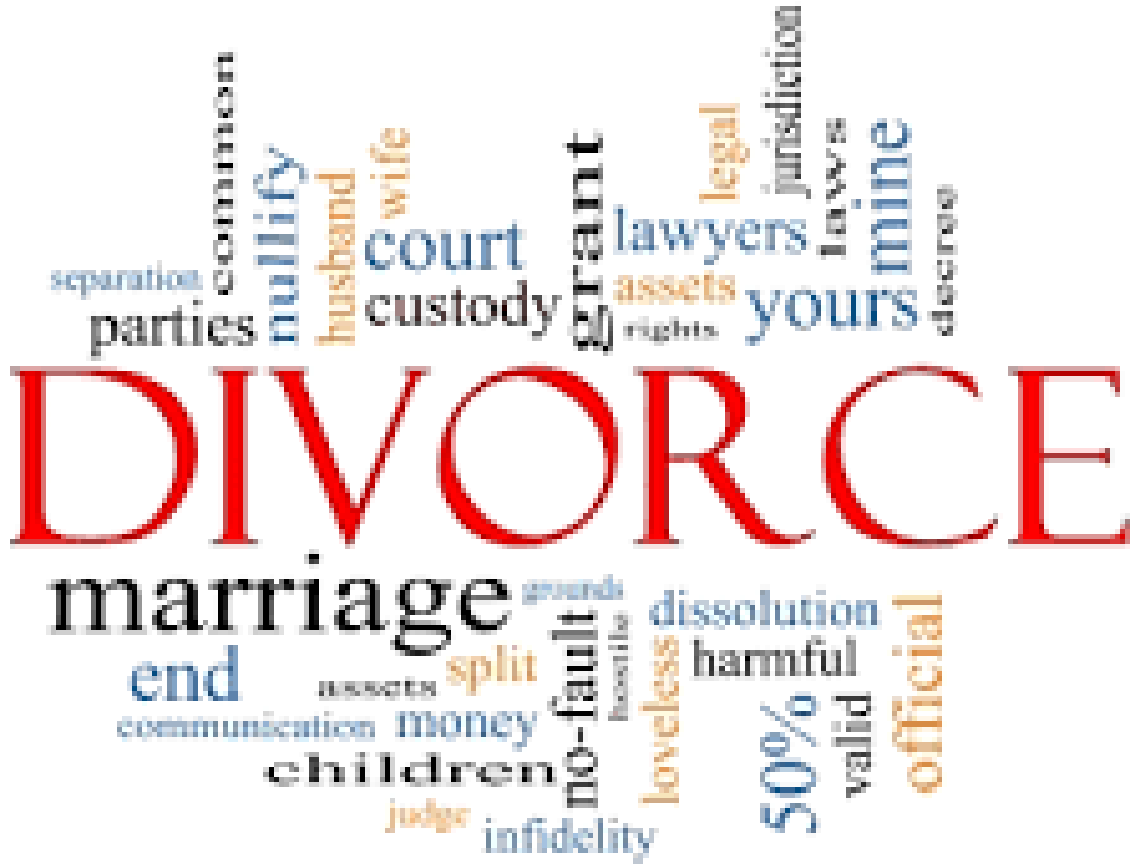
- Financial calculator software – FinPlan, Family Law Software
- Child Support Calculator - https://courts.delaware.gov/family/supportcalculator/Disclaimer
- Ancillary Pretrial Stipulation – https://courts.delaware.gov/Forms/Download.aspx?id=100688

RESOURCES

- American Academy of Matrimonial Lawyers – Model Family Law Arbitration Act
- Uniform Family Law Arbitration Act

POTENTIAL ISSUES FOR ARBITRATORS

- Appearance of Neutrality/Impartiality
- Dealing with Pro Se Parties
- Domestic Violence
- Wide Variety of Issues



Rule 16.3. Alternative dispute resolution.

(a) In any proceeding, the Court may upon motion by either party or sua sponte enter a scheduling order that either establishes or limits the time to engage in compulsory alternative dispute resolution ("ADR"), the format of which is to be agreed upon by the parties. Such ADR may include, but shall not be limited to, non-binding or, if agreed to by the parties, binding arbitration, mediation or neutral case assessment. If the parties cannot agree on the format of ADR, the default format shall be mediation unless otherwise ordered by the Court. Mediation as referred to in this rule is a separate process from the mediation required in Family Court Civil Rule 16.1. Therefore, the provisions contained in this rule, including those related to confidentiality, shall not apply to Rule 16.1 mediations.

(b) In the event the parties cannot agree on an ADR Practitioner, they shall file a joint motion with the Court within thirty (30) days of the issuance of the scheduling order requesting that the Court appoint an ADR Practitioner for the parties. The Court may impose sanctions upon a party or both parties if it determines that the parties have not attempted to agree upon an ADR Practitioner in good faith.

(c) The parties shall pay the ADR Practitioner in accordance with the allocation and amount of fees established by the ADR Practitioner and agreed to by the parties or ordered by the Court. The ADR Practitioner may apply to the Court for sanctions against any party who fails to comply with the terms of engagement established by the ADR Practitioner and agreed to by the parties. Sanctions may include, but shall not be limited to, dismissal of the action or default judgment.

(d) The ADR Practitioner may not be called as a witness in any aspect of the litigation, or in any proceeding relating to the litigation in which the ADR Practitioner served, unless ordered by the Court. In addition, all ADR Practitioners, when serving as an arbitrator, mediator or neutral assessor, shall be immune from civil liability for, or resulting from, any act or omission done or made while engaged in ADR, unless an act or omission was made or done in bad faith, with malicious intent, or in a manner exhibiting a willful, wanton disregard of the rights, safety, or property of another. Each ADR Practitioner shall remain bound by any confidentiality agreement signed by the parties and the ADR Practitioner as part of the ADR.

(e) All memoranda, work products, and other materials contained in the case files of an ADR Practitioner or the Court related to the mediation are confidential. Any communication made in or in connection with the mediation which relates to the controversy being mediated, whether made to the ADR Practitioner or a party, or to any person made at a mediation conference, is confidential. The mediation agreement shall be confidential unless the parties otherwise agree in writing. Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except:

(1) Where all parties to the mediation agree in writing to waive confidentiality;

(2) In any action between the ADR Practitioner and a party to the mediation for damages arising out of mediation; or

(3) Statements, memoranda, materials, or other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use and actually used in the mediation conference.

(f) If a mediation is not successful, no party may use statements made during the mediation or memoranda, materials or other tangible evidence prepared for mediation at any point in the litigation in any way, including, without limitation, to impeach the testimony of any witness.

(g) The following definitions apply to this rule:

(1) "Arbitration" is a process by which a neutral arbitrator hears both sides of a controversy and renders a fair decision based on the facts and the law. If the parties stipulate in writing that the decision shall be binding, the case shall be removed from the Court's docket.

(2) "Mediation" is a process by which a mediator facilitates the parties in reaching a mutually acceptable resolution of a controversy. It includes all contacts between the mediator and any party or parties until a resolution is agreed to, the parties discharge the mediator, or the mediator determines that the parties cannot agree.

(3) "Neutral case assessment" is a process by which an experienced neutral assessor gives a non-binding, reasoned oral or written evaluation of a controversy, on its merits, to the parties. The neutral assessor may use mediation or arbitration techniques to aid the parties in reaching a settlement.

(4) "ADR Practitioner" shall include the arbitrator, mediator, neutral case assessor or any other person engaged by the parties to facilitate ADR.

Arbitrators Ethics Guidelines

Introduction

A. The purpose of these Ethics Guidelines is to provide basic guidance to JAMS Arbitrators regarding ethical issues that may arise during or related to the Arbitration process. Arbitration is an adjudicative dispute resolution procedure in which a neutral decision maker issues an Award. Parties are often represented by counsel who argue the case before a single Arbitrator or a panel of three Arbitrators, who adjudicate, or judge, the matter based on the evidence presented.

B. Arbitration - either entered into voluntarily after a dispute has occurred, or as agreed to in a pre-dispute contract clause - is generally binding. By entering into the Arbitration process, the Parties have agreed to accept an Arbitrator's decision as final. There are instances when an Arbitrator's decision may be modified or vacated, but they are extremely rare. The Parties in an Arbitration trade the right to full review for a speedier, less expensive and private process in which it is certain there will be an appropriately expeditious resolution.

C. Other sets of ethics guidelines for Arbitrators exist, such as those promulgated by the National Academy of Arbitrators and jointly by the American Arbitration Association and the American Bar Association. An Arbitrator may wish to review these for informational purposes.

D. These Guidelines are national in scope and are necessarily general. They are not intended to supplant applicable state or local law or rules. An Arbitrator should be aware of applicable state statutes or court rules, such as laws concerning disclosure that may apply to the Arbitrations being conducted. In the event that these Guidelines are inconsistent with such statutes or rules, an Arbitrator must comply with the applicable law.

E. In addition, most states have promulgated codes of ethics for judges and other public judicial officers. In some instances, these codes apply to certain activities of private judges, such as court-ordered Arbitrations. Arbitrators should comply with codes that are specifically applicable to them or to their

activities. Where the codes do not specifically apply, an Arbitrator may choose to comply voluntarily with the requirements of such codes.

F. The ethical obligations of an Arbitrator begin as soon as the Arbitrator becomes aware of potential selection by the Parties and continue even after the decision in the case has been rendered. JAMS strongly encourages Arbitrators to address ethical issues that may arise in their cases as soon as an issue becomes apparent, and where appropriate to seek advice on how to resolve such issues from the National Arbitration Committee.

G. The Guidelines in Articles I through IX apply to neutral Arbitrators regardless of the method by which they may have been selected. Article X is intended to apply to Party-appointed Arbitrators who are non-neutral.

Many Arbitration agreements provide for the appointment of an Arbitrator by each Party and the appointment of the third Arbitrator by the two Party-appointed Arbitrators. Party-appointed Arbitrators should be presumed to be neutral, unless the parties' agreement, the arbitration rules agreed to by the parties or applicable laws provide otherwise.

1. Where the Party-appointed Arbitrator is expected to be non-neutral, some of the Guidelines applicable to neutral Arbitrators do not apply or are altered to suit this process. For example, while non-neutral Arbitrators must disclose any matters that might affect their independence, the opposing Party ordinarily may not disqualify such person from service as an Arbitrator.
2. It is appropriate for the party appointed arbitrators to address the status of their service with the party that appointed them, with each other and with the neutral arbitrator and to determine whether the Parties would prefer that they act in a neutral capacity.
3. *Note regarding international Arbitrations.* Tripartite Arbitrations in which the Parties each appoint one Arbitrator are common in international disputes; however, all Arbitrators, by whomever appointed, are expected to be independent of the Parties and to be neutral. They are sometimes expected to communicate *ex parte* with the Party that appointed them solely for purposes of the selection of the chairman and not otherwise.

H. These Guidelines do not establish new or additional grounds for judicial review of Arbitration Awards.

Guidelines

I. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE OFFICE OF THE ARBITRATION PROCESS.

An Arbitrator has a responsibility to the Parties, to other participants in the proceeding, and to the profession. An Arbitrator should seek to discern and refuse to lend approval or consent to any attempt by a Party of its representative to use Arbitration for a purpose other than the fair and efficient resolution of a

dispute.

II. AN ARBITRATOR SHOULD BE COMPETENT TO ARBITRATE THE PARTICULAR MATTER.

An Arbitrator should accept an appointment only if the Arbitrator meets the Parties' stated requirements in the agreement to arbitrate regarding professional qualifications. An Arbitrator should prepare before the Arbitration by reviewing any statements or documents submitted by the Parties. An Arbitrator should refuse to serve or should withdraw from the Arbitration if the Arbitrator becomes physically or mentally unable to meet the reasonable expectations of the Parties.

III. AN ARBITRATOR SHOULD INFORM ALL PARTIES OF THE ROLE OF THE ARBITRATOR AND THE RULES OF THE ARBITRATION PROCESS.

A. An Arbitrator should ensure that all Parties understand the Arbitration process, the Arbitrator's role in that process, and the relationship of the Parties to the Arbitrator.

B. An Arbitrator may encourage the Parties to mediate their dispute but should not suggest that the Arbitrator serve as the mediator. In the event that, prior to or during the Arbitration, all Parties request an Arbitrator to participate in discussions of settlement or to combine the Arbitration with another dispute resolution process, the Arbitrator should explain how the Arbitrator's role and relationship to the Parties may be altered, including the impact such a shift may have on the willingness of the Parties to disclose certain information to the Arbitrator serving in the settlement-related role. Nothing in these Guidelines is intended to prevent an Arbitrator from acting as a neutral in another dispute resolution process in the same case, if requested to do so by all Parties and if an appropriate written waiver is obtained. The Parties should, however, be given the opportunity to select another neutral to conduct any such process.

IV. AN ARBITRATOR SHOULD MAINTAIN CONFIDENTIALITY APPROPRIATE TO THE PROCESS.

A. Unless otherwise agreed by the Parties, or required by applicable rules or law, an Arbitrator should keep confidential all matters relating to the Arbitration proceedings and decisions.

B. An Arbitrator should not discuss a case with persons not involved directly in the Arbitration unless the identity of the Parties and details of the case are sufficiently obscured

to eliminate any realistic probability of identification.

C. An Arbitrator may discuss a case with another member of the Arbitration panel hearing that case, whether or not all panel members are present.

D. An Arbitrator should not use confidential information acquired during the Arbitration proceeding to gain personal advantage or advantage of others, or to affect adversely the interest of another. An Arbitrator should not inform anyone of the decision in advance of giving it to all Parties. Where there is more than one Arbitrator, an Arbitrator should not disclose to anyone the deliberations of the Arbitrators.

E. An Arbitrator should not participate in post-Award proceedings, except (1) if requested to make a correction to or clarification of an Award, (2) if required by law or (3) if requested by all Parties to participate in a subsequent dispute resolution procedure in the same case.

V. AN ARBITRATOR SHOULD ENSURE THAT HE OR SHE HAS NO KNOWN CONFLICT OF INTEREST REGARDING THE CASE, AND SHOULD ENDEAVOR TO AVOID ANY APPEARANCE OF A CONFLICT OF INTEREST.

A. An Arbitrator should promptly disclose, or cause to be disclosed all matters required by applicable law and any actual or potential conflict of interest or relationship or other information, of which the Arbitrator is aware, that reasonably could lead a Party to question the Arbitrator's impartiality.

B. An Arbitrator may establish social or professional relationships with lawyers and members of other professions. There should be no attempt to be secretive about such relationships but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

C. An Arbitrator should not proceed with the process unless all Parties have acknowledged and waived any actual or potential conflict of interest. If the conflict of interest casts serious doubt on the integrity of the process, an Arbitrator should withdraw, notwithstanding receipt of a full waiver.

D. An Arbitrator's disclosure obligations continue throughout the course of the Arbitration

and require the Arbitrator to disclose, at any stage of the Arbitration, any such interest or relationship that may arise, or that is recalled or discovered. Disclosure should be made to all Parties, and the Arbitrator should accept such work only where the Arbitrator believes it can be undertaken without an actual or apparent conflict of interest. Where more than one Arbitrator is appointed, each should inform the others of the interests and relationships that have been disclosed.

E. An Arbitrator should avoid conflicts of interest in recommending the services of other professionals. If an Arbitrator is unable to make a personal recommendation without creating a potential or actual conflict of interest, the Arbitrator should so advise the Parties and refer them to a professional service, provider or association.

F. After an Award or decision is rendered in an Arbitration, an Arbitrator should refrain from any conduct involving a Party, insurer or counsel to a Party to the Arbitration that would cast reasonable doubt on the integrity of the Arbitration process, absent disclosure to and consent by all the Parties to the Arbitration. This does not preclude an Arbitrator from serving as an Arbitrator or in another neutral capacity with a Party, insurer or counsel involved in the prior Arbitration, provided that appropriate disclosures are made about the prior Arbitration to the Parties to the new matter.

G. Other than agreed fee and expense reimbursement, an Arbitrator should not accept a gift or item of value from a Party, insurer or counsel to a pending Arbitration. Unless a period of time has elapsed sufficient to negate any appearance of a conflict of interest, an Arbitrator should not accept a gift or item of value from a Party to a completed Arbitration, except that this provision does not preclude an Arbitrator from engaging in normal, social interaction with a Party, insurer or counsel to an Arbitration once the Arbitration is completed.

H. Where relevant state or local rule or statute is more specific than these Guidelines as to Arbitrator disclosure, it should be followed.

VI. AN ARBITRATOR SHOULD ENDEAVOR TO PROVIDE AN EVENHANDED AND UNBIASED PROCESS AND TO TREAT ALL PARTIES WITH RESPECT AT ALL STAGES OF THE PROCEEDINGS.

A. An Arbitrator should remain impartial throughout the course of the Arbitration. Impartiality means freedom from favoritism either by word or action. The Arbitrator should be aware of and avoid the potential for bias based on the Parties' backgrounds, personal attributes or conduct during the Arbitration, or based on the Arbitrator's pre-existing knowledge of or opinion about the merits of the dispute being arbitrated. An Arbitrator should not permit any social or professional relationship with a Party, insurer or counsel to a Party to an Arbitration to affect his or her decision-making. If an Arbitrator becomes incapable of maintaining impartiality, the Arbitrator should withdraw.

B. An Arbitrator should perform duties diligently and conclude the case as promptly as the circumstances reasonably permit. An Arbitrator should be courteous to the Parties, to their representatives and to the witnesses, and should encourage similar conduct by all participants in the proceedings. An Arbitrator should make all reasonable efforts to prevent the Parties, their representatives, or other participants from engaging in delaying tactics, harassment of Parties or other participants, or other abuse or disruption of the Arbitration process.

C. Unless otherwise provided in an agreement of the Parties, (1) an Arbitrator should not discuss a case with any Party in the absence of every other Party, except that if a Party fails to appear at a hearing after having been given due notice, the Arbitrator may discuss the case with any Party who is present; and (2) whenever an Arbitrator communicates in writing with one Party, the Arbitrator should, at the same time, send a copy of the communication to every other Party. Whenever an Arbitrator receives a written communication concerning the case from one Party that has not already been sent to each Party, the Arbitrator should do so.

D. When there is more than one Arbitrator, the Arbitrators should afford each other full opportunity to participate in all aspects of the Arbitration proceedings.

VII. AN ARBITRATOR SHOULD WITHDRAW UNDER CERTAIN CIRCUMSTANCES.

A. An Arbitrator should withdraw from the process if the Arbitration is being used to further criminal conduct, or for any of the reasons set forth above - insufficient knowledge of relevant procedural or substantive issues, a conflict of interest that has not been or cannot be waived, the Arbitrator's inability to maintain impartiality, or the Arbitrator's physical or

mental disability. In addition, an Arbitrator should be aware of the potential need to withdraw from the case if procedural or substantive unfairness appears to have irrevocably undermined the integrity of the Arbitration process.

B. Except where an Arbitrator is obligated to withdraw or where all Parties request withdrawal, an Arbitrator should continue to serve in the matter.

VIII. AN ARBITRATOR SHOULD MAKE DECISIONS IN A JUST, INDEPENDENT AND DELIBERATE MANNER.

A. An Arbitrator should, after careful deliberation and exercising independent judgment, promptly or otherwise within the time period agreed to by the Parties or by JAMS Rules, decide all issues submitted for determination and issue an Award. An Arbitrator's Award should not be influenced by fear or criticism or by any interest in potential future case referrals by any of the Parties or counsel, nor should an Arbitrator issue an Award that reflects a compromise position in order to achieve such acceptability. An Arbitrator should not delegate the duty to decide to any other person.

B. If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator should comply with such request unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she may inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

IX. AN ARBITRATOR SHOULD UPHOLD THE DIGNITY AND INTEGRITY OF THE ARBITRATION PROCESS IN MATTERS RELATING TO MARKETING AND COMPENSATION.

An Arbitrator should avoid marketing that is misleading or that compromises impartiality. An Arbitrator should ensure that any advertising or other marketing to the public conducted on the Arbitrator's behalf is truthful. An Arbitrator may discuss issues relating to compensation with the Parties but should not engage in such discussions if they create an appearance of coercion or other impropriety and should not engage in *ex parte* communications regarding compensation.

X. ETHICAL GUIDELINES APPLICABLE TO NON-NEUTRAL ARBITRATORS.

These Guidelines are applicable to non-neutral Arbitrators, except as follows:

Guideline III: A non-neutral Arbitrator should ensure that all Parties and other Arbitrators are aware of his or her non-neutral status.

Guideline V: A non-neutral Arbitrator is obligated to make disclosures of any actual or potential conflicts of interest, although a non-neutral Arbitrator is not obligated to withdraw if requested to do so only by the party who did not appoint him or her.

Guideline VI:

1. A non-neutral Arbitrator may be predisposed toward the Party who appointed him or her but in all other respects is obligated to act in good faith and with integrity and fairness.
2. A non-neutral Arbitrator may engage in *ex parte* communication with the Party that appointed him or her, but should disclose to the Parties and the other Arbitrators the fact that such communications are occurring and should honor any agreement reached with the Parties and the other Arbitrators regarding the timing and nature of such communications.

Guideline IX: The compensation arrangements between a non-neutral Arbitrator and the Party that appointed him or her usually is treated as confidential but may be disclosed in connection with any fee application in the Arbitration proceeding.

For more information, please call your local JAMS office at 1-800-352-5267.

- Discovery Protocols ›
- Consumer Minimum Standards ›
- Arbitrators Ethics Guidelines ›
- Arbitration Forms ›
- Virtual Arbitration FAQs ›

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR [ ] COUNTY

[NAME],	:	
Petitioner	:	File No. :
	:	Case No.:
VS.	:	
	:	
[NAME],	:	
Respondent	:	

[PARTY]'S PRE-ARBITRATION STATEMENT

Respectfully submitted,

Michael W. Arrington, Esquire (#3603)
Parkowski, Guerke & Swayze, P.A.
1105 North Market Street, 19th Floor
Wilmington, DE 19801

Date:

TABLE OF CONTENTS

Page

EXHIBITS

EXHIBITS TO ASSET AND LIABILITY CHART

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR [ ] COUNTY

[NAME],	:	
Petitioner	:	File No. :
	:	Case No.:
VS.	:	
	:	
[NAME],	:	
Respondent	:	

[PARTY]'S PRE-ARBITRATION STATEMENT

[NAME], by and through his undersigned attorneys, Parkowski, Guerke & Swayze, P.A., submits this Pre-Arbitration Statement to assist the Arbitrator at the hearing scheduled on [DATE]. He reserves the right to supplement and/or amend this Pre-Arbitration Statement.

I. FACTUAL AND PROCEDURAL HISTORY

Procedural Posture.

[Parties] were married on [DOM], separated on [DOS] and divorced on [DODiv]. Wife filed her Petition on [DATE]. This is the first marriage for both parties. The parties have one child: Little Tyke (born February 31, 2000) ("Lil' Tyke").

Wife's Petition requested retention of ancillary jurisdiction over Property Division, Alimony, Court Costs, and Attorney's Fees. The issue of alimony was resolved with finality by Court Order dated [DATE]. Pursuant to the parties Antenuptial Agreement, discussed in greater detail below, attorney's fees and costs may be awarded to either party only based on unreasonable litigious conduct. The Antenuptial Agreement also requires equal division of the net marital estate in the event of filing for divorce prior to the fifth anniversary of the date of marriage. Therefore,

the only issue before the arbitrator is effectuating an equal distribution of net marital estate in this relatively simple case. Arbitration is scheduled for [DATE].

Relevant Factual Background and the Antenuptial Agreement.

In December 2017, the parties began negotiating an Antenuptial Agreement. Wife retained [Great Attorney No. 1], Esquire, and Husband retained Michael W. Arrington, Esquire, both former chairpersons of the Delaware Bar Association Family Law Section, for review and negotiation of the agreement. The parties' agreement containing contractual provisions that fixed the parties rights in the event of divorce was executed on September 31, 2001. A copy of the governing Antenuptial Agreement is attached as **Exhibit "A"**. The parties stipulate and agree the antenuptial is bonding and enforceable.

Additionally, on October 35, 2001, the parties executed an "Acknowledgment and Agreement Related to Marital Residence" stipulating that …

Pertinent Antenuptial Agreement Provisions.

While the entire Antenuptial Agreement is controlling, certain provisions are of particular relevance in the reconciliation of the net marital estate in this case:

Paragraph 3 requires

Paragraph 4.c. provides

Paragraph 5 defines Separate Property of the parties. Subsection A unequivocally provides that separate property includes, *inter alia,*

Paragraph 6 provides that

Paragraph 7 recognizes Husband's premarital interest in business entities as his separate property, but

Paragraphs 8 and 9 require equal division of the marital portion of the parties' retirement assets.

Paragraph 10 defines the duration of marriage as "the period from the date that a marriage ceremony takes place until the filing of a Petition for Divorce."

Paragraph 12 requires equal division of the net marital estate as the parties were married less than

Paragraph 13 provides, "In the event of the parties' separation, divorce or annulment, attorney's fees and costs may awarded to either party only based on unreasonable litigious conduct." Exhibit A at ¶-13 (emphasis added).

Paragraph 18 requires good faith participation in Alternative Dispute Resolution such as mediation or arbitration in the event of a separation and/or divorce.

Paragraph 26 prohibits oral modification of the Antenuptial Agreement and requires a written waiver, signed by both parties, in order to be valid.

Paragraph 28 requires that Delaware law be applied in construing the Antenuptial Agreement in all respects at all times.

II. ASSETS AND LIABILITIES

See Assets and Liabilities chart attached hereto as **Exhibit "H"**. Supporting Documentation for each area of the chart is attached as **Exhibits "B" through "G"**. Further explanation is provided in Section IV, below.

III. DISTRIBUTION FACTORS

Paragraph 12 of the Antenuptial Agreement requires that

Paragraph 10 defines the duration of the marriage as "the period from the date that a marriage ceremony takes place until the filing of a Petition for Divorce." Wife filed her petition for divorce on [DATE]. The duration of the marriage was [LOM]. Since the marriage was less than [x] years in duration, the net marital estate must be divided equally, and the statutory equitable distribution factors are not relevant to this case.

IV. EQUAL DIVISION OF THE NET MARITAL ESTATE

ASSETS.

1. Real Estate. The parties hold title as tenants by the entirety to three Delaware real properties.

a. [Property 1]. [Purchase, Mortgage Balance, Appraised or CMA Value, Party Retaining]

b. [Property 2]. [Purchase, Mortgage Balance, Appraised or CMA Value, Party Retaining]

c. [Property 3]. [Purchase, Mortgage Balance, Appraised or CMA Value, Party Retaining]T

d. Summary. The total marital equity in the three real properties is $xxx,xxx,xxx.xx. [PARTY] proposes to retain the three properties and the marital equity as a portion of his/her entitlement in the equal division of the net marital estate.

2. Bank Accounts.

a. [Account 1].

b. [Account 2].

c. [Account 3].

d. [Account 4].

e. HSA Account. In conjunction with [PARTY]'s high deductible health insurance policy, there is a Health Savings Account[1] which is a marital asset.

3. Automobiles.

4. Life Insurance.

There was one life insurance policy purchased during the marriage. The marital term policy is owned by [PARTY] and has no marital cash value.

5. Retirement Funds.

Husband has a 401(k) plan with Harvey Hanna & Associates. The value at the date of marriage was $73,600. The value as of December 31, 2015 (last available statement) was $158,306. The martial portion of the 401(k) account is $84,706 which needs to be divided in half by QDRO with gains and losses thereon from February 8, 2016.

Husband has a premarital Roth IRA excluded by the Agreement. There was one deposit of $5,000 made during the marriage. However, this September 27, 2012 deposit was transferred from one of Husband's non-marital account and therefore is Husband's separate property under paragraph 3 of the Antenuptial Agreement.

DEBTS. The parties had marital credit cards paid in full each month from the joint accounts. The only marital debt for reconciliation in this case is

[1] The HSA account is distinct from the health insurance coverage that [PARTY] presently pays for [SPOUSE] without credit.

POST-MARRIAGE CREDIT DUE TO HUSBAND.

Husband is entitled to credits for payments made on Wife's behalf after [DOS]. The credits are:

1. Credit 1;
2. Credit 2;
3. Credit 3;
4. Credit 4;

V. ALIMONY

VI. COUNSEL FEES, COSTS AND EXPENSES

Counsel fees, costs and expenses may be apportioned only upon a finding of unreasonable litigious conduct.

VII. WITNESSES

In addition to the parties, Husband may call witnesses necessary to rebut Wife's argument. Although Husband does not know at this time which witnesses may be required, Husband identifies the following potential fact witnesses:

1. [Witness 1].
2. [Witness 2].

Husband reserves the right to call rebuttal witnesses, if needed, after presentation of Wife's evidence.

VIII. EXPERT WITNESSES

Husband engaged Lorenz Associates to appraisal all three properties. [APPRAISER] inspected each house and signed the appraisals. In the event that Wife contests the appraisals and no compromise is reached, Husband may have either or both appraisers testify at the arbitration.

Husband reserves the right to call [Expert 2]. Husband may request to have [Expert 2] testify by telephone in light of the distance from [DISTANT PLANET] to Wilmington, and the uncertainty of whether Wife will raise the issue regarding assets that are unquestionably non-marital.

IX. TRIAL EXHIBITS

Husband intends to introduce into evidence the attached exhibits and reserves the right to submit additional exhibits after presentation of Wife's case.

X. PROPOSED RESOLUTION

Husband's proposed distribution is set forth in Exhibit H.

The net marital post-tax assets are $xx,xxx.xx. Wife current holds $xx,xxx.xx and Husband holds $xx,xxx.xx. In order to equalize the net martial post-tax asset, Wife owes Husband $xx,xxx.xx.

Husband is entitled to credits of $xx,xxx.xx from Wife as of [DOS], plus any additional withdrawals that Wife has or will make from the HSA account after [DOS].

In order to equalize the above the net marital post-tax assets, credits to Husband, and post-marriage net rental income, **Wife owes Husband $xx,xxx.xx (post-tax).**

Wife is entitled to half of the marital portion of Husband's 401(k). Wife should prepare the QDRO for the fixed amount of $xx,xxx.xx plus and minus the gains and losses from [DATE]. **Husband owes Wife $xx,xxx (pre-tax).**

Form 466
Rev 12/19

The Family Court of the State of Delaware

In and For ☐ New Castle County ☐ Kent County ☐ Sussex County

ANCILLARY PRETRIAL STIPULATION

Petitioner	*v. Respondent*	
Name	**Name**	Case Name
Street Address (including Apt)	**Street Address (including Apt)**	
P.O. Box Number	**P.O. Box Number**	File Number
City/State/Zip Code	**City/State/Zip Code**	
Phone **D.O.B.**	**Phone** **D.O.B.**	Petition Number
Attorney Name	**Attorney Name**	
E-Mail Address	**E-Mail Address**	Date of Marriage
FAX Number	**FAX Number**	
		Date of Separation
		Date of Divorce

Petitioner	*v. Respondent*
Employer Name **Years Employed**	**Employer Name** **Years Employed**
Employer Address	**Employer Address**
Position or Occupation	**Position or Occupation**
Current Annual Income	**Current Annual Income**

If you have remarried, indicate date of marriage	**If you have remarried, indicate date of marriage**

Names and dates of birth of minor children of the parties. Indicate with whom the child(ren) reside: Mother (M), Father (F), Shared (S).				
Name	**D.O.B.**	**Resides with**		
		M ☐	F ☐	S ☐
		M ☐	F ☐	S ☐
		M ☐	F ☐	S ☐
		M ☐	F ☐	S ☐
		M ☐	F ☐	S ☐
		M ☐	F ☐	S ☐

Names and dates of birth of adult children of the parties. Indicate with whom the child(ren) reside: Mother (M), Father (F), Shared (S).			
Name	**D.O.B.**	**Enrolled in School**	
		Y ☐	N ☐
		Y ☐	N ☐
		Y ☐	N ☐
		Y ☐	N ☐
		Y ☐	N ☐
		Y ☐	N ☐

Date of settlement meeting*:		Jurisdiction has been retained for the following:	
Date of pretrial conference:		☐ Property Division	☐ Alimony
Date and time of ancillary hearing:		☐ Counsel Fees	☐ Court Costs
*or reason why not held:			

Percentage Distribution Requested by:	Petitioner	Respondent

A. ESTIMATED TRIAL TIME

PETITIONER'S Estimated Trial Time: _____ RESPONDENT'S Estimated Trial Time: _____

B. HOUSEHOLD BELONGINGS

Have household belongings been divided?

Petitioner: ☐ Yes ☐ No	Respondent: ☐ Yes ☐ No

C. PENSIONS

Have qualified domestic relations orders (QDROs) or pension allocation orders been prepared for all marital pension plans?

Petitioner: ☐ Yes ☐ No	Respondent: ☐ Yes ☐ No

D. ISSUES IN AGREEMENT

1. List marital assets and their specific values:

ASSETS	AMOUNT	COMMENTS

ASSETS	AMOUNT	COMMENTS

2. List marital debts to be shared and their specific balances:

DEBTS	AMOUNT	COMMENTS

3. State the annual incomes which the parties agree should be attributed to each party:

Petitioner: $	Respondent: $

4. State other issues in agreement:

•

E. <u>ISSUES IN DISPUTE</u>

1. List the marital assets in dispute and state each party's position:

ASSETS / AMOUNT	PETITIONER'S POSITION	RESPONDENT'S POSITION
/		
/		
/		
/		
/		
/		
/		
/		
/		
/		

2. List the debts in dispute and state each party's position:

DEBTS / AMOUNT	PETITIONER'S POSITION	RESPONDENT'S POSITION
/		
/		
/		
/		
/		
/		
/		
/		
/		

3. If either party's income is in dispute, state the basis of each party's position:

PETITIONER'S POSITION	RESPONDENT'S POSITION

4. State other issues in dispute and each party's position:

ISSUE	PETITIONER'S POSITION	RESPONDENT'S POSITION

F. WITNESSES

List the witness(es) you expect to call and the reason for their testimony. Other witnesses will be permitted to testify only with Court approval:

PETITIONER'S WITNESS(ES)		RESPONDENT'S WITNESSES(ES)	
Name of Witness	**Reason for Testimony**	**Name of Witness**	**Reason for Testimony**

G. OTHER RELEVANT CIRCUMSTANCES

List any other relevant considerations (including factors listed in Title 13, Section 1513 of the *Delaware Code*, such as extraordinary or dissipation by a party, exceptional gifts, or non-marital assets):

PETITIONER	RESPONDENT

H. ALIMONY

If alimony is requested, the party seeking alimony is to complete the following:

1. Have you cohabitated with another adult since separation? ☐ Yes ☐ No
2. Amount of monthly child support received from either party: _____
3. Amount of monthly alimony: $_____ Date of Order: _____
4. Reasons party is dependent. If health is at issue, identify the supporting evidence to be presented at trial:

•

5. Use the **Form 465 Ancillary Financial Disclosure Report** to list your CURRENT and PROPOSED expenses, and attach to this form.

I. PROPOSED REASONS

Pursuant to Title 13, Section 15413 of the *Delaware Code*, the Court, in dividing the marital property and allocating the marital debts, must consider the following factors:

1. The length of the marriage;

PETITIONER	RESPONDENT

2. Any prior marriage of the party;

PETITIONER'S POSITION	RESPONDENT'S POSITION

3. The age, health, station, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties;

PETITIONER'S POSITION	RESPONDENT'S POSITION

4. Whether the property award is in lieu of or in addition to alimony;

PETITIONER'S POSITION	RESPONDENT'S POSITION

5. The opportunity of each for future acquisitions of capital assets and income;

PETITIONER'S POSITION	RESPONDENT'S POSITION

6. The contribution or dissipation of each party in the acquisition, preservation, depreciation or appreciation of the marital property, including the contribution of a party as homemaker or spouse;

PETITIONER'S POSITION	RESPONDENT'S POSITION

7. The value of the property set apart to each party;

PETITIONER'S POSITION	RESPONDENT'S POSITION

8. The economic circumstances of each party at the time of the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the party with whom any children of the marriage will live;

PETITIONER'S POSITION	RESPONDENT'S POSITION

9. Whether the property was acquired by gift, except those gifts excluded by Title 13, Section 1513(b)(1) of the *Delaware Code*;

PETITIONER'S POSITION	RESPONDENT'S POSITION

10. The debts of the parties;

PETITIONER'S POSITION	RESPONDENT'S POSITION

11. Tax consequences;

PETITIONER'S POSITION	RESPONDENT'S POSITION

J. OTHER

Attach a "Wright Chart" and a proposed form of Order. State any other stipulations below:

•

The litigants are hereby bound in the ancillary proceedings by the stipulations made above, absent a showing of good cause and amended Court Order and have an affirmative duty to provide the Court with any material change in information.

At the Court's discretion, the parties may be required to amend, resubmit or supplement the Ancillary Pretrial Stipulation. Failure to comply may result in the imposition of sanctions that may include, but are not limited to, dismissal of the ancillary matters with prejudice, fines, counsel fees and/or forfeiting the Ancillary Hearing date.

At least seven days prior to the ancillary hearing, the parties shall exchange and premark all exhibits, with the exception of any exhibits which either party seeks to introduce solely for the purpose of impeaching the other party. Petitioner's exhibits shall be premarked "P-_" and Respondent's exhibits shall be premarked "R-_." At the commencement of the Ancillary Hearing, the parties shall submit a stipulation of the matters about which they agree and the matters that remain at issue, and Qualified Domestic Relations Orders ("QDROs") dividing any assets which either party proposes be divided by QDRO.

PETITIONER	RESPONDENT
PETITIONER'S ATTORNEY	RESPONDENT'S ATTORNEY
DATE	DATE

IT IS SO ORDERED.

JUDGE

DATE

Date emailed/mailed: _____

WRIGHT v. WRIGHT CHART

*** Both Petitioner and Respondent must complete this Chart. ***

Completed by: ☐ **Petitioner:** _____ ☐ **Respondent:** _____
(Enter Name Here) (Enter Name Here)

Date: _____ **Attorney Name:** _____

ASSETS	VALUE (Net)	Petitioner	Respondent
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
ASSET TOTAL	**$**	**$**	**$**
		$	**$**

owes $ on Assets.

WRIGHT v. WRIGHT CHART

Completed by: ☐ **Petitioner:** _____ ☐ **Respondent:** _____
(Enter Name Here) (Enter Name Here)

Date: _____ **Attorney Name:** _____

DEBTS * **(* Subject to documentation)**	**VALUE (Net)**	**Petitioner**	**Respondent**
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
	$	$	$
DEBT TOTAL	**$**	**$**	**$**
		$	**$**

owes $ on Debts.

Total Payment by to of $.

WRIGHT v. WRIGHT CHART

Completed by: ☐ **Petitioner:** _____ ☐ **Respondent:** _____
(Enter Name Here) (Enter Name Here)

Date: _____ **Attorney Name:** _____

TAX DEFERRED ASSETS
•

JOINT TRIAL EXHIBIT LIST

JOHN DOE V. MARY DOE, FAM. CT. FILE NO. CN22-00001; PETITION NO. 22-00001

JX No.	PX No.	RX No.	Date	Description	Beg Bates	End Bates	Deposition Exhibit Number	Petitioner's Objections [RESERVED]	Respondent's Objections [RESERVED]
JX-1	PX-1	Rx-8	4/15/2019	Federal Tax Return			John Smith CPA Dep. Ex. 1		
JX-2		RX-9	4/17/2020	Letter from Petitioner's Sister That Respondent is Mean	JD000024	JD00026	Mary Doe Dep. Ex. 5		Rule 401 (Relevance)
JX-3	PX-2		12/31/2020	Mary Doe Pay Stub	MD00001	MD00001	Mary Doe Dep. Ex. 5		
JX-4	PX-3		1/15/2021	Mary Doe's Bucket List	MD00034	MD00040		Rule 401 (Relevance)	
JX-5		RX-11	2/15/2022	Johe Doe PNC Checking Account Statements	JD001204	JD001255			
Demonstrative 1			Undated	Expert Chart of Cash Available for Support			Financial Guy Dep. Ex. 2		

UNIFORM FAMILY LAW ARBITRATION ACT

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-TWENTY-FIFTH YEAR
STOWE, VERMONT
JULY 8 - JULY 14, 2016

WITH PREFATORY NOTE AND COMMENTS

October 7, 2016

ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 125th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.

- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.

- ULC keeps state law up-to-date by addressing important and timely legal issues.

- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.

- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.

- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.

- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.

- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

UNIFORM FAMILY LAW ARBITRATION ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

BARBARA ANN ATWOOD, University of Arizona – James E. Rogers College of Law, 1201 E. Speedway, P.O. Box 210176, Tucson, AZ 85721-0176, *Chair*

LORIE FOWLKE, 2696 N. University Ave., #220, Provo, UT 84604

MICHAEL B. GETTY, 430 Cove Towers Dr., #503, Naples, FL 34110

GAIL HAGERTY, Burleigh County Court House, P.O. Box 1013, 514 E. Thayer Ave., Bismarck, ND 58502-1013

ELIZABETH KENT, Commission to Promote Uniform Legislation, c/o Legislative Division, Department of the Attorney General, 425 Queen St., Honolulu, HI 96813

DEBRA LEHRMANN, Supreme Court of Texas, Supreme Court Bldg., 201 W. 14th St., Room 104, Austin, TX 78701

MARY QUAID, House Legislative Services, Louisiana House of Representatives, P.O. Box 44486, Baton Rouge, LA 70804

HARRY TINDALL, 1300 Post Oak Blvd., Suite 1550, Houston, TX 77056-3081

CAM WARD, 124 Newgate Rd., Alabaster, AL 35007

DAVID ZVENYACH, 707 10th St. NE, Washington, DC 20002

LINDA D. ELROD, Washburn University School of Law, 1700 SW College Ave., Topeka, KS 66621, *Reporter*

EX OFFICIO

RICHARD T. CASSIDY, 100 Main St., P.O. Box 1124, Burlington, VT 05402, *President*

WILLIAM W. BARRETT, 600 N. Emerson Ave., P.O. Box 405, Greenwood, IN 46142, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

PHYLLIS G. BOSSIN, 105 E. 4th St., Suite 1300, Cincinnati, OH 45202-4054, *ABA Advisor*

HELEN E. CASALE, 401 Dekalb St., 4th Floor, Norristown, PA 19401-4907, *ABA Section Advisor*

DOLLY HERNANDEZ, 2665 S. Bayshore Dr., Suite 1204, Miami, FL 33133, *ABA Section Advisor*

LARRY R. RUTE, 212 SW 8th Ave., Suite 102, Topeka, KS 66603, *ABA Section Advisor*

EXECUTIVE DIRECTOR

LIZA KARSAI, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.uniformlaws.org

UNIFORM FAMILY LAW ARBITRATION ACT

TABLE OF CONTENTS

UNIFORM FAMILY LAW ARBITRATION ACT

Prefatory Note

Family law arbitration offers parties an alternative to negotiation, litigation, collaborative law, mediation or court-sponsored methods of dispute resolution. In arbitration, the parties, usually spouses, agree to submit one or more issues arising from the dissolution of their relationship to an arbitrator, who is a neutral third party, for resolution. The arbitrator makes a decision, called an award, based on the facts presented. Unlike litigation, parties choose the arbitrator or the method of selecting the arbitrator and pay the arbitrator's fee. Arbitration awards typically are subject to limited judicial review. In exchange, arbitration offers an alternative for those who want an experienced decision-maker in a proceeding that is potentially faster, more confidential, and less adversarial.

The Uniform Law Commission has promulgated two arbitration acts – the Uniform Arbitration Act in 1955 and the Revised Uniform Arbitration Act in 2000. Every state has one of these arbitration statutes which are used extensively in labor and commercial law. Arbitration has been advocated for family law disputes as early as the 1960s. See Coulson, *Family Arbitration – An Exercise in Sensitivity*, 3 FAM. L.Q. 22 (1969). Most states have little law on the topic of family law arbitration and rely on their commercial arbitration statutes.

Arbitration clauses began to appear in premarital and mediated settlement agreements partly because increasing numbers of contested family law cases have flooded court dockets, resulting in delays in getting hearings and trials. In 1990, the American Academy of Matrimonial Lawyers (AAML) adopted Rules for Arbitration of Financial Issues. In 1999 North Carolina enacted the first comprehensive family law arbitration act patterned on the Uniform Arbitration Act. N.C. GEN. STAT. § 50-41 to 62. In 2005, the AAML adopted a Model Family Law Arbitration Act, patterned after North Carolina and the Revised Uniform Arbitration Act (2000). Although no state has adopted the AAML Model Act, the AAML conducts trainings to certify family law arbitrators. The American Arbitration Association has developed a family dispute service and offers arbitration, as well as mediation services.

Courts have held that parties may arbitrate property and spousal support issues because parties may release property rights by contract. Because the agreement to arbitrate is a contract, the parties are bound. Spencer v. Spencer, 494 A.2d 1279 (D. C. App. 1985). Arbitration awards are subject to limited review and appeal rights. Child-related issues, however, present different issues because of the court's traditional role as *parens patriae* acting to protect the child. Additionally, child-related issues are never "final" because they are modifiable throughout a child's minority.

Several states have enacted court rules or statutes authorizing arbitration of all issues arising at divorce, including property, spousal maintenance, child custody and child support. See, e.g., ARIZ. R. FAM. L. PRO. R. 67(c); MICH. COMP. L. §600.5071 (parties may stipulate to binding arbitration governing property, child custody, child support, parenting time, spousal support, attorneys' fees, enforceability of prenuptial and postnuptial agreements, allocation of debt, and "other contested domestic relations matters."); N.J. SUP. CT. R. 5:1-5 (2015).

The Uniform Law Commission Executive Committee appointed the Family Law Arbitration Study Committee in April 2012. After considering the feasibility and desirability of a uniform or model act on family law arbitration for several months, the Study Committee unanimously recommended that a drafting committee be appointed to develop an act on family law arbitration. The Study Committee further suggested that the act need only contain the features of arbitration law that are essential for family law arbitration and are typically not addressed by commercial arbitration statutes. The Study Committee envisioned an act that would incorporate by reference the existing structure of a state's commercial arbitration statutes – whether it is the original Uniform Arbitration Act of 1955 (UAA) or the 2000 Revised Uniform Arbitration Act (RUAA). In 2013 the Uniform Law Commission approved a drafting committee to write a Family Law Arbitration Act.

The Committee originally tried to draft a free-standing act addressing family law arbitration in full, rather than a partial act with references that incorporate other arbitration law in the state. As the drafting process developed, it appeared a free-standing act would repeat much of the existing arbitration law. Therefore, the final Act incorporates by reference a state's existing arbitration law—whether it be the RUAA or the UAA—for many steps in the arbitration process. The UFLAA expressly tracks certain RUAA provisions that are necessary for family law arbitration and do not appear in the UAA, such as sections giving arbitrators the power to conduct arbitration in a manner appropriate to the fair and expeditious disposition of the proceeding, recognizing the parties' rights to engage in discovery, and providing arbitrator immunity.

The UFLAA potentially covers the arbitration of any contested issue arising under the enacting state's family law. See Section 3. Typical issues would be property division, allocation of debt, spousal support, parenting time, child support, interpretation of marital agreements, and attorneys' fees. Importantly, the Act excludes certain status determinations, such as the termination of parental rights or the granting of an adoption, from the arbitrator's authority. The UFLAA does not cover agreements to arbitrate according to the tenets of a particular religion or before a religious tribunal.

A central question was whether disputes about child custody or child support should be subject to arbitration. While states disagree, most states now permit arbitration of child custody and child support as long as meaningful judicial review of the awards is preserved. See COLO. REV. STAT. ANN. § 14-10-128.5; GA. CODE ANN. § 19-9-1.1; N.M. STAT. ANN.§ 40-4-7.2; TEX. FAM. CODE § 153.0071; WIS. STAT. ANN. § 802.12. In at least one state, courts have held that parents have a constitutional right to resolve their custody disputes by arbitration. See Fawzy v. Fawzy, 973 A.2d 347 (N.J. 2009). A minority of states exclude some or all child-related issues from contractual arbitration, either by statute or by case law. See, e.g., CONN. GEN. STAT. ANN. § 46b-66 (binding arbitration is not permitted to resolve child visitation, custody, or support); Goldberg v. Goldberg, 1 N.Y.S.3d 360 (App. Div. 2015) (finding child custody is not subject to arbitration because of court's exclusive *parens patriae* authority but allowing arbitration of child support as long as the award complies with the Child Support Act). In order to provide needed guidelines for the majority of states, including a requirement for vigorous judicial review, the Act presumptively extends to child-related disputes. In deference to the minority of states opposed to arbitration of child-related issues, however, the Act includes an opt-out provision

under Section 3.

The UFLAA provides several safeguards to protect the *parens patriae* power of the court to protect children. Section 14 requires that arbitration proceedings involving child-related disputes must be recorded, and under Section 15 any award affecting children must spell out the underlying reasons. Sections 16 and 19 provide for robust judicial scrutiny of child-related awards. A court cannot confirm an award determining child custody or child support unless it finds that the award complies with applicable law and is in the child's best interests. Another safeguard for a child is Section 12 which provides that if an arbitrator finds that a child is the subject of abuse or neglect, the arbitration must stop and the arbitrator must report his or her findings to the appropriate state authority. In addition, if domestic violence is evident between the parties, a court—not the arbitrator—decides whether arbitration may proceed.

One policy issue concerned whether the Federal Arbitration Act (FAA) might preempt a state family law arbitration statute if the state law imposed special requirements inconsistent with the FAA. As a general rule, family law is state law. State courts have jurisdiction over family law disputes and presumably can set out the parameters for family law arbitration. The Federal Arbitration Act (FAA) establishes a strong nationwide policy favoring the enforceability of arbitration agreements in contracts affecting interstate commerce. See 9 U.S.C. §§ 1-16. Section 2 of the FAA expressly covers agreements to arbitrate existing controversies as well as future disputes that may arise between the parties. 9 U.S.C. § 2. The Supreme Court has construed the FAA to preempt state laws that categorically prohibit the arbitration of a particular type of claim or impose special requirements on arbitration agreements. See, e.g., Marmet Health Care Center, Inc. v. Brown, ___U.S.___,132 S. Ct. 1201 (2012) (per curiam) (invalidating a state policy that categorically barred enforcement of arbitration clauses in nursing home admission agreements); Doctor's Associates, Inc. v. Lombardi, 517 U.S. 681 (1996) (invalidating a state law that required arbitration clauses to be in underlined capital letters on first page of contract).

A problem of preemption can arise if the family law matter has interstate aspects. Because conflicts over marital property or spousal maintenance often have interstate elements, agreements to arbitrate such conflicts could potentially fall within the FAA, and courts have recognized as much. See In re Provine, 312 S.W.3d 824 (Tex. App. 2009) (noting FAA not applicable because all marital property was in Texas); Verlander Family Ltd. Partnership v. Verlander, 2003 WL 304098 (Tex. App. Feb. 13, 2003) (unpublished) (FAA applicable because parties held assets in family partnership located in both Texas and New Mexico). As a result, the Act tracks the language of the FAA regarding the general validity of arbitration agreements. Ordinary contract defenses (lack of voluntariness, fraud, duress, and the like) remain available as a basis to challenge the validity of an arbitration agreement at the time of enforcement.

A point of contention during the drafting was whether to permit pre-dispute arbitration agreements—that is, agreements to arbitrate a dispute that may arise in the future. The use of pre-dispute agreements in consumer contracts of adhesion has been the subject of widespread criticism. In family law arbitration, however, actual consent to the process is a prerequisite, whether in an earlier agreement or an agreement entered into at the time of marital dissolution. The inclusion of arbitration clauses in premarital agreements is fairly common, and courts have enforced such clauses so long as the premarital agreement itself is valid and the clause is not

otherwise subject to challenge. See, e.g., LaFrance v. Lodmell, ___ A.3d ___, 2016 WL 4505748 (Conn. Sept. 6, 2016) (upholding agreement to arbitrate in premarital agreement); Kelm v. Kelm, 623 N.E.2d 39 (Ohio 1993) (upholding enforceability of arbitration clause in premarital agreement to arbitrate child support and spousal support); LINDA J. RAVDIN, PREMARITAL AGREEMENTS – DRAFTING AND NEGOTIATION 286-89 (ABA 2011) (providing practice guidelines on including arbitration clauses in premarital agreements). In addition, there is no built-in bias favoring one party over the other in family law arbitration. Instead, arbitrators are selected by the parties or the court, often bringing specialized expertise to the parties' particular dispute. The parties might choose a family law specialist who has represented both fathers and mothers, a retired domestic relations judge, or another professional to arbitrate all, or just a part, of a case.

With respect to child-related disputes, however, the state's strong interest in protecting children warrants greater restrictions. The Act bars a pre-dispute arbitration agreement of child-related issues unless the parties reaffirm the agreement after the dispute arises or the agreement was incorporated in a court decree in a family law proceeding—such as a marital settlement agreement. See UFLAA Section 5.

Family law arbitration is on the rise across the United States, but state law in general has not kept up with the trend. The Uniform Family Law Arbitration Act provides needed guidelines for this growing form of dispute resolution to ensure that the process is fair and efficient for the participants and protects the interests of vulnerable family members.

UNIFORM FAMILY LAW ARBITRATION ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Family Law Arbitration Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) "Arbitration agreement" means an agreement that subjects a family law dispute to arbitration.

(2) "Arbitration organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers an arbitration or is involved in the selection of an arbitrator.

(3) "Arbitrator" means an individual selected, alone or with others, to make an award in a family law dispute that is subject to an arbitration agreement.

(4) "Child-related dispute" means a family law dispute regarding [legal custody, physical custody, custodial responsibility, parental responsibility or authority, parenting time, right to access, visitation], or financial support regarding a child.

(5) "Court" means [the family court] [insert name of a tribunal authorized by this state to hear a family law dispute].

(6) "Family law dispute" means a contested issue arising under the [family] [domestic relations] law of this state.

(7) "Party" means an individual who signs an arbitration agreement and whose rights will be determined by an award.

(8) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal entity.

(9) "Record", used as a noun, means information that is inscribed on a tangible medium

or that is stored in an electronic or other medium and is retrievable in perceivable form.

(10) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(11) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. [The term includes a federally recognized Indian tribe.]

Legislative Note: *In paragraph (4), a state should insert the term used under state law to refer to a dispute over custodial responsibility and parenting time for a child. In paragraph (6), a state should insert the term used under state law to refer to the family or domestic relations law of the state.*

Comment

The definition of "arbitrator" includes one or more individuals. Family law arbitration ordinarily involves only a single neutral arbitrator, selected by the parties or by the court. It is possible, however, that parties might want a panel of three arbitrators to resolve a particularly complex or contentious issue. In that event, the normal practice would be to have each party independently select an arbitrator and for the two independent arbitrators to jointly select a third arbitrator.

"Arbitration organization" tracks the definition in the Revised Uniform Arbitration Act § 1(1). Under UFLAA Section 5, an arbitration agreement must identify the arbitrator, a method of selecting the arbitrator, or an arbitration organization from which the arbitrator will be drawn. Several professional organizations maintain lists of arbitrators that meet their own screening standards. In addition, entities associated with family courts may offer arbitration services.

Two key terms in the act are "family law dispute" and "child-related dispute." A family law dispute incorporates the domestic relations law of the particular state. In most states, the subject matters within family or domestic relations law include issues relating to defining, classifying, valuing, and dividing real and personal property; determining and allocating debt; awarding alimony, maintenance, or spousal support; determining custodial responsibility, parenting time, and child support; construing and enforcing agreements—premarital, postmarital or marital incident to a divorce; and awards of attorney fees. In some states marital tort issues may be included. In other words, each state's family or domestic law will dictate the potential scope of a family law arbitration in that state unless a state excludes a particular category of dispute under Section 3. State law will provide the meaning of "child," "parent," and "spouse,"

for example, and will determine whether claims arising out alternative relationships such as civil unions are covered. Similarly, if state law authorizes nonparents under defined circumstances to seek access to a child, that category of claim would fall within this act and be subject to arbitration if all relevant parties agreed to arbitrate.

A child-related dispute, in turn, is a subset of a family law dispute and includes all aspects of custodial responsibility, parenting time, and child support. If state policy requires, a state may exclude child-related disputes from arbitration under Section 3.

The terms "person" "record," "sign," and "state" comport with the current definitions used in other uniform laws.

SECTION 3. SCOPE.

(a) This [act] governs arbitration of a family law dispute.

(b) This [act] does not authorize an arbitrator to make an award that:

(1) grants a [legal separation], [divorce] [dissolution of marriage], or annulment;

(2) terminates parental rights;

(3) grants an adoption or a guardianship of a child or incapacitated individual; [or]

(4) determines the status of [dependency] [a child in need of protection] [;][or]

[(5) determines a child-related dispute] [; or

(6) determines [other specified dispute to be excluded from arbitration]].

Legislative Note: *In the bracketed language in subsection (b)(1) and (4), a state should insert the appropriate term used under state law.*

If a state wants to exclude child-related disputes from arbitration under this act, it should enact subsection (b)(5). If a state excludes child-related disputes from arbitration, the state should delete the following provisions from the act: Sections (5)(c); 12(c); 13(c)(5) and (12); 14(b); 15(c); 16(c); and 19(b), (c), and (d); and the introductory phrase in Section 15(b).

If a state wants to exclude other family law disputes from arbitration, it should enact subsection (b)(6) and identify the category of dispute to be excluded.

Comment

In most states, a family law dispute would include the interpretation and enforcement of premarital and other agreements between the parties; the characterization, valuation and division of property and allocation of debt; awards of alimony; custodial responsibility and parenting

time; child support; and award of attorney's fees. If a state enacts the UFLAA, the parties can choose to have an arbitrator decide any family law dispute that could be decided by a judge, except the status determinations listed in this section. The arbitrator cannot divorce the parties, grant an adoption or guardianship, terminate parental rights, adjudicate a child in need of care, or the like. Parties may not delegate these powers to the arbitrator.

The trend appears to be in the direction of permitting arbitration of child-related disputes so long as courts retain their essential role in overseeing awards affecting children. See Vanderborgh v. Krauth, 370 P.3d 661 (Colo. App. 2016); Brazzel v. Brazzel, 789 S.E.2d 626 (Ga. Ct. App. 2016); In re Marriage of Golden and Friedman, 874 N.E.2d 927 (Ill. 2012); Harvey v. Harvey, 680 N.W.2d 835 (Mich. 2004); Vanderheiden v. Marandola, 994 A.2d 74 (R.I. 2010). In fact, the New Jersey Supreme Court has held that parents have a constitutional right to resolve their custody disputes by arbitration. See Fawzy v. Fawzy, 973 A.2d 347 (N.J. 2009).

Nevertheless, a minority of states exclude child-related disputes from arbitration altogether. See, e.g., Goldberg v. Goldberg, 1 N.Y.S.3d 360 (App. Div. 2015) (because of court's exclusive *parens patriae* authority, arbitrator may not decide child custody dispute but could decide child support); CONN. GEN. STAT. ANN. § 46b-66(c) (arbitration shall not include issues related to child custody, visitation, or support). Subsections (b)(5) and (6) are bracketed provisions permitting states to carve out child-related disputes and additional categories of disputes from arbitration. The Legislative Note explains that the carve-out option allows a state to exclude child custody or child support from arbitration and identifies later subsections of the Act that should be deleted if child-related disputes are excluded. The last bracketed subsection would allow states to choose to exclude child custody but not child support or to identify another area, such as parentage, that the legislature does not want parties to arbitrate.

SECTION 4. APPLICABLE LAW.

(a) Except as otherwise provided in this [act], the law applicable to arbitration is [cite this state's statutes and procedural rules governing contractual arbitration].

(b) In determining the merits of a family law dispute, an arbitrator shall apply the law of this state, including its choice of law rules.

Comment

Subsection (a) incorporates by reference a state's existing law and procedure applicable to arbitration. To date, about one-third of the states have enacted the Revised Uniform Arbitration Act. In the majority of states, the Uniform Arbitration Act is still in effect. The RUAA contains more detailed procedures than the UAA. A state using the UAA may want to incorporate some provisions of the RUAA.

Subsection (b) provides that the merits of the case will be determined by the law of the forum state, including its choice of law principles. In general, family courts apply forum law to

the disputes that fall within their jurisdiction. In most cases, parties can consent to personal jurisdiction but not subject-matter jurisdiction. Under this subsection, the parties may choose to use the law of another state to apply to their dispute if permissible under forum law. For example, parties might enter into a post-nuptial agreement and select the law of a particular state to govern the agreement's interpretation. If they included an arbitration clause in the agreement, the arbitrator would apply the law chosen by the parties if a court of the forum state would do so. If, however, child custody is at issue, jurisdiction is determined under the Uniform Child Custody Jurisdiction and Enforcement Act, and the law of the state with jurisdiction applies.

Because of the privacy and flexibility of arbitration, couples can use some creative alternatives in their choice of law. The subject of pet custody, for instance, is of interest to a growing number of family law clients. Through private arbitration agreements, parties could define the decision-making criteria governing custody of family pets, so long as the agreement does not violate the forum's choice-of-law rules.

Except for child-related awards, an isolated error of law is not a basis for vacating an award under this act. Nevertheless, an arbitrator's complete disregard of forum law might be subject to challenge as action beyond the arbitrator's authority. See Section 19(a)(4); Washington v. Washington, 770 N.W.2d 908 (Mich. App. 2009) (awards are not subject to vacatur for mere mistake of law, but clear disregard of controlling law could be ground for vacating). Also, states may enact additional grounds for vacating awards through the bracketed provision in Section 19(a)(7).

Because of the state's *parens patriae* responsibility to protect children, judicial review of child-related awards is rigorous. Accordingly, with respect to child-related disputes, the arbitrator's failure to follow applicable law is a basis for vacating the award. See Section 19(b). Additionally, the Uniform Child Custody Jurisdiction and Enforcement Act and the Uniform Interstate Enforcement of Family Support Act will determine jurisdiction for child-related disputes.

Any federal law applicable to the family law dispute will govern of its own force. With regard to child-related disputes, for example, the Parental Kidnapping Prevention Act, 28 U.S.C. 1738A, may be relevant to the court's exercise of jurisdiction.

SECTION 5. ARBITRATION AGREEMENT.

(a) An arbitration agreement must:

(1) be in a record signed by the parties;

(2) identify the arbitrator, an arbitration organization, or a method of selecting an arbitrator; and

(3) identify the family law dispute the parties intend to arbitrate.

(b) Except as otherwise provided in subsection (c), an agreement in a record to arbitrate a

family law dispute that arises between the parties before, at the time, or after the agreement is made is valid and enforceable as any other contract and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

(c) An agreement to arbitrate a child-related dispute that arises between the parties after the agreement is made is unenforceable unless:

(1) the parties affirm the agreement in a record after the dispute arises, or

(2) the agreement was entered during a family law proceeding and the court approved or incorporated the agreement in an order issued in the proceeding.

(d) If a party objects to arbitration on the ground the arbitration agreement is unenforceable or the agreement does not include a family law dispute, the court shall decide whether the agreement is enforceable or includes the family law dispute.

Comment

Arbitration is a matter of contract. Arbitrators derive their authority to resolve the dispute from the parties' agreement. Therefore, the agreement to arbitrate is the foundational document that governs the arbitration. The court cannot unilaterally order the parties to arbitration without an agreement. See Budrawich v. Budrawich, 115 A.3d 39 (Conn. App. 2015) (absent specific agreement between parties, trial court lacked authority to require parties to arbitrate child support question). The parties, however, can voluntarily choose to arbitrate one or more issues.

To ensure that parties voluntarily enter an arbitration agreement, the agreement must be in a record which identifies the arbitrator or method of selecting the arbitrator and the family law dispute the parties want to arbitrate. Among the factors that a court might consider in determining if the agreement was voluntary would be whether parties knew what they were waiving and understood the essential features of arbitration. Arbitration as a means of resolving family law disputes must be a voluntary and informed choice of the parties, not an alternative that is the product of coercion or a contract of adhesion. See MICH. COMP. L. § 600.5072 (requiring that parties acknowledge in a record that they have been informed of the essential features of arbitration, including that arbitration is voluntary, binding, and right of appeal is limited; arbitration is not recommended for cases involving domestic violence; the arbitrator will decide each issue assigned to arbitration and the court will enforce the decision; the parties may consult with an attorney before and during the arbitration process; and the parties are obligated to pay for arbitration).

The UFLAA recognizes that the use of pre-dispute arbitration clauses in premarital

agreements is fairly common and courts generally accept them. See, e.g., LaFrance v. Lodmell, ___A.3d ___, 2016 WL 4505748 (Ct. 2016); Kelm v. Kelm, 623 N.E.2d 39 (Ohio 1993). In addition, the core mandate of the Federal Arbitration Act (9 U.S.C. § 2) (FAA) applies to any agreement to arbitrate an existing or subsequent dispute arising out of a contract affecting interstate commerce. A case in which divorcing spouses have agreed to arbitrate competing claims to property located in more than one state or interests in a multi-state business would likely be construed as involving interstate commerce. Indeed, marital or community property often includes real property, accounts in financial institutions, interests in business entities, and retirement benefits, whether federal, state or private. Thus, the FAA may apply to those family law arbitration agreements involving interstate property, broadly defined.

This section provides that the arbitration agreement is enforceable as any other contract and irrevocable except on grounds for revocation of a contract at law or equity. The language is drawn from the FAA and the Revised Uniform Arbitration Act (RUAA). There is a rich body of case law on the issue of enforceability of arbitration agreements. As with ordinary contract law, the agreement may be challenged at the time of enforcement on the basis of duress, fraud in the inducement, unconscionability, or other traditional grounds. See Bruhl, *The Unconscionability Game: Strategic Judging and the Evolution of Federal Arbitration Law*, 83 N.Y.U. L. REV. 1420 (2008). In a few states, courts have enforced agreements to arbitrate family disputes according to the tenets of a particular religion or before religious tribunals. See, e.g., Berg v. Berg, 927 N.Y.S.2d 83 (App. Div. 2011). Because this act has no application to religious arbitration, the enforceability of agreements to arbitrate under religious doctrine is governed by other law of the state.

With respect to child-related awards, the general enforceability of agreements to arbitrate disputes that might arise in the future does not apply. Subsection (c) bars pre-dispute arbitration agreements for child-related awards unless the parties reaffirm the agreement after the dispute arises or the agreement was incorporated in a court decree—such as a marital settlement agreement.

Subsection (d) makes clear that, if challenged, the validity of an agreement to arbitrate is for the court to decide, not an arbitrator. Similarly, if in question, the court decides whether a particular family law dispute is subject to arbitration. See Lippman v. Lippman, 20 So. 3d 457 (Fla. Dist. Ct. App. 2009) (a shareholder agreement requiring arbitration of all claims arising from the agreement that was incorporated into a final judgment of divorce did not create an omnibus agreement to arbitrate all post-dissolution marital disputes).

The allocation of authority is non-waivable. In this respect, the UFLAA differs from the RUAA. While the RUAA likewise gives the court the power to decide both questions, that default is waivable by the parties. See RUAA §§ 4 and 6(b). Because of the state's interest in ensuring the fair resolution of family law disputes, the UFLAA requires that the court determine the basic question whether a valid agreement to arbitrate exists and whether a dispute is subject to the agreement.

SECTION 6. NOTICE OF ARBITRATION. A party may initiate arbitration by giving notice to arbitrate to the other party in the manner specified in the arbitration agreement

or, in the absence of a specified manner, under the law and procedural rules of this state other than this [act] governing contractual arbitration.

Comment

Consistent with many other provisions of the UFLAA, this section permits parties to choose their own method of initiating an arbitration or to fall back on the arbitration law of the forum state. The parties may want to provide for notice as for a civil suit under state law or chose a more informal process by letter, email, or phone call. The Uniform Arbitration Act (1955) has no general notice provision. It does provide that notification of a hearing be sent by registered mail not less than five days before the hearing. UAA § 5. The Revised Uniform Arbitration Act (2000) § 2 provides that except as otherwise provided, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in the ordinary course, whether or not the other person acquires knowledge of the notice. A person has notice if the person has knowledge of the notice or has received notice. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or other place the person has held out as a place of delivery for such communications.

SECTION 7. MOTION FOR JUDICIAL RELIEF.

(a) A motion for judicial relief under this [act] must be made to the court in which a proceeding is pending involving a family law dispute subject to arbitration or, if no proceeding is pending, a court with jurisdiction over the parties and the subject matter.

(b) On motion of a party, the court may compel arbitration if the parties have entered into an arbitration agreement that complies with Section 5 unless the court determines under Section 12 that the arbitration should not proceed.

(c) On motion of a party, the court shall terminate arbitration if it determines that:

(1) the agreement to arbitrate is unenforceable;

(2) the family law dispute is not subject to arbitration; or

(3) under Section 12, the arbitration should not proceed.

(d) Unless prohibited by an arbitration agreement, on motion of a party, the court may order consolidation of separate arbitrations involving the same parties and a common issue of

law or fact if necessary for the fair and expeditious resolution of the family law dispute.

Comment

This section provides the framework for motions for judicial relief. Motions must be filed in the court where the family law proceeding is pending or, if no proceeding is pending, in a court with proper jurisdiction. Motions for judicial relief are made and heard in the manner provided by law or rule of court for making and hearing motions. Revised Uniform Arbitration Act § 5 provides that unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion must be served in the manner provided by law for the service of a summons in a civil action. Otherwise notice of the motion is given in the manner prescribed by law or rule of court for serving motions in pending cases.

If necessary, a party seeking to enforce an arbitration agreement may file a motion in court to compel arbitration. Conversely, a party opposing arbitration may file a motion to terminate arbitration. In either case, the court must determine whether the agreement is enforceable and covers the dispute. Both the Uniform Arbitration Act § 2 and the RUAA § 7 contain more detailed procedures for compelling or staying arbitration. Therefore, the state's procedural rules for arbitration will be used. In addition, the UFLAA allows a party to file a motion under subsection (c) to terminate arbitration based on a finding of family violence or child abuse under Section 12.

Subsection (d) permits consolidation of related arbitrations when it would lead to a fair and efficient resolution of the family law dispute. For example, a divorcing couple's assets might include a family business. If the parties agreed to arbitrate the dissolution of the business, the consolidation of that arbitration with the core family law arbitration might be appropriate. A decision on consolidation must be based on whether it is necessary for the fair and expeditious resolution of the family law dispute, not whether it might serve the interests of one party. This provision is more restrictive than the RUAA's consolidation provision (§ 10) in that it requires that the arbitrations to be consolidated involve the same parties. The RUAA concerns commercial arbitration where a more liberal consolidation policy makes sense.

SECTION 8. QUALIFICATION AND SELECTION OF ARBITRATOR.

(a) Except as otherwise provided in subsection (b), unless waived in a record by the parties, an arbitrator must be:

(1) an attorney in good standing admitted to practice or on inactive status [or a judge on retired status] in a state; and

(2) trained in identifying domestic violence and child abuse [according to standards established under law of this state other than this [act] for a judicial officer assigned to

hear a family law proceeding].

(b) The identification in the arbitration agreement of an arbitrator, arbitration organization, or method of selection of the arbitrator controls.

(c) If an arbitrator is unable or unwilling to act or if the agreed-on method of selecting an arbitrator fails, on motion of a party, the court shall select an arbitrator.

Legislative Note: *If a state has judicial education requirements on the topics of domestic violence and child abuse, the state should enact the bracketed language in subsection (a)(2). A state that does not have such requirements should delete the bracketed language.*

Comment

The default qualifications for an arbitrator under this section are that he or she be a lawyer in good standing admitted to practice or on inactive status or a judge on retired status and have training in recognizing intimate partner violence and child abuse. The default requirements reflect the importance of the decisions that family law arbitrators make and the need for arbitrators to be sensitive to the presence of family violence.

Nevertheless, parties may choose to waive the requirements in selecting a particular individual. Because parties may want an arbitrator with unique expertise, experience, or reputation, this section authorizes parties to select whomever they please. An arbitrator selected by the parties in the agreement or in a later written designation does not have to meet the default requirements. The parties may want an arbitrator for only one part of a case, such as to resolve a dispute about competing values on a rare collection, or to unravel a complex multi-state business entity.

The parties' agreed-on selection of an arbitrator may sometimes fail. When an arbitrator cannot serve due to unforeseen circumstances or resigns, subsection (c) directs the court to choose the arbitrator. This subsection tracks Revised Uniform Arbitration Act §11.

SECTION 9. DISCLOSURE BY ARBITRATOR; DISQUALIFICATION.

(a) Before agreeing to serve as an arbitrator, an individual, after making reasonable inquiry, shall disclose to all parties any known fact a reasonable person would believe is likely to affect:

(1) the impartiality of the arbitrator in the arbitration, including bias, a financial or personal interest in the outcome of the arbitration, or an existing or past relationship with a party,

attorney representing a party, or witness; or

(2) the arbitrator's ability to make a timely award.

(b) An arbitrator, the parties, and the attorneys representing the parties have a continuing obligation to disclose to all parties any known fact a reasonable person would believe is likely to affect the impartiality of the arbitrator or the arbitrator's ability to make a timely award.

(c) An objection to the selection or continued service of an arbitrator and a motion for a stay of arbitration and disqualification of the arbitrator must be made under the law and procedural rules of this state other than this [act] governing arbitrator disqualification.

(d) If a disclosure required by subsection (a)(1) or (b) is not made, the court may:

(1) on motion of a party not later than [30] days after the failure to disclose is known or by the exercise of reasonable care should have been known to the party, suspend the arbitration;

(2) on timely motion of a party, vacate an award under Section 19(a)(2); or

(3) if an award has been confirmed, grant other appropriate relief under law of this state other than this [act].

(e) If the parties agree to discharge an arbitrator or the arbitrator is disqualified, the parties by agreement may select a new arbitrator or request the court to select another arbitrator as provided in Section 8.

Comment

The disclosure section is taken mainly from Section 12 of the Revised Uniform Arbitration Act and requires arbitrators to reveal any fact or relationship that might affect the arbitrator's impartiality. The parties may agree to higher standards of disclosure.

An ongoing duty of disclosure rests on the arbitrator as well as the parties and their attorneys. One addition here to the disclosures listed in the RUAA is the requirement to reveal facts bearing on the arbitrator's "ability to make a timely award." The relative speed of the arbitration process is one of its advantages, particularly within the family law context.

The failure to make a required disclosure can result in suspension of the arbitration, the vacating of an award, or other relief. See Section 19(a)(2). If nondisclosure does not result in evident partiality or other prejudice, the court may refuse relief.

SECTION 10. PARTY PARTICIPATION.

(a) A party may:

(1) be represented in an arbitration by an attorney;

(2) be accompanied by an individual who will not be called as a witness or act as an advocate; and

(3) participate in the arbitration to the full extent permitted under the law and procedural rules of this state other than this [act] governing a party's participation in contractual arbitration.

(b) A party or representative of a party may not communicate ex parte with the arbitrator except to the extent allowed in a family law proceeding for communication with a judge.

Comment

Section 10 (a)(1) recognizes that a party may be represented by an attorney throughout the arbitration process and is patterned after Uniform Arbitration Act§ 6 and Revised Uniform Arbitration Act § 16. Some states may require that the attorney be licensed in the state.

Section 10(a)(2) gives a party an absolute right to be accompanied by an individual who will not be called as a witness nor act as an advocate. This provision was, in part, a response to concerns expressed by groups who wanted to ensure that a victim of domestic violence could be accompanied by a support person during the arbitration. The accompanying person, however, does not have the right to take the place of the lawyer or advocate for the party.

Section 10(b) provides that as in family law court proceedings, there should be no ex parte communications with the decision-maker except under limited circumstances defined by other law.

SECTION 11. TEMPORARY ORDER OR AWARD.

(a) Before an arbitrator is selected and able to act, on motion of a party, the court may enter a temporary order under [insert reference to this state's statutes or rules governing issuance

of a temporary order in a family law proceeding].

(b) After an arbitrator is selected:

(1) the arbitrator may make a temporary award under [insert reference to this state's statutes or rules governing issuance of a temporary order in a family law proceeding]; and

(2) if the matter is urgent and the arbitrator is not able to act in a timely manner or provide an adequate remedy, on motion of a party, the court may enter a temporary order.

(c) On motion of a party, before the court confirms a final award, the court under Section 16, 18, or 19 may confirm, correct, vacate, or amend a temporary award made under subsection (b)(1).

(d) On motion of a party, the court may enforce a subpoena or interim award issued by an arbitrator for the fair and expeditious disposition of the arbitration.

Comment

Parties in family law cases often seek temporary orders to maintain the status quo or provide interim remedies pending resolution of the case. Temporary restraining orders, both personal and economic, are common. The parties may have already obtained some temporary orders before submitting the case to arbitration or may decide to seek such orders after arbitration has begun. The court retains the authority to issue temporary orders before arbitration starts. Once arbitration begins, the arbitrator can issue temporary awards, subject to the court's power to confirm, correct, amend, or vacate under subsection (c).

Typical orders are for temporary child support, maintenance, residency of the child, restraints on the selling of real and personal property, access to bank accounts, and attorney fees. If for some reason the arbitrator is unavailable to act on an urgent request or cannot provide an adequate remedy, a party can file a motion for the court to provide appropriate relief. Revised Uniform Arbitration Act § 8 addresses the court's ability to grant provisional remedies before the arbitrator is appointed and authorized to act or if there is an urgent matter that the arbitrator cannot act in a timely manner to protect the effectiveness of the arbitration proceeding. UFLAA provisions are broader.

A party may move under subsection (d) for a court to enforce temporary awards entered under this section or other sections of the act.

SECTION 12. PROTECTION OF PARTY OR CHILD.

(a) In this section, "protection order" means an injunction or other order, issued under the

domestic-violence, family-violence, or stalking laws of the issuing jurisdiction, to prevent an individual from engaging in a violent or threatening act against, harassment of, contact or communication with, or being in physical proximity to another individual who is a party or a child under the custodial responsibility of a party.

(b) If a party is subject to a protection order or an arbitrator determines there is a reasonable basis to believe a party's safety or ability to participate effectively in arbitration is at risk, the arbitrator shall stay the arbitration and refer the parties to court. The arbitration may not proceed unless the party at risk affirms the arbitration agreement in a record and the court determines:

(1) the affirmation is informed and voluntary;

(2) arbitration is not inconsistent with the protection order; and

(3) reasonable procedures are in place to protect the party from risk of harm, harassment, or intimidation.

(c) If an arbitrator determines that there is a reasonable basis to believe a child who is the subject of a child-related dispute is abused or neglected, the arbitrator shall terminate the arbitration of the child-related dispute and report the abuse or neglect to the [state child protection authority].

(d) An arbitrator may make a temporary award to protect a party or child from harm, harassment, or intimidation.

(e) On motion of a party, the court may stay arbitration and review a determination or temporary award under this section.

(f) This section supplements remedies available under law of this state other than this [act] for the protection of victims of domestic violence, family violence, stalking, harassment, or

similar abuse.

Comment

Section 12 provides that if a party is subject to an order of protection or if the arbitrator otherwise finds that a party's safety or ability to participate effectively in the arbitration is at risk, the arbitration must be suspended unless the party who is at risk reaffirms the desire to arbitrate and a court allows it. The presence of domestic or intimate partner violence can vitiate the voluntariness of the consent to arbitrate. Most family lawyers routinely screen for domestic violence. An arbitrator needs to be sensitive to the potential for violence that could adversely affect a party's ability to participate freely and voluntarily in the process.

If there is a protective order in place or the arbitrator suspects abuse that would impair a party's ability to participate in the arbitration, the arbitrator must refer the parties to the court. The court, in turn, must ensure that the requirements of subsection (b) are met before authorizing the arbitration to continue. Nothing precludes a party at any time from seeking a protection order from the appropriate court.

Subsection (c) reflects the principle that where a child's safety is at risk, judicial oversight is essential and arbitration of a child-related dispute is no longer appropriate. Thus, if the arbitration involves a child-related dispute and the arbitrator has a reasonable basis to suspect abuse or neglect of a child, the arbitrator must terminate the arbitration and report the abuse and neglect to the appropriate authorities. Many states impose a similar duty on mediators. See Hinshaw, *Mediators as Mandatory Reporters of Child Abuse: Preserving Mediation's Core Values*, 34 FLA. ST. U.L.REV. 271 (2007).

Where the parties' circumstances require immediate attention, subsection (d) recognizes that the arbitrator has the power to enter a temporary award. Any interim award or determination by the arbitrator under this section can be reviewed by the court.

Subsection (e) allows a court to protect vulnerable parties by staying the arbitration pending review of any determination or award made under this section. If an arbitrator refused to terminate arbitration after a party alleged violence or child abuse, for example, the party could file a motion with the court for a de novo review.

Subsection (f) makes clear that nothing in this Act is meant to replace the state remedies for protecting victims of domestic or family violence, stalking, harassment or abuse and neglect.

SECTION 13. POWERS AND DUTIES OF ARBITRATOR.

(a) An arbitrator shall conduct an arbitration in a manner the arbitrator considers appropriate for a fair and expeditious disposition of the dispute.

(b) An arbitrator shall provide each party a right to be heard, to present evidence material

to the family law dispute, and to cross-examine witnesses.

(c) Unless the parties otherwise agree in a record, an arbitrator's powers include the power to:

(1) select the rules for conducting the arbitration;

(2) hold conferences with the parties before a hearing;

(3) determine the date, time, and place of a hearing;

(4) require a party to provide:

(A) a copy of a relevant court order;

(B) information required to be disclosed in a family law proceeding under law of this state other than this [act]; and

(C) a proposed award that addresses each issue in arbitration;

(5) meet with or interview a child who is the subject of a child-related dispute;

(6) appoint a private expert at the expense of the parties;

(7) administer an oath or affirmation and issue a subpoena for the attendance of a witness or the production of documents and other evidence at a hearing;

(8) compel discovery concerning the family law dispute and determine the date, time, and place of discovery;

(9) determine the admissibility and weight of evidence;

(10) permit deposition of a witness for use as evidence at a hearing;

(11) for good cause, prohibit a party from disclosing information;

(12) appoint an attorney, guardian ad litem, or other representative for a child at the expense of the parties;

(13) impose a procedure to protect a party or child from risk of harm, harassment,

or intimidation;

(14) allocate arbitration fees, attorney's fees, expert-witness fees, and other costs to the parties; and

(15) impose a sanction on a party for bad faith or misconduct during the arbitration according to standards governing imposition of a sanction for litigant misconduct in a family law proceeding.

(d) An arbitrator may not allow ex parte communication except to the extent allowed in a family law proceeding for communication with a judge.

Comment

The powers of an arbitrator, which may be set by the arbitration agreement, depend to a large extent on what the parties agree the arbitrator is to decide. This section draws on the Revised Uniform Arbitration Act §§ 15, 17, and 21 to recognize broad powers of an arbitrator, unless the parties agree otherwise. These powers include to select the rules for the arbitration; conduct the prehearing conferences and the hearing; administer oaths to parties and witnesses; allow any party to conduct prehearing discovery by interrogatories, deposition, requests for production of documents, or other means; determine the admissibility of evidence; and subpoena witnesses or documents upon the arbitrator's own initiative or request of a party. In addition, this section recognizes powers that may be uniquely necessary in the family law context, such as the power to meet with a child, appoint a representative for the child, and impose procedures to protect a party or child from risk of harm. Also, this section authorizes the arbitrator to sanction bad faith conduct according to state law governing misconduct in family law proceedings.

The arbitrator does not have power to alter the terms of the arbitration agreement or to award a remedy other than in accordance with the law. Ex parte communications between a party and the arbitrator are prohibited except to the extent permitted under other law.

SECTION 14. RECORDING OF HEARING.

(a) Except as otherwise provided in subsection (b) or required by law of this state other than this [act], an arbitration hearing need not be recorded unless required by the arbitrator, provided by the arbitration agreement, or requested by a party.

(b) An arbitrator shall request a verbatim recording be made of any part of an arbitration hearing concerning a child-related dispute.

Comment

The general default rule established by this section is that an arbitration hearing need not be recorded. That rule, however, is subject to various exceptions. The hearing must be recorded if the arbitrator requires it, the arbitration agreement so provides, or any party requests it. Importantly, because of the *parens patriae* responsibility of the court to protect children, this section requires that a verbatim record be made of any part of an arbitration hearing concerning a child-related dispute. That mandate is not waivable by the parties. The goal is to ensure that there is a sufficient record for the trial court to review to determine whether the arbitrator applied the relevant law and whether the award furthers the child's best interest.

SECTION 15. AWARD.

(a) An arbitrator shall make an award in a record, dated and signed by the arbitrator. The arbitrator shall give notice of the award to each party by a method agreed on by the parties or, if the parties have not agreed on a method, under the law and procedural rules of this state other than this [act] governing notice in contractual arbitration.

(b) Except as otherwise provided in subsection (c), the award under this [act] must state the reasons on which it is based unless otherwise agreed by the parties.

(c) An award determining a child-related dispute must state the reasons on which it is based as required by law of this state other than this [act] for a court order in a family law proceeding.

(d) An award under this [act] is not enforceable as a judgment until confirmed under Section 16.

Comment

Section (a) is patterned after Uniform Arbitration Act § 8 and Revised Uniform Arbitration Act § 19 which both require the award to be in writing and signed by the arbitrator. The UFLAA allows parties to determine the manner of giving notice of the award or leave it to the state's arbitration law. Under the UAA, the arbitrator must deliver a copy to each party personally or by registered mail, or as provided in the agreement. Under the RUAA, the arbitrator must give notice (defined in RUAA § 2) of the award including a copy of the award to each party to the arbitration proceeding.

Although the RUAA does not create a default requirement for a "reasoned award," the

UFLAA in this section does establish such a default, subject to the parties' agreeing otherwise. The default is based on the state's interest in ensuring that arbitrators follow the law and act fairly and carefully in resolving family law disputes. Most statutes contain descriptions for classifying property as marital or nonmarital and list factors for distribution. If the parties choose to forego a reasoned award, they can do so with respect to monetary disputes between themselves.

Section (c) recognizes that child-related awards are subject to a rigorous standard of review. Therefore, the award must state the reasons on which it is based in the same manner that is required of a family court under state law. The parties cannot waive this requirement. Most states require findings of fact and conclusions of law, sometimes on all statutory factors. A sufficient record is necessary in order for a court to determine whether the arbitrator complied with state law. See Fawzy v. Fawzy, 973 A.2d 347 (N.J. 2009). On the issue of child support, federal law requires that all state guidelines establish a presumptive award. 42 U.S.C. § 667(b)(2). There must be written findings of fact as to why deviation from the state guidelines is in the best interests of the child. See 45 C.F.R. § 302.56(f).

Subsection (d) makes clear that an award is not enforceable as a judgment until confirmed. Similarly, a decree of divorce, separation, or annulment requires judicial action. If a party fails to comply with an award before it is confirmed, that non-compliance is not punishable by contempt. Non-compliance, however, might give rise to sanctions once the award is confirmed, if the award provided for the imposition of sanctions. A failure to pay child support as required by an award, for example, might give rise to liability for interest on the unpaid amounts once the award is confirmed.

SECTION 16. CONFIRMATION OF AWARD.

(a) After an arbitrator gives notice under Section 15(a) of an award, including an award corrected under Section 17, a party may move the court for an order confirming the award.

(b) Except as otherwise provided in subsection (c), the court shall confirm an award under this [act] if:

(1) the parties agree in a record to confirmation; or

(2) the time has expired for making a motion, and no motion is pending, under Section 18 or 19.

(c) If an award determines a child-related dispute, the court shall confirm the award under subsection (b) if the court finds, after a review of the record if necessary, that the award on its face:

(1) complies with Section 15 and law of this state other than this [act] governing a child-related dispute; and

(2) is in the best interests of the child.

(d) On confirmation, an award under this [act] is enforceable as a judgment.

Comment

On motion of a party, a court has a duty to confirm an award if no party is challenging it. That duty to confirm is consistent with general arbitration law. See Revised Uniform Arbitration Act § 22. For a child-related award, however, even when no party has raised a challenge, the court may not confirm unless it finds that the award complies with state law and is in the best interests of the child. The court may make that determination on the face of the award or, if necessary, by reviewing the record.

The need for judicial oversight to determine that the award complies with state law and is in the best interest of the child rests on the state's *parens patriae* responsibility. The approach in this section subjects the arbitration award to a standard of judicial review similar to the review typically given to a parenting agreement achieved through negotiation or mediation. Just as parties cannot make a binding agreement as to child custody without judicial approval, an arbitration award of child custody requires some additional scrutiny by the court, even when both parties accept the award, to ensure the award complies with the law of the state. In some states, the law requires a judge to make a finding on the factors listed in the statute. If no factors are listed, the judge would not confirm the award. See Zupan v. Zupan, 230 P.3d 329 (Wyo. 2010).

Similarly, by federal mandate all states require the use of child support guidelines. If there is no child support worksheet as required by state law and the amount of child support is not the amount on the tables, the judge would not confirm the award.

SECTION 17. CORRECTION BY ARBITRATOR OF UNCONFIRMED AWARD. On motion of a party made not later than [30] days after an arbitrator gives notice under Section 15(a) of an award, the arbitrator may correct the award:

(1) if the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(2) if the award is imperfect in a matter of form not affecting the merits on the issues submitted; or

(3) to clarify the award.

Comment

This section is based on Revised Uniform Arbitration Act § 20. A party by motion to the arbitrator may seek a correction of an award for mathematical or descriptive mistakes, for errors of form not going to the merits, or to clarify the award. If the award is corrected, the arbitrator has a duty to give notice of the changed award.

SECTION 18. CORRECTION BY COURT OF UNCONFIRMED AWARD.

(a) On motion of a party made not later than [90] days after an arbitrator gives notice under Section 15(a) of an award, including an award corrected under Section 17, the court shall correct the award if:

(1) the award has an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property;

(2) the award is imperfect in a matter of form not affecting the merits of the issues submitted; or

(3) the arbitrator made an award on a dispute not submitted to the arbitrator and the award may be corrected without affecting the merits of the issues submitted.

(b) A motion under this section to correct an award may be joined with a motion to vacate or amend the award under Section 19.

(c) Unless a motion under Section 19 is pending, the court may confirm a corrected award under Section 16.

Comment

This section tracks the Revised Uniform Arbitration Act § 24 for the most part. It allows a party to file a motion with the court to correct the award for mathematical or descriptive mistakes, errors of form not affecting the merits, and mistake in deciding an issue not submitted to the arbitrator. In general, UFLAA Sections 17 and 18 together give parties a choice as to seeking a correction from the arbitrator or from the court in the first instance, but a motion to the arbitrator has a shorter timeline. In addition, as long as the motion is timely, a party may seek a correction from the court of an award that has already been corrected by the arbitrator.

SECTION 19. VACATION OR AMENDMENT BY COURT OF UNCONFIRMED AWARD.

(a) On motion of a party, the court shall vacate an unconfirmed award if the moving party establishes that:

(1) the award was procured by corruption, fraud, or other undue means;

(2) there was:

(A) evident partiality by the arbitrator;

(B) corruption by the arbitrator; or

(C) misconduct by the arbitrator substantially prejudicing the rights of a party;

(3) the arbitrator refused to postpone a hearing on showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 13, so as to prejudice substantially the rights of a party;

(4) the arbitrator exceeded the arbitrator's powers;

(5) no arbitration agreement exists, unless the moving party participated in the arbitration without making a motion under Section 7 not later than the beginning of the first arbitration hearing; [or]

(6) the arbitration was conducted without proper notice under Section 6 of the initiation of arbitration, so as to prejudice substantially the rights of a party[; or

(7) a ground exists for vacating the award under law of this state other than this [act]].

(b) Except as otherwise provided in subsection (c), on motion of a party, the court shall

vacate an unconfirmed award that determines a child-related dispute if the moving party establishes that:

(1) the award does not comply with Section 15 or law of this state other than this [act] governing a child-related dispute or is contrary to the best interests of the child;

(2) the record of the hearing or the statement of reasons in the award is inadequate for the court to review the award; or

(3) a ground for vacating the award under subsection (a) exists.

(c) If an award is subject to vacation under subsection (b)(1), on motion of a party, the court may amend the award if amending rather than vacating is in the best interests of the child.

(d) The court [shall][may] determine a motion under subsection (b) or (c) based on the record of the arbitration hearing and facts occurring after the hearing [or may exercise de novo review].

(e) A motion under this section to vacate or amend an award must be filed not later than [90] days:

(1) after an arbitrator gives the party filing the motion notice of the award or a corrected award; or

(2) for a motion under subsection (a)(1), after the ground of corruption, fraud, or other undue means is known or by the exercise of reasonable care should have been known to the party filing the motion.

(f) If the court under this section vacates an award for a reason other than the absence of an enforceable arbitration agreement, the court may order a rehearing before an arbitrator. If the reason for vacating the award is that the award was procured by corruption, fraud, or other undue means or there was evident partiality, corruption, or misconduct by the arbitrator, the rehearing

must be before another arbitrator.

(g) If the court under this section denies a motion to vacate or amend an award, the court may confirm the award under Section 16 unless a motion is pending under Section 18.

Legislative Note: *If state law permits an arbitration award to be vacated on grounds other than those listed in subsection (a)(1) – (6), the state may enact bracketed subsection (a)(7) to make those grounds equally available under this act.*

If a state wishes to authorize discretionary de novo review of an arbitration award in a child-related dispute, it should enact the "may" in subsection (d) and the bracketed language at the end of the subsection. If a state does not want to authorize de novo review, it should enact the "shall" in subsection (d) and omit the bracketed reference to de novo review at the end of the subsection.

Comment

The language in subsection (a) tracks the traditional narrow grounds for vacating an arbitration award found in both the Uniform Arbitration Act § 12 and the Revised Uniform Arbitration Act § 23. To avoid frustrating the purpose of arbitration, courts must give appropriate deference to arbitration awards. The court does not consider the sufficiency or weight of the evidence or otherwise consider an attack on the merits. See Brinckerhoff v. Brinckeroff, 889 A.2d 701 (Vt. 2005).

Under section (a)(2)(A), the evident partiality standard requires "clear evidence of impropriety" and the "evidence of bias or interest of an arbitrator must be direct, definite and capable of demonstration rather than remote, uncertain or speculative." Ormsbee Development Co. v. Grace, 668 F.2d 1140, 1147 (10th Cir. 1982). See also In re Marriage of Shults, 2015 WL 9459743 (Kan. App. Dec. 23, 2015) (unpublished) (fact that arbitrator represented the attorney for one party seventeen years earlier did not amount to evident partiality). Under subsection (a)(4), to show an arbitrator exceeded his or her powers, the party must show the arbitrator either acted beyond the terms of the arbitration agreement or acted in complete disregard of the law. See Giraldi v. Morrell, 892 P.2d 422 (Colo. App. 1994); Washington v. Washington, 770 N.W.2d 908 (Mich. App. 2009).

Some states go beyond the RUAA in authorizing additional grounds for vacating arbitration awards. The bracketed subsection (a)(7) authorizes a court to vacate family law arbitration awards on the basis of those additional grounds. If state law, for example, permits parties to agree that an award can be challenged for errors of law, the bracketed language would authorize a court to review an award for errors of law if the parties have so agreed.

Child-related awards are reviewed under a separate mandatory standard. Under subsection (b), the award must comply with applicable law and must be in the child's best interests. Moreover, the record and statement of reasons in the award itself must be adequate for the court to exercise its review. Subsection (c) permits a court to amend an award rather than

vacate if amendment would be in the child's best interests. Amendment might be an appropriate option, for example, if the arbitrator has misapplied the state's child support guidelines and the child support determination can be easily corrected without a further evidentiary hearing.

Subsection (d) contains a discretionary de novo review option. While some states authorize discretionary de novo review as a way of ensuring that children's interests are protected, others limit judicial review of child-related awards to the record in the arbitration proceeding and later-occurring facts. *Compare* Harvey v. Harvey, 680 N.W.2d 835 (Mich. 2004) (requiring de novo review of arbitration award determining child custody), *with* N. MEX. STAT. ANN. § 40-4-7.2(T) (providing that review of arbitration award must be based on arbitration record and any facts arising after arbitration hearing). The bracketed provision allows states to choose between these competing approaches. See Vanderborgh v. Krauth, 370 P.3d 661 (Colo. App. 2016) (finding no violation of the father's due process rights or of child's rights when the trial court used its discretion to decline to exercise de novo review of arbitration award; the court had the power to order a de novo hearing if found necessary).

The bracketed 90-day time period for filing a motion to vacate is the time frame most often found in family law arbitration statutes. A state may insert a different time period if it wants. The act provides two alternative measures of time: no later than 90 days after notice of the award, or, when an award is challenged on the ground of "corruption, fraud, or other undue means," no later than 90 days after the corruption, fraud, or undue means is known or should have been known. If the fraud is not discovered until after the award has been confirmed, then a party's recourse would be to challenge the confirmed award under other law governing challenges to judgments. For example, if fraud were discovered 30 days after notice of an award and the award remains unconfirmed, a party would have 90 days from the time of discovery in which to bring the challenge. If fraud were discovered after the award has been confirmed, however, then any challenge would be governed by the state's rules for vacating judgments.

SECTION 20. CLARIFICATION OF CONFIRMED AWARD. If the meaning or effect of an award confirmed under Section 16 is in dispute, the parties may:

(1) agree to arbitrate the dispute before the original arbitrator or another arbitrator; or

(2) proceed in court under law of this state other than this [act] governing clarification of a judgment in a family law proceeding.

Comment

A confirmed award may be so ambiguous that clarification is required. Under this section, the parties may agree to arbitrate any dispute arising from the ambiguity, or they may proceed according to state law in clarifying a judgment.

SECTION 21. JUDGMENT ON AWARD.

(a) On granting an order confirming, vacating without directing a rehearing, or amending an award under this [act], the court shall enter judgment in conformity with the order.

(b) On motion of a party, the court may order that a document or part of the arbitration record be sealed or redacted to prevent public disclosure of all or part of the record or award to the extent permitted under law of this state other than this [act].

Comment

Subsection (a) follows Revised Uniform Arbitration Act §25(a) and requires the court to enter judgment after confirming, vacating, or amending an award. The entry of judgment is an important judicial act that may be necessary to give rise to enforceable legal obligations under the award.

The opportunity for privacy is often a key attraction of arbitration for couples at the point of marriage dissolution. Subsection (b) recognizes that the court may seal or redact documents or records to prevent public disclosure to the extent allowed under applicable law. This is important to prevent bank account and other numbers, private business information, and other items from being public record. In addition, parties are free as a matter of contract to agree that evidence disclosed during the arbitration should remain confidential. If a party were to breach such a confidentiality agreement, the remedy for the aggrieved party would be contractual.

SECTION 22. MODIFICATION OF CONFIRMED AWARD OR JUDGMENT. If a party requests under law of this state other than this [act] a modification of an award confirmed under Section 16 or judgment on the award based on a fact occurring after confirmation:

(1) the parties shall proceed under the dispute-resolution method specified in the award or judgment; or

(2) if the award or judgment does not specify a dispute-resolution method, the parties may:

(A) agree to arbitrate the modification before the original arbitrator or another arbitrator; or

(B) absent agreement proceed under law of this state other than this [act]

governing modification of a judgment in a family law proceeding.

Comment

Post-decree modifications of court orders are well-known in family law**.** Family law decrees involving spousal support, custodial responsibility, or child support may be subject to modification under state law based on material and continuing changes in circumstances. Child-related issues are generally modifiable throughout a child's minority, subject to varying limitations under state law.

This section provides that parties may proceed on requests for modification of a confirmed award by various routes. If a dispute-resolution method for modification is specified in the award or judgment, that method should be followed. If no method is specified, then the parties can agree to arbitrate or, in the absence of agreement, proceed in court under state law governing modifications of family court decrees. If the parties do opt for arbitration, they may return to arbitration with the same arbitrator, or they may choose a different arbitrator.

SECTION 23. ENFORCEMENT OF CONFIRMED AWARD.

(a) The court shall enforce an award confirmed under Section 16, including a temporary award, in the manner and to the same extent as any other order or judgment of a court.

(b) The court shall enforce an arbitration award in a family law dispute confirmed by a court in another state in the manner and to the same extent as any other order or judgment from another state.

Comment

This section clarifies that a confirmed award is a judgment of the court and can be enforced as any other judgment, including the use of contempt, fines, and other enforcement remedies. Awards confirmed by a court in another state will be entitled to the same full faith and credit as any court judgment from a sister state. If there is a confirmation of an award from another state, full faith and credit requires that it be honored as a judgment.

SECTION 24. APPEAL.

(a) An appeal may be taken under this [act] from:

(1) an order [granting or] denying a motion to compel arbitration;

(2) an order granting [or denying] a motion to stay arbitration;

(3) an order confirming or denying confirmation of an award;

(4) an order correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a final judgment.

(b) An appeal under this section may be taken as from an order or a judgment in a civil action.

Legislative Note: *If a state wants to authorize an immediate appeal from an order granting a motion to compel arbitration, it should enact the bracketed language in subsection (a)(1). If a state wants to authorize an immediate appeal from an order denying a motion to stay arbitration, it should enact the bracketed language in subsection (a)(2).*

Comment

The appeals section tracks the Revised Uniform Arbitration Act § 28 and Uniform Arbitration Act § 18, with the exception of the bracketed terms in subsection (a)(1) and (a)(2). The bracketed terms would, in effect, level the playing field in determining appealability of trial court rulings on motions to compel arbitration and to stay arbitration. Under the RUAA and UAA, trial court rulings that delay arbitration—orders that refuse to compel arbitration or orders that stay arbitration—are immediately appealable, but trial court orders compelling arbitration or refusing to stay arbitration are not immediately appealable. The bracketed terms in this section give states the option of expanding appealability in the family law context.

SECTION 25. IMMUNITY OF ARBITRATOR.

(a) An arbitrator or arbitration organization acting in that capacity in a family law dispute is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity provided by this section supplements any immunity under law of this state other than this [act].

(c) An arbitrator's failure to make a disclosure required by Section 9 does not cause the arbitrator to lose immunity under this section.

(d) An arbitrator is not competent to testify, and may not be required to produce records, in a judicial, administrative, or similar proceeding about a statement, conduct, decision, or ruling

occurring during an arbitration, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) to the extent disclosure is necessary to determine a claim by the arbitrator or arbitration organization against a party to the arbitration; or

(2) to a hearing on a motion under Section 19(a)(1) or (2) to vacate an award, if there is prima facie evidence that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator arising from the services of the arbitrator or seeks to compel the arbitrator to testify or produce records in violation of subsection (d) and the court determines that the arbitrator is immune from civil liability or is not competent to testify or required to produce the records, the court shall award the arbitrator reasonable attorney's fees, costs, and reasonable expenses of litigation.

Comment

Immunity for arbitrators is essential if arbitration is to serve the purpose of helping parties resolve disputes and alleviating crowded court dockets. Without the cloak of immunity, individuals will be unwilling to serve in the important and demanding role of family law arbitrator. This section tracks Revised Uniform Arbitration Act § 14. Likewise, the bar against arbitrator testimony parallels the approach of the RUAA and protects the integrity of the arbitration process. In the interest of child protection, the family law arbitrator nevertheless has a duty to report child abuse or neglect under Section 12.

Immunity for other professionals engaged in the arbitration process, such as guardians ad litem, would be determined according to other law. See, e.g., Vlastelica v. Brend, 954 N.E.2d 874 (Ill. App. 2011).

SECTION 26. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 27. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

SECTION 28. TRANSITIONAL PROVISION. This [act] applies to arbitration of a family law dispute under an arbitration agreement made on or after [the effective date of this [act]]. If an arbitration agreement was made before [the effective date of this [act]], the parties may agree in a record that this [act] applies to the arbitration.

SECTION 29. EFFECTIVE DATE. This [act] takes effect . . . .