

Frequently asked questions about the proposed TN Domestic Relations Arbitration Act (“DRAA”)

1. Can parties engage in binding arbitration for property and alimony disputes under existing law?

No. Family law is governed by statute only. The Code (Title 36) does not allow binding arbitration for property and alimony issues.

2. Will the Arbitrator be qualified?

Yes. The Act requires the arbitrator to be trained and have a minimum of 10 years of practice, with a substantial portion devoted to family law. (Sec. 8).

3. Is Arbitration better for children than litigation?

Yes. Research has proven that children suffer from lengthy, contentious custody disputes that their parents have been fighting for years. Arbitration is proven successful as an ADR mechanism to help litigants get to the finish line quicker and less adversarial than litigation and provides the emotional closure that litigants and children need.

Joan Kessler, Allan Koritzinsky, Stephen Schissel, Why Arbitrate Family Law Matters?, Journal of the American Academy of Matrimonial Lawyers, Vol. 35, No. 14 (1997).

Susan W. Savard, Through the Eyes of a Child: Impact and Measures to Protect Children in High-Conflict Family Law Litigation, Florida Bar Journal, Vol. 84, No. 4 (April 2010)

Richard Wolman, Ph.D. and Keith Taylor, Ph.D. Psychological Effects of Custody Disputes on Children, Behavioral Sciences and the Law, Vol. 9 (1991).

Stephen W. Schlissel, A Proposal for Final and Binding Arbitration of Initial Custody Determinations, 26 Family Law Quarterly 71 (1992).

4. Will the Arbitrator have any ethical requirements?

Yes. The Act requires before serving, the selected arbitrator, after making reasonable inquiry, shall disclose to all parties any known fact that would affect the impartiality or their ability to make timely awards. (Sec. 9). The arbitrator, parties, and attorneys have a continuing

obligation for these disclosures. A party can object to the Court within 30 days after discovering undisclosed facts or other cause for disqualification.

5. Is a Special Master able to hear the property, alimony, and child-related disputes and make an award?

No. Special Masters may only hear matters referred to them by the presiding judge and cannot make a binding decision.

6. Is there a danger that the stay-at-home spouse may be forced financially into arbitration?

No. If the 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 the parties go to Court. (Sec. 12). Further, if a party files a motion to compel arbitration or a party files a motion to terminate arbitration, and the Court finds that arbitration should not proceed because a party's safety or ability to participate effectively in arbitration is at risk, arbitration will not proceed even if the parties entered into an Arbitration Agreement. (Sec. 7 (c)(d)).

7. Is there a danger that discovery will be unfair to the spouse who might be abused financially or otherwise?

No. The arbitrator working with the parties and their lawyers will determine the scope and subject matter of discovery with the specific goal that discovery will be focused on achieving a fair and expeditious disposition of the dispute. (Sec. 13). If a party is being abused or acts of domestic violence exist, the arbitration is stayed, and the parties go to the Court. The arbitrator may make a temporary order to protect a party or child from harm, harassment, or intimidation pending the Court's intervention. (Sec. 12)

8. Can arbitrators hear civil or criminal contempt petitions?

No. The Act does not allow the arbitrator to hear civil or criminal contempt petitions. (Sec. 3 (b)(5)). However, the arbitrator may award sanctions on a party for bad faith or misconduct during the arbitration. (Sec. 13 (c)(15)).

9. What are other states doing with respect to Arbitration in family law cases?

Four states have adopted the UFLAA as promulgated by the Uniform Law Commission (ULC) (also known as the National Conference of Commissioners on Uniform State Laws); three states or jurisdictions have introduced the UFLAA legislation; and twenty states have expressly provided for statutes or rules that permit arbitration in family law matters.

Carolyn Moran Zack, Family Law Arbitration, Practice, Procedures and Forms, ABA, 2020, p. 13, and Appendix F. State Laws Applicable to Family Law Arbitration (updated as of 8/29/2021)