

CIPRIANI INN OF COURT – UNIFORM FAMILY LAW ARBITRATION

January 8, 2025

FACT PATTERN

Husband and Wife have been married for 10 years. Husband is a psychologist, who started his practice as a sole proprietor 4 years before the date of marriage. 2 years after the date of marriage, Husband created an S Corp for tax purposes. While Husband was obtaining his Ph.D. at Temple, he realized the opportunity to invest in real estate near the University and acquired 6 properties before the marriage. Wife also had 2 of her own properties before the marriage. After marriage, the parties acquired 20 additional rental properties.

Prior to marriage, Wife worked in pharmaceutical sales and earned approximately \$500,000 but stopped working after their first child born approximately 2 years into the marriage. After their second child was 2 years old, Wife started working for Husband's psychological practice, primarily handling payroll, but had access to all aspects of Husband's practice.

A majority of Husband's income for the practice was due to a contract with Community Behavioral Health and prior to the parties' date of separation, Husband's business savings account had \$725,000 and the parties had \$200,000 in their real estate account.

The parties were scheduled for an out of town vacation over the July 4th weekend and immediately before leaving, Wife started an argument with Husband and at the conclusion of their argument, Wife asked Husband to stay back a day so they could cool down. Husband agreed and unbeknownst to Husband, Wife stopped at the bank on her way to their vacation and withdrew \$700,000 from the business savings account and \$175,000 from the real estate account.

Although the parties' vacation occurred without incident, Wife convinced Husband to stay at a friend's house upon return and when Husband refused to stay out after 2 weeks out of the house, Wife filed a PFA against Husband, thereby evicting Husband from the property and forcing him to rent a property while they waited 3+ months for their PFA trial. Although the PFA was dismissed with prejudice following a trial, Husband agreed to stay out of the property to avoid further false allegations of abuse.

After Husband was evicted under the Ex Parte Abuse Order, Husband finally realized Wife removed \$900,000 from the bank accounts and that he could not access his company's payroll. As a result, he immediately went to the bank and removed Wife from all of his personal and business accounts, removed her from the payroll company, and shut her out of all business accounts, including access to her email through his business.

In addition to each party filing emergency petitions in family court with Husband seeking 100% control of his business and all of his personal and joint real estate properties and with Wife seeking reinstatement to Husband's business and access to the real estate rental income, Wife retained a corporate litigator and filed a Declaratory Judgment and Emergent Injunction action in the Commerce Program in the Civil Division seeking the same remedies she filed in her emergency family court filing, but she also sought compensation for her alleged wrongful termination.

As all of the above is occurring, the parties are also about to become embroiled into a bitter custody battle as well as a fight in support case, which will involve Wife's earning capacity and Husband's Net Income Available for Support.

Before this case spirals out of control, the concept of taking their case out of both Family Court and the Civil Divisions and proceeding to binding arbitration peaked both of the parties' interests; however, neither party exactly knows what Arbitration means.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 917 Session of 2023

INTRODUCED BY SHUSTERMAN, T. DAVIS, MADDEN, CEPEDA-FREYTIZ, ROZZI, HILL-EVANS, SANCHEZ, KINSEY, BOROWSKI, BRENNAN, HANBIDGE, PIELLI, WARREN, KLUNK, WEBSTER, TAKAC, HADDOCK AND GREEN, APRIL 17, 2023

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, APRIL 8, 2024

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, adopting the Uniform
3 Family Law Arbitration Act.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 73 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER D

9 UNIFORM FAMILY LAW ARBITRATION

10 Sec.

11 7371. Short title of subchapter.

12 7372. Definitions.

13 7373. Scope of subchapter.

14 7374. Applicable law.

15 7375. Arbitration agreement.

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12 7389. Vacation, amendment or confirmation by court of
13 unconfirmed award.
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15 7391. Judgment on award.
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18 7394. Appeal.
19 7395. Immunity of arbitrator.
20 7396. Uniformity of application and construction.
21 7397. Relation to Electronic Signatures in Global and National
22 Commerce Act.
23 7398. Transitional provision.
24 § 7371. Short title of subchapter.
25 This subchapter shall be known and may be cited as the
26 Uniform Family Law Arbitration Act.
27 § 7372. Definitions.
28 The following words and phrases when used in this subchapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Arbitration agreement." An agreement which subjects a
2 family law dispute to arbitration.

3 "Arbitration organization." An association, agency, board,
4 commission or other entity which is neutral and initiates,
5 sponsors or administers an arbitration or is involved in the
6 selection of an arbitrator.

7 "Arbitrator." An individual selected or appointed, alone or
8 with others, to make an award in a family law dispute which is
9 subject to an arbitration agreement.

10 "Award." Any interim award, temporary order or final
11 disposition of a family law dispute by an arbitrator.

12 "Child custody dispute." A family law dispute regarding
13 legal custody, physical custody, parenting plans, parental
14 duties, relocation or supervised physical custody of a child.

15 "Child support dispute." A family law dispute regarding
16 financial support of a child.

17 "Court." A court of common pleas which has jurisdiction over
18 a family law dispute.

19 "Family law dispute." A contested issue arising under 23
20 Pa.C.S. (relating to domestic relations). The term does not
21 include an issue under section 7373(b) (relating to scope of
22 subchapter).

23 "Party." An individual who signs an arbitration agreement
24 and whose rights will be determined by an award.

25 "Person." An individual, estate, business or nonprofit
26 entity, public corporation, government or governmental
27 subdivision, agency or instrumentality or any other legal
28 entity.

29 "Protection order." An injunction or other order, issued
30 under the domestic-violence, family-violence or stalking laws of

1 the issuing jurisdiction, to prevent an individual from engaging
2 in a violent or threatening act against, harassment of, contact
3 or communication with or being in physical proximity to, another
4 individual who is a party or a child under the custodial
5 responsibility of a party.

6 "Record." Information that is inscribed on a tangible medium
7 or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

9 "Sign." With present intent to authenticate or adopt a
10 record:

11 (1) to execute or adopt a tangible symbol; or

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

14 "State." A state of the United States, the District of
15 Columbia, Puerto Rico, the United States Virgin Islands or any
16 territory or insular possession subject to the jurisdiction of
17 the United States. The term includes a federally recognized
18 Indian tribe.

19 § 7373. Scope of subchapter.

20 (a) Coverage.--Except as set forth in subsection (b), this
21 subchapter governs arbitration of a family law dispute.

22 (b) Exceptions.--This subchapter does not authorize an
23 arbitrator to make an award which:

24 (1) grants a divorce or annulment;

25 (2) terminates parental rights;

26 (3) grants an adoption or a guardianship of a child or
27 incapacitated individual; or

28 (4) determines the status of a child under Ch. 63
29 (relating to juvenile matters).

30 § 7374. Applicable law.

1 (a) Revised Statutory Arbitration Act.--

2 (1) Subject to paragraph (2), the law applicable to
3 arbitration is Subchapter A.1 (relating to revised statutory
4 arbitration).

5 (2) If there is a conflict between Subchapter A.1 and
6 this subchapter, this subchapter controls.

7 (b) Choice of law.--In determining the merits of a family
8 law dispute, an arbitrator shall apply the law of this
9 Commonwealth, including its choice of law rules.

10 § 7375. Arbitration agreement.

11 (a) Requirements.--An arbitration agreement must:

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

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

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

17 (b) Effect.--Except as set forth in subsection (c), an
18 agreement in a record to arbitrate a family law dispute which
19 arises between the parties is:

20 (1) valid and enforceable as any other contract; and

21 (2) irrevocable, except on a ground that exists at law
22 or in equity for the revocation of a contract.

23 (c) Unenforceable agreements.--An agreement to arbitrate a
24 child custody dispute or child support dispute, which arises
25 between the parties after the agreement is made is unenforceable
26 unless:

27 (1) the parties affirm the agreement in a record after
28 the child custody dispute or child support dispute arises; or

29 (2) the agreement was entered during a family law
30 proceeding, and the court approved or incorporated the

1 agreement in an order issued in the proceeding.

2 (d) Objection to arbitration.--If a party objects to
3 arbitration on the ground that the arbitration agreement is
4 unenforceable or that the agreement does not include a family
5 law dispute, the court shall decide whether the agreement is
6 enforceable or includes the family law dispute.

7 § 7376. Notice of arbitration.

8 A party must initiate arbitration by giving notice to
9 arbitrate to the other party:

10 (1) in the manner specified in the arbitration
11 agreement; or

12 (2) in the absence of a specified manner, under section
13 7321.3 (relating to notice).

14 § 7377. Motion for judicial relief.

15 (a) Forum.--A motion for judicial relief under this
16 subchapter must be made to:

17 (1) the court in which a proceeding is pending involving
18 a family law dispute subject to arbitration; or

19 (2) if no proceeding is pending, a court with
20 jurisdiction over the parties and the subject matter.

21 (b) Compulsion.--On motion of a party, the court may compel
22 arbitration if the parties have entered into an arbitration
23 agreement which complies with section 7375 (relating to
24 arbitration agreement) unless the court determines under section
25 7382 (relating to protection of party or child) that the
26 arbitration should not proceed.

27 (c) Termination.--On motion of a party, the court shall
28 terminate arbitration if it determines that:

29 (1) the agreement to arbitrate is unenforceable;

30 (2) the family law dispute is not subject to

1 arbitration; or

2 (3) under section 7382 the arbitration should not
3 proceed.

4 (d) Consolidation.--Unless prohibited by an arbitration
5 agreement, on motion of a party, the court may order
6 consolidation of separate arbitrations involving the same
7 parties and a common issue of law or fact if consolidation is
8 necessary for the fair and expeditious resolution of the family
9 law dispute.

10 § 7378. Qualification and selection of arbitrator.

11 (a) Qualifications.--Except as set forth in subsection (b)
12 and unless waived in a record by the parties, an arbitrator
13 must:

14 (1) be an attorney at law, a former attorney at law on
15 inactive status or a senior judge; and

16 (2) have successfully completed a combined five hours of
17 instruction, approved by the Pennsylvania Supreme Court
18 Continuing Legal Education Board, in domestic violence and
19 child abuse.

20 (b) Arbitration agreement.--The identification in the
21 arbitration agreement of an arbitrator, arbitration organization
22 or method of selection of the arbitrator controls.

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

27 § 7379. Disclosure by arbitrator and disqualification.

28 (a) Initial obligation.--Before agreeing to serve as an
29 arbitrator, an individual, after making reasonable inquiry,
30 shall disclose to all parties any known fact a reasonable person

1 would believe is likely to affect:

2 (1) the impartiality of the arbitrator in the
3 arbitration, including:

4 (i) bias;

5 (ii) a financial or personal interest in the outcome
6 of the arbitration; or

7 (iii) an existing or past relationship with a party,
8 attorney representing a party or witness; or

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

10 (b) Continuing obligation.--The arbitrator shall disclose,
11 and provide in writing to the parties, the amount of initial
12 fee, any hourly rate to be charged, the process for invoices and
13 payment for services and information on the arbitration process,
14 specifically including how to terminate the arbitration. An
15 arbitrator, the parties and the attorneys representing the
16 parties have a continuing obligation to disclose to all parties
17 any known fact a reasonable person would believe is likely to
18 affect the impartiality of the arbitrator or the arbitrator's
19 ability to make a timely award.

20 (c) Objection.--An objection to the selection or continued
21 service of an arbitrator and a motion for a stay of arbitration
22 and disqualification of the arbitrator must be made under
23 section 7377 (relating to motion for judicial relief).

24 (d) Failure to disclose.--If a disclosure required by
25 subsection (a)(1) or (b) is not made, the court may:

26 (1) on motion of a party not later than 15 days after
27 the failure to disclose is known or, by the exercise of
28 reasonable care, should be known by the party, suspend the
29 arbitration;

30 (2) on timely motion of a party, vacate an award under

1 section 7389(a)(2) (relating to vacation, amendment or
2 confirmation by court of unconfirmed award); or

3 (3) if an award has been confirmed, grant other
4 appropriate relief under law of this Commonwealth other than
5 this subchapter.

6 (e) Replacing arbitrator.--If the parties agree to discharge
7 an arbitrator or the arbitrator is disqualified, the parties by
8 agreement may select a new arbitrator or request the court to
9 select another arbitrator under section 7378 (relating to
10 qualification and selection of arbitrator).

11 § 7380. Party participation.

12 (a) Representation.--A party may:

13 (1) be represented in an arbitration by counsel;

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

16 (3) participate in the arbitration to the full extent
17 permitted under sections 7321.16 (relating to arbitration
18 process) and 7383 (relating to powers and duties of
19 arbitrator).

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

24 § 7381. Temporary order or award.

25 (a) Before selection of arbitrator.--Before an arbitrator is
26 selected and able to act, on motion of a party, the court may
27 enter a temporary order under 23 Pa.C.S. (relating to domestic
28 relations) and the applicable Pennsylvania Rules of Civil
29 Procedure.

30 (b) After selection of arbitrator.--After an arbitrator is

1 selected:

2 (1) the arbitrator may make a temporary award under 23
3 Pa.C.S. and the applicable Pennsylvania Rules of Civil
4 Procedure; and

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

8 (c) Modification.--On motion of a party, before the court
9 confirms a final award, the court, under section 7386 (relating
10 to confirmation of award), 7388 (relating to correction or
11 confirmation by court of unconfirmed award) or 7389 (relating to
12 vacation, amendment or confirmation by court of unconfirmed
13 award), may confirm, correct, vacate or amend a temporary award
14 made under subsection (b) (1).

15 (d) Enforcement.--On motion of a party, the court may
16 enforce a subpoena or interim award issued by an arbitrator for
17 the fair and expeditious disposition of the arbitration.
18 § 7382. Protection of party or child.

19 (a) (Reserved).

20 (b) Stay.--

21 (1) This subsection applies if all of the following
22 subparagraphs apply:

23 (i) ~~All parties are not represented.~~ (RESERVED). <--

24 (ii) Any of the following clauses apply:

25 (A) A party is subject to a protection order.

26 (B) The arbitrator determines there is a
27 reasonable basis to believe a party is the victim of
28 domestic violence or a party's safety or ability to
29 participate effectively in arbitration is otherwise
30 at risk.

1 (2) If paragraph (1) applies, the arbitrator shall stay
2 the arbitration and refer the parties to court. The
3 arbitration may not proceed unless the party at risk affirms
4 the arbitration agreement in a record and the court
5 determines:

6 (i) the affirmation is informed and voluntary;

7 (ii) arbitration is not inconsistent with the
8 protection order; and

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

11 (c) Termination.--If the arbitrator determines that there is
12 a reasonable basis to believe a child who is the subject of a
13 child custody dispute is abused or neglected, the arbitrator
14 shall terminate the arbitration of the child custody dispute and
15 report the abuse or neglect to the court and, the Statewide <--
16 toll-free telephone number established under 23 Pa.C.S. § 6332
17 (relating to establishment of Statewide toll-free telephone
18 number) or to another appropriate authority.

19 (d) Temporary protection.--An arbitrator may make a
20 temporary award to protect a party or child from harm,
21 harassment or intimidation.

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

25 (f) Other law applicable.--This section supplements remedies
26 available under law of this Commonwealth other than this
27 subchapter for the protection of victims of domestic violence,
28 family violence, stalking, harassment and similar abuse.

29 § 7383. Powers and duties of arbitrator.

30 (a) Fairness and expediency.--An arbitrator shall conduct an

1 arbitration in a manner the arbitrator considers appropriate for
2 a fair and expeditious disposition of the family law dispute.

3 (b) Procedural due process.--An arbitrator shall provide
4 each party a right to be heard, to present evidence material to
5 the family law dispute and to cross-examine witnesses.

6 (c) Powers.--Unless the parties otherwise agree in a record,
7 an arbitrator may:

8 (1) select the rules for conducting the arbitration;

9 (2) hold a conference with the parties before a hearing;

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

11 (4) require a party to provide:

12 (i) a copy of a relevant court order;

13 (ii) information required to be disclosed in a
14 family law proceeding under 23 Pa.C.S. (relating to
15 domestic relations) and the applicable Pennsylvania Rules
16 of Civil Procedure; and

17 (iii) a proposed award which addresses each issue in
18 arbitration;

19 (5) interview a child who is the subject of a child
20 custody dispute;

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

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

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

29 (9) determine the admissibility and weight of evidence;

30 (10) permit deposition of a witness for use as evidence

1 at a hearing;

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

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

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

8 (14) allocate arbitration fees, attorney fees, expert
9 witness fees and other costs to the parties; and

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

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

17 § 7384. Recording of hearing.

18 An arbitration hearing need not be recorded unless required
19 by the arbitrator, provided by the arbitration agreement or
20 requested by a party.

21 § 7385. Award.

22 (a) Manner.--An arbitrator shall make an award in a record,
23 dated and signed by the arbitrator. The arbitrator shall give
24 notice of the award to each party by a method agreed on by the
25 parties or, if the parties have not agreed on a method, under
26 section 7321.3 (relating to notice).

27 (b) Rationale.--

28 (1) Except as set forth in paragraph (2), the arbitrator
29 shall make written findings explaining an award.

30 (2) Except as set forth in subsection (c), the parties,

1 by agreement, may stipulate that paragraph (1) does not
2 apply.

3 (c) Child custody or support.--Notwithstanding subsection
4 (b) (2), for an award determining a child custody dispute or a
5 child support dispute, the arbitrator shall state the reasons on
6 which the award is based as required by 23 Pa.C.S. (relating to
7 domestic relations).

8 (d) Confirmation required.--An award is not enforceable as a
9 judgment until confirmed under section 7386 (relating to
10 confirmation of award).

11 § 7386. Confirmation of award.

12 (a) Motion.--After an arbitrator gives notice under section
13 7385(a) (relating to award) or makes a correction under section
14 7387 (relating to correction by arbitrator of unconfirmed
15 award), a party may move the court for an order confirming the
16 award or, when applicable, entry of the divorce decree
17 incorporating the award.

18 (b) Grounds.--Except as set forth in subsection (c), the
19 court shall confirm an award if any of the following paragraphs
20 apply:

21 (1) The parties agree in a record to confirmation.

22 (2) All of the following apply:

23 (i) The time period under section 7388 (relating to
24 correction or confirmation by court of unconfirmed award)
25 has expired, and no motion is pending under section 7388.

26 (ii) The time period under section 7389(e) (relating
27 to vacation, amendment or confirmation by court of
28 unconfirmed award) has expired, and no motion is pending
29 under section 7389.

30 (c) Child custody or child support.--If an award determines

1 a child custody dispute or a child support dispute, the court
2 shall confirm the award under subsection (b) if the court finds,
3 after a review of the record if necessary, that the award on its
4 face:

5 (1) complies with section 7385 and 23 Pa.C.S. (relating
6 to domestic relations); and

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

8 (d) Effect.--On confirmation, an award is enforceable as a
9 judgment.

10 (e) Confidentiality.--Unless the parties otherwise agree,
11 the arbitration proceedings and the arbitration award are
12 confidential. If either party includes, in the motion under
13 subsection (a), a request that the arbitration award be filed
14 under seal, the court shall file the award under seal.

15 § 7387. Correction by arbitrator of unconfirmed award.

16 On motion of a party made not later than 20 days after an
17 arbitrator gives notice under section 7385(a) (relating to
18 award), the arbitrator may correct the award:

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

22 (2) (Reserved); or

23 (3) to clarify the award.

24 § 7388. Correction or confirmation by court of unconfirmed
25 award.

26 (a) Grounds.--On motion of a party made not later than 30
27 days after an arbitrator gives notice under section 7385(a)
28 (relating to award) or makes a correction under section 7387
29 (relating to correction by arbitrator of unconfirmed award), the
30 court shall correct the award if:

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

4 (2) (Reserved); or

5 (3) the arbitrator made an award on a family law dispute
6 not submitted to the arbitrator, and the award may be
7 corrected without affecting the merits of the issues
8 submitted.

9 (b) Joinder.--A motion under this section to correct an
10 award may be joined with a motion to vacate or amend the award
11 under section 7389 (relating to vacation, amendment or
12 confirmation by court of unconfirmed award).

13 (c) Confirmation.--Unless a motion under section 7389 is
14 pending, the court may confirm a corrected award under section
15 7386 (relating to confirmation of award).

16 § 7389. Vacation, amendment or confirmation by court of
17 unconfirmed award.

18 (a) Grounds for amendment.--Subject to subsection (b), on
19 motion of a party, the court shall vacate an unconfirmed award
20 if the moving party establishes that:

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

23 (2) there was:

24 (i) evident partiality by the arbitrator;

25 (ii) corruption by the arbitrator; or

26 (iii) misconduct by the arbitrator substantially
27 prejudicing the rights of a party;

28 (3) the arbitrator refused to postpone a hearing on
29 showing of sufficient cause for postponement, refused to
30 consider evidence material to the controversy or otherwise

1 conducted the hearing contrary to section 7383 (relating to
2 powers and duties of arbitrator), so as to prejudice
3 substantially the rights of a party;

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

5 (5) no arbitration agreement exists, unless the moving
6 party participated in the arbitration without making a motion
7 under section 7377 (relating to motion for judicial relief)
8 not later than the beginning of the first arbitration
9 hearing; or

10 (6) the arbitration was conducted without proper notice
11 under section 7376 (relating to notice of arbitration), so as
12 to prejudice substantially the rights of a party.

13 (b) Child custody or child support.--Subject to subsection
14 (c), on motion of a party, the court shall vacate an unconfirmed
15 award which determines a child custody dispute or a child
16 support dispute if the moving party establishes that:

17 (1) the award:

18 (i) does not comply with section 7385 (relating to
19 award) or 23 Pa.C.S. (relating to domestic relations); or

20 (ii) is contrary to the best interests of the child;

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

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

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

29 (d) Standard of review.--The court may determine a motion
30 under subsection (b) or (c):

1 (1) based on the record of the arbitration hearing, if
2 it was recorded, and facts occurring after the hearing; or

3 (2) if there is no record, de novo.

4 (e) Time.--A motion under this section to vacate or amend an
5 award must be filed not later than 30 days:

6 (1) except as set forth in paragraph (2), after an
7 arbitrator gives notice under section 7385(a) or makes a
8 correction under section 7387 (relating to correction by
9 arbitrator of unconfirmed award); or

10 (2) for a motion under subsection (a)(1), the ground of
11 corruption, fraud or other undue means is known or, by the
12 exercise of reasonable care, should be known to the party
13 filing the motion.

14 (f) Rehearing.--If the court under this section vacates an
15 award for a reason other than the absence of an enforceable
16 arbitration agreement, the court may order a rehearing before an
17 arbitrator. The rehearing shall be before another arbitrator if
18 the reason for vacating the award is that:

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

21 (2) there was evident partiality, corruption or
22 misconduct by the arbitrator.

23 (g) Confirmation.--If the court under this section denies a
24 motion to vacate or amend an award, unless a motion is pending
25 under section 7388 (relating to correction or confirmation by
26 court of unconfirmed award), the court may confirm the award
27 under section 7386 (relating to confirmation of award).

28 § 7390. Clarification of confirmed award.

29 If the meaning or effect of an award confirmed under section
30 7386 (relating to confirmation of award) is in dispute, the

1 parties may:

2 (1) agree to arbitrate the family law dispute before the
3 original arbitrator or another arbitrator; or

4 (2) proceed under Subchapter C of Chapter 75 (relating
5 to declaratory judgments) and Pa.R.C.P. Ch. 1600 (relating to
6 action for declaratory judgments).

7 § 7391. Judgment on award.

8 (a) Entry.--On granting an order confirming, vacating
9 without directing a rehearing or amending an award under this
10 subchapter, the court shall enter judgment in conformity with
11 the order.

12 (b) Sealing and redaction.--On motion of a party, the court
13 shall order that a document or part of the arbitration record be
14 sealed or redacted to prevent public disclosure of all or part
15 of the record or award.

16 § 7392. Modification of confirmed award or judgment.

17 If a party requests under law of this Commonwealth other than
18 this subchapter modification of an award confirmed under section
19 7386 (relating to confirmation of award) or of a judgment on an
20 award, based on a fact occurring after confirmation:

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

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

25 (i) agree to arbitrate the modification before the
26 original arbitrator or another arbitrator; or

27 (ii) absent agreement proceed under 23 Pa.C.S.
28 (relating to domestic relations) and the applicable
29 Pennsylvania Rules of Civil Procedure.

30 § 7393. Enforcement of confirmed award.

1 (a) This Commonwealth.--A court shall enforce an award
2 confirmed under section 7386 (relating to confirmation of
3 award), including a temporary award, in the manner and to the
4 same extent as any other order or judgment of a court.

5 (b) Other states.--A court shall enforce an arbitration
6 award in a family law dispute confirmed by a court in another
7 state in the manner and to the same extent as any other order or
8 judgment from another state.

9 § 7394. Appeal.

10 (a) Matters.--An appeal may be taken under this subchapter
11 from:

12 (1) an order granting or denying a motion to compel
13 arbitration;

14 (2) an order granting or denying a motion to stay
15 arbitration;

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

18 (4) an order correcting an award;

19 (5) an order vacating an award without directing a
20 rehearing; and

21 (6) a final judgment.

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

24 § 7395. Immunity of arbitrator.

25 (a) Civil liability.--An arbitrator or arbitration
26 organization acting in that capacity in a family law dispute is
27 immune from civil liability to the same extent as a judge of a
28 court of this Commonwealth acting in a judicial capacity.

29 (b) Sovereign immunity.--The immunity provided by this
30 section supplements immunity under:

1 (1) 1 Pa.C.S. § 2310 (relating to sovereign immunity
2 reaffirmed; specific waiver); and

3 (2) Subchapter B of Chapter 85 (relating to actions
4 against Commonwealth parties).

5 (c) Nondisclosure.--An arbitrator's failure to make a
6 disclosure under section 7379 (relating to disclosure by
7 arbitrator and disqualification) does not cause the arbitrator
8 to lose immunity under this section.

9 (d) Testimony.--

10 (1) Except as set forth in paragraph (2), an arbitrator
11 is not competent to testify, and may not be required to
12 produce records, in a judicial, administrative or similar
13 proceeding about a statement, conduct, decision or ruling
14 occurring during an arbitration, to the same extent as a
15 judge of a court of this Commonwealth acting in a judicial
16 capacity.

17 (2) This subsection does not apply:

18 (i) to the extent disclosure is necessary to
19 determine a claim by the arbitrator or arbitration
20 organization against a party to the arbitration; or

21 (ii) to a hearing on a motion under section 7389(a)
22 (1) or (2) (relating to vacation, amendment or
23 confirmation by court of unconfirmed award) if there is
24 prima facie evidence that a ground for vacating the award
25 exists.

26 (e) Attorney fees and costs.--If a person commences a civil
27 action against an arbitrator arising from the services of the
28 arbitrator or seeks to compel the arbitrator to testify or
29 produce records in violation of subsection (d) and the court
30 determines that the arbitrator is immune from civil liability or

1 is not competent to testify or required to produce the records,
2 the court shall award the arbitrator reasonable attorney fees
3 and costs.

4 § 7396. Uniformity of application and construction.

5 In applying and construing this uniform act, consideration
6 must be given to the need to promote uniformity of the law with
7 respect to its subject matter among states that enact it.

8 § 7397. Relation to Electronic Signatures in Global and
9 National Commerce Act.

10 To the extent permitted by section 102 of the Electronic
11 Signatures in Global and National Commerce Act (Public Law 106-
12 229, 15 U.S.C. § 7002), this subchapter may supersede provisions
13 of that act.

14 § 7398. Transitional provision.

15 (a) Prospective.--This subchapter applies to arbitration of
16 a family law dispute under an arbitration agreement made on or
17 after the effective date of this section.

18 (b) Retroactive.--If an arbitration agreement was made
19 before the effective date of this section, the parties may agree
20 in a record that this subchapter applies to the arbitration.

21 Section 2. This act shall take effect in 60 days.



The Uniform Family Law Arbitration Act

Cipriani Inn of Court
January 8, 2024



The Pennsylvania Uniform Family Law Arbitration Act ("UFLAA") 42 Pa. Cons. Stat. §§ 7371-7398

- Went into effect July 8, 2024
- Received unanimous, bipartisan support
- Provides necessary guardrails to protect the needs of family law participants
- Provides a more reliable and consistent process for arbitrating family law claims

Key Provisions

No Status Determinations

42 Pa.C.S. § 7373(b)

Must Apply Substantive Law

42 Pa.C.S. § 7374(b)

Agreement to Arbitrate Controls

42 Pa.C.S. § 7375(a)

Child-related Issues

42 Pa.C.S. § 7375(c)

42 Pa.C.S. § 7385(c)

Arbitrator Qualifications

42 Pa.C.S. § 7378(a)

Party Rights

42 Pa.C.S. § 7380(a)

Disclosures by Arbitrator

42 Pa.C.S. § 7379(a)

Key Provisions

No Ex Parte Communication

42 Pa.C.S. § 7380(b)

Protection of a Party or Child

42 Pa.C.S. § 7382

Broad Powers of the Arbitrator

42 Pa.C.S. § 7383(c)

Issuance of Award

42 Pa.C.S. §§ 7385,
7388, 7389

Judgment on the award

42 Pa.C.S. § 7391

Modification, Enforcement, and Appeals

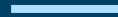
42 Pa.C.S. §§ 7392, 7393, 7394

Key Benefits

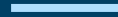
- Promotes timely resolution of disputes and reduced conflict between parents.
- Provides ability to select the decision-maker.
- Protects confidentiality of personal and business matters.
- Allows for a more family-friendly setting for children and parents.
- Provides protection for victims of domestic violence and abuse.
- Helps parties to avoid expensive litigation and related expenses.
- Prevents years of appeals and related expenses.
- Specific provisions related to child-related awards.
- Decisions enforceable as a court order.

“Shall We Arbitrate Family Law Issues? Finally . . . Yes!” by Jeannine Turgeon and Carolyn Moran Zack

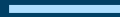
Deciding Whether to Arbitrate



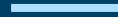
Pre-Hearing Process



Directives

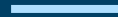


Hearing



Issuance/Review of Award

Ethical Issues



AGREEMENT TO ARBITRATE

THIS AGREEMENT is entered into by and between [REDACTED] (“Wife”) and [REDACTED] (“Husband”).

WHEREAS, the parties hereto are parties to a divorce action docketed in the Court of Common Pleas of Philadelphia County, Pennsylvania.

WHEREAS, the parties have been unable to agree regarding the disposition of all ancillary issues related to the separation and divorce; and

WHEREAS, in order to reduce the delays, expense, and uncertainties and anxieties of Court litigation, the parties prefer to resolve their differences by making use of binding arbitration.

NOW THEREFORE, intending to be legally bound, the parties agree as follows:

1. **Agreement to Arbitrate.**

A. The parties submit to binding common law arbitration in accordance with the terms of this Agreement.

B. Neither party to this Agreement shall have the right or power to revoke this submission without the consent in writing of the other party hereto.

2. **Knowing Waiver of Certain Rights, Consent to Arbitrate, Scope of Arbitration, Entry of Decree of the Arbitration Award.**

The parties acknowledge and agree to the following:

A. The parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;

B. The parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;

C. The parties have had sufficient time to consider the implication of their decision to arbitrate; and

D. The parties have entered into this Arbitration Agreement freely and voluntarily, after due consideration of the consequences of doing so.

3. Selection of Arbitrator.

A. The parties have agreed upon and designate Michael D. Fioretti, Esquire, as the sole Arbitrator to consider, adjudicate and make Awards.

B. In the event that before the final Award is made, the Arbitrator dies, becomes incapacitated, unfit to act or refuses to act, he/she shall be replaced by agreement of the parties within thirty (30) days after such event.

4. Scope of Arbitration.

A. The Arbitrator shall have the power to consider, adjudicate and make Award(s) on all issues relating to the dissolution of the parties' marriage, including without limitation, alimony (including alimony pendente lite, spousal support and child support); attorney's fees; costs; expenses (including expert fees); equitable distribution of marital property including debts and obligations, discovery and pretrial motions.

5. Arbitrator's Fees.

A. The Arbitrator shall be compensated at the rate of \$400.00 per hour for preparation, conducting the hearing, receiving the facts and law, and rendering an Award.

B. Husband/Wife shall advance the sum of \$7500.00 toward the Arbitrator's fees, without prejudice to the right of the Arbitrator to assess such fees as the Arbitrator may determine.

6. Procedure.

A. Arbitration shall be conducted in accordance with the terms of this Agreement and the procedures employed by the Arbitrator not inconsistent therewith. For example, the Arbitrator will determine to what extent he/she will follow the rules of evidence, whether post-hearing memoranda will be required, all discovery issues, etc. The Arbitrator shall be free to fashion such remedies as he/she deems just and proper without regard to whether such remedies would be available at law.

B. The parties, their counsel and the Arbitrator understand the importance of resolving this matter expeditiously. They will each remain accessible, promptly and return

the phone calls and answer correspondence. They will cooperate in all discovery. They will cooperate in scheduling conferences and hearings and devote the time necessary so that, if at all possible, the Award will be issued within thirty (30) days of the completion of the hearing.

C. There shall be a record of the proceedings. The parties shall share the cost of the court stenographer.

7. Effect of Award.

A. The Award shall be fully enforceable as any other Agreement of the parties under the Divorce Code of 1980 and shall be subjected to an Action of Contempt and Award of Counsel Fees and Costs in the event of non-compliance. The Arbitration Award may be submitted to the Court for incorporation by reference in the final Decree of Divorce.

B. The Award of the Arbitrator shall be binding upon the parties and not appealable except for the following:

(1) Denial of a hearing to a party;

(2) Fraud, misconduct or corruption which caused the rendition of an unjust, inequitable or unconscionable award;

C. Each party shall have the right to request the Arbitrator to reconsider any portion of the award by written request within ten (10) days following the date of such award. The Arbitrator shall promptly decide any such request for reconsideration, and shall have sole discretion to determine whether any future hearing or argument of counsel, by telephone conference call, Zoom, in-person, or otherwise, is necessary in order to decide any such reconsideration request.

D. In the event either party seeks to proceed as to subparagraph B above, notice of the nature of Exceptions must be filed with the Court in the county where the divorce action was commenced within ten (10) days of the receipt of the Award. The Exceptions shall have the attached copy of the Arbitrator's Award and this Agreement. Copies of the Exceptions were taken in accordance with the existing rules of Court, except these Exceptions shall be limited as set forth in this Agreement.

E. All counsel fees and costs of such Exceptions or further appeal will be subjected to a further Order of the Court and will be charged to either party or both in a proportion to be determined by the Court.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, sign this Arbitration Agreement.

Plaintiff

Defendant

Attorney for Plaintiff

Attorney for Defendant

Attorney for Plaintiff

JAMES ROCCO, Esquire
Attorney for Defendant

APPROVED BY:

Date: _____

MICHAEL D. FIORETTI, ESQUIRE

MICHAEL D. FIORETTI, ESQUIRE
ATTORNEY ID NO. 16036
CHERRY HILL PLAZA-SUITE 105
1415 MARLTON PIKE EAST
CHERRY HILL, NEW JERSEY 08034
(856) 427-9060

ARBITRATOR

[REDACTED] : COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
[REDACTED] : FAMILY LAW DIVISION

VS. : [REDACTED]
: [REDACTED]
[REDACTED] : PRE-DECREE DIRECTIVE

The parties, counsel and the Arbitrator having participated in a Hearing on May 22, 2023; and the Arbitrator having considered the testimony of the parties, the arguments of counsel, and for other good cause shown; the Arbitrator makes the following directive:

1. Wife's request for payment of the overdue medical and extracurricular activities is **GRANTED**. Father shall pay 70% of the following expenses:

- Dentist.....\$137.20
- Dentist.....\$135.80
- Therapy.....\$126.00
- Therapy.....\$189.00
- Therapy.....\$378.00

- Therapy.....\$252.00
- Coach.....\$140.00
- Doctor's Visit.....\$14.00
- Radiology X-Ray.....\$105.00
- Orthopedic.....\$10.00
- Prescription.....\$63.69
- Total.....\$1550.69**

Father shall obtain a second opinion with regard to the orthodontic braces for his son.

2. With regard to extracurricular activities, Father shall be responsible for 100% of the following expenses consistent with the terms of the Support Order:

- ESport Gaming Camp.....\$95.00
- Basketball Camp [REDACTED].....\$305.00
- Total Sports [REDACTED].....\$395.00
- Sports Camp PC.....\$980.00
- Skateboard Camp.....\$475.00
- ESport Gaming Camp.....\$314.00
- Tennis Camp.....\$600.00
- Swim Team.....\$155.00
- Drumming Camp PC.....\$540.00
- Total.....\$3,954.00**

Total Due.....\$5,504.69¹

3. The Process with regard to Father's payment of medical and extracurricular bills prospectively shall be as follows:

A) With regard to activities engaged in by the children during the marriage, and specifically referenced in the Support Order, those bills shall be paid consistent with the terms of the Support Order. With regard to a new expense, Mother shall first notify Father as follows:

- (i) The nature of the expense;
- (ii) The reason why the expense should be incurred;
- (iii) The amount of the expense.

B) This communication shall take place through "Our Family Wizard". Father shall provide an answer to Mother's request within 48 hours. If Father does not answer within 48 hours, then Mother may conclude that Father has agreed to that expense.

C) A support fund will be created in the Trust Account of [REDACTED]. [REDACTED] Father shall deposit \$30,000.00 into that Account on or before May 31, 2023. [REDACTED] [REDACTED] will first pay the expenses indicated above. Prospectively, [REDACTED] will pay each expense upon receipt from opposing counsel on a monthly basis a statement indicating the expenses and the cost of the expenses. If Father objects to the payment of an expense, the expense will be payable by [REDACTED] without prejudice, subject to Father's right to raise the issue of whether or not the expense was appropriate at the time of final hearing. The fund shall be replenished with \$5000.00 each time it is expended.

¹ The Arbitrator disregarded expenses incurred for new expenses which were incurred by Mother without Father's prior knowledge or consent.

4. One of the purposes of the emergent hearing which took place on May 22, 2023, was to creatively establish a mechanism to make a lump sum available to Wife. Husband had previously suggested the sale of a parcel of real estate. The Arbitrator did not believe that that was an appropriate resolution because it would to time to sell and close on the real estate.

At the hearing, Husband suggested that he make a lump sum payment to Wife in the amount of \$175,000.00 which represents 50% of the net equity of [REDACTED] which is the location of Husband's clinic. It is highly improbable that Husband will be awarded that real estate since that is the real estate from which he conducts his business.

Husband was willing to make a lump sum payment to Wife in an amount of \$175,000.00 without prejudice, provided Wife executed the Deed to the clinic to Husband. The execution of the Deed to Husband at this time would be a non-taxable transfer since it will be a transfer from Husband and Wife during the marriage. If this property is transferred post-divorce, there may be capital gains tax which will have to be considered valuing the property for distribution.

Counsel for Wife indicated that the testimony with regard to that offer could not be properly evaluated by Wife's attorney. Therefore, Wife's attorney indicated she needed more time to review the appraisal and other aspects of the case.

The Arbitrator indicated that the payment to Wife of \$175,000.00 in exchange for the transfer of [REDACTED] would be part of the entire equitable distribution scheme between the parties. The sum of money received by Wife would be without prejudice.

Based on the timing of the proposal, the Arbitrator will not issue an Order, ordering a partial equitable distribution of that real estate at this time. However, the Arbitrator would suggest that counsel and Wife have a discussion with regard to that proposal.

It should be noted that at this time, neither party nor counsel nor the Arbitrator is aware of the full value of the marital estate. The Arbitrator does not want to place the parties in a position where the pre-equitable distribution payments to Wife exceed her share of the marital estate, requiring Wife to give-up assets or make an equitable distribution to Husband at the time of final hearing.

The Arbitrator would suggest that counsel discuss this issue prior to the next hearing.

5. With regard to the inquiries contained in the email of May 22, 2023, at 1:45 P.M., I would request that counsel for Husband provide an answer to the allegations contained in that email. The Arbitrator would request a copy of the provision of Judge Sulman's Order which requires Husband to be responsible for those mortgages.

In the meantime, without prejudice, I am directing Husband to bring current the [REDACTED] mortgage and [REDACTED] mortgage.

5. Mother shall receive an equitable distribution advance in the amount of \$25,000.00 on or before May 31, 2023.

The [REDACTED] Arbitration Status Conference scheduled for June 13, 2023, at 9:00 A.M. shall be scheduled for two (2) hours. The forensic accountant shall be present during that conference. Both parties shall have the right to be heard on the issue of discovery requested by the expert.

Michael D Fioretti
MICHAEL D. FIORETTI, ESQUIRE
ARBITRATOR

Date: 5-23-2023

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CHERRY HILL, NEW JERSEY 08034
(856) 427-9060

ARBITRATOR

[REDACTED]
[REDACTED]

: COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FAMILY LAW DIVISION

VS.

: [REDACTED]
:
[REDACTED]
[REDACTED]

[REDACTED]

: ARBITRATOR'S FINDINGS OF FACT

RE: ALIMONY PENDENTE LITE, SPOUSAL SUPPORT,
AND CHILD SUPPORT

INTRODUCTION:

Plaintiff filed a Complaint for Support on July 19, 2021, requesting spousal and child support. An Interim Order was entered by the Court ordering Defendant to pay \$3182.00 per month for the support of two (2) children. The Order further obligated that the unreimbursed medical expenses that exceed \$250.00 annually per child shall be paid 100% by Defendant. In addition, Defendant was ordered to provide medical insurance for the children. The Order further provided as follows: "This is an Interim Order entered effective August 16, 2021, as per Pennsylvania Support Guidelines in the amount of \$3182.00 per month for support plus \$318.00 towards the arrears. Defendant shall provide health insurance, if available at a reasonable cost.

Defendant's attorney raised the issue of entitlement for the spousal portion of the Support Complaint. Therefore, the case is scheduled for a hearing officer's support hearing. Plaintiff's attorney also requested a support hearing officer's hearing to address an accurate decision regarding the Defendant's self-employment income."

The baseline factors for the Interim Order were: Plaintiff at zero income and Defendant at income of \$21,377.05 per month net.

That a protracted support hearing was scheduled for November 8, 2022, before a Philadelphia Hearing Officer.

That in lieu of the support hearing, the parties opted to participate in Binding Arbitration with Michael D. Fioretti, Esquire, who will be referred to herein as "the Arbitrator".

Therefore, based upon the relevant, credible evidence presented on the date of the hearing as well as the corroborative evidence, and the arguments of counsel as contained in their Memorandum of Law, the Arbitrator makes the following Findings of Fact:

1. Plaintiff/Wife and Defendant/Husband were married on December 12, 2006.
2. That they became separate and apart on July 14, 2021.
3. That a Complaint for Support was filed by the Plaintiff/Wife on July 19, 2021.

4. That the parties are the parents of two (2) children born of this marriage: [REDACTED]

[REDACTED], who is 14 years of age and is in 9th Grade at [REDACTED]

[REDACTED] and [REDACTED], born [REDACTED], who is 11 years of age and is in 6th Grade at [REDACTED]

[REDACTED]

PARTIES' INCOME

5. That during the marriage, the parties received income from three (3) lucrative business entities, real estate rentals, and unearned income.

6. That Husband's qualified¹ income for the year 2021, is \$296,244.00.

7. That Wife's income for the year 2021 was \$116,827.00.

8. That since July of 2021, Wife has received no income from the various business entities but she has received some minimal rental income.

9. That the parties' W2 income over the past five (5) years is as follows:

<u>Year</u>	<u>Husband's Income</u>	<u>Wife's Income</u>
2017	\$265,313.00	\$204,500.00
2018	\$367,539.00	\$216,250.00
2019	\$266,390.00	\$236,810.00
2020	\$300,062.00	\$262,912.00
2021	\$296,244.00	\$116,826.00 ² (\$215,678.00)
Total	\$1,489,548.00	\$1,136,151.00

10. That Husband's average total W2 income for the last five (5) years is \$1,489,548.00 or \$297,910.00 per year.

11. That Wife's total average income for the past five (5) years with the proration for year 2022, is \$1,136,151.00 or \$227,230.00 per year.

¹ Because the parties receive rental income and unearned income from marital assets to be distributed, income from those assets are not being considered for child support since they will be distributed in equitable distribution.

² This sum represents income for Wife up until July 21, 2022. The Arbitrator has prorated Wife's income for the full year. Wife's income for the full year will be \$215,678.00.

-
- (E) That Wife has filed a Complaint for Wrongful Termination in an attempt to regain her employment.
- (F) That a custodian has been appointed by the Court who has the right, inter alia, to re-employ Wife in the marital businesses and determine an appropriate level of compensation.
- (G) That Husband has had minimal contact with the minor children since the Divorce Complaint was filed. As a result thereof, Wife is totally responsible for all of the needs of the minor children.
- (H) That the five (5) years prior to the marriage, Wife had average income of \$144,000.00 per year.
- (I) That the Arbitrator understands Wife's dilemma with regard to seeking employment.

14. However, the Arbitrator cannot, consistent with the Law of the Commonwealth of Pennsylvania, avoid ascribing some earning capacity to Wife. Therefore, recognizing all of these factual issues, and given Wife's past employment history, the Arbitrator sets Wife's earning capacity effective January 1, 2023, in the amount of \$72,000.00⁵ per year or \$6000.00 per month gross.

APPLICATION OF THE PA SUPPORT GUIDELINES

15. Effective January 1, 2023, Husband shall pay basic child support in the amount of \$3,323.94 per month.⁶

⁵ The Arbitrator is including the few rentals collected by Wife in that total earning capacity figure.

⁶ As was indicated previously, the Arbitrator will address the children's extraordinary expenses separately.

SPOUSAL SUPPORT

16. With regard to spousal support, as was indicated previously in these Findings of Fact, by agreement, Wife's spousal support claim, including retroactivity, is preserved for final hearing.

CHILD SUPPORT/ALIMONY PENDING LITIGATION 11/8/22 TO THE PRESENT

17. The Arbitrator is assigning the same baseline factors as indicated above. Effective November 8, 2022, Husband shall pay alimony pendente lite to Wife in the amount of \$3140.00 per month. Husband shall pay child support in the amount of \$2723.00 per month. The total order is \$5,863.00 per month effective November 8, 2022.

MEDICAL INSURANCE

18. Effective July 19, 2021, Husband shall continue to cover Wife and the minor children on his existing medical insurance. The unreimbursed medical expenses shall be shared 70% Husband and 30% Wife after the first \$250.00 per year per child, which shall be Wife's obligation.

CHILDREN'S EXTRAORDINARY EXPENSES

19. The Arbitrator finds as a fact that these children shall not be penalized as a result of the separation and dissolution of their parents' marriage. They have attended private school throughout the marriage and will continue to do so since the Arbitrator finds that these parties have the financial ability to continue to pay for the children's extraordinary expenses.

(A) The arbitrator defines the children's extraordinary expenses as follows:

Children's attendance at [REDACTED] cost of dance, music lessons, tutors, summer camp, summer math tutor, summer reading tutor, tennis, swim team and any other agreed upon extracurricular activity. In addition, neither party shall unreasonably withhold consent to an extracurricular activity.

20. The children's extraordinary expenses shall be paid by Father advancing the funds from the income received by these parties from rental and unearned income, subject to Father receiving an allocated credit for payment of Mother's share of these expenses at the time of final hearing. Father is to pay these expenses promptly directly to the providers. If Father is late with the payment of any two (2) payments, then the money for the expenses will be conveyed from Father to Mother and she will pay the expenses.⁷

21. That if Mother has paid any of these expenses commencing in July of 2021, and continuing until the present time, she shall provide counsel and the Arbitrator with proof of payment of these expenses. Those expenditures by Wife shall be the subject of an allocated credit at the time of settlement or final hearing.

ARREARS

22. Payment of the arrears generated by these findings will be paid consistent with the Arbitrator's Support Award.

12-9-2022
Date

Michael D Fioretti
MICHAEL D. FIORETTI, ESQUIRE
ARBITRATOR

⁷ That will require an increase in the support award to cover the total cost of those expenses.

OFFICES OF MICHAEL E. FINGERMAN
BY: Michael E. Fingerman, Esquire
Attorney I.D. #25711
714 North Bethlehem Pike
Suite 301
Lower Gwynedd, PA 19002
(215) 731-1300

[REDACTED]

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
CIVIL ACTION

v.

[REDACTED]

IN DIVORCE

ARBITRATION CONCLUSIONS/AWARD

MICHAEL E. FINGERMAN, ESQUIRE
ARBITRATOR

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ARBITRATION CONCLUSIONS/AWARD

CONCLUSIONS

I. INTRODUCTION

A. **Parties/Procedural History:** Plaintiff, [REDACTED], [REDACTED], [REDACTED] ("Wife"), and Defendant, [REDACTED], [REDACTED] ("Husband"), were married on [REDACTED] and separated on February 8, 2014. This is the first marriage for Wife, and the second marriage for Husband. Husband has three adult daughters from his prior marriage; no children were born or adopted of this marriage. Husband has an MBA from the [REDACTED], [REDACTED], and is a [REDACTED]. Husband began employment at [REDACTED], approximately nine (9) months after the parties' marriage. Husband's 2018 Form W-2 reflects gross earned income of \$469,735. In 2004, Wife received a Doctorate in Clinical Psychology (Psy.D.) from [REDACTED]. She currently is employed part-time (60%) as a therapist for [REDACTED], and also maintains a part-time private practice. In 2018, Wife's gross earned income was \$94,361 from [REDACTED] and \$23,277 from her private practice, for total gross earned income of \$117,638.

B. **Interim Orders/Agreements:**

1. **Interim Support Order:** On 04/04/14, the parties entered into a Stipulation for Agreed Order of Support, without prejudice, providing, *inter alia*, for Husband to pay Wife the sum of \$6,000 per month in spousal support, effective 02/18/14, based on Husband's then gross earned income approximating \$343,000 per year, and Wife's then gross earned income approximating \$50,000 per year. The Stipulation further provided that Husband would continue to maintain his current medical and dental insurance for Wife, and unreimbursed medical expenses incurred by or on behalf of Wife in excess of \$250 per year would be paid 80% by Husband and 20% by Wife. (See, Exhibit 2 attached to Wife's Pre-Arbitration Statement).

2. **Agreements Regarding Amies Lane:** The parties entered into three (3) written Agreements dated 12/28/15, 01/16/17 and 04/28/17, which provided, in summary, that the former marital residence occupied by Husband and located at [REDACTED] would be transferred to Husband, and in consideration for the transfer, Husband would pay Wife a total of \$441,741 (representing one-half (1/2) the net equity in the property at an agreed fair market value of \$1,275,000, minus the mortgage balance at date of separation, and hypothetical costs of sale and miscellaneous repairs/other costs). (See, Exhibits 3-5 attached to Wife's Pre-Arbitration Statement/Exhibit 3 attached to Husband's Pre-Arbitration Statement). The Agreements were without prejudice to either party's position regarding the ultimate percentage distribution of net marital assets between the parties. While Wife has received the amount due to her from a home equity line of credit on the property secured by Husband, upon questioning by the Arbitrator at the Arbitration hearing, the parties confirmed that a deed transferring the property to Husband has not yet been prepared or executed.

C. **Arbitration Proceedings:**

1. **Agreement to Arbitrate:** The parties executed an Agreement to Arbitrate, in counter-parts, which was approved by Michael E. Fingerman, Esquire ("Arbitrator") on September 23, 2019. Pursuant to Paragraph 3. of the Agreement to Arbitrate, the Arbitrator has the power to adjudicate and make an Award(s) on all issues relating to the dissolution of the parties' marriage, including, without limitation, spousal support/alimony *pendente lite*, equitable distribution of marital property, post-divorce alimony, and interim and final counsel and expert fees, costs and expenses.

2. **Pre-Arbitration Conference/Directive:** On September 9, 2019, in anticipation of the execution/approval of the Agreement to Arbitrate, the Arbitrator held a Pre-Arbitration Conference with the parties' attorneys, [REDACTED], attorney for Wife, and James A. Rocco, III, Esquire, attorney for Husband. Following the Pre-Arbitration Conference, the Arbitrator issued a Letter-Directive dated

09/06/19 regarding various interim issues including discovery, exchange of experts' reports, and dates for submission of Pre-Arbitration Statements and accompanying documents, and for the Arbitration hearing.

3. Arbitration Hearing: The first day of the Arbitration hearing on all issues, except the value of Husband's practice/book of business, was held on October 29, 2019 at [REDACTED] [REDACTED] [REDACTED] [REDACTED], and was attended by both parties; Wife's attorneys, [REDACTED] [REDACTED] Esquires, and Wife's forensic expert, [REDACTED] [REDACTED], Asterion; Husband's attorney, James A. Rocco, III, Esquire; and the Arbitrator. The second day of the Arbitration hearing on the value of Husband's practice/book of business was held on October 30, 2019 at the same location, and was attended by both parties; both parties' attorneys; [REDACTED] the Arbitrator; Wife's valuation experts, [REDACTED] [REDACTED] Elite Consulting Partners, and [REDACTED] [REDACTED], CPA, Asterion; and Husband's valuation expert, [REDACTED] [REDACTED] CPA, Financial Research Associates.

4. Documentation: In addition to considering the testimony of each party, the witnesses, and argument of counsel at the Arbitration hearing, the Arbitrator also reviewed and analyzed all documentation submitted by each party including, without limitation, the following: Wife's Pre-Arbitration Statement ("W-PA") and Exhibits 1-26 attached to Wife's Pre-Arbitration Statement ("W- "), Wife's Inventory/Appraisal (attached as W-14), Wife's Forensic Accounting Report (separately bound) by [REDACTED] [REDACTED], CPA, Asterion ("Asterion"), and the Practice/Book of Business Opinion of Fair Market Value by [REDACTED] [REDACTED] Elite Consulting Partners ("Elite") and attached Exhibits 1-7 (attached as W-16); Husband's Pre-Arbitration Statement ("H-PA") and Exhibits 1-20 and B-F attached to Husband's Pre-Arbitration Statement ("H- "), Husband's Inventory/Appraisal (at H-PA, p. 16), and a Critique of the Elite Report by [REDACTED] [REDACTED], CPA, Financial Research Associates ("FRA") (attached as H-19). The Arbitrator also reviewed the Rebuttal to the FRA Critique by [REDACTED] [REDACTED] (marked as Wife's Supplemental Exhibit 1 (W-S-1)), and [REDACTED] [REDACTED] Supplement to the FRA Report (marked as Husband's Supplemental Exhibit 1) (H-S-1)).

II. NET MARITAL ASSETS

A. Real Estate:

1. [REDACTED] As set forth at subparagraph I.B.2. above, the parties agreed to transfer the former marital residence located at [REDACTED] ([REDACTED] from joint names to Husband's name solely, in consideration for the payment by Husband to Wife of \$441,741 representing one-half (1/2) the net equity in [REDACTED]. As set forth in the Award, if not previously transferred, within thirty (30) days from the date of this Award, Wife shall execute a deed to be prepared by Husband transferring all of her right, title and interest in [REDACTED] from joint names to Husband's name solely.

2. [REDACTED]:

a. **Introduction:** A condominium unit located at [REDACTED] ([REDACTED] was purchased on [REDACTED] for \$220,000 by Husband and Husband's sister, [REDACTED] as a residence for their mother (H-PA, p. 3/H-3).

b. **Wife's Position:** It was Wife's initial position that at a current fair market value of \$220,000, the net marital value of Husband's Fifty (50%) Percent interest in [REDACTED] is \$34,130, based on a current principal balance of the mortgage in the amount of \$136,341, and reduction for hypothetical costs of sale. The calculation is as follows (W-PA, p. 28):

Fair Market Value	\$220,000
Mortgage	(136,341)
Costs of Sale (@ 7%)	(15,400)
Net Value	\$ 68,259
Percentage Ownership	x 50%
Net Marital Value	\$ 34,130

c. **Husband's Position:** It is Husband's position that the net marital value of Husband's interest subject to equitable distribution is \$26,672, based on a fair market value of \$200,000 and a current mortgage balance of

\$146,657, without reduction for costs of sale. The simple calculation is as follows (H-PA, p. 3):

Fair Market Value	\$200,000
Mortgage	(146,757)
Net Value	\$ 53,343
Percentage Ownership	x 50%
Net Marital Value	\$ 26,672

d. **Fair Market Value:** With regard to its fair market value, it is Wife's position that the fair market value of M [REDACTED] is \$220,000 "due to substantial, expensive renovations" (W-PA, p. 28). It is Husband's position that the fair market value of [REDACTED] is \$200,000, based on a recent (10/15/19) sale of a comparable unit in the building for \$200,000 (H-PA, p. 3). Husband also documents three other sales from 09/17 - 04/19, ranging from approximately \$210,000 - \$215,000 (D-4).

e. **Current Mortgage:** While Wife lists the mortgage balance at \$136,341 (W-I/A, p. 1), Husband lists the current mortgage balance at \$146,657 in accordance with the Mortgage Statement dated 10/01/19 attached at H-4.

f. **Testimony/Argument:**

(1) **Renovations/Mortgage Balance:** At the Arbitration hearing, Wife testified that many of the current "renovations" to [REDACTED] were paid by Husband post-separation. Husband acknowledged that the mortgage balance at date of separation approximated \$136,000, but after separation, Husband refinanced/increased the principal balance of the mortgage to obtain funds for "remodeling" the property. At a date of separation (12/31/13) principal balance of \$136,341, Wife's attorney argued that the principal balance for purposes of equitable distribution should properly be reduced by approximately \$360 per month, representing the monthly principal reduction on account of monthly payments on the mortgage for the 68 months from 12/30/13 - 10/30/19, for a "current" principal balance for purposes of equitable distribution in the amount of \$112,000 ($\$136,341 - \$24,480$ ($\$360$ per month x 68 months) = \$112,000 (rounded)).

(2) **Purchase/Down-Payment:** Upon questioning by Wife's attorney, Husband testified that he made a down-payment on the purchase of the property in the amount of \$40,000, and his mother also made a down payment on the purchase of the property in the amount of \$40,000. In opposition, Wife testified that all of the down-payment for the purchase of [REDACTED] was paid by Husband and Wife. Wife's attorney also noted that at a purchase price at \$220,000, and the original mortgage as reflected on the [REDACTED] Recorder of Deeds website at \$177,000, the estimated total down-payment would total only approximate \$43,000 (or approximately Twenty (20%) Percent of the purchase price). Wife's attorney argued, therefore, that as the parties actually paid 100% of the down-payment for [REDACTED] notwithstanding that the house is titled in joint names with right of survivorship, 100% of the current net equity in [REDACTED] properly should be subject to equitable distribution between the parties. In opposition, Husband reiterated that he and his mother each paid one-half (1/2) of the down-payment (whether \$20,000 each or otherwise), and Husband's attorney further argued that as the property was titled in joint names with Husband and Husband's sister and/or mother, only Husband's percentage interest in the property (@ 50%) is subject to equitable distribution.

g. Arbitrator's Conclusion: After consideration of all evidence, the Arbitrator concludes a net marital value for [REDACTED] subject to equitable distribution at \$39,325, representing Husband's ownership percentage, at a fair market value of \$205,000 (excluding post-separation renovations), and a mortgage balance at \$112,000 (assuming monthly payments to-date and excluding post-separation refinancing). A summary of the Arbitrator's calculations is as follows:

Fair Market Value	\$205,000
Mortgage	(112,000)
Costs of Sale (@ 7%)	(14,350)
Net Value	\$ 78,650
Percentage Ownership	x 50%
Net Marital Value	\$ 39,325

B. Husband's Retirement Assets:

1. [REDACTED] Plan:

a. **Introduction:** Husband is a participant in the [REDACTED] 401(k) Plan. The current (10/17/19) value of Husband's interest is \$962,278 (H-8, last page).

b. **Husband's Position:** Husband acknowledged that post-separation, Husband withdrew a total of \$319,793 (\$250,000 in the 3rd quarter of 2018, and \$69,793 in the 4th quarter of 2018) (H-8). After adding-back the withdrawals, and subtracting the post-separation contributions, it is Husband's position that at the end of the first quarter of 2019 (03/31/19), the net marital value of Husband's interest in the [REDACTED] 401(k) Plan is \$1,070,905. A summary of the calculations is as follows (H-8/H-PA, p. 4):

Current (03/01/19) Value	\$1,013,659
Minus Post-Separation Contributions	(262,547)
Subtotal	\$ 751,112
Add-Back Post-Separation Withdrawals	<u>319,723</u>
Net Marital Value (including Post-Separation Withdrawals)	\$1,070,905

c. **Wife's Position:** Through 07/03/19, Mr. [REDACTED] calculated the net marital value of Husband's interest in the [REDACTED] 401(k) Plan, exclusive of \$300,000 in post-separation withdrawals, at \$808,129 (over \$260,000 less than Husband's position). The calculation is as follows (Asterion, pgs. 1-2/Asterion-1):

Value - Date of Separation (02/08/14)	\$1,123,550
Minus Net Post-Separation Gains/Losses	(15,421)
Subtotal	\$1,108,129
Minus Post-Separation Withdrawals	(300,000)
Net Marital Value (excluding Post-Separation Withdrawals)	\$ 808,129

d. **Testimony:** Upon questioning by the Arbitrator at the Arbitration hearing, Mr. [REDACTED] confirmed that he added-back post-separation withdrawals, in the amount of \$300,000, to the account to which such withdrawals were

transferred - Husband's [REDACTED] IRA 90022 (See, subparagraph 2. below). By including such amount in Husband's [REDACTED] IRA 90022, Mr. [REDACTED] properly excluded such amount from his calculation of the net marital value of Husband's [REDACTED] 401(k) Plan in order to avoid inappropriate "double-dipping". Mr. [REDACTED] also noted that by not reducing the net marital value by the additional \$19,793 withdrawn by Husband (see, subparagraph b. above) this amount is "captured" in the net marital value of Husband's 401(k) Plan.

e. Arbitrator's Conclusion: After consideration of all documentation, including the Asterion Report and the voluminous documentations attached to the Asterion Report, the Arbitrator concludes that Asterion properly traced and accounted for post-separation transfers, contributions, and net gains/losses to the current date in determining the net marital value of Husband's retirement and non-retirement accounts as more specifically set forth below. (See, e.g., subparagraph 2. below). In consideration of all the foregoing, the Arbitrator concludes a net marital value for Husband's interest in the UBS 401(k) Plan at \$808,129.

2. [REDACTED] IRA 90022:

a. Introduction: Husband's Individual Retirement Account with [REDACTED], being [REDACTED] IRA [REDACTED] had a value at date of separation (02/14) of \$48,674 (W-PA, p. 28), and has a current (08/30/19) value of \$85,789 (H-7) ("[REDACTED]").

b. Husband's Position:

(1) Husband's Initial Position: Husband notes that his [REDACTED] account was a roll-over of Husband's pre-marital [REDACTED] Profit Sharing Plan (H-PA, p. 4). While Husband could not obtain a Statement at date of marriage, Husband did obtain a Distribution Summary dated 06/30/94 (eight (8) months after the parties' marriage on 08/06/93), evidencing the distribution of the Plan to Husband at a then total of \$340,102 (H-9). It was Husband's initial position, therefore, that there was a decrease in value/no net marital value subject to equitable distribution with regard to Husband's [REDACTED] (H-PA, p. 4/H-9).

(2) **Husband's Revised Position:** At the Arbitration hearing, Husband's attorney acknowledged that as set forth at H-9, p. 1, in May 2004, Husband transferred \$300,000 from this account to [REDACTED], accordingly, at date of separation, the value of this account would be the value of this account at date of separation (\$48,674), plus the value of the [REDACTED] Account at date of separation (01/31/14) at \$540,892 (H-9-B). It was Husband's position, therefore, that the increase in value/net marital value of [REDACTED] properly was \$249,464, calculated as follows:

Value - Date of Separation (\$540,892 + \$48,674)	\$589,566
Value - Date of Marriage	(340,102)
Net Marital Value - Increase in Value	\$249,464

In opposition, Mr. [REDACTED] testified that as set forth at H-9, p. 1, the \$300,000 transferred to [REDACTED] was not the only pre-separation withdrawal by Husband from [REDACTED]. Again, as set forth below, the Arbitrator concludes that Mr. Bradford properly traced the date of separation value of all accounts net of post-separation deposits/withdrawals and gains/losses.

c. **Wife's Position:** It was Wife's position that the net marital value of Husband's [REDACTED] equals the current value of \$85,789 calculated as follows (Asterion-1/Asterion-3):

Value-Date of Separation (02/08/14)	\$ 48,674
Post-Separation Gains/Losses	590,568
Post-Separation Transfers (Net Deposits/ Withdrawals)	(553,452)
Net Marital Value (Current Value)	\$ 85,789

d. **Testimony/Argument:** There was extensive testimony and argument with regard to the calculation of the net marital value of this and the remaining retirement and non-retirement accounts titled in Husband's name based on questioning by the Arbitrator. With regard to [REDACTED] and Asterion's analysis of all of Husband's retirement/non-retirement accounts, the Arbitrator's questions, included, without limitation, the following:

Question 1: The Arbitrator first confirmed that as the Asterion Report regarding the post-separation transfers set forth above for [REDACTED] include the deposit of \$300,000 withdrawn from Husband's [REDACTED] 401(k) Plan, the net marital value of Husband's interest in the [REDACTED] 401(k) Plan properly is \$808,129 (Wife's position), rather than the higher \$1,1070,905 inclusive of the \$300,000 (Husband's position).

Question 2: The Arbitrator next questioned how there could be post-separation gains/losses of \$590,568 attributable to [REDACTED] when the value of this account was only \$48,674 at date of separation, and there have only been approximately 5½ years of investment experience from date of separation (02/14) to the present (10/19). In addition, the Arbitrator questioned Mr. [REDACTED] calculation of the market gain/loss at \$590,568, as the annual summary of net gains/losses totaled \$547,493 as set forth below (Asterion, p. 2/Asterion-1).

Market Gain/Loss

(\$ 43,529)	02/14-12/14
(42,715)	2015
512,790	2016
101,222	2017
(39,937)	2018
(25,769)	<u>01/19-08/19</u>
Total \$547,493	02/14-08/19

With regard to the latter issue, Mr. [REDACTED] testified that while the foregoing lists the net market loss for the period 02/14 - 12/14 at \$43,529, that amount actually represents the net market loss for all of calendar year 2014 - The total net market gain of \$590,568 properly includes only the post-separation (post 02/14) net gains/losses. With regard to the former issue, as set forth in the Asterion Report, the account had as opening value in September 1997 (in accordance with the earliest Statement provided by Husband) of \$942,576, and through the date of separation had deposits of \$977,359 and withdrawals of \$1,832,856 (Asterion, p. 2). As set forth at Question 3. below, from date of separation to the present, the account had deposits of \$653,422 and withdrawals of \$1,206,874 for net withdrawals of \$553,452.

Question 3: The Arbitrator also questioned Asterion's Net Deposit/Withdrawals from date of separation to the present totaling \$574,612.42, rather than \$553,452 as calculated by the Arbitrator in accordance with the detail set forth at Asterion, pgs. 2-3. Mr. [REDACTED] noted that as set forth in the Asset Analysis at Asterion-1, the post-separation transfers did total \$553,452 as calculated by the Arbitrator (Asterion-1).

Question 4: The Arbitrator next questioned whether Mr. [REDACTED] analysis properly excluded any "double-dipping" of deposits/withdrawals from the net marital value of Husband's other retirement/non-retirement accounts. In response to the Arbitrator's questioning, Mr. [REDACTED] agreed that the deposits to this account from [REDACTED] in the amount of \$19,793 on 01/02/19, and \$39,604 on 08/12/19, originated from Husband's [REDACTED] 410(k) Plan, accordingly, the Arbitrator properly should exclude these amounts in determining the net marital value of the total of Husband's retirement/non-retirement accounts.

Question 5: Perhaps most substantively, the Arbitrator questioned whether Mr. [REDACTED] analysis gave Husband a "credit" for the pre-marital/date of marriage value of Husband's [REDACTED]. In response, Mr. [REDACTED] acknowledged that as he had no information/documentation of any value at date of marriage, his analysis did not exclude the pre-marital/date of marriage value of Husband's [REDACTED] account or any predecessor retirement account used to fund the [REDACTED] account. As set forth at subparagraph b.(1) above, however, Husband was able to obtain a Distribution Summary dated 06/30/94, approximately eight (8) months after date of marriage, evidencing that he received a distribution from his then pre-marital retirement plan in the amount of \$340,102. In opposition, Wife's attorney argued that as set forth at Section 3501(b) of the Divorce Code, all property acquired by either party during the marriage is presumed to be "marital property"; the burden of proof that any portion of assets at date of separation are "non-marital" is upon the proponent, and Husband has not provided any Statement evidencing the value of his retirement accounts on the date of marriage.

Question 6: In response to further questioning by the Arbitrator, Mr. [REDACTED] confirmed that his analysis of this account included deposits from [REDACTED] (at \$294,023), accordingly, any value for Husband's interest in [REDACTED] set forth below should not include such deposits. Mr. [REDACTED] also confirmed, however, that the net marital value of [REDACTED] excludes transfers to Husband's [REDACTED], and Husband's investments in [REDACTED], accordingly, the net marital value of those assets properly should be included in the total of the marital assets subject to equitable distribution between the parties. The detail of the net deposits/withdrawals to/from all of the foregoing are set forth at Asterion, pgs. 2-3 and need not be repeated here.

Question 7: Finally, the Arbitrator noted that the Asterion Asset Analysis (MB-1) included "other transfers untraced" to Husband from [REDACTED] totaling \$336,168, inclusive of federal tax payments totaling \$52,724 (MB-3, p. 7). While the Arbitrator agreed that any distributions post-separation to Husband properly should be added-back in determining the net marital value of all retirement/non-retirement accounts subject to equitable distribution, tax payments on account of such distributions may properly be excluded pursuant to Section 3502(a)(10.1) of the Pennsylvania Divorce Code.

e. Arbitrator's Conclusion: After consideration of all the foregoing, the Arbitrator concludes a net marital value for Husband's [REDACTED] account for purposes of equitable distribution of (\$30,164). The summary is as follows:

Date of Separation (01/31/14) Value	\$ 48,673
Post-Separation Gains/Losses	590,568
Post-Separation Transfers	(<u>\$553,452</u>)
Current (08/30/19) Value	\$ 85,789
Untraced Transfers	<u>336,168</u>
Total Value - (Asterion-1)	\$421,957
Adjustments - Arbitrator	
[REDACTED] Deposits	
01/02/19 (Asterion-3, p. 7)	(19,793)
05/12/19 (Asterion-3, p. 7)	(39,604)
Credit-Premarital Value	(340,000)
Tax Payments on Distributions	(<u>52,724</u>)
Net Marital Value	(<u>\$ 30,164</u>)

3. [REDACTED] (Asterion-1/Asterion-4): There were transfers into this account from [REDACTED] totaling \$402,423, and withdrawals from this account to [REDACTED] totaling \$287,625, for net deposits into this account of \$114,798. There were also market losses in the amount of \$114,795 for a net marital value at (rounded) \$0. In addition, however, as set forth at Asterion-4, there were additional withdrawals from this account "untraced", but either to Husband or Husband's Citizen's Bank Account totaling \$35,250. A summary of the foregoing is as follows (Asterion-4-4.1):

Transfers into [REDACTED] from [REDACTED]	\$402,423
Withdraws from [REDACTED] to [REDACTED]	(287,625)
Net Deposits into [REDACTED]	\$114,798
Market Loss	(114,795)
Subtotal (Asterion-1) (rounded)	\$ 0
Add-Back Untraced Withdraws (Asterion-4-4.1)	35,250
Net Marital Value	\$ 35,250

4. [REDACTED] This account was opened September 2018 and funded entirely with transfers from [REDACTED] one in 09/18 for \$100,000, and one in 10/18 for \$25,000, plus net market gains of \$16,992, for a net marital value of \$141,992 as follows (Asterion-5/Asterion-1):

Transfers into [REDACTED] from [REDACTED]	\$125,000
Net Market Gains	16,992
Net Marital Value	\$141,992

5. [REDACTED] ("I [REDACTED]"): The net marital value of Husband's interest in [REDACTED] is \$178,418 calculated as follows (Asterion-6):

Transfers into [REDACTED] from [REDACTED]	\$210,000
Transfer into [REDACTED] from [REDACTED]	25,000
Total Transfers into [REDACTED]	\$235,000
Withdraws from [REDACTED] to [REDACTED]	(143,890)
Withdraws from [REDACTED] to [REDACTED]	(25,000)
Net Deposits into [REDACTED]	\$ 66,110
Net Market Gains	146,813
Subtotal	\$212,923
Plus Post-Analyses Deposit into 90022 on 07/02/19	(34,505)
Net Marital Value	\$178,418

6. [REDACTED] ([REDACTED])
[REDACTED]: The net marital value of [REDACTED] is \$50,000 representing a deposit from [REDACTED] (Asterion-1). As set forth at Asterion-1, there also was a \$0 "wash" on account of a deposit of \$25,000 and was withdrawal of \$25,000 "untraced".

7. [REDACTED] While Husband notes that the date of separation (02/14) value of Husband's interest in [REDACTED] was \$531,927, as all of the funds deposited into this account were transferred between 02/15 - 09/15 from Husband's [REDACTED], except for the final transfer from this account in the amount of \$10,160, Wife properly values this account subject to equitable distribution at \$10,160 (Asterion-7/Asterion-1).

C. Husband's Non-Retirement Assets:

1. [REDACTED] Husband's [REDACTED] Account is a "spending account" maintained by Husband. Beginning September 2016, Asterion traced transfers into this account from [REDACTED] of \$502,053, for a total net marital value for this account of \$514,053 (Asterion-p. 4/Asterion-10). At the Arbitration hearing, the Arbitrator noted that the joint U.S. Individual Income Tax Return Forms 1040 for calendar years 2016 and 2017 evidence distributions from retirement accounts at respectively, \$35,000 and \$494,191 (W-11-12). While the Arbitrator did not receive a copy of Husband's 2018 Form 1040 reflecting 2018 distributions from Husband's retirement accounts, if any, or evidence of any 2019 distributions from Husband's retirement accounts, the distributions for calendar years 2016 and 2017 support Asterion's position regarding substantial distributions to Husband post-separation from his retirement assets. In accordance with all of the foregoing, the Arbitrator concludes a net marital value for Husband's [REDACTED] of \$514,053.

2. [REDACTED] Husband lists the net marital value of this account as its value at date of separation in the amount of \$2,947 (H-PA, p. 6/H-10). Wife lists the net marital value of this account as its value at date of separation in the amount of \$1,007 (Asterion, p. 4/Asterion-1), but adds-back transfers to this account from [REDACTED] totaling \$102,897 (Asterion, p. 4/Asterion, p.9) for a total net marital value for \$103,904. As set forth at subparagraph 6. below,

Husband lists the net marital value of [REDACTED] at \$141,994; in contrast, Wife subtracts from the net marital value of [REDACTED] the transfer from [REDACTED] to this account of \$102,897 (See, subparagraph 6. below).

3. [REDACTED]

a. **Introduction:** Husband is a participant in the [REDACTED], known as the [REDACTED]. The date of separation (01/01/14) value of Husband's interest in the Plan was \$635,085, and the current (06/05/19) value of Husband's interest in the Plan is \$125,612 (H-12).

b. **Husband's Position:** It is Husband's position that the net marital value of his interest in the [REDACTED] is \$0, as distributions from this Plan from date of separation to the present were included in Husband's net earned income as set forth on the parties' income tax returns for purposes of spousal support/alimony *pendente lite* (H-PA, p. 7/H-12).

c. **Wife's Position:** It is Wife's position that she was not aware that Husband was taking distributions from the Plan as compensation post-separation, accordingly, the net marital value properly should be \$409,552, representing the value of Husband's interest in the Plan at date of separation, plus post-separation net gains/losses, minus taxes actually paid from date of separation to the present and potential taxes on the balance. The calculation is as follows (Asterion, pgs. 4-5/Asterion-11):

Value at Date of Separation	\$635,084
Plus Post-Separation Gain	5,489
Minus Taxes Paid (Date of Sep/Present)	(188,869)
Potential Taxes on Balance	(42,152)
Net Marital Value	\$409,552

d. **Testimony/Argument:** In response to questioning by the Arbitrator at the Arbitration hearing, Husband testified that he started taking distributions from the Plan in 2009. He did not "choose" the amounts distributed to him; the amounts were distributed in accordance with the Plan. For the five years prior to date of separation, Husband's

attorney noted the following amounts distributed to Husband, which either were spent or accumulated into other marital assets:

2009	\$149,000
2010	175,000
2011	196,000
2012	109,000
2013	79,000

Also upon questioning by the Arbitrator at the Arbitration hearing, the parties confirmed that Husband's total gross earned income, gross Partners Plus distributions, and gross income excluding Partners Plus distributions, for the post-separation period 2015 - 2018, was as follows:

<u>Year</u>	<u>Total Gross</u>	<u>Partners Plus Gross</u>	<u>Gross Excl. Partners Plus</u>
2015	\$445,933	\$225,973	\$219,960
2016	447,664	112,433	335,211
2017	472,319	59,693	412,636
2018	469,735	27,280	442,445

e. **Arbitrator's Conclusions:** While the Arbitrator accepts the calculation of the net after-tax value of Husband's [REDACTED] at date of separation as set forth by Wife at \$409,552, the Arbitrator notes that case-law in Pennsylvania holds that money included in an individual's income for purposes of calculating support may not also be labeled as a "marital asset" subject to equitable distribution. See, e.g., *Cerny v. Cerny*, 565 A.2d 507 (Pa. Super. 1995); *Fingerman, M., Double-Dipping and Related Issues*, PBI Publication No. 10377, July 2018, and cases cited therein. As set forth at subparagraph I.B.1. above, the spousal support payable to Wife effective 02/18/14 was based on Husband's gross annual earned income approximating \$343,000. As set forth immediately above, Husband's gross earned income exclusive of the distributions from his [REDACTED] either were approximately equal to or in excess of the gross income used for the calculation of spousal support to Wife, except, however, for calendar year 2015 (and perhaps, for 2014 from the effective date of the Order). The Arbitrator also notes that Wife's post-separation/current

gross annual income exceeds the gross annual income used for purposes of spousal support in February 2014 at \$50,000 per year. Bottom-line, there would be an inappropriate "double-dipping" to include in the equitable distribution of assets between the parties One Hundred Percent (100%) of the net value of the [REDACTED] as calculated by Wife. After consideration of all the foregoing, the Arbitrator concludes a proper net marital value for Husband's interest in the [REDACTED] [REDACTED] exclusive of the income from such Plan considered in the determination of spousal support between the parties, at \$200,000.

4. [REDACTED] Plan:

a. **Wife's Position:** The net marital value of Husband's [REDACTED] set forth at Asterion-1 is \$15,246, representing the value of the awards to Husband through 01/28/19 "currently available for distribution" (Asterion-1, 12).

b. **Testimony/Argument:** At the Arbitration hearing, the Arbitrator noted that the foregoing does not include the total estimated current value of the awards "not currently available" to Husband at an additional \$79,327. The total current value of all awards, the value of the awards currently available for distribution, and the additional value not currently available for distribution is as follows:

Currently Available	\$15,246
Add. Value (not currently available)	<u>79,327</u>
Total Value	\$94,573

c. **Arbitrator's Conclusion:** The Arbitrator concludes that while post-separation awards allocated to Husband should be excluded as Husband's post-separation/non-marital property (See Asterion-12 for listing of Awards post-02/14), the awards granted prior to separation, at a total estimated current value of \$49,779, even though not all of the foregoing are "currently available", should be subject to equitable distribution between the parties pursuant to applicable case-law in Pennsylvania. (See, e.g., *MacAleer v. MacAleer*, 725 A.2d 829 (Pa. Super. 1999); *Fisher v. Fisher*, 769 A.2d 1165 (Pa. 2001)). The Arbitrator also concludes, however, that the gross value

properly should be reduced by estimated taxes as such funds are paid to Husband as "ordinary" income. After consideration of the foregoing, the Arbitrator concludes a net marital value of \$30,000.

5. [REDACTED] Agreed - \$0.

6. [REDACTED] As set forth at subparagraph C.2. above, Husband lists the net marital value of his interest in [REDACTED] at \$141,994 (H-I/A/H-9-10). As also set forth above, after excluding the transfer of Husband's interest in [REDACTED] to [REDACTED] at \$102,897, it is Wife's position that the net marital value of [REDACTED] subject to equitable distribution is \$17,213. The calculation is as follows (Asterion-1/Asterion-14):

Value at Date of Separation (12/31/18)	\$141,994
Transfers to [REDACTED] (Incl. by Asterion in [REDACTED])	(102,897)
Market Gains/Losses	(21,884)
Net Marital Value	\$ 17,213

7. [REDACTED] Partners:

a. **Introduction:** Husband has an interest in [REDACTED], otherwise known as [REDACTED]'s [REDACTED] an investment titled in Husband's name only which was opened in May 2015.

b. **Wife's Position:** The Asterion Report states that on 05/15 and 05/16 Husband deposited, respectively, \$40,000 and \$50,000 into this investment, and the investment had net market losses of \$5,729 through September 2017, which was the date of the most recent documentation received by Asterion with regard this investment (Asterion, p.6/Asterion-1, 15). Without evidence to the contrary, Asterion has included the deposits as emanating from marital funds (Asterion, p. 6). Asterion also notes a September 2017 withdrawal of \$55,000 to an unknown account as an advance/distribution to Husband. it is Wife's position that the net marital value of Husband's interest in [REDACTED] is \$84,271, calculated as follows (Asterion, p. 6/Asterion-1, 15):

Deposit 05/15	\$40,000
Deposit 05/16	50,000
Total Deposits	<u>\$90,000</u>
Net Market Loss (08/06/17)	(5,729)
Net Marital Value	\$84,271

c. **Testimony:** At the Arbitration hearing, the Arbitrator confirmed that while \$55,000 was transferred out of this account by Husband in September 2017, and while Mr. [REDACTED] could not trace the funds withdrawn, the \$55,000 was not "counted" somewhere else (above or below) in the net marital assets calculated by Mr. [REDACTED]. Mr. [REDACTED] also confirmed that since he could not trace the source of the deposits, he assumed that the investments by Husband in 05/15 and 05/16 were sourced from marital funds. In opposition, Husband testified that the investments were funded "with post-separation loans". While the Arbitrator noted that no documentation was provided to prove the source of the funds, at the Arbitration hearing, Husband testified that he received forgivable loans from [REDACTED] post-separation in 2014 and 2015 which were the source of the investment into [REDACTED]. Indeed, Wife's Pre-Arbitration Statement details a number of post-separation forgivable loans received by Husband through his employment, with a total post-separation/non-marital value of \$591,025 (W-PA, pgs. 39-40).

d. **Arbitrator's Conclusion:** After consideration of all evidence, including Husband's testimony at the Arbitration hearing, the Arbitrator concludes that Husband's investment in [REDACTED] is Husband's post-separation/non-marital property.

8. [REDACTED]

a. **Introduction:** Asterion noted a deposit into Husband's [REDACTED] on January 12, 2015, in the amount of \$115,598, with a description of [REDACTED] (Asterion p. 6/Asterion-9). [REDACTED] is a company which assists in managing a compensation plan for [REDACTED]

b. **Testimony:** At the Arbitration hearing, the Arbitrator confirmed that the parties' 2015 U.S. Individual Income Tax Return 1040, Form 9949, noted that the sale of [REDACTED] stock, purchased in 2009, generated net proceeds of \$115,598 (Asterion-16). Upon questioning by the Arbitrator, Mr. [REDACTED] confirmed that these proceeds were not included by him in determining the net marital value of Husband's [REDACTED] account (See, subparagraph C.2. above). Mr. [REDACTED] confirmed that Husband's 2016 [REDACTED] (dated November 30, 2016) also evidences "additional stock" - 893 shares awarded to Husband in 2011, and 1,772 shares awarded to Husband in 2012, which should be included in the [REDACTED] account. At a closing price of \$10.60 per share at 10/08/19, the "additional stock" value is \$28,249. Finally, the Arbitrator questioned whether Mr. [REDACTED] also should have included a value for 1,140 shares awarded to Husband in 2013, and a fraction of the 664 shares awarded to Husband in 2014, as reflected on Husband's 2016 [REDACTED] at Asterion-16.1. In response, Mr. [REDACTED] testified that such amounts have already been captured in his calculation of the net marital value of Husband's Deferred Compensation Plan at subparagraph 4. above.

c. **Arbitrator's Conclusion:** After consideration of all the foregoing, the Arbitrator concludes that the net marital value of Husband's interest in [REDACTED] properly is \$115,598 reflecting the amount received in January 2015, plus an additional \$28,249 in outstanding shares not included elsewhere in the calculation of net marital assets.

9. [REDACTED]: As set forth at Asterion, p. 7/Asterion-1, any value for Husband's interest in the [REDACTED] Company has been included in calculating the net marital value of [REDACTED] at subparagraph B.2. above.

D. **Summary - Husband's Retirement/Non-Retirement Assets:** In summary, it is Wife's position that the total net marital value of Husband's Retirement and Non-Retirement Assets (exclusive of real estate) is \$2,933,997 (Asterion-1); it is Husband's position that the total net marital value of Husband's Retirement and Non-Retirement Assets (exclusive of real estate) is \$1,578,512 (H-PA, p. 12 at \$1,329,048, plus \$249,464

attributed to [REDACTED] by Husband at the Arbitration hearing as set forth at subparagraph B.2.b.(2) above); and as set forth in these Conclusions and the Award, the Arbitrator concluded a total net marital value for Husband's Retirement and Non-Retirement Assets at \$2,202,802. The difference between each party's position and the Arbitrator's conclusions is as follows:

Summary - Net Marital Value
Husband's Retirement and Non-Retirement Assets

Wife's Position	\$2,933,997
Husband's Position	(1,578,512)
Difference	\$1,355,485
Arbitrator's Conclusion	\$2,202,802
Wife's Position	(2,933,997)
Difference	(\$ 731,195)
Arbitrator's Conclusion	\$2,202,802
Husband's Position	(1,578,512)
Difference	\$ 624,290

E. Wife's Retirement Assets:

1. [REDACTED] Husband's position - \$111,583 (H-3); Wife's position - \$110,726 (Asterion-17). Arbitrator's Conclusion - \$110,726.
2. [REDACTED] Husband's position - \$36,311 (H-4); Wife's position - \$44,224 (Asterion-18). Arbitrator's Conclusion - \$44,224.
3. [REDACTED]: Husband's position - \$13,885 (H-5); Wife's position - \$13,542 (Asterion-19). Arbitrator's Conclusion - \$13,542.

F. Husband's Practice/Book of Business:

1. **Introduction:** Husband's Financial Advisory Practice at [REDACTED] had [REDACTED] (" [REDACTED] ") at year-end 2018 of \$160,670,000 (H-19, p.3), and currently has [REDACTED] of \$190,653,000 (W-16, p. 2), which generated trailing twelve (12) month revenue ("TTR") to May 2019 of \$867,714 (H-19, p. 3/W-16, p. 2). In summary, the issues are (a) What value, if any, would

Husband receive if he moved to another Wealth Management Company or transitioned his practice to other Wealth Managers at [REDACTED]
(b) What value, if any, is "marital" and not "personal goodwill" or attributable to any "pre-marital" value, and (c) Whether the total value properly is discounted for considerations of present value and taxes?

2. Elite Reports:

a. Introduction: A written Opinion of the value of Husband's "Book of Business" or "Practice", in the event Husband moved his Practice to another brokerage firm or in the event he stayed at [REDACTED] and availed himself of the Aspiring Legacy Financial Advisors Program ("ALFA"), was prepared by [REDACTED] CEO, Elite Financial Partners (W-16) ("Elite"). Upon questioning by the Arbitrator at the Arbitration hearing, [REDACTED] confirmed that Elite provides consulting services to Financial Advisors contemplating transitioning.

b. Husband's Practice: Elite first noted that Husband previously moved from [REDACTED] shortly following the parties' marriage in 1993 (Elite, p. 2/W-PA, 24/H-19, p. 2). Elite opined that as with Husband's prior move, Husband will again be able to transition to another firm, and due to the "concentrated number of clients he manages, it will be easier for [Husband] to complete a successful transition because there are fewer clients to speak with" (Elite, p. 2). Upon questioning by the Arbitrator, [REDACTED] and [REDACTED] both confirmed that at the time of Husband's transition from [REDACTED] Husband received an "Upfront" gross payment in the amount of \$830,000, and was entitled to a "Back-End" additional gross amount of \$300,000, "dependent upon meeting certain production milestones". Husband testified, however, that he did not receive the "Back-End" additional production amount (FLS, Exhibit 7). Also at the Arbitration hearing, the Arbitrator questioned whether a "concentrated" or "smaller" number of clients might negatively affect the value of Husband's Book of Business as (1) If one client did not transition with Husband, it would constitute a larger percentage loss of total transitioned clients, and (2) The percentage fee for "larger" clients typically is less than for "smaller" clients. In response, [REDACTED] testified that a concentrated

number of clients actually would be "positive" factor in Husband's "Book of Business" as a small number of clients is "easier to manage - there is no need to serve numerous clients" and the relationship between Husband and a smaller number of clients is "deeper - more permanent". Bottom-line, however, [REDACTED] confirmed that, as set forth in the Elite Report, the amount paid is mostly "formulaic", i.e., based on the revenue generated (TTR) by the assets under management (AUM).

c. **Summary - Elite Valuation:** In summary, Elite opined that Husband would receive the following amounts depending on how and to where he transitioned his Practice (Elite, pgs. 2-4):

[REDACTED]	\$3,557,627
[REDACTED]	\$2,874,302
[REDACTED]	\$1,301,572

d. **Testimony:** At the Arbitration hearing, the Arbitrator first noted that the Ameriprise Financial gross total actually is \$3,279,311, rather than \$3,557,627, as the Elite Report double-counted an additional annual \$260,314 payment. Also, the gross amount from [REDACTED] actually is \$2,787,430, rather than \$2,874,302 (See, W-16/Elite Exhibits 6-7). While the Elite Report also set forth, in summary, the terms for payment of the foregoing amounts by [REDACTED] [REDACTED] indicating that some payments are up-front and some payments are deferred, while there was no documentation from [REDACTED] and [REDACTED] setting forth its terms, the Arbitrator was able to confirm that pursuant to the UBS ALFA Program (i.e., in the event Husband stayed at UBS and availed himself of the Aspiring Legacy Financial Advisors Program ("ALFA")) the terms for the payment to Husband are as follows (Elite-4):

i. At Husband's TTR at \$867,000 (rounded), and Husband's length of service at [REDACTED] at 25 years, Husband is entitled to 150% of TTR ($\$867,000 \times 150\% =$ (rounded) \$1,301,572).

ii. As the foregoing is paid, in part, monthly, over five (5) years, the Arbitrator opined that the gross amount should properly be reduced for "present value."

iii. In addition, the payments are taxable as compensation/ordinary income.

iv. Finally the Arbitrator noted that in accordance with the ALFA Program, Husband must remain at UBS full-time for two (2) years, then must continue for an additional three (3) years as a Registered Representative, but not an employee at UBS - The foregoing raising the issue of a "personal goodwill" component.

Also at the Arbitration hearing, Husband testified that pursuant to the ALFA Program, his five (5) year pay-out is based on 150% of actual TTR production thereafter. In opposition, Mr. [REDACTED] testified that the pay-out was based on a "snapshot" of Husband's TTR at the date of his transition; not his TTR thereafter. It is undisputed, however, that Husband must remain an employee or in some other capacity with [REDACTED] for five (5) years following the transition; he cannot simply take his business "elsewhere" and continue to receive payments.

3. FRA Critique:

a. **Introduction:** A Critique of the Elite Report was prepared by [REDACTED], [REDACTED], and [REDACTED] Financial Research Associates (H-19) ("FRA"). In summary, the FRA Critique noted the following:

(1) Pre-Marital Value - The Elite Report does not account for Husband's Book of Business at date of marriage;

(2) Opinion v. Valuation - The Elite Report does not set forth a "valuation"; it simply sets forth three (3) "What If" scenarios;

(3) Errors - FRA notes various mathematical errors in the Elite Report; and

(4) Taxes/Present Value/Goodwill - The FRA Critique notes that none of the foregoing are accounted for in the Elite Report.

b. Date of Marriage Value/Decrease in Value:

(1) FRA notes that at date of marriage, Husband had AUM of \$143M, versus 2018 AUM of \$160M, but revenue at date of marriage on AUM approximated 1.5%, for production/TTR of \$2,123,000, versus current revenue on AUM approximating 0.6%, for production/TTR of \$867,714 (FRA, pgs. 2-3). The fair market value under the Income Approach (capitalizing normalized cash flow) is, therefore, higher at date of marriage than presently, accordingly, for purposes of equitable distribution, it is FRA's position that there has been a decrease in value of Husband's Practice from date of marriage to date of separation or presently, accordingly, there is no "net marital value" subject to equitable distribution. Indeed, at the Arbitration hearing, the Arbitrator noted that under all of Elite's "scenarios", the amount paid to Husband for his Practice/Book of Business is based on Husband's TTR.

(2) While applying an Income Capitalization Approach would evidence a "decrease in value" or no net marital value subject to equitable distribution, the Arbitrator opined that, as the amount set forth by Elite which would be paid by ██████████ to Husband currently, exceeds the amount paid by ██████████ when he transitioned from ██████████, there would be an increase in value/net marital value subject to equitable distribution. FRA noted, however, that Husband also is an obligor on the remaining principal balances of loans due by Husband to ██████████ in the current total amount of \$313,600 (FRA, p. 3). In response, ██████████ indicated that it is not uncommon for the "Transitioner" (in this case, Husband) to ask for an additional dollar-for-dollar amount to repay outstanding loans (e.g., ██████████ might give Husband \$313,600 to pay back the ██████████ loan either upfront or over-time) however, the Arbitrator noted that such an "additional amount" was not added to the amounts indicated in the Elite Report (i.e., this amount may have to be paid out of the funds which Husband might receive upon transitioning as set forth in the Elite Report). ██████████ also testified, however, that the ██████████ loan balance at date of separation actually

approximated only \$13,000; the remaining balance was Husband's post-separation/non-marital liability.

c. Errors/Adjustments: After adjusting the Elite valuation for (1) Mathematical errors (See, subparagraph 2.d.) above; (2) Discounts for potential failure of Husband to meet required benchmarks for maximum payments; (3) Taxes due by Husband on any amounts received (or on "loan forgiveness"); and (4) The present value of the future payments, FRA calculated the net value of the Elite "scenarios" as follows (FRA, pgs. 7-9/FRA-1-6):

██████████ Financial	\$1,250,714 (vs. Elite @ \$3,557,627)
██████████ Management	\$1,313,349 (vs. Elite @ \$2,874,302)
██████████ Program	\$ 564,842 (vs. Elite @ \$1,301,572)

The foregoing is before consideration of any pre-marital value, the loan(s) due to ██████████ or personal goodwill, if any.

d. Personal Goodwill: Finally, FRA also calculated the present value of Husband's "Personal Goodwill", which is not subject to equitable distribution in accordance with applicable case-law in Pennsylvania (See, e.g., *Butler v. Butler*, 663 A.2d 148 (Pa. 1995); *Buckl v. Buckl*, 542 A.2d 65 (Pa. Super. 1998); *Solomon v. Solomon*, 611 A.2d 686 (Pa. 1992)). Based on the market compensation which would be paid to Husband having to continue as an employee or in another capacity for a period following the transition, FRA calculated the present value of Husband's Personal Goodwill at 62% of the net present value calculation. The detail is set forth at FRA, pgs. 8-10, and need not be repeated here. Assuming, however, no Personal Goodwill discount, FRA concluded a net value for each of the "transition scenarios", and the value of Husband's Book of Business at date of marriage, as follows (FRA, p. 12):

██████████ Financial	\$937,114
██████████ Management	\$999,749
██████████ Program	\$251,242
██████████ Date of Marriage	\$612,849

The increase in value, therefore, ranges from \$0 to \$386,900. After personal goodwill, however, the increase in value ranges from \$0 to (rounded) \$147,000, as the net value of Husband's Practice after FRA's calculation of "personal goodwill" currently and at date of marriage is as follows (FRA, pgs. 10-12):

██████████ Financial	\$356,103
██████████ Management	\$379,905
██████████ Program	\$ 95,472
██████████ Date of Marriage	\$232,883

e. **Conclusion:** FRA concluded, therefore, that the increase in value/net marital value of Husband's Practice ranged from \$0 to \$147,000, based on then net present value, minus personal goodwill, of the amount received by Husband when he transitioned from ██████████ (FRA, Exhibit 7). As noted by FRA, however, "had the Income Approach been consistently applied at date of marriage and at the present, given the decrease in [Husband's] production, there likely would have been a decrease in value of Husband's Book of Business" (FRA, p. 12).

4. **Rebuttal/Addendum:** At the Arbitration hearing, the Arbitrator received an Elite/Asterion 10/28/19 Rebuttal to the 10/17/19 FRA Critique (W-S-1), and an FRA 10/29/19 Supplement to its 10/17/19 Report (H-S-1). The details are set forth in the Rebuttal/Supplement, however, after certain adjustments by FRA for tax calculations and deductions for loan repayments, the FRA Supplement opines an actual decrease in value of Husband's Book of Business under any of the transition scenarios from approximately (\$47,410) to (\$332,000); the Elite Rebuttal does not acknowledge any pre-marital value to Husband's Book of Business or a Personal Goodwill adjustment (H-S-1/W-S-1).

5. **Additional Testimony:** There was extensive additional testimony at the Arbitration hearing by Husband and both parties' experts regarding all aspects of the Elite and FRA opinions/valuations. For instance, with regard to "personal goodwill", both parties' experts testified in response to

questions by the Arbitrator regarding, *inter alia*, whether there is a distinction between "personal goodwill" representing the ability "to retain existing business/clients" versus the ability "to attract new business/clients". For example, the Arbitrator noted that the Arbitrator's practice has no "legacy clients", no "repeat" business; the Arbitrator opined, therefore, that all of the Arbitrator's practice might be considered "personal goodwill" as it is only the Arbitrator's name which has the ability to attract "new" business/clients. In the instant matter, however, Husband is being paid substantially for the retention of his "existing" Book of Business, which is portable, stays with the professional, and has been his for many years. The Arbitrator further opined, therefore, that perhaps Husband's situation is more comparable to an "estate's attorney" who might be bringing a "Book of Wills" which could result in eventual estate administration income - The "Book of Business" is effectively more "enterprise" goodwill rather than "personal" goodwill as those clients could transition either to a new firm or an associate at the existing firm with the transitioning attorney eventually being phased-out. With regard to the date of marriage value, while Wife's attorney and experts opined that there should be no remaining date of marriage value to Husband's Book of Business, as the income generated by that "Book of Business" would have been expended during the marriage, and there is no evidence that Husband's current clients are the same as Husband's clients at date of marriage, in opposition, the Arbitrator noted that this argument would not be applicable to any other "business". For instance, while a business may have one set of clients/customers at date of marriage, and another set of clients/customers at date of separation or presently, the value of the business at date of marriage properly would be subtracted from the value of the business at date of separation or presently in computing its increase in value/net marital value. In addition, while Husband was paid for transitioning from [REDACTED] shortly following the date of marriage on Husband's then Book of Business, Husband did not "start" his employment at [REDACTED] with no existing clients or only with new clients - Husband's transitioning is not comparable to Husband "selling" his practice/book of business and starting a new practice/business without existing clients.

6. **Arbitrator's Conclusion:** While there may be some element of personal goodwill to Husband's Book of Business/ Practice, the fact that the Book of Business is transferable, even if Husband eventually reduces and within several years eliminates his employment, evidences that not all of the goodwill value "is intrinsically tied to the attributes and/or skills" of Husband (*Butler* at 541 Pa. 378). In addition to the value, if any, of the "personal" goodwill attributable to Husband's practice, the Arbitrator concludes that the value of Husband's Book of Business/Practice at date of marriage must be subtracted from the value of Husband's Book of Business/Practice at date of separation or presently in calculating the net marital value subject to equitable distribution, in accordance with Section 3501(a.1) of the Pennsylvania Divorce Code (23 Pa. C.S. §3501(a.1.)). After consideration of all the foregoing, including, *inter alia*, the value of Husband's Practice/Book of Business at date of marriage, personal goodwill, taxes and present value considerations, the Arbitrator concludes a net marital value/increase in value of Husband's Book of Business/ Practice at \$150,000.

G. Other Assets/Liabilities:

1. [REDACTED] At the Arbitration hearing, the Arbitrator confirmed that at date of separation, the balance in the parties' [REDACTED] Savings Account was \$58,855. Following separation, Wife received \$27,500 from [REDACTED] with the balance in the amount of \$28,355 being retained by Husband (H-PA, p. 6/H-11; W-PA, p. 38/W-I/A-p. 5/W-21).

2. **Husband's** [REDACTED] Also at the Arbitration hearing, the Arbitrator confirmed that in accordance with the 07/23/19 Statement from [REDACTED] Husband is entitled to a Defined Benefit Pension of \$559.90 per month, which Husband actually was entitled to begin receiving on 12/01/15 (Asterion-8). At the Arbitration hearing, the Arbitrator opined a present value for such payments at a 15 year payout to Husband from 12/15 discounted at 5% approximating \$71,000. At the first day of the Arbitration hearing, the Arbitrator permitted both parties to submit to the Arbitrator each party's calculation of the present value of this Defined Benefit Plan. At the second day of the Arbitration hearing, Husband submitted a calculation for 16

years of such payments at a discount rate of 5% at a present value of \$73,778, and Wife submitted a calculation of such payments at a life expectancy through 12/31/2034 and a discount rate of 2.5% at a present value of \$84,711 (H-S-2/W-S-2). The Arbitrator notes that while an "in-kind distribution" with regard to this asset, by means of a Qualified Domestic Relations Order, might be favored under applicable case-law in Pennsylvania, especially as there is a discrepancy in the calculation of the present value, in the instant matter, the Arbitrator is awarding a "present value/off-set distribution" in consideration of the relatively *di minimus* amount of the future monthly payments and in order to eliminate potential disputes in futuro regarding issues pertaining to an in-kind division of the monthly payments (e.g., timing, etc.). After consideration of all the foregoing, the Arbitrator concludes a net marital value/present value of Husband's Defined Benefit Pension Plan at \$73,778.

3. Motor Vehicles: At the Arbitration hearing, the Arbitrator confirmed that the parties agreed to a "wash" for the value of the 2010 Jeep Grand Cherokee retained by Husband and 2010 Subaru Outback retained by Wife. As set forth at W-I/A, p. 4, however, Husband also retained a 2004 BMW M-3 convertible. Wife testified that the value of the automobile at date of separation approximated \$20,000; the Arbitrator noted that the current Kelley Blue Book value of the automobile, approximates \$9,500. The Arbitrator concludes a net marital value for the 2004 BMW M-3 at \$15,000.

4. Art Collection:

a. Parties' Positions: It is Husband's position that the parties' art collection was divided in-kind between the parties, and neither party should receive any credit/debit on account of the value of any "marital" art in one party's possession in excess of the value of "marital" art in the other party's possession (H-PA, p. 9). In opposition, Wife notes that Husband's Answers to Interrogatories sets forth a value for the parties' art collection approximating \$133,000 (W-18 - Husband's Answer to Interrogatory Question 64), and it is Wife's position that at the value stated by Husband, Wife has

obtained items approximating \$33,000, and Husband has retained items approximating \$100,000 (W-PA, pgs. 36-37).

b. Testimony: There was extensive testimony by both parties regarding the division between the parties of home furnishings and the art collection at the former marital residence. Wife testified that approximately two (2) years after the parties' separation, Wife was able to return to the former marital residence and put "stickers" on items she desired, however, Husband advised Wife either that there were certain items "he would not part with" or "would not agree to", accordingly, Wife only received approximately "ten pieces" of artwork. Upon questioning by the Arbitrator, Wife testified to her belief that the value of items in her possession totaled \$20,000, but reiterated that in accordance with Husband's Answers to Interrogatories, the value of the items in Husband's possession would then approximate \$113,000. In opposition, it was Husband's opinion that the items retained by him, other than pre-marital items owned by Husband, approximated a current fair market value of \$25,000, and the items retained by Wife also approximated a fair market value of \$25,000. In response to questioning by the Arbitrator, Husband testified that while he retained quantitatively more items than obtained by Wife, the additional items Husband retained were his pre-marital items. In opposition, Wife testified that the most recent single item purchased by the parties and retained by Husband cost \$7,500; the value of all of the "marital" artwork is "close to" the value set forth by Husband in his Answers to Interrogatories. After consideration of all evidence, the Arbitrator concludes a net marital value of the marital art collection in Husband's possession at \$50,000, and the net marital value of the marital art collection in Wife's possession at \$20,000.

5. Camera/Exercise Equipment: It is Husband's position that the current fair market value of the camera and exercise equipment in his possession approximates \$0 (H-PA, p. 9/H-28-29). It is Wife's position that the value of the camera equipment in Husband's possession approximates \$50,000, and the value of the exercise equipment in Husband's possession also approximates \$50,000 (W-PA, p. 37). There was extensive testimony by both parties regarding the current value of all of these items. For instance, Husband testified that his current

cell phone "takes better pictures" than all of the camera equipment in his possession. Husband stated he was willing to give Wife all of the camera and exercise equipment, other than the three items he purchased post-separation, at a value in Wife's "column" for purposes of equitable distribution of \$5,000. After consideration of all evidence and all other conclusions set forth in these Conclusions/Award, the Arbitrator concludes a *di minimus*/\$0 value for the used camera/exercise equipment in Husband's possession.

6. Capital Loss Carryforward: Wife's Pre-Arbitration Statement states that there is a "marital" capital loss carryforward totaling \$281,655 (W-PA, p. 37). At the Arbitration hearing, the Arbitrator noted that reference to the last filed joint U.S. Income Tax Return Form 1040 for calendar year 2017, at Schedule D, evidences a total capital loss carryover in the amount of \$268,419 (H-1). The Arbitrator also noted, however, that the carryforward may only be used at a maximum of \$3,000 per year to off-set ordinary income. At a long-term capital gains tax rate of 15-20%, an ordinary income tax rate approximating 35%, and a future life expectancy of age 75-80, the Arbitrator approximates a present value of the capital loss carryover available to Husband at 30,000.

7. Loan Receivable: Wife's Pre-Arbitration Statement states that during the marriage, Husband loaned a third party, [REDACTED] \$17,000, "over [Wife's] specific objection" (W-PA, p. 38). It is Wife's position, therefore, that the sum of \$17,000 on account of this loan receivable should be in Husband's "column" for purposes of equitable distribution. At the Arbitration hearing, Husband testified that the loan was made to [REDACTED] in 2009, and both parties testified that the loan was to help [REDACTED] then pay for an outstanding credit card bill and a lease for one year for an apartment in New York City. The payments were made by one check for \$15,000 and another check for \$2,000 approximately 2010-2011. The parties agreed that there is little or no hope of ever receiving payment on account of this loan receivable. As the loan was made many years prior to date of separation, the Arbitrator concludes that there is no "credit" due to Wife on account of the loan receivable - If it is ever paid back, as set

forth in the Award, it shall be divided equally between the parties.

8. [REDACTED] **Legacy Payment:** Wife's Pre-Arbitration Statement requests that Wife be named the beneficiary of Husband's [REDACTED] Survivor Benefit in the event of Husband's death, which is "equal to 100% of the pay-off, before adjustments (as reflected on Schedule C) for the calendar year preceding the year of Husband's death (W-PA, pg. 52). It is Wife's position that Husband should continue to maintain Wife as the beneficiary of this Survivor Benefit. After consideration, the Arbitrator concludes that this benefit is comparable to an employer sponsored life insurance benefit which has no cash value/no obtainable value prior to Husband's death. In accordance with applicable case-law in Pennsylvania, only the "cash value" if any, of a life insurance or similar survivor benefit, is subject to equitable distribution in Pennsylvania, accordingly, the Arbitrator concludes that there is no "marital" value subject to equitable distribution. The Arbitrator also notes, however, that the Arbitrator could provide for Husband to maintain Wife as a beneficiary of such Plan to secure either post-divorce alimony or deferred equitable distribution payments to Wife until the completion of such payments. See, e.g., Divorce Code Sections 3502(d) and (e).

III. INCOME/EXPENSES

A. **Husband's Income:** In summary, Husband's gross wages, and the [REDACTED] component of Husband's gross wages, in each of the last four calendar years, were as follows (W-PA, pgs. 25-26; Husband's Forms W-2 (W-9)):

<u>Calendar Year</u>	<u>Gross Wages/W-2</u>	<u>Partners Plus Component</u>
2018	\$469,735	\$ 27,281
2017	472,312	59,693
2016	447,644	112,434
2015	445,933	225,973

B. Wife's Income: As set forth at subparagraph I.A. above, Wife's gross earned income in 2018 was \$117,638, however, at the Arbitration hearing, Wife confirmed that she anticipates projected gross earned income for 2019 forward approximating \$91,496, as in 2018, Wife received additional income on account of her "covering" for two [REDACTED] employees then on maternity leave (W-PA, pgs. 26-27/W-10-12).

C. Wife's Expenses: The detail of Wife's expenses totaling \$11,792 per month is set forth at W-13, and need not be repeated here, but was reviewed and considered by the Arbitrator in his determination regarding post-divorce alimony, if any.

IV. COUNSEL FEES AND COSTS

Wife is requesting payment by Husband of counsel fees and costs totaling \$76,861, representing \$54,487 in expert's fees incurred to Asterion for having to trace/calculate the net marital value of Husband's retirement/non-retirement accounts, and \$30,473, less \$8,100 in legal fees paid as "sanctions" by Husband, for Wife's counsel to pursue discovery regarding Husband's retirement and non-retirement accounts. The detail is set forth at W-PA, pgs. 2-17 and need not be repeated here. In opposition, Husband's counsel argued that Husband provided all documentation which he was able to obtain. As a result of the many years from date of separation to the present, and the numerous post-separation transfers, the "tracing" of withdrawals, deposits and expenditures naturally was problematic, but Husband provided all documentation in his possession/control; any difficulties were occasioned by [REDACTED] not Husband. As set forth in these Conclusions/Award, however, the Arbitrator calculated almost \$875,000 in net marital value of Husband's retirement/ non-retirement accounts in excess of the net marital value of Husband's retirement/non-retirement accounts set forth at Husband's Inventory and Appraisement (H-PA, p. 12), and almost \$625,000 in excess of the adjusted value of Husband's retirement/non-retirement accounts as calculated by Husband (See, subparagraph II.D. above).

V. CRITERIA

Both in the Pre-Arbitration Statements and at the Arbitrating hearing, each party and/or each party's attorney addressed all other issues with regard to this matter, including, all of the criteria to be considered pursuant, *inter alia*, to Sections 3502 and 3701 of the Pennsylvania Divorce Code. While all of the foregoing need not be repeated here, the Arbitrator has considered each of the criteria set forth in the Divorce Code in arriving at the Award in this matter.

AWARD

After consideration of all the foregoing, including, without limitation, each party's Pre-Arbitration Statements; all exhibits and other documentation submitted by each party; all testimony of each party, the witnesses and argument of counsel; all of the factors and criteria in accordance with the Pennsylvania Divorce Code including, without limitation, all criteria for determining an equitable distribution of marital property pursuant to Section 3502(a) and all criteria for determining the amount and duration of alimony pursuant to Section 3701(b); and all applicable case-law on all issues, the Arbitrator enters the following Award:

I. PROPERTY DIVISION

A. Distribution: The net marital assets shall be divided between the parties as follows:

<u>ASSET/LIABILITY</u>	<u>HUSBAND</u>	<u>WIFE</u>
<u>Real Estate</u>		
[REDACTED]	\$ 441,741	\$ 441,741
[REDACTED]	39,325	
<u>Husband's Retirement Assets</u>		
[REDACTED]	808,129	
[REDACTED]	(30,164)	
[REDACTED]	35,250	
[REDACTED]	141,992	
[REDACTED]	178,418	
[REDACTED]	50,000	
[REDACTED]	10,160	
<u>Husband's Non-Retirement Assets</u>		
[REDACTED]	514,053	
[REDACTED]	103,904	
[REDACTED]	200,000	
[REDACTED]	30,000	
[REDACTED]	----	
[REDACTED]	17,213	
[REDACTED]	----	
[REDACTED]		
Received 01/15	115,598	
Outstanding	28,249	
[REDACTED]	----	

<u>ASSET/LIABILITY</u>	<u>HUSBAND</u>	<u>WIFE</u>
<u>Wife's Retirement Assets</u>		
██████████		\$ 110,726
██████████		44,224
██████████		13,542
<u>Husband's Book of Business/Practice</u>	150,000	
<u>Other Assets</u>		
██████████	28,355	27,500
██████████	73,778	
Motor Vehicles	15,000	
Art Collection	50,000	20,000
Camera/Exercise Equipment	----	----
Capital Loss Carryover	30,000	
Loan Receivable	----	
<u>UBS Legacy Payment</u>	----	
Subtotal	<u>\$3,031,001</u>	<u>\$ 657,733</u>
Amount Due to Wife	<u>(1,250,000)</u>	<u>1,250,000</u>
Total - Dollars	<u>\$1,781,001</u>	<u>\$1,907,733</u>

B. **Effectuation:** The foregoing distribution shall be effectuated as follows:

1. **Amount Due To Wife:**

a. ██████████ **Plan:** Within thirty (30) days from the date of this Award, Husband shall execute and deliver to Wife's counsel any and all documentation, including an appropriate Domestic Relations Order or Qualified Domestic Relations Order ("QDRO"), necessary for Wife to receive from Husband's ██████████ 401(k) Plan assets with a fair market value on the date of transfer in the amount of Seven Hundred and Fifty Thousand Dollars (\$750,000). Such amount either shall be segregated by the Plan Administrator into a Retirement Account for Wife or transferred to an Individual Retirement Account as directed by Wife. Any QDRO necessary to effectuate the foregoing shall be prepared by Husband's employer, if practicable; if not, the documentation shall be prepared by ██████████ who shall prepare the QDRO, submit it to the Plan Administrator for pre-approval, submit it to the assigned Judge for execution and entry as an Order, and finally

submit it to the Plan Administrator for effectuation. Any fees incurred to [REDACTED] shall be divided equally between the parties.

b. Annual Payments: The balance due to Wife in the amount of Five Hundred Thousand Dollars (\$500,000) shall be paid by Husband to Wife in five (5) equal annual installments of One Hundred Thousand Dollars (\$100,000), plus interest on the then remaining principal balance at Six Percent (6%) per annum, with the first payment of principal and interest due on March 1, 2020, and the remaining payments due on each March 1st thereafter. The balance due from Husband to Wife may be pre-paid by Husband, in whole or in part, at any time, and in such event, the amount of the annual payments due to Wife shall thereafter be reduced *pro rata*.

2. [REDACTED] Within thirty (30) days from the date of this Award, Husband shall deliver to Wife's counsel a deed prepared by Husband's counsel transferring all of Wife's right, title and interest in [REDACTED] to Husband. Upon receipt, Wife shall execute the deed and return it to Husband for immediate recording with the Recorder of Deeds office.

3. **Loan Receivable:** In the event either party receives any payment on account of the loan receivable due from [REDACTED] such party shall immediately deliver to the other party one-half (1/2) of any such payment received.

4. **Other Assets/Liabilities:** Upon presentation, each party shall execute any documentation presented by the other party necessary to confirm the distribution of any other net marital assets between the parties in accordance with this Award. All other property of any nature whatsoever shall be and remain the sole property of the party in possession of such property or in whose name such property is titled as of the date of this Award. Except as otherwise specifically set forth in this Award, each party shall be solely responsible for any liabilities incurred by such party or attached to any asset awarded to such party, and each shall exonerate and indemnify the other party and hold the other party harmless from all actions, claims or demands with respect to any such liability, and from all counsel fees and costs pertaining to any such action, claim or demand.

II. ALIMONY

A. Alimony Amount: Commencing on the first day of the month following the effective date of this Award, and on the first day of each month thereafter, Husband shall pay to Wife, as alimony, the sum of Four Thousand Dollars (\$4,000) per month ("Alimony Amount").

B. Modification of Alimony: The Alimony Amount shall not be subject to modification, except in the event of a decrease in Husband's gross annual earned income from all sources in excess of Twenty-Five Percent (25%) of Husband's gross earned income for calendar year 2019. In such event, Husband shall have the right to file a Petition requesting a modification, which modification, if any, shall be determined by the appropriate court, or upon agreement of both parties, the Arbitrator.

C. Tax Provisions: The Alimony Amount shall neither be deductible by Husband nor includable by Wife for income tax purposes.

D. Termination of Alimony: Husband's obligation for payment of the Alimony Amount shall cease upon the first to occur of (1) Husband's death (provided that Husband has maintained security for such payments as set forth at subparagraphs IV.B. and C. below); (2) Wife's death; (3) Wife's remarriage; (4) Wife's cohabitation as then defined by applicable case-law pursuant to Section 3706 of the Pennsylvania Divorce Code; or (5) With the final monthly payment on July 1, 2024.

III. COUNSEL FEES AND COSTS

On or before March 1, 2020, Husband shall pay to Wife's attorney the sum of Twenty-Five Thousand Dollars (\$25,000) on account of Wife's counsel fees and costs. Each party shall be solely responsible for the balance of his/her counsel fees and costs incurred in this matter.

IV. SECURITY FOR PAYMENTS

A. Incorporation in Divorce Decree: Pursuant to the Agreement to Arbitrate signed by the parties, this Arbitration Award shall be incorporated, but not merged, into the Divorce Decree to be entered in this matter. In the event of any default in payment by Husband to Wife pursuant to this Award, Wife shall have all remedies available to her to effectuate compliance with this Award including, without limitation, all rights pursuant to Section 3502(e) of the Pennsylvania Divorce Code which includes, *inter alia*, awarding interest on unpaid installments; directing the transfer or sale of any property required in order to comply with the court's order incorporating this Award; requiring security to ensure future payments; awarding counsel fees and costs for non-compliance; and issuing attachment proceedings and finding a party in civil contempt.

B. Life Insurance: Husband shall maintain and keep in full force and effect a policy or policies of insurance on his life naming Wife as beneficiary in an amount equal to the then principal balance of the payments due to Wife pursuant to subparagraph I.B.1.b. above, and the Alimony Amount due to Wife pursuant to Paragraph II. above assuming payments through July 2024. The amount of such insurance may be reduced annually by the amount of the balance due and alimony payments paid by Husband to Wife. Husband's obligation to maintain such insurance shall cease upon the termination of his obligations for payment of the balance due to Wife and Alimony Amount as set forth in this Award. During any period in which Husband is required to maintain such insurance, Husband shall send Wife, no less frequently than annually, confirmation of the existence of such policy or policies and maintenance of the beneficiary designation as set forth in this Award, and Husband shall request the insurance company or companies to send duplicate notices of premiums due and receipts that premiums have been paid to Wife.

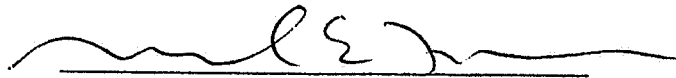
C. Legacy Payment: To the extent Husband does not have sufficient insurance on his life to secure the obligations as set forth at subparagraph B. above, Husband shall name Wife as beneficiary of his Survivor Benefit/Legacy Payment to the extent of any such deficiency until the termination of Husband's

obligation for maintenance of security for such payments as set forth at subparagraph B. above.

V. OTHER ISSUES

The Arbitrator's fees have been paid prior to the issuance of this Award. In consideration of the foregoing and the other terms of this Award, the Arbitrator declines to award either party additional credits/debits on account of any other issue relating to this matter, including payments by or on behalf of either party to-date.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink, appearing to read 'M. E. Fingerman', is written over a horizontal line.

MICHAEL E. FINGERMAN, ESQUIRE
Arbitrator

DATED: January 17, 2020

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW

[REDACTED]
Plaintiff

v.

[REDACTED]
Defendant

:
:
:
:
:
:
:
:
:
:
:

[REDACTED]
[REDACTED]
IN DIVORCE

ARBITRATION AWARD BY AGREEMENT

WHEREAS, the parties are [REDACTED] (“Husband”) and [REDACTED] (“Wife”), having been married on [REDACTED]

WHEREAS, the parties are the parents of [REDACTED]

WHEREAS, the parties submitted their economic claims to arbitration with Carolyn Moran Zack, Esquire and reached a comprehensive settlement on July 16, 2024, after four days of discussion on July 8, July 9, July 15 and July 16, 2024, with the assistance of their counsel, their experts, and the jointly-retained expert, based on the non-binding recommendations of the Arbitrator;

WHEREAS, the parties requested that the Arbitrator initially draft this Agreement to reflect their settlement terms, and, thereafter, they and their counsel reviewed and made any changes to the Agreement that they thought were necessary or appropriate; and

WHEREAS, the parties intend to live separate and apart for the rest of their lives, and want to settle the economic and other rights and obligations between each other, including those related to the divorce action pending under the caption above and the action filed by [REDACTED]

[REDACTED], in the Court of Common Pleas of Philadelphia County, [REDACTED]

[REDACTED] Commerce Program, and except for any outstanding child support or future child support claims;

NOW THEREFORE, intending to be legally bound to a sealed instrument, the parties agree as follows:

1. **Financial Disclosure.** Husband and Wife represent and warrant that they have disclosed to each other in full their respective assets, liabilities, and income and that this Agreement was negotiated and entered into on the basis of those disclosures. Any further enumeration or statement thereof in this Agreement is hereby specifically waived.
2. **Child Support.** Effective August 1, 2024, Husband shall pay Wife \$5,822 per month for the support of [REDACTED] on or before the first day of each month. This child support amount is based on Husband's net income of \$73,822 monthly and Wife's net imputed net earning capacity of \$4,657 monthly. Husband shall continue to maintain health insurance for the benefit of the children through his employment. Husband and Wife shall share any unreimbursed medical expenses as defined in Pa.R.C.P. 1910.16-6(c) above \$250 per child per year in the ratio 94% by Husband and 6% by Wife. The parties shall also share the children's private school tuition, summer camp, and extracurricular activities, as they may agree or, if they can't agree, as ordered by the court. The parties have two children with special needs, and therefore the PPO National policy health insurance shall be maintained by Husband to continue to provide the children with in-network access to their long-term providers. The parties shall also cooperate promptly to execute any and all documents and provide any information necessary to maintain Medicaid coverage, without interruption, for [REDACTED]. This provision of the Agreement shall be subject to modification pursuant to 23 Pa.C.S.A. Section 3105 based on a showing of changed circumstances. Child support for each child shall terminate upon that child's emancipation as provided by law. Upon such emancipation, the amount of child support for any remaining child shall be adjusted based on the parties' then-financial circumstances. Counsel will file a stipulation to confirm the terms of this support obligation with Domestic Relations.
3. **Health Insurance.** Husband shall maintain the existing health insurance policy for the benefit of Wife at his expense until the entry of the divorce decree.
4. **Retroactive Support.** Husband owes Wife \$400,000 in retroactive support to the date of July 19, 2021. Husband shall pay this amount to Wife pursuant to this Agreement and this payment resolves either party's claims related to the base amount of support owed or paid for Wife or the two children prior to this Agreement. The parties' respective claims for credits or amounts due for the children's additional expenses from July 19, 2021 through July 31, 2024 is specifically reserved for further negotiation by the parties and, in

c. Properties Titled to the Parties Individually. Husband owns the properties located at [REDACTED]

[REDACTED] Except as otherwise provided in this Agreement, Husband shall retain these properties as his sole and separate property and he shall be solely liable for any expenses or liabilities relating to these properties. Wife owns the properties located at [REDACTED] and [REDACTED]. Wife shall retain these properties as her sole and separate property and she shall be solely liable for any expenses or liabilities relating to these properties.

d. Both parties shall promptly sign within three days any and all documents presented through counsel to effectuate the terms of this Agreement.

6. Bank and Brokerage Accounts. Husband shall retain as his sole and separate property: (a) Wells Fargo [REDACTED] (currently in joint names); (b) Wells Checking Fargo [REDACTED], (c) Wells Fargo Savings [REDACTED] (d) TD Checking [REDACTED] (e) TD Checking [REDACTED] (f) [REDACTED] Holding [REDACTED] (g) [REDACTED] Holding [REDACTED] (h) Morgan Stanley [REDACTED] and (i) Robinhood account [REDACTED]. Husband shall pay Wife \$777 within seven days of execution of this Agreement on account of her share of PFCU [REDACTED] and he shall retain the balance of that account. Wife shall retain as her sole and separate property: (a) Wells Fargo Savings [REDACTED] (b) Wells Fargo Checking [REDACTED] (c) TD Checking [REDACTED] and (d) Firstrust Bank. Each party shall be solely liable for any and all taxes, including but not limited to, capital gains taxes on his or her accounts incurred on or after January 1, 2024. Each party shall sign any documents necessary to transfer the accounts or relinquish their interest in these accounts to the receiving party within five (5) days.

7. Business Interests. Husband shall retain as his sole and separate property and Wife waives and releases any interest in the following business interests: (a) [REDACTED] Consulting Group, Inc. and (b) [REDACTED] Billing Services, Inc. (hereinafter "the Business Entities"). Wife shall sign any documents reasonably required to relinquish her interest in these entities to Husband. Husband represents that he has received no offers to buy, nor has he made any offers to sell, the Business Entities since July 14, 2021. Husband shall provide Wife with written notice if he enters a Letter of Intent to sell either of the Business Entities immediately upon signing such Letter of Intent or receives any written offers to buy the Business Entities in whole, or in part. Husband's notice shall be sent to Wife by certified mail, return receipt requested, with a copy to her counsel, [REDACTED] by email at [REDACTED] and [REDACTED]. Pending Husband's payment of all amounts due to Wife under this Agreement, Husband shall not transfer his interest in the Business Entities except pursuant to a sale from which he will use the proceeds to pay Wife the outstanding balance due to her under this Agreement within thirty days of the sale-Husband shall be solely liable for any expenses

or liabilities related to the Business Entities, and he shall indemnify Wife and hold her harmless from such expenses or liabilities.

8. Retirement Accounts. Husband shall transfer to Wife his entire interest in the Empower Rollover IRA [REDACTED], valued at approximately \$725,321 as of the current date, and both parties shall execute the documents required to effectuate this transfer within thirty (30) days of presentation. The transfer shall be made by way of a tax-free rollover pursuant to divorce. If a Domestic Relations Order ("DRO") is required, the parties shall retain KLM Attorneys to prepare the DRO and shall share the fees equally. Husband shall retain the following accounts: (a) Morgan Stanley Traditional IRA [REDACTED], (b) Fidelity IRA [REDACTED], and (c) Allianz Life Insurance IRA. Wife shall retain as her sole and separate property the following accounts: (a) Morgan Stanley Traditional IRA [REDACTED] & [REDACTED], and (b) [REDACTED] 401(k) Rollover IRA [REDACTED]
9. Cash Payments to Wife. The parties agree that to effectuate equitable distribution, Husband owes Wife \$2,741,325. In addition, pursuant to paragraph 4 of this Agreement, Husband owes Wife retroactive support of \$400,000. Husband therefore owes Wife a total of \$3,141,325. Husband shall pay Wife this amount directly by way of an ACH payment to an account that Wife designates as follows:
- 30* *\$400,000.00 by 8-15-24, \$300,000.00 by 8-30-24*
- a. \$700,000 in cash by August 15, 2024. Husband acknowledges that Wife intends to use \$250,000 of this payment to repay a loan that she took from her IRA. If Husband does not make the payment by August 15, 2024, Husband shall be solely liable for the taxes and any penalties or interest Wife is required to pay on account of her failure to repay the loan timely.
 - b. \$725,000 representing the balance in his IRA, pursuant to paragraph 8 of this Agreement.
 - c. \$1,716,325 within forty-eight (48) months of the date of execution of this Agreement, pursuant to the following schedule:
 - i. \$4,178 on the first day of each month beginning August 1, 2024 and ending July 31, 2028; and
 - ii. \$378,945 in four equal installments due on August 1, 2025, August 1, 2026, August 1, 2027 and August 1, 2028.
 - iii. Husband shall be obligated to pay Wife sooner should he sell any of the properties he retains under this Agreement as a priority from any net proceeds he receives on the sale of those properties. Husband shall disclose to Wife when any of his properties is listed for sale, as well as notice of the closing date on such sale, and he shall authorize the title company to pay the net proceeds of such sale directly to Wife. Such net proceeds shall include any escrow fund checks and/or pro-rated reimbursements made for pre-paid real estate taxes, homeowners' insurance premiums, and any other similar costs payable to Husband on the sale of the property. Upon Wife's receipt of such payment, Husband shall receive a credit in the amount of such payment against his lump sum owed to Wife under Paragraph 9 of this Agreement.

- iv. Husband may prepay Wife the balance due without penalty. If Husband is late on any payment, Husband shall pay Wife interest at the rate of 6% annually on any unpaid balance until the balance due is satisfied and he shall also pay Wife's reasonable attorneys' fees incurred to enforce this Agreement.
 - d. Husband's payments to Wife under this paragraph shall not be included or considered as income to Wife in any further domestic relations proceedings.
 - e. At Wife's request, Husband shall execute mortgages against his properties totaling the balance due to Wife on the properties he receives under this Agreement, within sixty days of the date of presentation by Wife. If and only if Husband misses a payment under this Agreement and does not list for sale properties which would net sufficient proceeds to pay Wife the balance due under this Agreement within thirty days, then Wife shall be authorized to file these mortgages to secure the balance due under this Agreement and she shall send Husband recorded copies for his records. Wife shall cause these mortgages to be marked satisfied and removed commensurate with the balance due to her by Husband under this Agreement by September 1 of each year until the balance is paid.
10. Stipulation for Payments to be Paid Through PaSCDU. The parties agree to file a stipulation under the support caption in Philadelphia County to permit Husband to pay Wife the child support he owes under this Agreement through PaSCDU. Wife's counsel shall prepare this Stipulation for approval by Husband's counsel.
11. Praecepto to Dismiss the Commerce Program Lawsuit. Promptly upon execution of this Agreement, Wife shall cause her counsel to withdraw the lawsuit pending in the Commerce Program with prejudice and Husband shall cooperate to the extent necessary for the matter to be closed.
12. Personal Property. Each party shall retain any personal property in their possession or control, free of any claim by the other party.
13. Life Insurance. Husband shall maintain life insurance at his expense on his life with an initial face value of \$2 million naming Wife as the sole beneficiary for so long as he has an obligation to her under this Agreement for equitable distribution payments. Husband shall provide Wife proof of the policy coverage and beneficiary designation within ten (10) days after the date of this Agreement and on January 1 of each year thereafter for as long as he is required to maintain Wife as the sole beneficiary of this policy. Husband is permitted to reduce the face value of the life insurance policy following satisfaction of his equitable distribution payments provided that he has coverage for the benefit of Wife commensurate with the balance of his obligation for equitable distribution due to her under this Agreement.
14. Obligation of Estate. Husband agrees that, to the extent he owes Wife any amounts under paragraph 9 of this Agreement at the time of his death that are not covered by his life insurance policy, these amounts shall be an obligation of his estate for equitable

distribution payments only (not child support), and that his estate shall satisfy these obligations to Wife as a priority over any obligation owed to any other person or entity.

15. Attorneys' Fees, Expert and Arbitrator Fees. Each party shall be solely liable for their counsel fees and expert fees. The parties shall share equally the Arbitrator fees. Husband shall receive a credit of \$5,000 for having prepaid Wife's share of these fees with the \$10,000 retainer payment. The parties shall share equally the fees of the joint expert, Asterion, for which the balance as of July 22, 2024 was \$18,649.50 (after deduction of the retainer), within sixty (60) days of the date of this Agreement.
16. ██████████ Fees. The parties will cooperate to reduce or eliminate the fees of ██████████. The parties will share equally any balance due to Mr. ██████████ or refund to be received from Mr. ██████████.
17. 529 Accounts. The parties have 529 accounts for ██████████ valued at approximately \$79,878, and ██████████ valued at approximately \$109,874. Husband is currently listed as the custodian for these accounts. Husband will transfer the custodianship for ██████████ account to Wife within thirty days of execution of this Agreement and each party shall thereafter provide online access to the other party for each of the children's 529 accounts. The parties agree that the funds in these accounts shall be used solely for the children's benefit. Neither party shall use these funds without express written consent of the other party or by Court Order.
18. Disclosure of Marital Debts. The parties hereby warrant that neither has placed any liens or incurred any other debts against any asset which is to be awarded to the other party except for those debts or liens that are specifically set forth in this Agreement. Only to the extent that property awarded to one spouse has been encumbered in any way by debts or liens incurred by the other spouse and those debts or liens have not been disclosed herein, the spouse incurring the debts or liens shall be fully responsible for the debts or liens and shall indemnify and hold the other spouse harmless thereon, otherwise, the spouse awarded any asset herein shall be solely responsible for any debt(s) or liabilities associated with said asset and shall indemnify and hold the other spouse harmless.
19. Husband's and Wife's Responsibility for Marital Debt. The parties acknowledge that since the date of separation, both may have accumulated credit cards and/or loans in his or her name. The parties agree that any such debt or liabilities incurred by either party after the date of separation or those which are not specifically referenced herein, shall be the responsibility of the party incurring such debt. Each party will be fully responsible for all credit card debt, loans or any other liability that is now in his or her own name or held jointly with another and shall indemnify and hold the other party harmless against the same. The parties agree and warrant that no liability or credit card remains in both parties' names jointly, or that if such card exists, it shall be cancelled within ten (10) days of the execution of this Agreement. Neither party will incur or acquire any other debts, liens, judgments or unpaid taxes for which the other party is or may be held liable and each agrees to indemnify and hold harmless the other spouse from any debts, liens,

judgments or unpaid taxes except as provided herein that would be attributable to the other or the property of the other party described herein.

20. Waiver of Any Other Claims. Each party waives any other claim related to the divorce and pending matters, including any request for further credits or adjustments.
21. Taxes. Each party shall be liable for any taxes on the assets they receive under this Agreement, effective January 1, 2024. Husband shall be solely liable for any taxes, interest, or penalties relating to the parties' 2020 joint tax returns, and he shall indemnify Wife and hold her harmless from this liability or expense, including her reasonable counsel fees in defending against any claim brought against her for non-payment.
22. Tax Advice. Husband and Wife have both been informed that there is a Tax Reform Act of 1986 and subsequent amendments thereto which included changes in several areas of the tax law affecting the taxation of transactions in domestic relations matters including transfers of property and the payment and receipt of alimony, alimony pendente lite, support and separate maintenance. The parties acknowledge that neither attorney has furnished advice with respect to said consequences, that each party has been directed and advised to obtain independent tax advice from a qualified tax expert, including an accountant or counsel prior to the signing of this Agreement.
23. Hold Harmless Clause. Each party responsible for all expenses and obligations associated with all property distributed or retained and they shall indemnify the other party and hold them harmless from any liability or expense, including their reasonable counsel fees in defending against any claim brought against them.
24. Divorce and Incorporation of Agreement in the Divorce Decree. The parties intend to secure a mutual consent, no-fault divorce pursuant to the provisions of 23 Pa.C.S.A. Section 3301(c) of the Pennsylvania Divorce Code of 1980, as amended. The parties shall sign Affidavits of Consent and Waivers of any notice to request the entry of a divorce upon execution of this Agreement, and they shall cooperate to seek a divorce decree incorporating the terms of this Agreement. The Philadelphia County Court of Common Pleas shall retain continuing, exclusive jurisdiction over the parties and the subject matter of this Agreement for the purpose of enforcement of any of its provisions.
25. Implementation of the Agreement. If the parties disagree about the implementation of this Agreement, they may file an action to enforce the Agreement in the Philadelphia County Court of Common Pleas or, if they mutually agree, submit the matter for binding arbitration to Carolyn Moran Zack, Esquire or another mutually agreed arbitrator.
26. Advice of Counsel. The terms of this Agreement and their legal effect have been fully explained to the parties by their respective counsel, [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED] and James Rocco, Esquire for Husband. The parties acknowledge that each has received independent legal advice from counsel of their selection and that they have been fully informed as to their legal rights and obligations arising out of their marriage and impending divorce, including all rights

available to them under the Pennsylvania Divorce Code of 1980, as amended. Each party confirms that he or she fully understands the terms, conditions and provisions of this Agreement and believes them to be fair and reasonable under the circumstances. The parties further confirm that each is entering into this Agreement freely and voluntarily and that the execution of this Agreement is not the result of any duress, undue influence, collusion, or improper or illegal agreement or agreements.

27. Waiver of Defenses. The parties forever waive any future right to challenge the validity or enforceability of this Agreement, or any portion of it based upon: (1) the absence of additional financial disclosure by the other party as to the valuation of the assets set forth herein; (2) a claim that this Agreement is inequitable; (3) a claim that this Agreement is unconscionable; (4) a claim that this Agreement does not make reasonable provision for one or the other of them; (5) a claim of inadequate or no legal representation; (6) a claim of failure to fully appreciate and/or realize the extent and nature of any rights waived; (7) a claim that new statutory or decisional law overrides the enforceability of this Agreement or renders it invalid because of public policy; (8) a claim that the law of a different jurisdiction renders this Agreement unenforceable; and/or (9) a claim that this Agreement was executed under duress.
28. Modification. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and signed by both parties and no waiver of any breach or default of this Agreement shall be deemed a waiver of any subsequent breach or default of the same or similar nature.
29. Law of Pennsylvania Applicable. This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania. Subject matter jurisdiction and venue shall be in the Court of Common Pleas of Philadelphia County, Pennsylvania, for any action arising out of this Agreement, and the resolution of any dispute between the parties. Such court shall also have personal jurisdiction over each of the parties with respect to any such action. The parties specifically intend in the event one or both of them moves out of this state, the Agreement shall continue to be interpreted under the laws of this state and no other state, whether the issue involves contract interpretation, enforcement, modification or termination of any provision of this Agreement.
30. Agreement Binding on Heirs. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns.
31. Contract Interpretation. This Agreement shall be construed in accordance with the laws of Pennsylvania. No provisions of this Agreement shall be interpreted for or against a party because that party's attorney drafted this Agreement in whole or in part. The separate provisions of this Agreement shall be construed as a whole and, where possible, so that the provisions are consistent with each other. If any part of this Agreement is determined void or invalid, then only that part of the Agreement shall be stricken. Headings preceding text are inserted solely for convenience of reference; are not a part of this Agreement; and shall not affect the Agreement's meaning, construction or effect.

32. Integration. This Agreement constitutes the entire understanding of the parties and supersedes any and all prior agreements and negotiations between them.
33. Other Documentation. Within five (5) days after demand therefor, the parties shall execute any and all written documents which may be reasonably necessary or desirable for the proper effectuation of this Agreement.
34. No Waiver of Default. This Agreement shall remain in full force and effect unless and until terminated under and pursuant to the terms of this Agreement. The failure of either party to insist upon strict performance of any of the provisions of this Agreement shall in no way affect the right of such party thereafter to enforce that provision. The waiver of any breach of any provision hereof shall not be construed as a waiver of any subsequent breach of the same or similar nature and shall not be construed as a waiver of strict performance of any other obligations herein.
35. Remedies and Sanctions. In addition to such other remedies and sanctions available under law, the parties may utilize any remedy or sanction set forth in the Pennsylvania Divorce Code of 1980, as amended, to enforce any term of this Agreement as though it had been an Order of Court.
36. Attorneys' Fees for Enforcement. In the event that there is a finding of default after a hearing of any term of this Agreement and the non-defaulting party elects to file a petition for enforcement with the Court, the breaching party shall reimburse the non-defaulting party for the reasonable legal fees, costs and expenses paid and/or incurred in any action or proceeding to compel performance under the Agreement, whether performance is ultimately achieved by litigation or by amicable resolution, in addition to any other penalty or sanction that may be imposed by the court.
37. Income and Appreciation in Value of Distributed Assets. Any interest, dividends, capital gains, appreciation in value, rents, royalties, distributions, profits, salary, bonus, options, tax benefits, or any other type or form of benefit received by or that inure to the benefit of Wife from the assets distributed to or retained by her under this Agreement shall belong solely to Wife. Husband waives any right or claim to such benefits. Any interest, dividends, capital gains, appreciation in value, rents, royalties, distributions, profits, salary, bonus, options, tax benefits, or any other type or form of benefit received by or that inure to the benefit of Husband from the assets distributed to or retained by him under this Agreement shall belong solely to Husband. Wife waives any right or claim to such benefits. Except as stated in this Agreement, Husband and Wife are free to sell, transfer, gift, bequeath, assign, convey, or otherwise dispose of his or her assets as he or she chooses without interference or control by the other party, free and clear of any claim by the other party to the asset, the sale proceeds of the asset, or any other assets acquired in exchange for the assets.
38. Separate Assets/Liabilities. Except as otherwise set forth in this Agreement, all other property, whether real, personal or of any description whatsoever and wheresoever situated including, without limitation, bank accounts; automobiles; cash; securities; business interests, including proprietorships, partnerships, corporate interests and professional

practices, Subchapter S Corporations, Limited Liability Corporations, pension, profit sharing, Individual Retirement Accounts or other retirement interests; educational degrees and licenses to practice; negotiable and nonnegotiable, liquid and illiquid assets, shall be and remain the sole property of the party in possession of such property or in whose name such property is titled at the time of execution of this Agreement. The party not having title to or possession of any particular separate asset hereby waives and releases any and all claim therein, and acknowledges that hereafter the party having title to or possession of a separate asset is the sole and exclusive owner thereof. With respect to his or her separate assets, each party agrees to indemnify and hold the other harmless from any liability, cost or expense associated with such separate assets. Further, each party shall pay any liabilities presently owed by or in his or her name except as provided in this Agreement. With respect to his or her liabilities, each party agrees to indemnify and hold the other party harmless from such liabilities or any claims, costs or expenses associated with such liabilities.

39. After-Acquired Property. Each party shall hereafter own and enjoy, independently of any claim or right of the other, all property acquired by him or her after execution of this Agreement, with full power in him or her to dispose of the same as though he or she were unmarried.

40. Warranty as to Existing and Future Obligations. Each party represents, covenants and warrants that, to the best of his or her knowledge and except as specifically otherwise provided for by the terms of this Agreement, as of the execution date of this Agreement:

- (a) No unpaid liabilities, except those specifically disclosed by the parties in this Agreement, remain which were incurred by him or her or on his or her behalf for which the other party may be deemed liable;
- (b) There are no actions, suits or proceedings pending or threatened against Husband and/or Wife or any judgments, liens or other obligations affecting any jointly held property or property of either party; neither Wife nor Husband is aware of any facts which to his or her knowledge might result in any such action, suit, proceeding, judgment, lien or other obligation; and
- (c) If any such liabilities, actions, suits or proceedings should be determined to have existed as of the execution date of this Agreement or thereafter, the party who incurred such liability shall exonerate and indemnify the other party against and hold the other party harmless from any liability or expense including counsel fees and costs incurred as a result of any such liability; the same shall include, but not be limited to, landlord/tenant, eviction, and any other matters related to the parties' respective real estate holdings hereto forward.

Neither Husband nor Wife shall incur any liability whatsoever in the future for which the other or the estate of the other party may be liable. Each shall exonerate and indemnify the other party against and hold the other party harmless from any damages resulting from such liability, including counsel fees and costs incurred as a result of any such liability.

41. Mutual Releases. Each party represents that he or she understands that, in the absence of this Agreement and as a matter of law: (a) as a surviving spouse, he or she might be entitled

to a greater share of the decedent's estate than is provided for in this Agreement; and (b) as a separated and/or divorced spouse, he or she might be entitled to receive or obligated to provide a different amount of support, maintenance, alimony pendente lite, counsel fees, costs, alimony, distribution of property, and/or other financial benefit arising from the marital relationship than is provided for in this Agreement. Notwithstanding the foregoing, the parties shall be bound by the terms of this Agreement.

Each of the parties further acknowledges and agrees that, with such knowledge, and after having read this Agreement carefully and fully, this Agreement is fair, reasonable and equitable, that it is being entered into freely, voluntarily, and in good faith, and that its execution is not the result of any duress, undue influence, coercion, collusion and/or improper or illegal agreement. This Agreement constitutes a full and final resolution of any and all claims that each of the parties ever had, now has, or may have in the future against the other party and/or the estate of the other party, that arise from the parties' status as spouses, as a surviving spouse, or otherwise, including without limitation claims for past, present or future support or maintenance, spousal support, alimony *pendente lite*, alimony, equitable distribution, and counsel fees, costs, expenses, whether under the law of Pennsylvania or any other jurisdiction.

Therefore, except for all rights and obligations specifically arising under this Agreement, each of the parties, for themselves and for their respective heirs, executors, administrators, personal representatives, successors, agents and assigns, does hereby waive, remise, release, quitclaim and forever discharge the other party and the heirs, executors, administrators, successors, agents and permitted assignees of the other party, or any of them, for all time to come and for all purposes whatsoever, of and from all claims, obligations, causes of action, rights and demands in law or in equity that either party ever had or now has against the other, whether known or unknown, matured or unmatured: (a) Whether arising under the laws of Pennsylvania or any other jurisdiction, arising as a result of the marital relation or otherwise, under the Domestic Relations Code, probate and intestacy laws, the Employee Retirement Income Security Act, the Retirement Equity Act, or otherwise, specifically including past, present or future support or maintenance, spousal support, alimony *pendente lite*, alimony, equitable distribution, and counsel fees, costs, expenses as well as claims against assets distributed to the other party by this Agreement except as provided by Section 3505(d) of the Pennsylvania Divorce Code; to assets that the other party may acquire in the future; and to the estate or any part of the estate of the other party; (b) Whether arising out of any acts done prior to this agreement, contracts (including life insurance and annuity contracts or otherwise), engagements or liabilities of the other party; (c) Whether arising pursuant to inheritance, elective and/or intestate rights to the other party's estate, including, without limitation, claims for dower, curtesy, widow's or widower's rights, family exemption, a distributive share, survivor's allowance, the right to elect to take against the other party's Will and conveyances, the right to treat a lifetime conveyance by the other party as testamentary, and all other rights to challenge the other party's Will, and/or participate in the other party's estate as administrator, executor or otherwise or to serve as agent under the other party's power of attorney or health documents, the right to protected health information under the Health Insurance Portability and Accountability Act; and (d) The parties acknowledge and agree that their retirement assets shall be distributed as specified in this Agreement, and that neither party shall receive

any amount in addition to the amount required by this Agreement, whether through survivor benefits, death benefits or otherwise. If either party receives any amount in excess of that required by this Agreement from retirement plans of the other party, the amount received shall be paid back to the other party or the estate of the other party.

42. Effect of Subsequent Bankruptcy. The parties agree that none of Husband's or Wife's obligations to one another under the terms of this Agreement are intended to be a debt which is affected by a discharge in bankruptcy. They further specifically intend that Husband's or Wife's obligations under the terms of this Agreement shall be non-dischargeable and not subject to discharge in bankruptcy because they acknowledge that, based upon the respective incomes, assets and needs of the parties and their households, such are necessary for each to meet their financial obligations and to support and maintain their standard of living and that of the parties' children. Husband and Wife represent that there are no bankruptcy proceedings presently pending in which either is involved. Husband and Wife expressly agree not to file a bankruptcy action prior to the completion of his or her obligations pursuant to this Agreement. These obligations shall not be discharged in a bankruptcy action filed by or against Husband or Wife. If Husband or Wife files for bankruptcy, this Agreement shall constitute conclusive evidence of the parties' intent that their obligations to each other under this Agreement are in the nature of maintenance and support and are not dischargeable under current bankruptcy law or under any amendment thereto. Further, if Husband or Wife institutes any action in bankruptcy or any other bankruptcy proceeding is instituted in which Husband's or Wife's right to payments or property hereunder becomes a matter for judicial review, Husband and Wife agree to consent to any motion filed by the other with the bankruptcy courts, wherein he or she may request that the bankruptcy courts abstain from deciding the dischargeability of any and all obligations to him/her hereunder in order to allow the appropriate Court of Common Pleas to rule upon this issue. Further, in the event that either party becomes a debtor in any bankruptcy or financial reorganization proceedings of any kind while any obligations remain to be performed by that party for the benefit of the other party pursuant to the provisions of this Agreement, the debtor spouse hereby waives, releases and relinquishes any right to claim any exemption (whether granted under state or federal law) to any property remaining in the debtor as a defense to any claim made pursuant hereto by the creditor-spouse, and the debtor-spouse hereby assigns, transfers and conveys to the creditor-spouse an interest in all of the debtor's exempt property sufficient to meet all obligations to the creditor-spouse as set forth herein, including all attorneys' fees and costs incurred in the enforcement of this Agreement. In the event that either party hereafter obtains a discharge in bankruptcy whereby debts that are herein assumed by that party would then become the sole liability of the non-discharged party, the party obtaining a bankruptcy herein indemnifies the other party and holds that party harmless for any liability whatsoever, and this indemnification may be taken as a reaffirmation of that debt following any filing of bankruptcy. It is the intent of the parties that this indemnification shall not be dischargeable in bankruptcy. In the event that this indemnification agreement is discharged in bankruptcy, then this Agreement may be modified by a Court of competent jurisdiction in order to effect a net distribution of assets and liabilities as the parties originally intended.

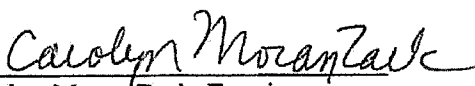
43. Knowing and Voluntary Agreement. Each party has carefully read and fully considered this Agreement and all of the statements, terms, conditions and provisions thereof prior to

signing below. Each party fully understands the terms, conditions, and provisions of this Agreement. Each party enters this Agreement freely and voluntarily; and confirms that the execution of this Agreement is not the result of any duress, undue influence, collusion, or improper or illegal agreement or agreements.

44. Waiver of Claims Against Arbitrator. The parties acknowledge that the Pennsylvania Uniform Family Law Arbitration Act (the "PAFLAA"), 42 Pa.C.S.A. Sections 7371-7398, became effective on July 7, 2024, and that the PAFLAA applies to this Agreement. In addition, the parties expressly agree that, pursuant to the terms of Section 7395 of the PAFLAA, the Arbitrator is immune from civil liability to the same extent as a judge of a court of this Commonwealth acting in a judicial capacity, and that she shall not be 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 Commonwealth acting in a judicial capacity. The parties expressly waive any claims against the Arbitrator relating to the arbitration, including her participation in the drafting of this Agreement.

RESPECTFULLY SUBMITTED:

Dated: 7/23/24


Carolyn Moran Zack, Esquire
Arbitrator
MOMJIAN ANDERER LLC
One Commerce Square
2005 Market Street, Suite 3510
Philadelphia, PA 19103
(267) 546-3700 (p)
(267) 546-3701 (f)

Intending to be legally bound, we approve the terms of this Agreement:

[Redacted] 7/23/24 [Redacted] 7/25/24
[Redacted] Date [Redacted] Date

[Redacted] 7/23/24 [Redacted] 7/25/24
[Redacted] Date [Redacted] Date
James A. Rocco, III, Esquire

Family Lawyers as ADR Facilitators

Tools to Help Achieve and Maintain Neutrality

By Lee A. Schwartz and Carolyn M. Zack



As family lawyers, we practice the art of civil litigation as we would engage in battle. We burnish the armor of our client's cause, shore up weak links with creative theories, root out weaknesses in the opposition's lines of defense and charge ahead to advance our client's objectives. Some of us have been honing these litigation skills for many decades. How, then, do those of us who also act as family law mediators, collaborative lawyers or arbitrators put the brakes on this winner-takes-all mentality and adopt the lens of an independent neutral? As alternative

dispute resolution (ADR) facilitators, we assist participants in achieving a fair and balanced result. Switching roles from advocate to neutral can be a tricky mental adjustment, which is even more challenging when the neutral litigates regularly against other lawyer participants. This article explores the tools that the family lawyer who also serves as a mediator, collaborative lawyer or arbitrator can use to help achieve neutrality and become a more effective and sought-after neutral. It also addresses a recent decision in the Angelina Jolie-Brad Pitt custody case that provides guidance for avoiding challenges to neutrality based on ongoing business and other relationships.



A. MEDIATION

1. Disclosing and Waiving Initial Conflicts

Mediation, effectively, is assisted settlement negotiation. Parties come to a mediator at many different stages of their conflict. Some have the framework of a settlement worked out and want the mediator to draft the agreement to formalize that understanding. Others are “starting from scratch” and have no idea how to resolve their dispute. They have marital property that needs to be divided. They have children, need a custody schedule and a perhaps a support agreement. Other than those broad-brush strokes, they don’t know what

other issues they may need to address. The mediator’s work can be broken down into a series of steps — starting with ensuring that the mediator discloses any personal or financial relationships that may bear on his or her ability to act impartially.

The Pennsylvania Rules of Professional Conduct (RPC) do not specifically require disclosure of conflicts by lawyers acting as neutrals. Instead, RPC 2.4, Comment 2, recognizes that the role of third-party facilitator, evaluator and decision-maker is not unique to lawyers and, in performing this role, the lawyer may be subject to court rules or other laws that apply either to third-party neutrals generally or to lawyers serving as third-party neutrals.

In the absence of rules applied by agreement of the parties or order of court, the mediator should adhere to the highest ethical standards, including the International Institute for Conflict Prevention and Resolution (CPR)’s Model Rule for the Lawyer as Third-Party Neutral, the Model Standards of Conduct of Mediators adopted by the American Bar Association (ABA) and the Association for Conflict Resolution in 2005, and the Standards of Practice for Professional Family Mediators adopted by the Academy of Professional Mediators in 2014. These ethical guidelines require that the mediator conduct the proceedings in an impartial, unbiased and even-handed manner.



Full disclosure of all actual and potential conflicts is important at the outset of the communication with the parties before the mediation agreement is signed and, ideally, ... within the mediation agreement itself.

The CPR Model Rule recommends the most detailed approach to establish impartiality in Section 4.5.3(b):

(1) The mediator-lawyer must disclose to the parties all circumstances, reasonably known to the lawyer, why the lawyer might not be perceived to be impartial. These circumstances include (i) any financial or personal interest in the outcome, (ii) any existing or past financial, business, professional, family or social relationship with any of the parties, including, but not limited to any prior representation of any of the parties, their counsel and witnesses, or service as an ADR neutral for any of the parties, (iii) any other source of bias or prejudice concerning a person or institution which is likely to affect impartiality or which might reasonably create an appearance of partiality or bias, and (iv) any other disclosures required of the lawyer by law or contract.

For the family lawyer considering an assignment as mediator, this disclosure step requires a deep dive not only through the lawyer's client list, but also creation of a

co-counsel/opposing counsel list and an ADR list, which the lawyer can consult as needed. Under the CPR Model Rule, these disclosures extend to the lawyer's immediate family, current employer, partners or business associates, requiring that the lawyer make inquiry of these individuals in creating those lists. Full disclosure of all actual and potential conflicts is important at the outset of the communication with the parties before the mediation agreement is signed and, ideally, should be confirmed within the mediation agreement itself. If the parties and their attorneys, if any, do not waive the conflict, the lawyer should decline the assignment. If the lawyer believes that the connections he or she has with the parties or the subject matter would appear to a reasonable person to preclude a fair and objective outcome, the lawyer should decline the mediation even after the parties expressly consent. The lawyer has a continuing obligation to disclose any new conflicts during the proceedings. The lawyer-mediator's ability to achieve neutrality depends on transparency and commitment to impartiality from the outset.

2. Ongoing Duty of Disclosure

The lawyer-mediator's duty of disclosure does not end with the signing of the mediation agreement. All of the ethical guidelines recommend that after accepting appointment and while serving as a neutral, the lawyer should not enter into any financial, business, professional, family or social relationship or acquire any financial or personal interest that is likely to affect impartiality or that might reasonably create the appearance of partiality or bias without disclosure and consent of all parties. RPC 1.12(a) provides that after the mediation is concluded, the lawyer-mediator shall not subsequently represent any party to the ADR proceeding in the same or a substantially related matter unless all parties consent after full disclosure. RPC 1.12(b) prohibits the lawyer from negotiating for employment with any party or attorney for a party in a matter in which the lawyer participated personally and substantially as a third-party neutral. The CPR Model Rule extends further to preclude a lawyer who has served as a third-party neutral from representing a party adverse to a former ADR party where the lawyer-neutral has acquired confidential information, without the consent of the former ADR party.

These standards preserve the integrity of the mediation process. Before later developing personal or professional relationships with the parties or other participants, the mediator should consider the time elapsed following the mediation, the nature of the relationships established and the services offered to determine whether these relationships may create a real or perceived conflict of interest.

3. Disclosure of Role as Neutral

Pursuant to RPC 2.4(b), a lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the

matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client. The comment to this rule explains that the potential for confusion as to the lawyer-mediator's role is significant, especially for unrepresented parties. The level of explanation may vary depending on the party's prior experience with ADR, but must ensure that the participants understand that the mediator is not an advocate for either party and the attorney-client privilege does not apply in this context.

The mediator should also explain to the participants how the role of mediator differs from other professional roles, such as expert or therapist and, in appropriate cases, encourage the parties to consult such other professionals and obtain advice, representation or treatment. These preliminary disclosures by the mediator and informed, written waivers of any actual or potential conflicts by the parties and their counsel pave the way for an eyes-wide-open proceeding where all participants are and perceive themselves to be on an even playing field.

4. Compartmentalizing the Attorney in Us All

As litigators, we have been trained to act in a certain way. We direct our clients toward the best result for them; we provide seasoned legal and practical advice to them each step along the litigation path; we identify weaknesses in the other side's case and we suggest solutions. Mediation is totally different. Not all attorneys are good mediators. There are several bright-line rules that help the mediator move away from that attorney mindset toward neutrality.

a. Not Providing Legal Advice

This is one of the more difficult habits for a litigator to overcome. The mediator should encourage each party to have his or her own attorney. Separate representation for each party avoids the inevitable prob-



The lawyer-mediator's ability to achieve neutrality depends on transparency and commitment to impartiality from the outset.

lem of a party asking the mediator for legal advice that the mediator may not provide. The mediator providing legal advice to one party is unethical and inappropriate. By having their own legal "sounding board," the parties are much better supported through the process.

b. Not Advocating for a Result

Again, this is a difficult habit to break. We have been trained as litigators to advocate on behalf of a party and to get the "best" result as we perceive it. The goal of mediation is to allow the parties to achieve their own resolution, which may or may not be "fair" in the eyes of the mediator. There is a huge difference in advocating for a client rather than advocating for a successful resolution tailored to the individual needs and objectives of the parties.

c. Using Caucus Prudently

Mediators have a tool called caucus to assist a party who is stuck on a position to find options for a resolution acceptable by the other party. The mediator seeks to avoid impasse or termination of the media-

The lawyer-mediator's duty of disclosure does not end with the signing of the mediation agreement.

There are several bright-line rules that help the mediator move away from [the] attorney mindset toward neutrality.



tion process. In doing so, the mediator must avoid the appearance of aiding one party to the detriment of the other party. The mediator should explain to both parties the potential benefit of the caucus and use the caucus sparingly, without advocating for a specific result.

B. COLLABORATIVE LAW

Collaborative law is another means of reaching a nonlitigation result. Collaborative practice is a blend of ADR methods, including mediation aspects, together with parties having their own lawyer to represent them and that lawyer being “in the room” during the collaborative process. Collaborative lawyers are specially trained in the collaborative process. Along with collaboratively trained lawyers, there can be collaboratively trained mental health professionals, financial experts, real estate professionals, mortgage professionals and other professionals.

Once retained, the two lawyers will communicate and put together a “team” of professionals to assist in the process. At times, the team can be made up of just the two lawyers. Sometimes, a party needs

mental health support in the process, so a trained mental health professional will be on the team. In other cases, a party was not involved in financial decisions during the marriage, or the party has a business or complicated financial holdings, so someone who has financial expertise will also be a part of the team.

The main challenges to collaborative lawyers are:

1. Moving Away From Being “Result Oriented” to Being “Goal Oriented”

The biggest challenge to a collaborative lawyer is to avoid suggesting results early in the process rather than inquiring about the goals of the participants. Traditional representation is, by its nature, results-oriented, i.e., “How can I get the best result for my client?”

In the first team meeting, the parties are asked to identify their short- and long-term goals; the collaborative lawyer should not raise how to achieve those individual goals. By working together to identify and satisfy the parties’ mutual goals, the team helps the parties to achieve results by compro-



mise. In collaborative practice, we are looking for a resolution that meets the needs of the family as a unit.

2. Sharing Knowledge Between Parties and Counsel

For the collaborative process to work, the lawyers need to assist the parties in providing complete disclosure and honesty, even if disclosure is not in one party's best interest. Conversely, traditional litigation may result in some parties or lawyers "hiding the ball." This includes keeping information from the other party if that information is not required to be disclosed by law and hasn't been requested by the other party.

3. Not Threatening Litigation

In traditional litigation, an attorney might threaten to file a motion or take other legal action if a party is not agreeing with his or her client's position on a topic. That type of conduct is strictly forbidden in collaborative practice. If a party is not agreeing to the other party's position, the next step is to find another solution that will meet the party's goals. If one party refuses to cooperate or the parties mutually decide

to terminate the process, then the lawyers withdraw from the representation and the parties must start afresh with new counsel in litigation.

C. ARBITRATION

1. Establishing and Maintaining Impartiality

Many of the same duties to establish impartiality in mediation apply to family law arbitration, including: (1) disclosing and waiving initial conflicts, (2) ongoing duty of disclosure and (3) disclosure of the attorney's role as neutral. The importance of the arbitrator's role in making disclosures to maintain neutrality was recently illustrated in the Angelina Jolie-Brad Pitt custody case, *Jolie v. Superior Ct. of Los Angeles Cty.*, No. B308958, 2021 WL 3123763 (Cal. Ct. App. July 23, 2021). The Second Appellate District Court of Appeal of California disqualified a private judge the parties retained in their custody matter for failing to sufficiently disclose business relationships with Pitt's attorneys.

The Court of Appeal found that grounds for disqualification existed under the state's

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Code of Judicial Ethics, which required the private judge to disclose facts that may cause a person to “reasonably entertain a doubt that the ... judge would be able to be impartial.” In that case, the Court of Appeal concluded that the private judge’s involvement in two previously undisclosed matters involving Pitt’s counsel — “thereby renewing and expanding a relationship with lawyers who had in the past attained the status of significant repeat-players” — coupled with the private judge’s failure to voluntarily disclose these matters to Jolie and her new lawyer (who had no prior professional relationship with this judge) could cause a “person on the street” to reasonably entertain a doubt as to the judge’s “ability, consciously or unconsciously, to remain impartial in the upcoming, hotly contested custody dispute.” While the Court of Appeal’s decision is based on the state’s ethical rules applicable to judges, the same result could easily apply in a private arbitration matter in which an arbitrator fails to disclose relationships with the parties’ counsel or their law firms, or new such relationships that develop during the proceedings. For these reasons, the CPR Model Rule 4.5.4(1)(4) recommends that where the circumstances might reasonably create the appearance that the neutral had been influenced in the ADR process by the anticipation or expectation of a subsequent relationship or interest, a lawyer who has served as a third-party neutral shall not subsequently acquire an interest in or represent a party to the ADR proceeding in a substantially unrelated matter for a period of one year or other reasonable period of time under the circumstances, unless all parties consent after full disclosure.

2. Ensuring Fairness and Integrity of the Process

Since the arbitrator will render a final, binding decision on important issues, the lawyer-arbitrator must strive to ensure that the process is fair. Pennsylvania’s Revised Uniform Arbitration Act, which applies to all agreements to arbitrate executed as of July 1, 2019, 42 Pa.C.S.A. Section 7321 et

seq., provides the basic requirements for due process. The CPR Model Rule and the Code of Ethics for Arbitrators in Commercial Disputes approved by the American Arbitration Association and the ABA in 2004 offer additional ethical guidelines that help the lawyer-arbitrator achieve and maintain neutrality, including:

- a. The arbitrator shall decide all matters justly, using independent judgment and not permitting outside pressure to affect the decision.
- b. The arbitrator shall maintain the confidentiality of information acquired during the course of the arbitration.
- c. The arbitrator shall treat all parties with fairness and respect and freedom from bias or favoritism.
- d. The arbitrator shall not communicate ex parte with a party except to obtain general information about the case to determine the suitability of the appointment.
- e. The arbitrator shall make reasonable efforts to prevent delay tactics, harassment of the parties or other participants, or other abuse or disruption of the process.

These standards help to reinforce arbitration as a fair and reliable method of dispute resolution by preventing harm to the parties and promoting the public's perception of the legitimacy of the process.

CONCLUSION

The family lawyer who undertakes the role of third-party neutral in a mediation, collaborative law or arbitration matter provides a valuable service for parties who seek to resolve their family law disputes outside of the court system. By helping the parties implement their chosen ADR method, the lawyer is facilitating a resolution that is much faster than going to court, is far less expensive than litigation and results in an agreement or award both parties "own." With that result, it is far more likely that

the parties will comply with their responsibilities. Before accepting this role, family lawyers should sharpen their tools to achieve and maintain neutrality, including understanding the role of the neutral in the specific ADR process, compartmentalizing the duties attendant to that role and adhering to the highest ethical standards. By using these tools throughout the process, family lawyers can effectively "switch hats" from advocates to neutrals, improve their success in resolving disputes fairly and gain recognition as dedicated and impartial ADR facilitators. ☞

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Trained by the American Arbitration Association, as well as in collaborative law and family law mediation, Lee A. Schwartz practices regularly in mediating equitable distribution, support, custody, divorce and premarital issues. As a presenter for the

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Carolyn M. Zack served as a family court hearing officer in the Chester County Court of Common Pleas, where she also presided over equitable distribution matters, for eight years. She joined the firm of Momjian Anderer LLC five years ago, where she practices family law, and acts as an arbitrator, mediator and parenting coordinator. Carolyn authored the book, *Family Law Arbitration: Practice, Procedure and Forms*, published by the ABA in August 2020. See <https://www.americanbar.org/products/inv/book/402949740/>. She can be reached at 267-546-3712 or czack@momjiananderer.com.

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Shall We Arbitrate Family Law Issues?

Finally ... *Yes!*

By Jeannine Turgeon and Carolyn Moran Zack

On May 8, 2024, Gov. Josh Shapiro signed into law Act 12 of 2024, the Pennsylvania Uniform Family Law Arbitration Act (UFLAA). Alternative Dispute Resolution methods such as mediation and arbitration have provided a confidential and less costly way to resolve divorce and other disputes for decades. However, arbitration was rarely used in the absence of a predictable process that would require the arbitrator to apply substantive law and expressly permit modifiability of alimony and child-related awards. Now, at long last, the UFLAA provides a roadmap for the expedient and confidential arbitration of custody, property, alimony and support disputes, along with guardrails needed to protect victims of domestic violence and child abuse.

Arbitration affords litigants a much more expeditious resolution than most courts and judicial systems can provide. It delivers a prompt and confidential resolution of parties' issues by an experienced lawyer or senior judge they personally select. It is usually much less costly than traditional litigation, as the parties control the timing and can consolidate most related matters in one arbitration hearing. Arbitration is also binding, except for the permissive review of child-related awards to ensure that the child's best interests are met. For child-related awards, the arbitrator must make specific findings consistent with the custody factors or guidelines sufficient to allow judicial review. The court shall vacate a child-related award if a party establishes that the arbitrator's statement of reasons in the award is inadequate for the court to review.



Lawyers have an obligation to resolve their client's issues diligently and promptly and to consult with the client about how their objectives are to be accomplished. When a matter is likely to involve litigation, the lawyer may need to inform the client of forms of dispute resolution that might constitute reasonable alternatives to litigation. Arbitration may be the most cost-effective and expedient manner of resolving your client's custody, property and support claims, particularly now that there is family-law specific legislation in place.

When considering whether arbitration is right for your clients, ask yourself three simple questions:

1. Would they like to have their family law case finally resolved in weeks or a few months from today?
2. Would they appreciate being able to select the factfinder vs. being assigned a hearing officer or judge?
3. Would they prefer their personal and business information to remain confidential rather than revealed in a public courtroom and becoming part of the permanent public record?

If the answer is a resounding "Yes!," then you should advise them about the benefits of arbitration. This article will give you the information you need to discuss this option with your clients.

Allowing the parties to resolve their dispute in a private forum may also help families to avoid the conflict and stress associated with the adversarial process.



A party may be accompanied in an arbitration proceeding by a person who will not be called as a witness or act as an advocate to reduce the possibility that one party will be intimidated or overpowered by the other.

Overview of the Uniform Family Law Arbitration Act

Under the UFLAA, the parties' agreement must include the name of the arbitrator or the method of selecting one and which issues will be arbitrated. If the issue relates to child support or child custody, the parties cannot enter into the arbitration agreement until the dispute arises, unless a judge previously approved the agreement or the parties affirm the agreement after the dispute arises.

The arbitrator must be an attorney, a former attorney on inactive status or a senior judge and must have completed five hours of continuing legal education in domestic violence and child abuse, unless the parties agree otherwise. An arbitrator must apply Pennsylvania's substantive family law, including choice of law rules and, except as the parties may agree, shall provide a written explanation for the arbitrator's decision(s).

The arbitrator has broad authority to conduct the proceeding, including setting the rules for the arbitration; holding a conference before the hearing; requiring a party to provide information; interviewing a child who is the subject of a custody

dispute; appointing a private expert; issuing a subpoena for the attendance of a witness or the production of documents; compelling discovery; prohibiting a party from disclosing information for good cause; appointing an attorney, guardian ad litem or other representative for the child at the parties' expense; imposing a procedure to protect a party or child from the risk of harm, harassment or intimidation; allocating fees and costs; or imposing sanctions for bad faith or misconduct.

In other words, arbitration can provide litigants with the same due process as a court of law, plus the added protection of confidentiality, closure, expediency and more, as described below:

1. Promotes timely resolution of disputes and reduced conflict between parents.

Research shows that parents place their children's emotional health at risk by continuing conflict in litigation and that they will benefit from alternative processes to promptly decide their disputes. Complaints to establish custody or petitions to modify custody may take months or years from start to conclusion, given the limited judicial resources available to handle thousands of custody case filings, including those of many self-represented litigants.

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The UFLAA specifically empowers arbitrators to protect victims of domestic violence and abuse.

Arbitration of custody matters provides parents and their children with a more responsive, efficient and less expensive forum than traditional litigation. Allowing the parties to resolve their dispute in a private forum may also help families to avoid the conflict and stress associated with the adversarial process.

The maxim "Justice delayed is justice denied" could not be more pertinent to every litigant today — especially children who are caught between quarrelsome parents in custody litigation that sometimes drags on for years. An arbitrator can schedule a custody hearing promptly, hear the case without interruption and issue a decision within a few weeks. Finally, under the new UFLAA, there is a reliable process for arbitrating child custody issues that will help to reduce the backlog of these cases and reduce conflict in families.

2. Provides ability to select the decision-maker.

Personal selection of the decision-maker is a key aspect of the UFLAA. While attorneys and their clients cannot select the hearing officer or judge assigned to their case, they can select their arbitrator from among many distinguished and seasoned senior or retired judges and reputable, experienced



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lawyers who know and understand the complexities of family law. Most lawyers and litigants prefer to have their case decided promptly by someone they respect and trust will give the case their undivided attention and who will resolve the issues raised promptly and fairly for all parties.

3. Protects confidentiality of personal and business matters.

Another key aspect of the UFLAA is confidentiality. Confidentiality is extremely important to most family law litigants, who abhor the fact their personal life or private business matters will be presented and possibly twisted during cross-examination in a courtroom open to the public and recorded for the never-ending future. The UFLAA provides that, “unless the parties otherwise agree, the arbitration proceedings and the arbitration award are confidential.” If either party requests in a motion to confirm the award that the award shall be filed under seal, then the court shall file the award under seal. The UFLAA, therefore, helps the parties resolve their family matters in private and for the decisions on these matters to be inaccessible to the public unless the parties mutually agree.

4. Allows for a more family-friendly setting for children and parents.

Few courthouses can provide separate rooms or safe, calming locations for parties and their children to await court proceedings. Dozens, if not hundreds, of other litigants and criminal defendants may be waiting in the surrounding area. Simply entering a courthouse or annex building creates anxiety for most litigants (and some lawyers as well, if we recall our early days in the profession!).

No arbitration participant need enter a courthouse. Under the UFLAA, unless the parties otherwise agree, the arbitrator will select the rules for conducting the

arbitration and select the date, time and place of the hearing. Most arbitrators hold their hearings in professional offices with separate conference rooms and pleasant waiting areas, and the participants are attended to by friendly, professional staff. This setting is relaxed and conducive to reducing stress for everyone.

5. Provides protection for victims of domestic violence and abuse.

The arbitrator will likely have years of experience, including firsthand knowledge about domestic violence and abuse issues. While most parties who select arbitration will not have a history of domestic violence, some who are subject to a protection order or are subject to harassment and intimidation may choose the process. The UFLAA provides that if a party is subject to a protection order or the arbitrator determines that there is a reasonable basis to believe that a party is the victim of domestic violence or that his or her safety or ability to participate effectively in the arbitration is at risk, the arbitrator must stop the arbitration and refer the parties to the court. The arbitration may not proceed unless the party at risk consents to arbitrate and the court determines that this consent is informed and voluntary; the arbitration is not inconsistent with the protection order and reasonable measures are in place to protect the party from harassment, intimidation or harm. In addition, a party may be accompanied in an arbitration proceeding by a person who will not be called as a witness or act as an advocate to reduce the possibility that one party will be intimidated or overpowered by the other.

If the arbitrator determines that there is a reasonable basis to believe that a child who is the subject of a child custody dispute is abused or neglected, the arbitrator shall terminate the arbitration and report the abuse or neglect to the court or other

appropriate authority. The arbitrator may make a temporary award to protect a party or child from “harm, harassment or intimidation,” that will supplement other remedies available under law. The court may stay the arbitration and review a determination or temporary award protecting a party or child on motion of a party. Thus, the UFLAA specifically empowers arbitrators to protect victims of domestic violence and abuse.

6. Helps parties to avoid expensive litigation and related expenses.

The prompt scheduling of an arbitration depends primarily on the parties providing timely and complete discovery and the participants scheduling the hearing and any conferences on mutually convenient dates for the parties, lawyers and any witnesses. Nevertheless, once the arbitration agreement is signed, the arbitrator will set deadlines to keep the matter moving forward without delay. The arbitrator will also be available if matters arise after the initial conference, including addressing delays in providing discovery, obtaining a valuation of an asset or listing a property for sale. These matters can be brought to the attention of the arbitrator by an email, copied to the other side, and the arbitrator can address the matter by a Zoom conference or telephone call, avoiding the need for the parties to prepare motions or travel to court to argue the issue. Arbitration allows for more casual communications to be made among all of the participants, consistent with due process.

The parties also conserve fees because the arbitrator will schedule hearings when the parties, their counsel or their experts are available. These hearings will allow the parties to avoid the cost of paying for multiple court appearances to address different issues, as these can be consolidated and addressed efficiently in one proceeding.



Arbitration allows for more casual communications to be made among all of the participants, consistent with due process.



This is especially helpful when the issues overlap, such as child custody being resolved before child support is determined or where net income available must be decided in connection with a support issue and a business valuation. Fees for these arbitration matters may be significant, depending on the complexity and number of issues involved, but they are rarely as high as they would be if the issues were being adjudicated separately or over multiple days of hearings. Further, the arbitrator has the discretion to allocate fees, including attorneys' fees and the arbitrators' fees, as part of the final award.

7. Prevents years of appeals and related expenses.

Although there is no specific time required under the UFLAA, the arbitrator will typically make an award within 30 days of the hearing. The parties may ask the arbitrator to correct the award within 20 days of its

issuance for a mathematical miscalculation or mistake in the description of a person, thing or property, or to clarify an award. The parties may ask the court to correct an arbitration award within 30 days for such an evident mistake or because the arbitrator made an award on a dispute not submitted, and the award may be corrected without affecting the merits of the dispute. The award must be confirmed on motion of a party once the award is corrected, unless a motion to vacate the award is pending. Except in child-related matters, a motion to vacate the award can only be filed for matters concerning due process, such as that the award was procured by corruption, fraud or other means; that there was evident partiality, corruption or misconduct by the arbitrator substantially prejudicing the rights of a party; the arbitrator refused to postpone a hearing, consider evidence or otherwise conducted the hearing contrary to the statute so as to prejudice the rights

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of a party; exceeded his or her powers or no agreement to arbitrate exists. Such a motion must be filed within 30 days of issuance of the award or within 30 of the asserted corruption, fraud or other undue means being known by the exercise of reasonable care.

Appeals are limited to the procedural bases set forth in the act. There are no substantive appeals of arbitration awards, except in the case of child-related awards. Thus, absent those extremely rare circumstances, the parties avoid a future of expensive and endless litigation and appeals and can receive a final, prompt and fair resolution of their dispute.

8. Specific provisions related to child-related awards.

Just as judges now must issue opinions in custody cases addressing each factor, arbitrators must also issue written findings stating the reasons for the award under applicable law. No transcript of the arbitration hearing is required, except as may be requested by a party or parties. Such a recording may be requested by a party or the arbitrator in a child-related arbitration proceeding in order to avoid the need for the witnesses to testify again before the court, which may only confirm the award after it finds – following a review of the

record if necessary – that the award on its face complies with substantive law and is in the best interest of the child. A court can vacate an unconfirmed award that determines a child custody or child support dispute only if the moving party establishes that the award does not comply with the UFLAA, with substantive law, is contrary to the child's best interest or the statement of reasons in the award is inadequate for the court to review the award.

9. Decisions enforceable as a court order.

Under the UFLAA, the court must enforce a confirmed arbitrator's award as though it were entered as an order of the court and must give full faith and credit to an arbitration award confirmed by another state. Of course, an order confirming an award can be modified under appropriate circumstances. A party may seek modification of the judgment entered on the award as provided under substantive law (i.e., modification of child support, spousal support/alimony pendente lite or alimony, except as otherwise agreed by the parties, and custody), and the matter will proceed in court unless the parties agree to arbitrate.

Conclusion

The Pennsylvania Uniform Family Law Arbitration Act is a welcome development in

the law. It provides an option for family law litigants who want to avoid the stress, uncertainty and expense of litigation in court, and to achieve an expedient and cost-efficient resolution of their family law claims. The act also provides guardrails to promote reliability of the process and to protect the interests of family law participants. Given the ever-increasing burdens on the courts and the resulting delays and backlogs in scheduling cases, there could never be a better and more opportune time to recommend the newly available arbitration option to your family law clients. ☞



Jeannine Turgeon retired as a trial court judge after nearly 40 years. She is an arbitrator for the American Arbitration Association and a mediator/arbitrator for Optimal ADR.

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Editor's Note: Carolyn Zack is a former chair of the PBA Family Law Section Arbitration Committee. The committee was instrumental in creating and shepherding the UFLAA into law over a number of years.

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