

ARBITRATION IN FAMILY AND DIVORCE CASES

AN EFFICIENT ALTERNATIVE TO COURT

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What Is Arbitration?

Arbitration is a process in which the parties agree to use a neutral person to make binding decisions to resolve disputes. In the area of family law, the parties can choose an arbitrator to make binding decisions regarding property and financial issues as well as child-related issues. Many divorcing and separating couples want to keep their dispute out of court to the fullest extent possible. Because arbitration is more private and confidential than court, parties often feel more comfortable using the arbitration process to settle their marital disputes rather than airing them in open court. Arbitration differs from mediation in the degree to which the parties control the outcome. In mediation, the parties are in total control of the outcome and fashion their own agreement. In arbitration, it is the arbitrator and not the parties who ultimately decides the outcome. While arbitration is a more formal process than mediation, both arbitration and mediation are less formal than court.

How Does Arbitration Work?

Each arbitration can be structured to accommodate the issues of the case. Typically during arbitration, there is a hearing at which the parties present their evidence, witnesses, experts if any, and documents to the arbitrator and make arguments for their position. After the hearing is closed and all the evidence is in, the arbitrator will issue a written decision that will make findings of fact and decisions based on those facts. In Colorado, even when the parties have agreed to arbitrate their family disputes, either party can ask the court to hold a new hearing, called a de novo hearing, regarding child-related issues within 30 after an arbitration award is issued.

The court cannot order the parties to go to arbitration without their agreement. Once the parties have a written agreement to arbitrate some or all family disputes, however, that agreement is binding and, except in unusual circumstances, the court will enforce it, requiring the parties to arbitrate prior to bringing their dispute to court.

Arbitration is a more flexible process than court. Generally the arbitration hearing can be scheduled on short notice. While the rules of evidence and procedure that govern proceedings in court are general guides in conducting an arbitration hearing, the arbitrator can waive or modify the rules to allow for more an efficient presentation of the case. The result is that the case can often be more fully developed in a shorter time in an arbitration hearing than in court. In some arbitration cases, the parties might feel that the case can be sufficiently presented by written submissions and will waive a hearing completely. The arbitrator will then make findings of fact and decisions based completely on the written submissions.

Are Attorneys Required In Arbitration?

You do not need to retain an attorney to represent you and participate in arbitration, but attorneys are always welcome. Even if you choose not to have an attorney represent you at the arbitration hearing, it is advisable for you to consult with an attorney prior to the hearing for advice about your legal rights and obligations in family law cases, and what documents and evidence might be necessary to adequately present your case at the hearing. Since the arbitrator cannot or will not give you legal advice, consulting with an attorney gives you an opportunity to ask questions and get information.

What Laws Govern Arbitration?

In Colorado, arbitration is governed by the Revised [Uniform Arbitration Act](#) as enacted in Colorado August 4, 2004. The Colorado statutes governing arbitration in Colorado can be found at Colorado Revised Statutes [\(C.R.S.\) §§13-22-201 through 13-21-230](#). In addition, arbitration of child-related issues is governed by [C.R.S. §14-10-128.5](#). After the arbitrator issues the award, either party can, within 20 days after the award is issued, request the arbitrator to modify or correct the award where necessary to clarify the award or correct a mistake ([C.R.S. §13-22-220](#)). Under certain circumstances, if a party feels that the award was improper, the party can ask the court to vacate or modify the award within 90 days after the award is issued ([C.R.S. §13-22-223](#) and [C.R.S. §13-22-224](#)). After the award has been issued by the arbitrator, either party may request an order from the court confirming the award [C.R.S. §13-22-222](#). In addition to requesting that the award be modified or corrected under the Uniform Arbitration Act, for child-related matters, either party may, within 30 days after the award is issued, request the court to hold a de novo hearing concerning the award ([§14-10-128.5](#)).

What Credentials Should An Arbitrator Have?

Although it is not necessary that an arbitrator be an attorney, parties will want to choose an arbitrator for their divorce, separation, or child-related issues who has experience in the field of family law. Because the arbitrator is making binding decisions affecting your legal rights, most people feel more comfortable with an arbitrator who is an attorney with a family law background and arbitration experience. This is especially important since arbitration awards can generally

only be overturned upon proving certain bad acts by the arbitrator ([C.R.S. §13-22-223](#)), except in cases where you are entitled to a de novo hearing on child-related issues. Mary Wollard, J.D., of Family Solutions Center, LLC has over 15 years experience as an arbitrator and over 20 years experience as a family law attorney.

How Many Arbitrators Handle Each Case?

Generally, a family law case is handled by one arbitrator. However, if the arbitration will involve particularly complicated issues, the parties might want to have three arbitrators rather than just one. Although having more arbitrators increases the cost of the arbitration, the parties might benefit from having arbitrators with different backgrounds. For example, if the financial issues in a divorce or separation include complex real estate or business issues, a panel of arbitrators might be made up of a family law attorney, a real estate or business expert, and a lay person. Such a make up would give the panel the expertise that might be necessary to understand specific complicated issues while at the same time allow for a balance of viewpoints.

Why Should We Pay To Arbitrate Our Divorce Or Child-Related Issues When Court Is Free?

Studies have found that arbitration is very often faster, simpler and less expensive than litigation. It is true that you will have to pay the arbitrator's fees and costs, but the service you get is more focused and personalized than court. While your case probably won't be the only case the arbitrator has, it will be the only case scheduled for your time-slot and you will have the undivided attention of the arbitrator during your hearing(s). In court, your hearing can be interrupted by unscheduled emergency motions or even matters which have been scheduled for breaks in your case. Since this doesn't occur during arbitration, you will likely be paying your attorney less during an arbitration hearing than during a scheduled court hearing. Although the courts are trying to control their dockets to schedule cases more quickly than in years past, scheduling is still problematic, especially for post-decree issues. Because a high percentage of all cases filed in court are family cases, the courts will often limit the time allowed for hearing your case. In arbitration, you will be allowed to schedule a hearing for however long you and the attorneys feel will be necessary to adequately present and argue the case.

If we arbitrate our divorce and child-related issues, will we have to go to court at all?

Only the court can issue a divorce decree, but you can use arbitration to determine all issues the court might otherwise decide in permanent orders. After you file your divorce case with the court, you would let the court know that you have agreed to submit all issues to arbitration, the name of the arbitrator you have agreed to use, and ask the court to enter an order appointing the arbitrator to resolve issues concerning your minor or dependent children, if you have children. After the award is issued, you would ask the court to confirm the award and enter the decree dissolving your marriage. As discussed under [What Laws Govern Arbitration?](#), above, for issues concerning your minor or dependent children, either party can ask the court for a de novo hearing after the arbitration award is issued.

How to get started

To get started, you and the other party must agree to use arbitration. You might already have such an agreement in a pre- or post-nuptial agreement or other settlement agreement. If not, your agreement will become formalized when you sign the Agreement to Arbitrate with the arbitrator you choose. If you would like to explore the possibility of arbitration for your divorce or child-related issues, please call Family Solutions Center at 303-455-6300 or email Mary Wollard at mary@cofamilysolutions.com for a free telephone or email consultation.