

RECENT DEVELOPMENTS IN FAMILY LAW ARBITRATION

(by Christopher Rade Musulin, Esquire - August 27, 2010)

Just as family law mediation is now a widely accepted norm in New Jersey, family law arbitration is fast becoming a standard method of resolving matrimonial disputes. Rule 1:40-5, adopted on July 14, 1992, not only represents the institutionalization of family law mediation in the New Jersey Superior Court but years of hard work to advance the idea of mediation as a standard tool to resolve all family law disputes. Similarly, over the last several years, three critical events have occurred advancing the use of family law arbitration in all aspects of New Jersey family law practice.

FAWZY

On July 1, 2009, the New Jersey Supreme Court decided Fawzy v. Fawzy, 199 N.J. 456 (2009), which approved the use of arbitration for custody and parenting time issues in the state of New Jersey. Prior to Fawzy, custody and parenting issues were not subject to arbitration. After Fawzy, all issues are now subject to family law arbitration, making arbitration a comprehensive vehicle for dispute resolution.

ACTIVITES OF THE NJSBA FAMILY LAW EXECUTIVE COMMITTEE

In Fawzy, the Supreme Court instructed the Rules Committee and the New Jersey State Bar Association to develop specific procedures and protocols to further implement and institutionalize the use of family law arbitration. Even before such a directive and prior to the Fawzy decision, members of the NJSBA Family Law Executive Committee, FLEC, created a subcommittee on arbitration and drafted a proposed family law arbitration statute.

During the 2009/2010 term, the issue of arbitration was one of the two or three most significant matters addressed by the NJSBA Family Law Executive. The subcommittee on arbitration performed a comprehensive analysis of the three existing statutes governing arbitration in New Jersey - NJSA 2A:24-1, NJSA 2A:23A-1 and NJSA 2A:23B-1. Since these three statutes were created primarily for labor, contract and commercial disputes, and, further, in light of the heightened standard of review for custody and parenting issues announced in the Fawzy decision, the subcommittee on arbitration drafted a proposed statute for presentation to the executive committee. The members of FLEC are presently conferring with other specialty sections of the state bar and remain optimistic that a New Jersey family law arbitration statute will be sponsored and signed into law perhaps as early as next year.

AAML TRAINING AND NEW JERSEY DIVORCE ARBITRATION ASSOCIATION

Between June 3rd and June 5th, 2010, The American Academy of Matrimonial Lawyers sponsored national arbitration training for the first time in almost a decade. Approximately 25 attorneys received accreditation and certificates from the AAML in "Family Law Arbitration." Due to the increasing popularity of family law arbitration, the Academy will likely offer the training again.

As a direct result of the AAML training, on July 14, 2010, a group of approximately twenty New Jersey attorneys founded the New Jersey Divorce Arbitration Association, the NJDAA, a domestic nonprofit association. Over six subcommittees were created including ethics, website development and marketing. Representatives of the NJDAA are now scheduled to meet with the presiding judges as well as representatives from the Supreme Court Practice Committee to diligently promote the use of family law arbitration in all matrimonial matters. This is the first group of its kind in New Jersey formed specifically to professionalize and promote the use of family law arbitration.

CONCLUSION

In the last eighteen months, family law arbitration has arguably received more effort and attention than any other substantive matrimonial issue. The culmination of the Fawzy decision, the efforts of the NJSBA, FLEC, the AAML and the NJDAA have created a powerful momentum to further professionalize and institutionalize the use of family law arbitration in the state of New Jersey.