Introduction

In the more than 30 years since I became a family lawyer, the practice has become more costly and less efficient. While the rate of divorces, along with rate of marriages, has slightly decreased in the past 20 years,\textsuperscript{1} since the economic downturn in 2007–2008 the number of self-represented parties in civil cases has significantly increased nationwide.\textsuperscript{2} In addition, although divorce is still the most common filing, domestic relations courts are devoting more time to an increased number of protection from abuse cases.\textsuperscript{3} Although reliable and consistent data on the number of cases involving self-represented litigants does not yet exist, preliminary information compiled by the National Center for State Courts confirms that domestic-relations cases are more likely than civil cases to have self-represented litigants.\textsuperscript{4} Due to the influx of these self-represented litigants, with ensuing problems that include procedural errors, failure to present necessary evidence, ineffective witness examination, and ineffective arguments, court procedures are slowed and case backlogs occur.\textsuperscript{5} For example, in Pennsylvania, during the period 2008 to 2018, while the number of divorce, custody, and protection from abuse filings stayed

\textsuperscript{1} According to provisional data compiled by the Center for Disease Control’s National Center for Health Statistics, from 2000 to 2018, the rate of divorces and annulments has decreased from 4.0 per 1,000 to 2.9 per 1,000, and the rate of marriages decreased from 8.2 per 1,000 to 6.5 per 1,000. National Center for Health Statistics, Marriages and Divorces, Centers for Disease Control and Prevention, https://www.cdc.gov/nchs/nvss/marriage-divorce.htm (last visited Mar. 9, 2020).


\textsuperscript{3} Slightly less than 30 percent of all domestic relations (DR) cases involve divorce or marriage dissolution cases, followed by civil protection orders (23 percent) and support cases (22 percent). http://www.courtstatistics.org/__data/assets/pdf_file/0015/24054/ewsc-2016-dr-page-2-comp-pie.pdf (last visited June 14, 2020).


\textsuperscript{5} Janku & Vradenburg, supra note 2, at 75.
relatively constant, the number of pending cases for divorce, custody, and protection from abuse increased.\(^6\)

The price of getting divorced has also increased. The current average total divorce costs range from about $11,000 for those who reach a comprehensive settlement to more than $23,000 for those who go to trial on more than one issue.\(^7\) The overall average duration of a divorce is one year, but in cases with two or more disputed issues, the average duration increases to 18 months.\(^8\) Typical hourly rates for the lawyers in these cases range from $225 to $310, but may be $500 or more for experienced lawyers in big cities.\(^9\) The cost of a divorce with disputed claims can thus rise exponentially with the time that the lawyers spend preparing and presenting their cases in court. The amount of lawyer time depends, in large part, on the court’s ability to schedule, hear, and resolve the cases efficiently. For many individuals, the cost of litigating their divorce case is unaffordable, or has no rational relationship to the financial goals they hope to achieve. Clients perceive that they have little control over the process by which their claims are adjudicated and are frustrated by the amount of time it takes to achieve a final decision.

Arbitration is an appealing method to avoid the rising cost of and inefficiencies prevalent in the litigation process. Family law arbitration is one of several types of alternative dispute resolution in domestic relations cases, including negotiation, collaborative law, mediation, and court-directed dispute resolution. Arbitration differs from these other methods in that the parties choose a neutral third party to adjudicate their family law case. The parties, usually spouses, “have their day in court” in a private setting rather than a public courtroom. They choose the person who will decide the matter, from the most qualified and experienced individuals available. The arbitrator has the authority to decide the dispute, and the decision may either be binding on the parties or advisory only, depending on the parties’ agreement to arbitrate. The parties define the scope of their arbitration, which can include their economic claims and may also include claims such as child support and child custody, depending on the law of the jurisdiction. They decide when the hearing will be held and, in some cases, which rules will apply to the hearing. The arbitrator may have more time and flexibility to fashion a result that is tailored to the needs of the family or individuals in the case. The arbitrator’s decision is usu-

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6. As of December 31, 2008, Pennsylvania had 17,785 custody, 73,107 divorce, and 5,687 protection from abuse cases pending, but as of December 31, 2018, it had 34,250 custody, 78,934 divorce, and 8,108 protection from abuse cases pending. The number of support filings decreased significantly, as did the number of support cases pending at the end of 2018. The Unified Judicial System of Pennsylvania, Caseload Statistics, http://www.pacourts.us/assets/files/setting-768/file-609.pdf?cb=e17fd1 (last visited Mar. 9, 2020).


8. Id.

ally made within a short time after the hearing concludes, and the right of appeal is very limited. Thus, the parties have a stake in the process, and they can achieve closure in a relatively short amount of time.

While there are still costs involved in the arbitration, including the fees of the arbitrator, these costs pale in comparison to those that they would have incurred through litigation. The overall expediency of arbitration promotes client satisfaction with the process and, therefore, increases their satisfaction with their counsel. It is a win-win for clients and their attorneys, and also serves the court system in relieving the docket, by allowing more time to address those cases that are more properly adjudicated through a formal court process, such as protection from abuse matters and highly contentious child custody cases.

I wrote this book to explore whether this wave of the future, which has started to gain hold in Pennsylvania, had traveled to distant shores across the United States. What I found was a wide disparity in the states’ willingness to test the waters of binding arbitration in family law cases. Some states have jumped in with enthusiasm, adopting very progressive rules or statutes tailored specifically for arbitrating family law claims; other states are dipping their toes, permitting family law arbitration by case law but having no rules in place to formalize the process; and still other states are remaining on shore, providing no guidance as to how and whether their commercial arbitration statutes will be applied in a family law matter.

Based in my research, including conversations with practitioners across the country, I conclude that while family law arbitration is becoming the preferred method of dispute resolution in many parts of the country, the adoption of family law-specific arbitration rules and statutes will help to promote more widespread understanding, use, and acceptance of this important and innovative tool to resolve family law disputes.