

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



Kristin Ruth is a long-time family law attorney and former 10th District Court Wake County Judge. She represents clients in all aspects of family law, including divorce, child custody, child support, and equitable property distribution. She brings more than 29 years of courtroom and mediation experience to her practice. She is an avid writer and frequent guest speaker at national and international events on issues covering child support and ethics.

## ARBITRATION: A Remedy for the post COVID-19 Courthouse Backlog

April 3, 2020 | by

Friday, March 13, 2020, will be a day I'll never forget. It was the day that North Carolina's Supreme Court Chief Justice Cheri Beasley announced the unprecedented decision to limit court access for all participants due to the increasing threat of the COVID-19 outbreak. Her prudent order meant that with few exceptions, such as preserving the right of due process or obtaining emergency relief, most North Carolina district and superior court cases would be postponed for at least 30 days. Then, on April 3, 2020, Chief Justice Beasley [issued an order](#) that extended her previous directive, and court proceedings are now postponed until June 1, 2020.

For those of us in Family Law who navigate the legal system on behalf of clients each day, I immediately thought about the staggering number of family law cases that would have to be continued, and the enormous backlog this will inevitably generate when family court eventually resumes.

As an eternal optimist, however, I believe there is a remedy for the pending courtroom scheduling nightmare, one that resolves a case with the same efficacy as a court hearing, but without the prolonged scheduling delays lasting months possibly into next year.

As a certified superior court mediator, family financial mediator, and former district court judge, it is my opinion that families and attorneys should begin engaging in conversations about *alternative dispute resolution tools*. As a general rule, many family law attorneys and their clients already participate in the mediation process as standard practice. This is an excellent form of dispute resolution and widely accepted in family law. However, it is only a part of the solution.

### ARBITRATION

Arbitration is an alternative dispute resolution tool that resolves disputes outside the Court and is legally binding on both parties and enforceable by the courts. The [North Carolina General Statute § 50-41, Article 3. Family Arbitration Act](#) (hereinafter "Act") is a quick read to review when deciding to step into the arbitration arena. It explains the

purpose of the Act is to help families resolve issues, not only in a timelier fashion but also not to circumvent the law set forth in the North Carolina General Statutes under Chapters 50, 51, and 52.

Sound good so far, don't you think? Now, I am sure you are wondering how arbitration works. Let's explore the process as I briefly describe below to learn how arbitration can save you from the pain of navigating the court system. Here is how to start the process:

**Written Agreement.** There must be a written agreement between all the parties who voluntarily agree on what issues are to be arbitrated in your family law case. The only issue that can not be arbitrated is an absolute divorce.

**Representation:** You have the option of representing yourself or have an attorney represent you. Since arbitration is similar to a court hearing where evidence is presented and certain arbitration rules will apply, it is best to retain an attorney. There are established model rules which are generally used to conduct an arbitration, or the parties may decide on specific rules for the introduction of evidence and testimony, which the parties will agree to prior to the arbitration. If the parties are unable to agree, then the arbitrator will decide after hearing from the parties, and these rules will be articulated in the written agreement, as noted above.

**Arbitrator:** If the proper notice has been given by a party who would like to arbitrate their issues, the parties or their attorneys will agree upon an attorney to act as the arbitrator. Fortunately, there are many well qualified and experienced attorneys, not only at Smith Debnam, who are excellent mediators and arbitrators.

**Conflict Check:** Upon the parties choosing an arbitrator, the arbitrator shall run a conflict check on the parties and shall disclose any known fact that a reasonable person would consider having an effect of impartiality on the case.

**Lock-in Date:** once the parties have chosen an arbitrator, the arbitrator shall notify the parties by proper notice or their counsel of the time and place for the arbitration to occur. Generally, the parties, attorney's and the arbitrator will work together to find an appropriate time to conduct the arbitration;

**Call to Order:** Arbitrators have the power to administer oaths, issue subpoenas, permit depositions, and enforce the compliance of the same as in a court proceeding and may additionally request assistance from the Court if needed. The arbitrator conducts the arbitration, and he/she has the authority to start and stop the hearing for good cause in the same manner as a court hearing.

**Cases are Presented:** The parties shall be entitled to present their evidence, testimony, and cross-examine witnesses. The arbitrator shall have the authority to determine any question and render a final award. The hearing may be recorded, and a record of the testimony and evidence may be preserved upon request of either party or the decision of the arbitrator.

**Draft of Award:** Upon the conclusion of the arbitration, the arbitrator shall prepare and

submit a written, signed, and dated award to the parties and their attorneys in writing. The time frame on which the arbitrator shall make his or her award should be reasonable (generally 30 days) and can be agreed upon in the arbitration agreement prior to the arbitration.

**Modifications Timetable:** If either party wants to modify or correct the award after it has been submitted to the parties, they will have 20 days to file an application to the arbitrator, and the opposing party shall have ten days to file any objections.

**Finalization of Award:** Finally, unless the parties agree otherwise in writing, that the award shall not be confirmed by the Court, upon a party's application to the Court, after the time constraints noted above, the Court shall confirm the award.

### **Remedy**

As I've demonstrated, your case does not have to sit and wait on COVID-19.

After we come out on the other side of this contagion, what is "normal" may not look the same as before. This "New Normal" we find ourselves in will require thinking strategically about how to resolve your case in the most effective, efficient, and professional manner, so you and your family can move forward with your daily life.

Now is the time to prepare your case for arbitration. Start working on your discovery, subpoenas, and talking to witnesses. All of this can be done by phone or through video conferencing technology, such as Zoom.

Please, if you need further information, contact me, [Kristin Ruth](#), at [kruth@smithdebnamlaw.com](mailto:kruth@smithdebnamlaw.com) or my direct line 919-250-2111. I am here, along with my other colleagues at Smith Debnam with years of experience in mediation/arbitration, including [John Narron](#), [Rose Stout](#), [Lynn McNally](#), and [Andrea Bosquez-Porter](#), and we want to help you resolve your case.

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