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Benefits of Using Private Arbitration

Arbitration is a smart alternate method of dispute resolution to employ when negotiations get 'stuck.' It can be far preferable to the last choice, ***litigation***. Here are just a few reasons, which illustrate the manner in which arbitration can be far more desirable, effective, economical and durable:

1. ***Arbitration Is Private***. The parties can be more comfortable and open rather than feeling intimidated or subject to attack in the courtroom environment. They can testify more freely and completely.
2. ***Arbitration Is Confidential.*** What is said by one party about the other remains confidential, rather than being recorded by a court reporter or the documents being scanned to go on the Internet for children, co-workers, family, friends, and future employers to see.
3. ***Arbitration Is Transparent.*** The parties are encouraged and better able to tell their full story and to comment on all the relevant facts; rather than the courtroom paradigm of being rewarded for hiding assets and saying nasty things about one's spouse -- whoever came to court and said their spouse was the best ever and deserved everything? If that happened, we missed hearing that case!
4. ***Arbitration Is Relevant and Responsive.*** The arbitrator in a family law proceeding can determine outcomes based upon the family's own unique values, history, and needs. This unlike court, in which the overriding factor is the Rule of Precedent – the case must be decided based upon the outcome of the nearest, latest Court of Appeals or Supreme Court case that is closest, but not identical, to the case at hand. Thus, a family's case is being decided by a stranger, based upon legislation or a case in which the parties did not testify, their attorney did not appear or speak, and the facts were not identical to those of the matter at hand. This simply does not make sense!
5. ***Arbitration Allows the Parties to Have the Best Decision-Maker for Their Case***. In an arbitration proceeding, the parties and their counsel choose the best, most qualified person to serve as decision-maker, one who is knowledgeable and experienced with the specific area of expertise required. In litigation, one is left with generalist judges who rotate among the criminal, civil, juvenile and family dockets and whose cases are not limited to those the judge was most proficient with in their legal practice. Indeed, the most common career path leading to appointment or election of a judge may be service in the criminal division of the prosecuting attorney's office – very few had a family practice background prior to coming on the bench. The exception to the latter is the former career deputy prosecutors who staffed the prosecuting attorney non-support or paternity units, which may have left them short of knowledge or experience in child psychology/experience in Parenting Plans, property division, real estate law, tax law, collection and bankruptcy law and the many other specialties subsumed in the Family Law category. If you are turning your decisions over to a stranger, be sure it is one who knows their business and is familiar with the possibilities and common outcomes that have worked for the issues of the case.
6. ***Arbitration Is Economical***.
   a. ***Much Less Idle Time.*** An arbitration hearing can be set up in a private office at an agreed-upon time, and may even be limited to a fixed amount of time. To the contrary, the court sets a case schedule to which all must conform, and then it may not do so itself. For example, a case may be set for trial on a given date and time. However, if the judge has not completed a

prior case, the case will be 'held' until the judge is free, which can be a matter of hours or even days – much of the time of which an attorney cannot be working/billing on any other matters.

   b. ***Better Use of Time.*** The court's trial day is quite limited, usually starting at 9:30am and going until noon (with a 15 minute break), thereafter going from 1:30pm until 4:00pm (with a 15 minute afternoon break), all for a total of ***4 ½ hours*** of productive time during the entire trial day. While it is true that the judges work more hours than that, they are working on other cases, motions, hearings and court administrative responsibilities rather than your case.
   c. ***Far Less Time Required.*** Motions may be decided by email or on a few days' notice. Hearings occur when convenient to the parties. No time delay occurs because of an appeal.
   d. ***Fewer (Unnecessary) Activities Required.*** In an arbitration proceeding, the attorneys prepare a Pre-Arbitration Statement and attach substantiating documents as appendices. In a court proceeding, the court may usually require a Status Conference, Pre-trial Conference, an Evidence Rule 907 Joint Statement of Evidence, a mandatory settlement conference, a trial brief, jury instructions/Pre-Trial Financial Declarations, List of Exhibits, and proposed orders. These can consume much legal time without adding significant substance to the case.
   e. ***Reduced Need for Follow-up Hearings.*** An arbitration hearing may resolve issues related to the final papers to be entered in a proceeding, or include language in the decision that can be imported into the final papers. However, after a court trial, if there is any disagreement as to language or form, an additional court presentation hearing is required.

7. ***Arbitration Is Based on All Relevant Facts***. In most arbitration cases, the Rules of Evidence are relaxed, so that witnesses can testify fully without being badgered by objections from counsel. Cross-examination is designed to bring the evidence out more fully or to clarify it – not to discredit, embarrass or humiliate the witness. And usually a party can, under oath, speak directly to the arbiter about and from their own knowledge, experience, and perceptions without the information being filtered in the Socratic, law-school question-and-answer method that can easily omit critical information.
8. ***Parties Get to Speak Directly to the Decision-Maker***. In an arbitration proceeding, the parties may speak directly to the decision-maker, with little prompting from the attorneys other than as to points sure to be made. They are listened to respectfully and completely. In a court case, the parties are expected to speak in their own self-interest, so that their attorneys need to assemble a gaggle of outside witnesses to say what the parties wanted to say themselves and should have been heard directly. Of course the 'gaggle of witnesses' usually add little to the case anyway, as what attorney would call a witness that would testify AGAINST their own client?
9. ***Finality (Durability).*** An arbitration award (decision) under the Uniform Arbitration Act (RCW Chapter 7.04A) is final in virtually all respects. There are few bases by which the decision may be modified (partiality of arbiter, lack of jurisdiction, error of fact or law) and most questions can be summarily resolved by the arbiter (by reconsideration) or by the trial court (Motion to Enforce Arbitration Award). A dissatisfied court litigant, to the contrary, has a host of remedies to avoid the judgment and seek further redress (thereby 'keeping the balls in the air'): Motion for Reconsideration, Motion for Review, Motion for Revision, Notice of Appeal, Petition to Modify, Motion for Judgment Notwithstanding Verdict, Motion to Set Aside Judgment – all of which will keep the litigation alive and extend it for days or months. If a party appeals and is fortunate enough to prevail after the one to two year period that the matter is in the Court of Appeals, the case will then be reversed and remanded to start ***all over again*** in the trial court!

Together, the above characteristics provide a compelling argument for the use of private arbitration as the most satisfactory and effective dispute resolution alternative, when negotiations are not successful.

