

You decide – the case for binding arbitration in the Family Courts

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Take it from someone who never was one - but who has observed many over the past 38+ years - family court trial lawyers in South Carolina comprise the very best trial lawyers in any court, at any level, in this State...period (man, let the conversations begin over that one!).

Think about it for a few minutes. No, seriously, think about it.

On a level of importance, is it more important to be able to successfully seek (and recover) insurance proceeds for someone injured in a car wreck...or to be able to win for a parent the custody (lives, souls, hearts) of their children? How important is it for a family court trial lawyer to anticipate the future financial needs of your client and then successfully provide for those needs? Can you compare trying a “road-closing” or condemnation case with defending a case where one side is attempting to forever terminate a parent’s right to be with his or her children? How does a family court trial lawyer artfully remove (and then later skillfully use) the emotions (anger, bitterness and hurt) in a case where a client’s spouse has committed adultery (for many, the ultimate marital sin)?

A family court trial lawyer is both required and compelled to be, concurrently:

- Brilliant and mentally agile
- Eloquent
- A skilled therapist and counselor
- Prescient (a great word)
- Empathetic
- Cool under pressure
- An exceptionally hard worker (always fully capable of outworking the opposition)
- Able to focus, laser-like, on the task at hand
- Personable (both inside and outside the family courtroom)
- An amazing, skilled negotiator
- Always overly-prepared and trial-ready
- Able to fully control, and remain in control of, the court process
- Able to win every appeal, whether representing the respondent or appellant

And with all these diverse skills, a family court trial lawyer has to impress only one person in the room. Not 12, not 6...just one, just a jury of one.

Hmmmm...let me think about this for just a moment. Give me a second. OK, a family court trial lawyer has the talent and the abilities to control every aspect of his or her case (client and witness preparation, evidence preparation, preparation for cross-examination). What's left to control? Oh, yes...you can't pick your decider and you don't have a clue when your case might be called to trial (don't you love those "A – B – C dockets?"). Pure luck of the draw there, man.

You have a great case for joint custody, but the family court judge who is to try your case never awards joint custody in a contested case, and rarely grants anything beyond "standard visitation". And for that matter, you've drawn a judge who has a reputation for rarely, if ever, awarding alimony.

Let's complicate the matter somewhat.

You're also charging your client \$200 (or more) an hour for out-of-court time, \$250 (or more) an hour for in-court time, and \$90 an hour for paralegal time. Your bill is now up to \$7,500, but you've been paid only a \$2,500 retainer to date. You've also incurred pre-trial costs of over \$2,000 to date, and you've had to hire a forensic expert. Your case is well over a year old and most probably has been closing in on 2 years. Your client has been recently (and maybe longer) second-guessing your skill level (all settlement negotiations have so far been a bust, the depositions didn't go so well, and you're having some "witness problems").

Now - and you knew this was coming - consider this for just one moment:

What if, just what if:

- You could pick your "judge".
- You could pick the date, time and location for the final hearing of your case.
- You can chose not to worry about following strict rules of evidence (no "I object, your Honor, that's irrelevant"...or no, "and Mrs. Smith what value would you place on that set of used Tupperware?").
- You choose not to have a hearing record.
- You could schedule your hearing without ever worrying about docket time, without ever worrying about what you will tell your client when he/she asks you "what's taking so long".
- If you have expert witnesses, you never have to worry about their attending (and charging you) for court appearances where there is even a remote chance that your case might be continued (no more paying double fees for an expert traveling to court and sitting in a family court's waiting area).
- You can get a final decision within 30 days of your hearing.
- You can use the South Carolina Uniform Arbitration Act, which provides for binding arbitration, so that your client is guaranteed finality.

- The total fees and litigation expenses incurred by the parties will be far less than if this same, identical case went to a trial inside a family courtroom...oh, and what if you have a much better chance of your being fully paid.

In arbitration, your arbitrator needs to have a detailed arbitration order in place, review the pleadings and know the issues beforehand...and start.

As a family court trial lawyer, with all the skills and talents you bring to the table, and they are many, the only reason for your not considering binding arbitration is that constant, age old, often unspoken, “professional Mount Everest” known as “the right to appeal”; that proverbial “second bite of the apple”. That works perfectly if (a) your client can afford to pay for the appeal, and (b) your client prefers to have his or her life on hold for another 2 years while the appeal winds through the appellate process.

Let’s just say that, in the modern-day practice of family law throughout this State, there is no logical reason for a family law attorney not considering the “binding arbitration” option.

Hmmmm...I can’t remember, but I believe I may have left out the word “logical” in listing the attributes of a family court trial lawyer. I’ll have to double-check that.

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