

Dispute Resolution and Family Law:
An Annotated Bibliography

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This bibliography cover dispute resolution issues that may be of special interest or significance for family law attorneys.

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Alternative Dispute Resolution

Advantages and Disadvantages of Alternative Dispute Resolution

Tammy Andrews, *The Reality of Having Your Day in Court*, FAM. ADVOC., Summer 2022, at 28 (challenging the myth that winning in court is the ideal way to resolve a divorce and urging divorcing couples to consider alternative dispute resolution methods that can help them avoid depleting their assets through a long and costly legal battle).

Jenny Bradley, *The Road to Settlement – ADR Can Offer Cost-Effective Alternatives to Trial*, FAM. ADVOC., Summer 2019, at 11 (recommending the use of alternative dispute resolution methods,

such as mediation, neutral evaluation, arbitration, and collaborative law).

Amy J. Cohen, *The Family, the Market, and ADR*, 2011 J. DISP. RESOL. 91 (examining the view that alternative dispute resolution involves privatization of lawmaking, with reliance on contracts and markets rather than state control, and arguing that it is important to recognize that the pioneers of alternative dispute resolution thought about contracts in terms of families as well as markets).

Bill Ezzell, Student Article, *Inside the Minds of America's Family Law Courts: The Psychology of Mediation Versus Litigation in Domestic Disputes*, 25 L. & PSYCHOL. REV. 119 (2001) (using psychological insights to argue that alternative dispute resolution should be used in all family cases except those involving child custody disputes).

Nancy E. Gordon, *This Judge Does Care About ADR*, FAM. ADVOC., Fall 2008, at 12 (providing a judge's perspective on the benefits of alternative dispute resolution and thoughts on how to determine if arbitration, mediation, or collaborative law best fits a client's situation).

Ronald S. Granberg & Sarah A. Cavassa, *Private Ordering and Alternative Dispute Resolution*, 23 J. AM. ACAD. MATRIM. LAW. 287 (2010) (analyzing the extent to which private ordering should be permitted or encouraged in family law cases, with the parties able to select their own decision maker and control the process of resolving their dispute, and looking at how four states—California, Illinois, New York, and Texas—have approached private ordering for family law issues).

Janet R. Johnston, *Building Multidisciplinary Professional Partnerships with the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help*, 22 U. ARK. LITTLE ROCK L. REV. 453 (2000) (recommending ways to reduce the harmful effects of high-conflict divorce, including mediation, collaborative divorce, mental-health evaluators, custody evaluators, interdisciplinary partnerships with courts, divorce orientation and education programs, and cooperation between community services and courts).

Jennifer A. Kolbusz, Comment, *Alternative Dispute Resolution*, 23 J. AM. ACAD. MATRIM. LAW. 403 (2010) (reviewing the development of statutes concerning arbitration of family law cases, discussing the development of mediation statutes including those that require good-faith participation in mediation, and discussing the extent to which the outcomes of arbitration or mediation should be subject to review by courts).

John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411 (2012) (examining the dramatic changes relating to marriage and families that have occurred in recent decades in law and in society, discussing the accompanying developments in family law dispute resolution, such as the increase in self-representation, mediation, and arbitration, and suggesting some possible directions for the future, including the development of “dispute system design” methods that focus on systematically managing a series of disputes rather than just resolving individual disputes as they arise).

John Lande & Gregg Herman, *Fitting the Forum to the Family Fuss: Choosing Mediation, Collaborative Law, or Cooperative Law for Negotiating Divorce Cases*, 42 FAM. CT. REV. 280 (2004) (analyzing the advantages and disadvantages of several alternative approaches to divorce cases and recommending that clients and attorneys should be able to choose the method that is most appropriate for their circumstances).

JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* (2015) (describing how family dispute resolution shifted from an adversarial approach to a problem-solving model, discussing the changing demographics and experiences of American families including sharp increases in the number of children born and raised outside of marriage, and arguing that the problem-solving model is based on outdated assumptions that do not take into account the complexities of modern families’ situations and needs).

Naomi Cahn & June Carbone, *Reality and the Family Courts*, 28 J. AM. ACAD. MATRIM. LAW. 309 (2015) (reviewing Jane Murphy and Jana Singer’s book *Divorced from Reality* and suggesting some additional reforms to family law and the family dispute resolution that might support the new approach envisioned by the book).

Andrew Schepard, *Kramer v. Kramer Revisited: A Comment on the Miller Commission Report and the Obligation of Divorce Lawyers for Parents to Discuss Alternative Dispute Resolution with Their Clients*, 27 PACE L. REV. 677 (2007) (considering whether attorneys in divorce cases have or should have an obligation to discuss with clients the pros and cons of alternative dispute resolution).

Robert B. Silver & Deborah Coe Silver, *The Sieve Model: An Innovative Process for Identifying Alternatives to Custody Evaluations*, 26 CONFLICT RESOL. Q. 333 (2009) (reporting on the implementation and success of an alternative approach to child custody cases in a judicial circuit in Florida, with educational, meditative, and therapeutic strategies used to filter out and remove as many cases from the court system as possible).

Jean R. Sternlight, *Dispute Resolution and the Quest for Justice*, 19 EXPERIENCE, no. 1, 2009, at 14 (considering which forms of dispute resolution are consistent with justice and arguing that there is no particular procedural approach that is most just or desirable in all circumstances).

Susan Yates & Peter Salem, *Family Court ADR: Decades of Cultivating Innovation*, DISP. RESOL. MAG., Fall 2013, at 4 (reviewing the development of alternative dispute resolution programs in family courts).

Assisted Reproduction Disputes

Stephen Page, *Planning to Resolve: ADR in ART*, FAM. ADVOC., Fall 2023, at 44 (examining how alternative dispute resolution can be used in disputes about assisted reproduction technology, the importance of clearly spelling out dispute resolution methods in agreements with egg donor or surrogacy agencies, and how alternative dispute resolution may wind up resolving a dispute even after a party has filed court proceedings).

Angela K. Upchurch, *The Deep Freeze: A Critical Examination of the Resolution of Frozen Embryo Disputes*, 33 FLA. ST. U. L. REV. 395 (2005) (criticizing the adversarial dispute resolution model for disputes about embryos and advocating for an alternative dispute resolution model).

Family Businesses

Haley R. Goodman, Note, *Divorcing Partners and Fighting Siblings: Using the Collaborative Law Model to Resolve Disputes in Family Businesses*, 30 U. MIAMI BUS. L. REV. 1 (2021) (endorsing the value of collaborative law for resolving family business disputes, including disputes that involve married business partners who get divorced).

Jacob Lebovics, Note, *The Role of Transformative Mediation in Family Business Disputes*, 20 CARDOZO J. CONFLICT RESOL. (2019) (considering alternative dispute resolution methods that could be used for conflicts over family businesses and recommending the use of transformative mediation as a promising way to resolve the business issues and maintain family cohesion).

Financial Considerations

Kimberly C. Emery, *Assisting Indigent Families in Conflict: A Pro Bono Test Drive for a Family Alternative Dispute Resolution (ADR) Clinic*, 34 WASH. U. J.L. & POL'Y 239 (2010) (reporting on the development of a dispute resolution clinic in which law students used mediation and collaborative law to help low-income clients resolve family law disputes).

Nancy Chausow Shafer, *Dispute Resolution Processes in Limited Finance Cases*, FAM. ADVOC., Fall 2013, at 39 (discussing approaches to dispute resolution that empower the parties to determine their outcomes, rather than having a third party such as a judge make the ultimate decisions, and that are economical and therefore will appeal to clients interested in getting divorced without spending a lot of money).

Nancy Ver Steegh, *Family Court Reform and ADR: Shifting Values and Expectations Transform the Divorce Process*, 42 FAM. L.Q. 659 (2008) (describing the transformation of the process of divorce that has occurred in recent decades, how it has led to reconsideration of the roles of lawyers and judges in the process, and how funding cuts for family court systems may lead to a two-tiered system of justice with only wealthier parties able to afford options such as private judges, private mediators, collaborative lawyers, and divorce coaches).

Hybrid and Novel Approaches to Alternative Dispute Resolution

Wensdai Brooks, Comment, *Artificial Bias: The Ethical Concerns of AI-Driven Dispute Resolution in Family Matters*, 2022 J. DISP. RESOL. 117 (assessing concerns that dispute resolution programs based on artificial intelligence will reflect biases in the data sets used to create them).

Robert J. Condlin, *Online Dispute Resolution: Stinky, Repugnant, or Drab*, 18 CARDOZO J. CONFLICT RESOL. 717 (2017) (pondering the possibility that artificial intelligence will allow for online dispute resolution guided by computer algorithms rather than humans).

Olivia Kalsner Kershen, Note, *Applying Family Mediation to the Creation of Psychiatric Advance Directives*, 25 CARDOZO J. CONFLICT RESOL. 387 (2023) (recommending the use of family mediation as part of the process of preparing a psychiatric advance directive, a relatively new type of legal document in which a person specifies their preferences for future mental health treatment in case they later have an episode during which they are unable to fully communicate their wishes).

Elena B. Langan, “*We Can Work It Out*”: *Using Cooperative Mediation – A Blend of Collaborative Law and Traditional Mediation – to Resolve Divorce Disputes*, 30 REV. LITIG. 245 (2011) (examining the shortcomings of mediation and collaborative law and arguing for the use of cooperative mediation, a hybrid form of dispute resolution that involves the use of a neutral evaluative mediator, jointly-retained experts, and a written “last, best offer” settlement process).

Duncan Joseph Moore, *Medical Surrogacy Mediation: Expanding Patient, Family, and Physician Rights and Reformulating the Virginia Health Care Decisions Act*, 10 VA. J. SOC. POL’Y & L. 410 (2003) (proposing the use of mediation for doctors and family members to make decisions about medical care for a person unable to make decisions due to incapacitation or incompetence).

Andrew Schepard, Marsha Kline Pruett & Rebecca Love Kourlis, *If We Build It, They Might Come: Bridging the Implementation Gap Between ADR Services and Separating and Divorcing Families*, 24 HARV. NEGOT. L. REV. 25 (2018) (describing how a model interdisciplinary center to promote alternative

dispute resolution was successful in creating a good process and outcomes for divorcing families, but unsuccessful in recruiting enough families interested in alternative dispute resolution to make the center sustainable).

Jonathan W. Wolfe, *The Dual Role Arbitration and Use of a Special Master to Move Your Family Law Case to Resolution*, FAM. ADVOC., Fall 2023, at 31 (discussing the judicial vacancy crisis in New Jersey, which led to all divorce trials being postponed indefinitely in some counties, and explaining how family law attorneys can move their cases forward through the use of arbitration and mediation, with one person authorized to act as both arbitrator and mediator, and through the use of special discovery masters who are appointed by courts to oversee complex, sophisticated discovery issues).

Personal Accounts

Forrest Mosten, *Lawyer as Peacemaker: Building a Successful Law Practice Without Ever Going to Court*, 43 FAM. L.Q. 489 (2009) (discussing the benefits of shifting from an adversarial paradigm to a peacemaking approach, from the perspective of a family attorney who gave up handling litigation and focused on non-adversarial methods including mediation, collaborative practice, unbundled lawyering for unrepresented parties, and preparing relationship agreements).

Peter Salem, *Family Dispute Resolution: The More Things Change, the More They Stay the Same*, DISP. RESOL. MAG., Spring 2015, at 24 (offering reflections on conversations with Zena Zumeta, a highly experienced mediator in family cases, and Brianna Zielke and Justin Kelsey, two members of the next generation of family dispute resolution practitioners).

Alison Sander, Tom Sander & Ernie Sander, *Sander Family Dispute Resolution*, DISP. RESOL. MAG., Fall 2012, at 20 (providing thoughts on how the resolution of routine disputes among his children may have inspired Harvard law professor Frank Sander's pioneering work in the field of alternative dispute resolution).

Suzanne J. Schmitz, *The Role of Law Schools in Improving Access to Justice: The Story of the Southern Illinois University School of Law and the Family Mediation Program*, 28 S. ILL. U. L.J. 1 (2003) (describing the family mediation program created

through a collaboration between Illinois courts and the Southern Illinois University School of Law).

Protecting Children

Donna Erez-Navot, *The Repeat Player Effect in Child Protection Mediation: Dangers of and Protections Against Second-Class Justice for Marginalized Parties*, 16 CARDOZO J. CONFLICT RESOL. 831 (2015) (examining how systems for resolution of child protection cases may be unfair if those who participate repeatedly in the system—such as mediators, attorneys, social workers, and guardians ad litem—have too much influence compared to litigants who participate in child protection mediation on a one-time basis).

Werthen Gass, Comment, *We're Getting Sued??? *Emotional* *With Proof**; *Using Alternative Dispute Resolution in Child Influencer Disputes*, 2024 J. DISP. RESOL. 164 (recommending the use of alternative dispute resolution for cases arising under laws that require earnings to be set aside in trusts when parents profit from featuring their children in videos on social media).

Alicia M. Hehr, Note, *A Child Shall Lead Them: Developing and Utilizing Child Protection Mediation to Better Serve the Interests of the Child*, 22 OHIO ST. J. ON DISP. RESOL. 443 (2007) (comparing the use of litigation and mediation for cases about child abuse and neglect).

Art Hinshaw, *Mediators as Mandatory Reporters of Child Abuse: Preserving Mediation's Core Values*, 34 FLA. ST. U. L. REV. 271 (2007) (urging state legislatures to include mediators in the set of professionals who are mandatory reporters of child abuse and neglect).

Laila-Rose Hudson, Note, *Child Protection Mediation: The Potential Role of ADR in Child Welfare Reform*, 37 OHIO ST. J. ON DISP. RESOL. 151 (2022) (describing weaknesses in the handling of child maltreatment cases through adjudication in courts and arguing for a shift toward the use of alternative dispute resolution including child protection mediation).

Stephanie Leavitt, Note, *Alternative Dispute Resolution in Child Sexual Abuse Cases: Approaches for Minimizing*

Victimization, 24 CARDOZO J. CONFLICT RESOL. 139 (2022) (applying restorative justice principles and examining the use of alternative dispute resolution in cases seeking to hold perpetrators liable for child sexual abuse).

Kelly Browe Olson, *The Importance of Using Alternative Dispute Resolution Techniques and Processes in the Ethical and Informed Representation of Children*, 6 NEV. L.J. 1333 (2006) (emphasizing the value of alternative dispute resolution for cases about child welfare and delinquency as well as child custody).

Heather Rushing Potter, Student Commentary, *Confidentiality in Mediation and the Duty to Report Child Abuse*, 29 J. LEGAL PROF. 269 (2004-2005) (analyzing the extent to which mediators have a duty to report suspected child abuse).

Anne Elizabeth Rosenbaum, *Embracing the Strengths and Overcoming the Weaknesses of Child Protection Mediation*, 15 U.C. DAVIS J. JUV. L. & POL'Y 299 (2011) (discussing the potential benefits and risks of child protection mediation as a means of resolving issues about child welfare).

Danielle Shayne Shapero, Note, *A Solution to the Silencing and Denial: How ADR Can Harmonize Catholic Law with the International Communities Demand to End the Sexual Victimization of Children in the Catholic Church*, 21 CARDOZO J. CONFLICT RESOL. 247 (2019) (proposing the use of mediation to develop new ecclesiastical laws and the creation of mediation and arbitration tribunals to address the interests of the Catholic Church and the international community in preventing sexual abuse of children by clergy).

Religious Approaches to Family Dispute Resolution

Jehan Aslam, Note, *Judicial Oversight of Islamic Family Law Arbitration in Ontario: Ensuring Meaningful Consent and Promoting Multicultural Citizenship*, 38 N.Y.U. J. INT'L L. & POL. 841 (2005) (examining the controversy over proposals to create Islamic family law arbitration tribunals in Canada and discussing how the need to protect individuals involved in religious arbitration can be balanced against interests in religious freedom).

Barbara Atwood, *Religious Arbitration of Family Disputes*, FAM. ADVOC., Fall 2019, at 24 (discussing the increasing number of divorcing couples, particularly in Orthodox Jewish communities, who choose to have their legal disputes resolved by faith-based tribunals rather than courts, and evaluating the constitutional and public policy concerns that may arise from having family law issues resolved by religious institutions rather than courts).

Michael J. Broyde, *Multicultural ADR and Family Law: A Brief Introduction to the Complexities of Religious Arbitration*, 17 CARDOZO J. CONFLICT RESOL. 793 (2016) (arguing that religious groups have less ability to influence legal and social norms than in the past, so they have shifted to developing their own internal legal processes, including religious arbitration and other forms of alternative dispute resolution).

MICHAEL BROYDE, SHARIA TRIBUNALS, JEWISH COURTS, AND CHRISTIAN PANELS: RELIGIOUS ARBITRATION IN AMERICA AND THE WEST (2017) (examining the trend toward the use of private religious arbitration, considering why religious communities turn away from secular family law, discussing appropriate limits on religious arbitration, and arguing that secular legal frameworks should regulate, facilitate, and enforce religious arbitration).

GENDER & JUSTICE IN FAMILY LAW DISPUTES: WOMEN, MEDIATION, AND RELIGIOUS ARBITRATION (Samia Bano ed. 2017) (examining dispute resolution practices for families in Islamic or other religious contexts).

Evan M. Lowry, Note, *Where Angels Fear to Tread: Islamic Arbitration in Probate and Family Law, a Practical Perspective*, 46 SUFFOLK U. L. REV. 159 (2013) (arguing that it may be appropriate to uphold religious arbitration of divorce issues based on Shari'a principles, because a divorce involves two adult parties who can consent to be bound by the religious arbitration, but allowing religious arbitration of custody disputes should not be permitted).

Mark D. Rosen, *Religious Law, Family Law and Arbitration: Shari'a and Halakha in America*, 90 CHI.-KENT L. REV. 163 (2015) (using John Rawls' principles of political liberalism to argue that courts should police the results of religious arbitration of family disputes on a case-by-case basis, overriding an arbitrator's decision

if it violates public policy, rather than categorically prohibiting all religious arbitration of family matters).

Laura Traum, Note, *Involved, Empowered and Inspired: How Mediating Halakhic Prenuptial Agreements Honors Jewish and American Law and Builds Happy Families*, 17 CARDOZO J. CONFLICT RESOL. 179 (2015) (explaining the significance and the shortcomings of halakhic prenuptial agreements for Orthodox Jewish marriages and recommending the use of prenuptial mediation as the best way to prepare such agreements).

Aviva Vogelstein, Note, *Is ADR the Solution? How ADR Gets Around the Get Controversy in Jewish Divorce*, 14 CARDOZO J. CONFLICT RESOL. 999 (2013) (discussing the beth din system of arbitration used to resolve disputes within Orthodox Jewish communities and how it can be used to address controversial situations in which a husband refuses to grant the permission necessary for his wife to remarry).

Arbitration

Advantages and Disadvantages of Arbitration

Steven D. Baker, *Rachal v. Reitz and the Efficacy and Implementation of Mandatory Arbitration Provisions in Trusts*, 9 EST. PLAN. & COMMUNITY PROP. L.J. 1991 (2017) (assessing the advantages and disadvantages of trust provisions that require arbitration of disputes between trustees and beneficiaries, analyzing a decision by the Supreme Court of Texas enforcing such a provision, and providing sample language and advice on drafting mandatory arbitration provisions for trusts).

Ashley Carleton, Comment, *An Ethics Analysis of Arbitrating Malpractice Claims*, 27 J. AM. ACAD. MATRIM. LAW. 445 (2015) (examining whether courts should enforce provisions in attorney/client agreements that would require legal malpractice claims to be resolved through arbitration, with a focus on the legal ethics issues raised by such provisions, and providing a review of current state approaches to the issue).

Christopher R. Drahozal, *A Behavioral Analysis of Private Judging*, LAW & CONTEMPORARY PROBLEMS, Winter/Spring 2004,

at 105 (discussing cognitive errors and illusions that affect decisionmaker and summarizing the results of empirical studies that suggest arbitrators, like judges, may be less susceptible to some cognitive illusions than jurors).

Linda D. Elrod, *Arbitration of Child-Related Issues and the Uniform Family Law Arbitration Act*, FAM. ADVOC., Fall 2023, at 14 (describing the advantages of resolving family law disputes through arbitration rather than trials, with arbitration involving more privacy, less cost, and less adversarial posturing, and with decisions made by a professional familiar with child development and children's needs rather than a judge who may be unprepared for the emotional aspects of family conflicts).

Julie J. Nelson & Bryant J. McConkie, *Taylor and the Impact of Arbitration in Divorce Proceedings*, UTAH B.J., May/June 2024, at 43 (providing a conversation among divorce lawyers about the effects of a new ruling from the Utah Supreme Court that favors enforcement of arbitration of divorce cases and leaves limited room for appellate review of arbitrators' decisions).

Rachel Schwartzman, *Utilizing Final-Offer Arbitration to Settle Divorces: A Proposal and Analysis*, 53 FAM. L.Q. 3 (2019) (recommending the use of the binding final-offer mode of arbitration, in which each party submits their final, best offer and the arbitrator must choose one of the offers, as a way to incentivize parties to make reasonable offers rather than extreme demands and a way to prevent arbitrators from routinely splitting matters down the middle by reaching a compromise result in between the parties' positions).

CAROLYN MORAN ZACK, *FAMILY LAW ARBITRATION: PRACTICE, PROCEDURE, AND FORMS* (2020) (assessing the advantages and disadvantages of resolving family law issues through arbitration, providing a state-by-state summary of laws concerning family law arbitration, and providing sample forms and practical advice about issues like how to choose an arbitrator and how to draft an arbitration agreement).

Carolyn Moran Zack, *Family Law Arbitration, An Underutilized ADR Option*, FAM. ADVOC., Fall 2023, at 18 (explaining the benefits of arbitration in family law cases, offering answers to some of the most common questions about arbitration, discussing the Uniform

Family Law Arbitration Act, and providing a chart of information about all state laws relating to family law arbitration).

Child Custody Disputes

Andre R. Imbrogno, *Arbitration as an Alternative to Divorce Litigation: Redefining the Judicial Role*, 31 CAP. U. L. REV. 413 (2003) (discussing why courts are reluctant to enforce binding arbitration of child custody and visitation issues and arguing that for similar reasons courts should also refuse to enforce arbitration of spousal support issues and other matters arising in divorce cases).

Bridgette Woodford, *Leave It to the Courts: Why Child Custody Arbitration Is Improper*, 14 PA. ST. ARB. L. REV. 54 (2023) (reviewing the history of arbitration, examining how states treat child custody arbitration, and arguing that arbitration of child custody disputes should not be permitted because courts are better equipped to handle child custody matters).

Aaron E. Zurek, *All the King's Horses and All the King's Men: The American Family After Troxel, the Parens Patriae Power of the State, a Mere Eggshell Against the Fundamental Right of Parents to Arbitrate Custody Disputes*, 27 HAMLINE J. PUB. L. & POL'Y 357 (2006) (arguing that the fundamental right to parent weighs in favor of allowing arbitration as a dispute resolution method for child custody disputes).

Legislation Regarding Family Law Arbitration

Linda D. Elrod, *The Case for Arbitration in Family Cases—and for the Uniform Act*, DISP. RESOL. MAG., Winter 2017, at 18 (reviewing major elements of the Uniform Family Law Arbitration Act).

Lisa J. Gill, *The Proposed Tennessee Domestic Relations Arbitration Act*, TENN. B.J., Mar./Apr. 2023, at 29 (endorsing the enactment of legislation that would govern arbitration of family law disputes in Tennessee).

George K. Walker, *Arbitrating Family Law Cases by Agreement*, 18 J. AM. ACAD. MATRIM. LAW. 429 (2003) (analyzing North Carolina's Family Law Arbitration Act and comparing it with federal and state legislation, the Uniform Arbitration Act, the Revised Uniform Arbitration Act, and arbitration rules).

George K. Walker, *Family Law Arbitration: Legislation and Trends*, 21 J. AM. ACAD. MATRIM. LAW. 521 (2008) (providing a detailed examination of the Model Family Law Arbitration Act and an update on state legislation concerning family law arbitration).

Carolyn Moran Zack, *It's Time for Pennsylvania to Adopt the Uniform Family Law Arbitration Act*, PA. LAW., Mar./Apr. 2020, at 34 (discussing the Uniform Family Law Arbitration Act and arguing that Pennsylvania should follow the lead of the three states that have enacted it).

Mandatory Arbitration Clauses in Nursing Care Contracts

Suzanne Gallagher, *Mandatory Arbitration Clauses in Nursing Home Admission Agreements: The Rights of Elders*, 3 NAELA J. 187 (2007) (arguing that mandatory arbitration provisions in nursing home admission agreements should not be enforced because they raise policy concerns about unconscionability, capacity, and fraud, as well as potential lack of authority when representatives of an incapacitated elder sign the agreement for the elder).

Laurence I. Gendelman, Case Note, *Kindred Nursing Centers v. Clark: United States Supreme Court Decisions on Mandatory Arbitration Provisions*, 15 NAELA J. 55 (2019) (analyzing the implications of Supreme Court decisions striking down state laws or rules that disfavor enforcement of mandatory arbitration clauses in contracts for care at nursing facilities).

David L. McGuffey, Case Note, *Marmet Health Care Center v. Brown: Nursing Home Arbitration Agreements*, 8 NAELA J. 239 (2012) (discussing court decisions allowing the enforcement of arbitration provisions in nursing home contracts and urging elder law attorneys to respond to these decisions by working to ensure that elder clients and their families understand and make informed decisions about agreeing to such provisions, as well as considering whether to draft power of attorney and other agency documents in ways that do not give the agent power to agree to binding arbitration).

Katherine Palm, Note, *Arbitration Clauses in Nursing Home Admission Agreements: Framing the Debate*, 14 ELDER L.J. 453 (2006) (arguing that mandatory arbitration clauses in nursing home agreements should be enforced and that attorneys representing

elders should focus on improving the language of arbitration clauses and the effectiveness of the arbitration process, especially through the use of model nursing home agreements, rather than fighting to make arbitration provisions unenforceable).

Charlie Sabatino, *Our New Nursing Home Arbitration Mandate: Educate, Educate, Educate*, BIFOCAL, July/Aug. 2019, at 120 (discussing how new rules issued by the Centers for Medicare and Medicaid Advocacy allow contracts between nursing homes and their residents to include binding provisions for resolution of disputes through arbitration, but provide some protections meant to ensure that residents make informed and voluntary decisions about whether to agree to such provisions, and stressing the importance of educating residents and their families about these provisions and advising them not to agree to such provisions).

John R. Schlessenbach, *Something Old, Something New: Recent Developments in the Enforceability of Agreements to Arbitrate Disputes Between Nursing Homes and Their Residents*, 22 ELDER L.J. 141 (2014) (analyzing the controversy over enforceability of nursing home arbitration agreements and discussing how nursing homes, elder law practitioners, arbitrators, and legislatures can take steps to improve the use of arbitration in nursing home cases and ensure that nursing home patients receive better information before agreeing to arbitration and have enhanced procedural protections during arbitration).

Erica F. Wood, *Should CMS Prohibit Arbitration in Nursing Home Admission Contracts?*, BIFOCAL, July/Aug. 2015, at 128 (noting that the American Bar Association opposes the use of mandatory, binding arbitration provisions in agreements between nursing care facilities and their residents, because of risks that residents and their families may not fully understand and voluntarily choose to accept such provisions, and urging the Centers for Medicare and Medicaid Services to prohibit the use of such provisions).

Collaborative Law

Advantages and Disadvantages of Collaborative Law

Alice L. Blackwell, *Collaborative Law: A Better Way for Families*, 17 BARRY L. REV. 1 (2011) (introducing a symposium on

collaborative and therapeutic family law and discussing why collaborative law is the most promising approach to dispute resolution in family law cases).

Paolo Cecchi-Dimeglio & Peter Kamminga, *The Changes in Legal Infrastructure: Empirical Analysis of the Status and Dynamics Influencing the Development of Collaborative Law Around the World*, 38 J. LEGAL PROF. 191 (2014) (reporting the findings of a survey of collaborative law practitioners from around the world, which sought to explore how they think about questions such as whether collaborative law is successful, how collaborative law is perceived by their legal community, and why clients decide to use collaborative law).

Lyn C. Conniff, *Collaborative Law: An Alternative, Not a Replacement*, in THE IMPACT OF THE UNIFORM COLLABORATIVE LAW ACT: LEADING LAWYERS ON GUIDING CLIENTS THROUGH COOPERATIVE DIVORCE 95 (2013) (comparing the collaborative law process to other methods of dispute resolution and reviewing its potential advantages and drawbacks).

Susan Daicoff, *Collaborative Law: A New Tool for the Lawyer's Toolkit*, 20 U. FLA. J.L. & PUB. POL'Y 113 (2009) (situating collaborative law within the larger "comprehensive law movement" seeking to make law sustainable for human well-being).

Marsha B. Freeman, *Collaborative Law: Recognizing the Need for a New Default Method of Family Law Resolution*, 17 BARRY L. REV. 15 (2011) (considering the difficulty of applying the collaborative law approach in different cultures, examining the costs of the collaborative process and how they may prevent it from being an option for lower and middle class families, and discussing the adoption of the Uniform Collaborative Law Act).

Susan Gamache, *Collaborative Practice; A New Way to Address Children's Best Interests in Divorce*, 65 LA. L. REV. 1455 (2005) (asserting that collaborative law maximizes the chances of good outcomes for children after divorce because it provides a rich, multidisciplinary pool of resources to help families resolve legal, emotional, and financial issues and thus reduces the risk of prolonged conflict between parents).

Dafna Lavi, *Can the Leopard Change His Spots?! Reflections on the 'Collaborative Law' Revolution and Collaborative Advocacy*, 13 CARDOZO J. CONFLICT RESOL. 61 (2011) (examining how collaborative law contributes to the reconceptualization of the role of attorneys in family law practice, considering whether attorneys can and should shift from an adversarial to a collaborative mode, and proposing a principled bargaining model as a means of addressing criticisms of collaborative law).

Julie Macfarlane, *Experiences of Collaborative Law: Preliminary Results from the Collaborative Lawyering Research Project*, 2004 J. DISP. RESOL. 179 (reporting the preliminary findings from an empirical study of the experiences of lawyers, clients, and other professionals using the collaborative law process in the United States and Canada).

Lawrence P. McLellan, *Expanding the Use of Collaborative Law: Consideration of Its Use in a Legal Aid Program for Resolving Family Law Disputes*, 2008 J. DISP. RESOL. 465 (reporting on the results of an assessment of the feasibility of starting a collaborative law program within the Volunteer Lawyers Project run by the bar association and legal aid society in Des Moines).

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Domestic Violence and Abuse

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Aubrey Harry Ducker, Jr., *Managing Family Law/Elder Law Care Nexus Cases Using Collaborative Law Strategies*, in STRATEGIES FOR FAMILY LAW IN FLORIDA (2014) (describing a collaborative law practice that focuses on issues at the intersection of family law and elder law, including divorce, guardianship, and Medicaid planning issues).

Sherri Goren Slovin, *The Collaborative Process: Divorce with Dignity*, EXPERIENCE, Spring 2006, at 13 (explaining the collaborative approach to divorce, why it is not the same as simply having two reasonable lawyers negotiating a case, and how it can be particularly beneficial for older couples because of its emphasis on client empowerment).

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despite having different goals and ethical obligations, can form effective interdisciplinary teams for a collaborative law approach).

David D. Dodge, *Legal Ethics and Collaborative Law Practice*, ARIZ. ATT'Y, May 2017, at 8 (analyzing ethical concerns arising from the use of collaborative law, including conflict of interest issues and scope of representation issues generated by the creation of a “four-way” agreement among the parties and their lawyers).

Barbara Glesner Fines, *Ethical Issues in Collaborative Lawyering*, 21 J. AM. ACAD. MATRIM. LAW. 141 (2008) (explaining that there is little specific regulation of collaborative lawyering and analyzing some of the key ethical issues addressed in ethics opinions on the subject, including issues about confidentiality, conflicts of interest, zealous advocacy, the competence of attorneys offering collaborative approaches, and withdrawal from representation of clients if the collaborative approach is unsuccessful).

David Hoffman & Dawn Ash, *Building Bridges to Resolve Conflict and Overcome the “Prisoner’s Dilemma”: The Vital Role of Professional Relationships in the Collaborative Law Process*, 2010 J. DISP. RESOL. 271 (analyzing the importance of the web of professional relationships involved in collaborative practice, reviewing the results of interviews with teams of collaborative lawyers and other professionals, and suggesting ways to overcome tendencies to revert to competitive, adversarial forms of interaction and negotiation).

Rebecca A. Koford, Note, *Conflicted Collaborating: The Ethics of Limited Representation in Collaborative Law*, 21 GEO. J. LEGAL ETHICS 827 (2008) (discussing a disagreement, between ethics committees of the Colorado Bar Association and the American Bar Association, over whether the clauses in collaborative law agreements that disqualify attorneys from continuing to represent clients if the collaborative process is unsuccessful are unethical on the ground that they create conflicts of interest that cannot be waived by clients).

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that may arise involving limited scope of representation, conflicts of interest, and obtaining informed consent).

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Practical Advice for Collaborative Law Practitioners

Sherrie Abney, *Moving Collaborative Law Beyond Family Disputes*, 38 J. LEGAL PROF. 277 (2014) (explaining collaborative law and practical issues such as how to become a collaborative lawyer, how to determine if the collaborative approach is suitable for a particular client, how to prepare for the first meeting in the collaborative process, and what to do if the process reaches an impasse).

Abby Cole et al., *Collaborative Divorce: A Paradigm Shift in Theory and Practice*, 8 PRAC. INNOVATIONS 196 (2023) (explaining collaborative divorce and encouraging psychologists to obtain specialized training to expand their practices to include collaborative divorce services).

Gay G. Cox & Robert J. Matlock, *The Case for Collaborative Law*, 11 TEX. WESLEYAN L. REV. 45 (2004) (discussing the

development of collaborative law in Texas, with advice for practitioners and an outline of how a typical case would be handled).

Susan L. Elkouri, *Understanding the Collaborative Law Process and Its Applications*, in *THE IMPACT OF THE UNIFORM COLLABORATIVE LAW ACT: LEADING LAWYERS ON GUIDING CLIENTS THROUGH COOPERATIVE DIVORCE* 83 (2013) (providing an introductory overview of the collaborative law process for family law attorneys interested in the collaborative model but who have little knowledge about it).

Larry Hance, *Integrating Collaborative Law into a Traditional Family Law Practice*, in *DEVELOPING A COLLABORATIVE FAMILY LAW PRACTICE* 87 (2011) (providing advice for lawyers who are new to collaborative law, including advice on marketing, training, ethics, and strategies).

FORREST S. MOSTEN, *COLLABORATIVE DIVORCE HANDBOOK: HELPING FAMILIES WITHOUT GOING TO COURT* (2009) (discussing how the collaborative approach to lawyering, relying on joint problem solving rather than adversarial litigation, can be applied to resolve disputes for divorcing couples).

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Nanci A. Smith, *Divorce with Dignity*, VT. B.J., Spring 2016, at 24 (describing the use of collaborative law in divorce cases and how family attorneys can determine if they would be effective collaborative divorce lawyers).

Ronald Melin Supancic, *The Value of Collaborative Law in Divorce Cases: A New Outlook on Old Practices*, in *THE IMPACT OF THE UNIFORM COLLABORATIVE LAW ACT: LEADING LAWYERS ON GUIDING CLIENTS THROUGH COOPERATIVE DIVORCE* 7 (2013) (providing personal reflections on the transition to collaborative law after many years of litigating divorce cases, examining obstacles that arise in the collaborative law process, and explaining how collaborative law led to a new outlook on family law which emphasizes helping families find peace).

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2017) (providing an overview of how the collaborative approach to law can be applied to divorce cases, with discussion of the theoretical foundations of the approach as well as practical advice about developing a collaborative family law practice).

PAULINE H. TESSLER & PEGGY THOMPSON, *COLLABORATIVE DIVORCE: THE REVOLUTIONARY WAY TO RESTRUCTURE YOUR FAMILY, RESOLVE LEGAL ISSUES, AND MOVE ON WITH YOUR LIFE* (2006) (providing a step-by-step explanation of a collaborative approach to divorce, utilizing a team that includes lawyers, coaches, a financial consultant, and a child specialist).

Gary L. Voegele, Linda K. Wray & Ronald D. Ousky, *Collaborative Law: A Useful Tool for the Family Law Practitioner to Promote Better Outcomes*, 33 WM. MITCHELL L. REV. 971 (2007) (providing a detailed account of the collaborative law process for family law cases, including the disqualification agreement and other common features of collaborative law, the protocols of practice for collaborative lawyers, ethical considerations, and proper training for collaborative practice).

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Uniform Collaborative Law Act

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disclosure requirements, interdisciplinary practice, coercive or violent relationships, access to justice, and training).

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Andrew Schepard & David A. Hoffman, *Regulating Collaborative Law*, DISP. RESOL. MAG., Fall 2010, at 26 (reviewing the history of the Uniform Collaborative Law Act, from the perspective of the reporter for the drafting committee, and responding to arguments against collaborative law and the uniform act concerning it).

Harry L. Tindall & Jennie R. Smith, *The Uniform Collaborative Law Act as a Teaching Tool*, 38 HOFSTRA L. REV. 685 (2009) (explaining how the Uniform Collaborative Law Act can be used to teach law students about dispute resolution skills and the impact of legislation on legal and social developments).

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2007, at 10 (suggesting that mediation may be less effective than early neutral evaluation, a process in which a facilitator who is an expert on the subject of the dispute identifies the core issues in the case, develops an evaluation of the merits of the issues, and helps the parties develop a plan for making responsible judgments about the likely outcome of litigation).

WAYNE D. BRAZIL, *EARLY NEUTRAL EVALUATION* (2012) (explaining early neutral evaluation, the circumstances in which it can be effective, and how it compares to other methods of dispute resolution such as mediation).

John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81 (2008) (explaining and advocating the use of early case handling, including early case assessment protocols, pretrial conferences, case management systems, and early neutral evaluation).

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Cindy M. Perusse, *Early Neutral Evaluation as a Dispute Resolution Tool in Family Court*, COLO. LAW., May 2012, at 37 (discussing the use of early neutral evaluation, comparing it to mediation, and arguing that it can be an effective way to correct parties' misperceptions about the strength of their cases and prevent cases from unnecessarily going too far down the path toward trials).

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Annie de Roo & Rober Jagtenberg, *Private Justice in the Domain of Family Law: The Place of Family Group Conferences Within the Range of ADR Methods*, 70 IUS GENTIUM 159 (2018) (discussing the use of family group conferences as a dispute resolution method in New Zealand, England, Wales, and the Netherlands).

Bobby Harges, *Alternative Dispute Resolution in Divorce and Family Cases in France and the United States: What the Two Countries Can Learn from Each Other*, 70 LOY. L. REV. 115 (2023) (comparing the use of alternative dispute resolution practices in the United States and France, including mediation, arbitration, collaborative divorce, and non-judicial divorce).

Amel Ketani, *The First Family Mediation Meeting: Purpose, Context, and Proposals for Change*, 76 DISP. RESOL. J. 113 (2023) (reporting the results of a survey of family mediators and lawyers in England and Wales, where a 2014 law made mediation compulsory in family cases, about their experiences in initial family mediation meetings).

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articles/alternatives-to-court/ (describing the financial dispute resolution hearings required in divorce cases in England and Wales, which involve having a judge provide a non-binding evaluation of the issues at an early stage of the litigation).

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Satoshi Minamikata, *Resolution of Disputes over Parental Rights and Duties in a Marital Dissolution Case in Japan: A Nonlitigious Approach in Chotei (Family Court Mediation)*, 39 FAM. L.Q. 489 (2005) (explaining the process in Japan for resolving disputes about parental rights and duties after separation or divorce, including the Chotei procedure, a mandatory mediation proceeding in which a committee made up of a family court judge and two or more other mediators try to help the parties resolve their dispute).

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Marian A. J. van Dijk, Sven Zebel & Ellen Giebels, *Power Asymmetry and Early Intervention in Divorce*, 29 PSYCHOL., PUB. POL’Y & L. 383 (2023) (reporting the results of a survey that examined how an educational web-based intervention affected Dutch adults and the impact that imbalances of power had on their divorce processes, perceptions, and outcomes).

Mediation

Advantages and Disadvantages of Mediation

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Carolynn Clark Camp, *Mediating the Indissoluble Family: Mediator Style in Domestic Relations Cases*, 26 BYU J. PUB. L. 187 (2012) (examining the advantages of mediating rather than litigating family cases and arguing that facilitative mediation techniques are more effective than evaluative techniques).

Barry Goldman, *The Psychology of Mediation*, 4 NAELA J. 115 (2008) (using social psychologist Robert Cialdini's six psychological "weapons of influence"—liking, authority, reciprocity, scarcity, consistency, and social proof—to explain why mediation is an effective method for resolving disputes).

Rose Mirzaie, *Divorce Mediation for Women: An Examination of Feminist Critiques*, 71 DISP. RESOL. J. 161 (2016) (assessing the feminist argument that power imbalances make divorce mediation unfair to women and arguing that mediators should have special training to recognize and address this unfairness).

Forrest S. Mosten & Lara Traum, *Mediation as the Default Approach for Family Dispute Resolution*, FAM. ADVOC., Fall 2023, at 9 (discussing the emergence of mediation as a principal method of resolving family disputes, with attorneys assuming mediation will be appropriate unless there is an exceptional reason not to attempt mediation).

Dennis P. Saccuzzo, *Controversies in Divorce Mediation*, 79 N.D. L. REV. 425 (2003) (examining concerns about the use of mediation in divorce cases, including questions about power imbalances, ethical standards, and mediator qualifications).

Lindsay Simonson, *What Now?: Divorce Mediation in the Wake of Legalizing Same-Sex Marriage*, 8 Y.B. ON ARB. & MEDIATION 219 (2016) (explaining how same-sex couples can be better incorporated into the practice of divorce mediation in the wake of the Supreme Court's decision in favor of marriage equality rights).

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Child-Inclusive Mediation

Cassandra W. Adams, *Children's Interest—Lost in Translation: Making the Case for Involving Children in Mediation of Child Custody Cases*, 36 U. DAYTON L. REV. 353 (2011) (recommending the expanded use of child-inclusive mediation, in which children have a chance to be heard within the mediation process, and discussing how to identify divorce and child custody cases where child-inclusive mediation would be appropriate).

Robin H. Ballard et al., *A Randomized Controlled Trial of Child-Informed Mediation*, 19 PSYCHOL., PUB. POL'Y & L. 271 (2013) (reporting the results of a study finding that child-focused mediation and child-inclusive mediation had a positive effect on outcomes compared to conventional mediation in divorce cases).

Felicity Bell, Judy Cashmore, Patrick Parkinson & Judi Single, *Outcomes of Child Inclusive Mediation*, 27 INT'L J. L. POL'Y & FAM. 116 (2013) (reporting the results of a study of child-inclusive mediation in Australia, which found that the participation of children did not improve outcomes for parental relationships or resolution of disputes, but parents nevertheless found it beneficial to have children involved in the mediation process).

Robert E. Emery, *Easing the Pain of Divorce for Children: Children's Voices, Causes of Conflict, and Mediation—Comments on Kelly's "Resolving Child Custody Disputes,"* 10 VA. J. SOC. POL'Y & L. 164 (2002) (warning that creating a greater role for children

in divorce mediation may lead to children being given inappropriate responsibility for making adult decisions about custody arrangements).

Joan B. Kelly, *Psychological and Legal Interventions for Parents and Children in Custody and Access Disputes: Current Research and Practice*, 10 VA. J. SOC. POL'Y & L. 129 (2002) (examining how divorce affects children and discussing empirical research on the impact of child-inclusive mediation and other interventions meant to benefit children by including their voices in the divorce dispute resolution process).

Samantha Lamka, Note, *Empowering Children's Rights Where They Matter: Implementing Child-Inclusive Mediations in Divorce Proceedings*, 39 OHIO ST. J. ON DISP. RESOL. 149 (2023) (analyzing an Australian study of how different mediation styles affect divorcing families and arguing for an approach that empowers children to participate and assert their own legal rights).

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Domestic Violence and Abuse

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Robin H. Ballard, Amy Holtzworth-Munroe & Amy G. Applegate, *Detecting Intimate Partner Violence in Family and Divorce Mediation: A Randomized Trial of Intimate Partner Violence Screening*, 17 PSYCHOL., PUB. POL'Y & L. 241 (2011) (reporting the results of a study examining the extent to which mediators are able to detect the presence of intimate partner violence in divorce mediation cases and the impact of using enhanced screening measures to assist detection of intimate partner violence).

Connie J.A. Beck et al., *Mediator Assessment, Documentation, and Disposition of Child Custody Cases Involving Intimate Partner Abuse: A Naturalistic Evaluation of One County's Practices*, 34 L. & HUM. BEHAV. 227 (2010) (reporting the results of a study finding that a large portion of cases in divorce mediation involve reports of intimate partner abuse, but only a small number of those cases are screened out of mediation).

Lydia Belzer, *Domestic Abuse and Divorce Mediation: Suggestions for a Safer Process*, 5 LOY. J. PUB. INT. L. 37 (2003) (discussing safeguards that can be installed to protect victims of domestic violence in divorce cases resolved through mediation).

Amy Holtzworth-Munroe et al., *Intimate Partner Violence (IPV) and Family Dispute Resolution: A Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation,*

and Litigation, 27 PSYCHOL., PUB. POL'Y & L. 45 (2021) (reporting that a study comparing litigation with two styles of mediation, for divorce cases involving domestic violence, showed some favorable results for mediation, including enhanced feelings of safety, more satisfaction with the process, greater likelihood of reaching settlements, and less time to reach final resolution of cases).

Amy Holtzworth-Munroe et al., *Intimate Partner Violence and Family Dispute Resolution: 1-Year Follow-Up Findings from a Randomized Controlled Trial Comparing Shuttle Mediation, Videoconferencing Mediation, and Litigation*, 27 PSYCHOL., PUB. POL'Y & L. 581 (2021) (reporting that the follow-up to a study comparing litigation with two styles of mediation, to determine whether there were differences in the likelihood of families having further disputes or violence, produced results that did not clearly favor one approach over others).

Kevin Lam, Note, *Mediating Domestic Violence Disputes in Chinese Immigrant Families in the U.S.: The Case for Court-Appointed Mediation Programs*, 17 CARDOZO J. CONFLICT RESOL. 989 (2016) (proposing the use of court-appointed mediation in family court cases involving domestic violence within Chinese immigrant families, observing that the risk of deportation may make immigrants less likely to use private or community-based mediation services, and describing the steps that mediators in such cases must take to be culturally sensitive and to screen out cases that are inappropriate for mediation).

Dafna Lavi, *Till Death Do Us Part?!: Online Mediation as an Answer to Divorce Cases Involving Violence*, 16 N.C. J. L. & TECH. 253 (2015) (recommending the use of online mediation as a way to reduce the potential harmful effects of mediation in divorce cases involving domestic violence).

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Thomas Luchs, Comment, *Is Your Client a Good Candidate for Mediation? Screen Early, Screen Often, and Screen for Domestic*

Violence, 28 J. AM. ACAD. MATRIM. LAW. 455 (2016) (explaining why mandatory mediation may be valuable in most divorce cases but may be harmful or even dangerous in situations involving intimate partner violence, reviewing various state laws and rules addressing whether mediation is required in these situations, and stressing how important it is for attorneys to screen for the possibility that domestic violence is an issue).

Jane C. Murphy & Robert Robinson, *Domestic Violence and Mediation: Responding to the Challenges of Crafting Effective Screens*, 39 FAM. L.Q. 53 (2005) (observing that there is a consensus that mediation of family law cases presents special challenges in situations where one partner has abused the other, but that courts nevertheless often order mediation without taking adequate measures to protect domestic violence victims, and arguing that this discrepancy between beliefs and practices could be reduced by clarifying confusion and uncertainty about the meaning of “mediation” and “domestic violence”).

Anne M. Sidwell, *Mandatory Child Custody Mediation: A Call for California to Protect Domestic Violence Survivors*, 57 U.S.F. L. REV. 135 (2022) (urging California to pass legislation allowing domestic violence survivors to opt out of court-mandated mediation).

Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145 (2003) (arguing that victims of domestic abuse should be allowed to make well-informed decisions about whether a mediated or an adversarial process will be best for their family’s situation).

Elder Law Issues

Ellie Crosby Lanier, *What Is Quality in Elder Care Mediation and Why Should Elder Law Advocates Care?*, BIFOCAL, Nov./Dec. 2010, at 15 (describing the growing field of elder care mediation, why mediation is an effective tool, and how to find a qualified elder care mediator).

Eleanor Crosby Lanier, *First Do No Harm – Why Mediator Competency Matters in Eldercare Cases and What the Mediation Community Is Doing to Develop Qualified Practitioners*, EXPERIENCE, Fall/Winter 2015, at 23 (explaining how the elder

mediation training objectives developed by the Association for Conflict Resolution's Section on Elder Decision-Making and Conflict Resolution can be used to promote best practices in the field of eldercare mediation).

Rikk Larsen & Crystal Thorpe, *Elder Mediation: Optimizing Major Family Transitions*, 7 MARQ. ELDER'S ADVISOR 293 (2006) (recommending the use of mediation for family disputes about decisions and transitions for an elder person, such as disputes among adult siblings over their aging parent's living situation, medical treatment, or financial matters).

Carolyn L. Rosenblatt, *Mediating Elder Disputes in Assisted Living Facilities*, 19 EXPERIENCE, no. 1, 2009, at 27 (explaining how mediation can help assisted living facilities and residents to resolve conflicts, with a case study about collaborative mediation of a dispute about a resident hitting his neighbor).

Fernanda S. Rossi et al., *Detection of Intimate Partner Violence and Recommendation for Joint Family Mediation: A Randomized Controlled Trial of Two Screening Measures*, 21 PSYCHOL., PUB. POL'Y & L. 239 (2015) (reporting the results of a study comparing two methods of screening intimate partner violence prior to conducting family mediation, one involving the use of a standardized and behaviorally specific screening device and the other involving a less specific mediation clinic screen, which found that the behaviorally specific screen identified more high risk cases).

Erica F. Wood, *Dispute Resolution and Aging: What Is the Nexus and Where Do We Stand?*, BIFOCAL, Jan./Feb. 2015, at 73 (discussing the impact of aging on dispute resolution, including how certain kinds of conflicts become more common as people get older and how the age of parties in mediation may affect the mediation process and the skills the mediator needs to have).

Zena Zumeta, *About the ABA Dispute Resolution Section Task Force Elder Abuse and Neglect Screening Guidelines for Mediators*, BIFOCAL, Jan.-Feb. 2021, at 65 (reporting on an ABA task force's development of guidelines to assist mediators in knowing how to identify signs of elder abuse, how to determine whether mediation is appropriate, how to empower elderly parties participating in mediation, and how to know when to bring additional professionals into the mediation process).

Alexandria Zylstra, *The Road from Voluntary Mediation to Mandatory Good Faith Requirements: A Road Best Left Untraveled*, 17 J. AM. ACAD. MATRIM. LAW. 69 (2001) (discussing how mediation requirements make it necessary to have “good faith” requirements concerning the level of participation that is required for mediation to be meaningful).

Guardianship Issues

Susan Butterwick & Penelope A. Hommel, *Mediation: A Tool for Resolution of Adult Guardianship Cases*, 14 NAELA Q. 4 (2001) (discussing the value of mediation in adult guardianship cases, providing advice on practical issues for attorneys considering mediation in such cases, and noting the findings of The Center for Social Gerontology’s study of pilot adult guardianship mediation projects).

Catherine A. Seal & Michael A. Kirtland, *Using Mediation in Guardianship Litigation*, EXPERIENCE, Fall/Winter 2015, at 16 (reviewing issues raised by the use of mediation to resolve disputes about the appointment of a guardian for a person who is alleged to be incapacitated, including due process concerns, evidentiary standards, information needed for an effective mediation, and the extent to which the allegedly incapacitated person should participate in the mediation).

Eva M. Soeka, *An Option for Families and Older Adults: Adult Guardianship Mediation*, GPSOLO, Mar. 2000, at 58 (assessing the use of mediation for adult guardianship cases).

International Parental Child Abductions

Elizabeth Cunha, Note & Comment, *The Potential Importance of Incorporating Online Dispute Resolution into a Universal Mediation Model for International Child Abduction Cases*, 24 CONN. J. INT’L L. 155 (2008) (discussing the value of online mediation in international child abduction cases).

Nuria González Martín, *International Parental Child Abduction and Mediation: An Overview*, 48 FAM. L.Q. 319 (2014) (explaining and assessing the value of the Guide to Good Practice on Mediation, a “soft law” instrument issued by the Hague Conference on Private International Law as a supplement to its Hague Convention on

the Civil Aspects of International Child Abduction, discussing the programs established in some nations to facilitate mediation of international child custody matters, and considering the special challenges of mediating international child abduction cases).

Melissa Kucinski, *Culture in International Parental Kidnapping Mediations*, INT'L ACAD. FAM. LAW. (2010), <https://www.iafl.com/resources/articles/alternatives-to-court/> (assessing how mediators in international parental child abduction cases need to be aware of and sensitive to cross-cultural differences that may influence how the parents act, think, and communicate).

Melissa Kucinski, *Mediating International Child Abductions*, FAM. ADVOC., Fall 2020, at 33 (discussing the use of mediation in international parental child abduction cases, including the role of the Hague Conference on Private International Law and other international and regional organizations addressing the issue, the lack of consistent standards and processes from country to country, the difficulty of finding capable mediators for complex international cases, and the benefits and potential risks of using mediation in cross-border situations).

Jennifer Zawid, *Practical and Ethical Implications of Mediating International Child Abduction Cases: A New Frontier for Mediators*, 40 U. MIAMI INTER-AM. L. REV. 1 (2008) (examining the risks and potential benefits of mediation in cases of international child abduction).

Model Standards

Model Standards of Practice for Family and Divorce Mediation, 35 FAM. L.Q. 27 (2001) (presenting the model standards adopted by the American Bar Association).

Andrew Schepard, *An Introduction to the Model Standards of Practice for Family and Divorce Mediation*, 35 FAM. L.Q. 1 (2001) (introducing and explaining the most important aspects of the model standards approved by the American Bar Association).

Online Mediation

Becca Brennan, *Match or Mismatch.com? Online Dispute Resolution and Divorce*, DISP. RESOL. MAG., Winter 2015, at 15

(discussing the potential benefits and drawbacks to conducting divorce mediation online rather than face-to-face).

Rebecca Brennan, Note, *Mismatch.com: Online Dispute Resolution and Divorce*, 13 CARDOZO J. CONFLICT RESOL. 197 (2011) (recommending online dispute resolution as a therapeutic method of settling divorce cases).

Susan Brooks, *Online Dispute Resolution and Divorce: A Commentary*, DISP. RESOL. MAG., Winter 2015, at 18 (explaining how online mediation can lead to missed opportunities for developing more constructive, positive relationships through in-person interaction in the mediation process).

Martin Gramatikov & Laura Klaming, *Getting Divorced Online: Procedural and Outcome Justice in Online Divorce Mediation*, 14 J. L. & FAM. STUD. 97 (2012) (reporting and discussing the results of a survey of individuals who participated in online divorce mediation in the Netherlands, which found that most participants had positive views of the procedure and outcomes of the mediation).

Elizabeth Kruse, *ADR, Technology, and New Court Rules—Family Law Trends for the Twenty-First Century*, 21 J. AM. ACAD. MATRIM. LAW. 207 (2008) (describing ways in which internet technology can make mediation sessions and other forms of alternative dispute resolution more efficient, and describing the benefits of using parenting coordinators in high-conflict child custody cases).

Melissa A. Kucinski, *The Pitfalls and Possibilities of Using Technology in Mediating Cross-Border Child Custody Cases*, 2010 J. DISPUTE RESOL. 297 (considering whether the use of online technology will assist international family mediators in resolving disputes, often involving significant cultural differences, over child custody).

Dafna Lavi, *No More Click? Click in Here: E-Mediation in Divorce Disputes—the Reality and the Desirable*, 16 CARDOZO J. CONFLICT RESOL. 479 (2015) (recommending measures to improve the use of online mediation in divorce cases, including training, certification, and regulation of online mediation service providers).

Michele F. Lowrance, *Effective and Personalized Mediation During the Zoom Boom*, FAM. ADVOC., Fall 2021, at 34 (describing

the experience, for a judge and mediator, of conducting mediation online during the COVID-19 pandemic and sharing tips and best practices for how to achieve a personal connection with the parties when doing mediation online rather than in person).

Post-Adoption Contract Agreements

Sophie Mashburn, Comment, *Mediating a Family: The Use of Mediation in the Formation and Enforcement of Post-Adoption Contact Agreements*, 2015 J. DISP. RESOL. 383 (discussing the use of post-adoption contact agreements, which address the interaction that birth parents and adoptive parents will have after finalization of an adoption, and proposing that mediation may be a useful tool for developing such agreements).

Practical Advice for Mediators and Attorneys

Harriet E. Cummings, *Safety Considerations for Family Law Mediators*, NEV. LAW., Nov. 2019, at 19 (advising mediators about the importance of ensuring that all participants in the mediation feel safe and discussing the many factors to consider in determining how to structure and conduct a safe mediation).

DIVORCE AND FAMILY MEDIATION: MODELS, TECHNIQUES, AND APPLICATIONS (Jay Folberg, Ann L. Milne & Peter Salem eds., 2004) (examining theoretical and practical issues surrounding mediation of divorce and other family issues, with chapters by professionals with expertise in law, psychology, and social work).

Anne Dranginis, *Is Truth Essential in Mediation?*, FAM. ADVOC., Fall 2023, at 6 (exploring the importance of truth in mediation, including the extent to which attorneys have an ethical obligation to determine the truth of information presented by their clients in mediation, and discussing how to prepare clients for the reality that their version of the truth may be challenged or questioned in mediation).

Carol Gersten, *Mediate the Move—Quelling Clients' Fears and Clarifying Options*, FAM. ADVOC., Spring 2006, at 30 (providing advice about the use of mediation for divorced couples who share custody of a child, when a dispute arises because one seeks to relocate and take children with them).

Gregory D. Kincaid, *What to Bring to Your First Mediation Appointment – The “Right” Documents, Information, and Attitude*, FAM. ADVOC., Summer 2012, at 20 (providing advice to individuals preparing for their first mediation session in a divorce case, including what documents to bring, key things to know about mediation and family law, and how to approach the mediation with a healthy, constructive, and creative attitude).

Ralla Klepak, *What to Tell Your Client About Mediation, the Custody Evaluator, or a Custody Evaluation*, FAM. ADVOC., Spring 2008, at 8 (recommending the use of mediation in child custody cases and providing advice about how to prepare parents who will undergo a forensic mental-health evaluation).

Maurice Jay Kutner & Kathryn Devane Hamilton, *Successful Mediation Techniques*, FAM. ADVOC., Winter 2006, at 6 (offering practical advice for lawyers representing a client in a mediation, including what to do before, during, and after the mediation).

Jack G. Marcil & Nicholas D. Thornton, *Avoiding Pitfalls: Common Reasons for Mediation Failure and Solutions for Success*, 84 N.D. L. REV. 861 (2008) (discussing fifteen common reasons why mediation is unsuccessful and providing pragmatic advice on how to avoid or overcome them).

FORREST S. MOSTEN, ELIZABETH POTTER SCULLY & LARA TRAUM, *EFFECTIVELY REPRESENTING CLIENTS IN FAMILY MEDIATION* (2023) (providing advice for lawyers about how to select a mediator, prepare for mediation, and negotiate to reach a settlement).

Delia D. Patterson, *Power Imbalances in Child Protection Mediation: How the Mediator Can Help*, 28 CHILD L. PRAC. 158 (2009) (discussing steps that mediators in child abuse and neglect cases can take to ensure that parents feel empowered and heard and have the power to self-determine the positions they take and the outcomes to which they agree).

Tamlyn Sbar, *The Risks and Rewards of Mediating a Pro Se Divorce*, GPSOLO, Jan./Feb. 2021, at 23 (assessing the benefits and challenges of mediation of pro se divorces, from the perspective of an experienced family dispute mediator).

Suzanne Schmitz, *Illinois Family Mediations: The Case Against Allowing GALs*, 98 ILL. B.J. 576 (Nov. 2010) (arguing that

guardians ad litem should be excluded from participating in mediation of child custody cases, because the guardian ad litem should investigate and form independent judgments about the family that are not influenced by the mediation, parents may be confused about the roles of the mediator and guardian ad litem if both are at the mediation, and the presence of the guardian ad litem in the mediation may undermine the parties' perceptions of the neutrality of the guardian ad litem).

Louise Phipps Senft, *Transformative Mediation*, EXPERIENCE, Fall/Winter 2015, at 8 (praising the effectiveness of a transformative approach to mediation, in which the mediator's goal is to facilitate quality dialogue among the parties, rather than a directive approach in which the mediator's goal is to get the parties to agree to a settlement).

Qualifications of Mediators

Jaime Abraham, Note, *Divorce Mediation—Limiting the Profession to Family/Matrimonial Lawyers*, 10 CARDOZO J. CONFLICT RESOL. 241 (2008) (analyzing the differences between lawyers and non-lawyer mediators and arguing that non-lawyers should not be allowed to mediate divorce cases).

Marsha B. Freeman, *Divorce Mediation: Sweeping Conflicts Under the Rug, Time to Clean House*, 78 U. DET. MERCY L. REV. 67 (2000) (analyzing concerns about divorce mediation, particularly ethical problems faced by lawyer-mediators and non-lawyer mediators).

Douglas E. Noll, *Hey, I'll Just Be a Mediator When I Retire! Not So Fast...*, EXPERIENCE, Jan./Feb. 2018, at 17 (providing advice to retiring lawyers and judges on what they need to know if they are interested in becoming a mediator, including warnings about how the business of being a mediator is very different from practicing law).

Thomas E. Spahn, *Staying Active in ADR Proceedings After Retirement Raises Unique Issues*, EXPERIENCE, Fall/Winter 2015, at 47 (listing issues that retiring lawyers need to consider if they want to do work in the field of mediation or arbitration, including whether they need to retain their licenses to practice law, whether they can participate in mediation or arbitration proceedings in

states where they were not admitted to practice law, and what duties of ethics and confidentiality will apply to them).

Racial and Cultural Differences

Giyang An, Note, *Enhancing the Effectiveness of Mediation in Korean-American Family Disputes: Cultural Sensitivity Training for Mediators and Co-Mediation Teams*, 11 CARDOZO J. CONFLICT RESOL. 557 (2010) (explaining how traditional Korean gender roles affect mediation for first-generation Korean-American families and

Marjorie H. O'Reilly, *Race, Culture & Mediation—Does the Informality of the Setting Create an Environment in Which Racism and Cultural Insensitivity May Enter Unchecked?*, FAM. ADVOC., Fall 2004, at 37 (discussing concerns about how conscious or unconscious racial biases or insensitivities may affect how parties feel about the mediation process as well as the outcomes of the process).

Donna Saadati-Soto, *An Innovative Alternative or an Institutional Failure of Family Courts?: A Critical Perspective on the Experience of Latinx Families in an Anglo-Centric Mediation Process*, 31 BERKELEY LA RAZA L.J. 25 (2021) (observing that Latinx families do not have the same cultural norms and family structures as White families, arguing that the traditional Anglo-European model of alternative dispute resolution fails Latinx people, and suggesting ways to make the mediation process more effective for Latinx families).

Settlement Agreements

Robert Kirkman Collins, *The Scrivener's Dilemma in Divorce Mediation: Promulgating Progressive Professional Parameters*, 17 CARDOZO J. CONFLICT RESOL. 691 (2016) (assessing the ethical and practical issues raised by attorney-mediators who draft settlement agreements for mediated couples, reviewing the variety of positions taken by states on the question, and arguing that well-trained mediators should be allowed to draft settlement agreements).

Rochelle B. Grossman & Carolyn Moran Zack, *Should the Mediator Draft the Divorce Agreement?*, FAM. ADVOC., Fall 2023,

at 40 (2023) (explaining ways to avoid the potential pitfalls that can occur when a mediator agrees to draft the divorce agreement at the end of mediation that results in an agreement between the parties).

Study Results

Connie J. A. Beck & Bruce D. Sales, *A Critical Reappraisal of Divorce Mediation Research and Policy*, 6 PSYCHOL., PUB. POL'Y & L. 989 (2000) (reviewing social science research on the benefits of divorce mediation, considering the impact of increases in pro se representation in divorce cases, and finding that the benefits of divorce mediation may have been overstated and the goals of divorce mediation may be overly ambitious).

Kathryn M. Kroeper et al., *Underestimating the Unrepresented: Cognitive Biases Disadvantage Pro Se Litigants in Family Law Cases*, 26 PSYCHOL., PUB. POL'Y & L. 198 (2020) (reporting the results of an experiment finding that the perceptions of attorney-mediators about the merits of parties' cases were strongly influenced by whether the parties had attorneys or were representing themselves).

Emily Rothkin, Note, *How to Create a Better Mediation: Using Divorce Mediation Outcomes to Assess Gender's Effect on Mediation*, 102 B.U. L. REV. 631 (2022) (analyzing outcomes from divorce mediation to explore how heuristics and biases disadvantage women in mediation and how the structure of mediation can be modified to achieve more equitable results).

Andrew Schepard & James W. Bozzomo, *Efficiency, Therapeutic Justice, Mediation, and Evaluation: Reflections on a Survey of Unified Family Courts*, 37 FAM. L.Q. 333 (2003) (reporting the findings of a survey of courts in states that have adopted a unified family court model, including findings about the expanded use of mediation for matters ranging from divorce and child custody to child protection).

Charles R. Stoner, Sandra J. Perry & Tanya M. Marcum, *The Court, the Parent, and the Child: Mediator Perceptions of the Purpose and Impact of Mandated Mediation in Child Custody Cases*, 13 J. L. & FAM. STUD. 151 (2011) (assessing the results of a study of mediation in a judicial district in Illinois, where mediation

of child custody and visitation issues is mandatory, which found that attorney-mediators and judge-mediators believe the primary goal of mediation is to expedite the process of resolving disputes, while counselor-mediators also emphasize the importance of helping parents to develop interpersonal and relational skills that will enable them to make child-oriented decisions and manage future conflicts).

Negotiation

Bankruptcy

Jennifer L. Bjurling, *Bringing a Lamb to Slaughter: How Family Law Attorneys Unknowingly Lead Clients to Financial Disaster in the Negotiation of a Divorce Stipulation*, 40 VERMONT L. REV. 939 (2016) (advising family law attorneys on how to negotiate and draft divorce settlement agreements that prevent obligations under the agreements from being discharged in bankruptcy).

Ethical Issues

Hiroharu Saito, *Do Professional Ethics Make Negotiators Unethical? An Empirical Study with Scenarios of Divorce Settlement*, 22 HARV. NEGOT. L. REV. 325 (2017) (describing the results of a study, which used ethical dilemmas in divorce settlement negotiations and compared the views of law students who had studied professional ethics and law students who had not, and which suggested that learning about professional ethical rules enhances commitment to clients' interests but diminishes commitment to fairness and human rights).

Thomas Spahn, *Negotiation Ethics—What About “Little White Lies?”* 19 EXPERIENCE, no. 3, 2009, at 44 (discussing how attorneys in negotiations should handle situations where they cannot give a truthful answer to a question about whether their client would be willing to settle for a certain amount without revealing strategic information that will impair the attorney's ability to try to negotiate a better outcome for the client).

Devlin Hart Woods, Note, *The Impact of Deception in Family Mediation*, 32 GEO. J. LEGAL ETHICS 975 (2019) (considering

whether ethical rules permit attorneys to make deceptive statements about their client's objectives or demands as a bargaining tactic in negotiation or mediation, observing that the Model Rules of Professional Conduct provides that "settlement puffery" is not a misstatement of material fact, and arguing that this allows for the use of deceptive tactics that can harm the parties and their familial relationships).

Judicial Facilitation of Settlements

Hugh E. Starnes & Sheldon E. Finman, *The Court's Role in Settlement Negotiations*, FAM. ADVOC., Winter 2015, at 30 (explaining the importance of judicial oversight and management of settlement negotiations in family law cases and discussing practices that judges can utilize, including providing standing orders to educate and guide the parties through the negotiation process, providing referrals to child-focused facilitation teams and mental-health facilitators, and offering "open house" times when lawyers engaged in a negotiation can drop in for informal consultation with a judge).

Negotiation Skills, Strategy, and Tactics

Ronald S. Granberg, *Three Logical Arguments for Divorce Settlement*, FAM. ADVOC., Winter 2015, at 20 (explaining how to make persuasive use of deductive syllogism, inductive generalization, and inductive analogy in settlement negotiations).

Gregg Herman, *The Role of a Family Law Attorney in Settlement Negotiations*, 53 FAM. L.Q. 71 (2019) (discussing the increasing importance of negotiating skills for family law attorneys, given the increasing number of cases resolved through settlements and the decreasing number of cases that reach the trial and appellate stages of litigation).

GREGG HERMAN, SETTLEMENT NEGOTIATION TECHNIQUES IN FAMILY LAW: A GUIDE TO IMPROVED TACTICS AND RESOLUTION (2d ed. 2020) (providing advice for family attorneys on how to improve their divorce negotiation skills).

H. Lee Hetherington, *Planning for Settlement Negotiations: The Big Picture*, FAM. ADVOC., Winter 2015, at 9 (explaining how to prepare for negotiating a family law dispute, such as a divorce or

child custody case, and explaining how preparation provides the information and negotiating principles to achieve a successful result).

Kathleen A. Hogan, *Lessons in Negotiation*, FAM. ADVOC., Winter 2015, at 4 (observing that lessons about negotiation skills can come from many aspects of life, not just from law school or practicing law).

John Lande, *Family Lawyering with Planned Early Negotiation—How to Get Good Results for Clients and Make Money*, FAM. ADVOC., Winter 2015, at 12 (providing advice for family law attorneys seeking to follow a planned early negotiation approach, which means planning and preparing to negotiate cases at the earliest appropriate time, based on interviews with attorneys who successfully implement this approach).

John Lande, *Overcoming Roadblocks to Reaching Settlement in Family Law Cases*, FAM. ADVOC., Winter 2018, at 26 (discussing ways to overcome obstacles to settlement agreements, including cognitive biases and fears that perpetuate the adversarial culture of litigation).

Kenneth H. Waldron, *Game Theory and Its Application to Divorce Settlement Negotiations*, FAM. ADVOC., Winter 2015, at 40 (explaining how game theory, a branch of mathematics that studies decision-making strategy in situations where one person's decisions affect decisions by others, can provide insight on divorce settlement negotiations).

Tess Wilkinson-Ryan & Deborah Small, *Negotiating Divorce: Gender and the Behavioral Economics of Divorce Bargaining*, 26 LAW. & INEQ. 109 (2008) (reviewing empirical evidence about how men and women have different negotiating styles and tactics and considering how this may lead to worse outcomes for women in divorce settlement negotiations).

Premarital Agreements

Michelle M. Gervais & Lauryn Coleman, *Pro Tips for Negotiating, Drafting, and Executing a Prenuptial Agreement*, FAM. ADVOC., Spring 2023, at 15 (offering a dozen recommendations for attorneys seeking to craft effective prenuptial agreements).

Linda J. Ravdin, *How to Avoid Malpractice in the Negotiation and Drafting of Premarital and Postmarital Agreements*, FAM. ADVOC., Fall 2017, at 34 (providing recommendations and warnings for attorneys about how to avoid legal malpractice when drafting premarital and postmarital agreements, including the importance of adequate financial disclosures, drafting mistakes to avoid, and what records to keep).

LINDA RAVDIN, *PREMARITAL AGREEMENTS: DRAFTING AND NEGOTIATION* (3d ed. 2023) (covering key aspects of negotiating a premarital agreement).

Self-Represented Parties

Joseph W. Booth, *Successfully Negotiating with the Self-Represented Party*, FAM. ADVOC., Winter 2015, at 36 (providing advice for attorneys attempting to negotiate a settlement between a client and a person without an attorney, including how to build rapport with the unrepresented litigant, how to set ground rules for the negotiation, and how to give credence to emotional issues without letting them make it impossible to reach an agreement).

Jim Hilbert, *Educational Workshops on Settlement and Dispute Resolution: Another Tool for Self-Represented Litigants in Family Court*, 43 FAM. L.Q. 545 (2009) (proposing that family courts should provide educational workshops on negotiation and settlement to help self-represented litigants better understand how to approach settlement negotiations).

Private Judges

Jennifer R. Morra, *Going Private*, FAM. ADVOC. Fall 2023, at 26 (explaining how the use of a private judge differs from arbitration, because private judges have the same authority as public judges and their decisions are subject to appeal through the court system, and describing the potential benefits of using a private judge versus using arbitration or the public judiciary).

Sheila Nagaraj, Comment, *The Marriage of Family Law and Private Judging in California*, 116 YALE L.J. 1615 (2007) (discussing the growing use of private judging in family law matters, explaining why critics of private judging believe it gives the parties too much

confidentiality and improperly limits the public's and the media's access to information, and proposing the adoption of regulations of private judging that would strike an appropriate balance between interests in privacy and disclosure).

Jill S. Robbins, *The Private Judge: California Anomaly or Wave of the Future*, INT'L ACAD. FAM. LAW. (2010), <https://www.iafl.com/resources/articles/alternatives-to-court/> (providing a primer on private judging in family law cases, including an assessment of potential benefits of private judging such as confidentiality, security, flexibility, informality, and cost).

Kathleen M. Scanlon & Sumit Bisarya, *Private Judging by Consent*, ALTERNATIVES TO THE HIGH COST OF LITIG., May 2002, at 1 (providing a basic primer on private judging and a listing of relevant state statutes).

Carmel Sileo, *Do Private Judges Need More Public Scrutiny?*, TRIAL, Nov. 2006, at 14 (discussing criticisms of the use of private judges, including the concern that private judges enable celebrities and other wealthy people to receive special treatment from the legal system).

John W. Whittlesey, *Private Judges, Public Juries: The Ohio Legislature Should Rewrite R.C. § 2701.10 to Explicitly Authorize Private Judges to Conduct Jury Trials*, 58 CASE W. RES. L. REV. 543 (2008) (arguing that states should create a process that would make it possible to have jury trials in cases handled by private judges).