

Archer Leaders Talk Growing Use Of ADR In NJ Family Law

By [Jake Maher](#) | 2023-03-27

Long wait times and too few judges are changing the way family law is practiced in New Jersey, opening alternatives to court proceedings, along with benefits and risks to clients, lawyers and third-party mediators, according to attorneys in the field.

The state's well-documented shortage of judges — up to 70 unfilled seats as of last month — has had a clear effect on family law: Courts in parts of Warren, Sussex, Hunterdon, Cumberland, Gloucester and Salem counties [halted](#) matrimonial trials for the immediate future in February, citing a lack of judges.

The use of alternative dispute resolution has grown to fill the vacuum left by the crushing [slowdown in the courts, according to Stephanie Zane, family law chair at Voorhees-based Archer & Greiner PC.](#)

"There's a much clearer path to finality [in ADR] than right now we have in the court system," Zane said.

It's a shift in the practice of family law with consequences and potential advantages for all involved, according to Zane and Judge Marie Lihotz, a retired appellate division judge and presiding judge of the Burlington Vicinage's family part, now of counsel at Archer.

Zane and Lihotz joined Law360 Pulse for a conversation about the current state and future of family law in New Jersey. This conversation has been edited for length and clarity.

What is the scope of the problem with New Jersey's judiciary, and how did we get to where ADR is such a large part of family law?

Zane: The problem stems from the fact that we don't have enough judges. So on top of the COVID backlog, when you don't have enough people to adjudicate the matters, everything gets to a standstill. Because of that, that's how ADR and mediation and arbitration has taken such a front seat in trying to move matters forward.

Judge Lihotz: I talked to one presiding judge last night who said that right now they can't schedule a divorce trial until February of 2025. Which seems insane. And the backlog will never be eliminated unless there's some other way of getting these cases resolved.

What kind of opening does this create for ADR? What benefits are there to clients in handling cases that way?

Zane: It creates a huge opportunity, because people who are looking to get divorced want to get divorced, so they want their process to move. The possibility of using mediators or arbitrators or sometimes both is now looked at as a welcome opportunity, and it's becoming much more mainstream than it used to be because it's a faster way to get cases done.

It allows for, at least through the mediation process of it, a more cooperative approach to getting divorced, and helps parties take some of the bite out of the litigation process by going through that.

But ultimately if we can't resolve it through mediation and there is an arbitration process that happens, people feel like they got their day in court without actually being in court. Because evidence is presented and hearings are heard, witnesses testify, and a decision is made.

Judge Lihotz: The benefit of this is the lawyers and the parties can choose who that person is. So it's not as if the person is just assigned to them and they're stuck with the result; they choose someone who they think has the qualifications and the experience to do the work that's necessary in their particular case.

The second is that mediation has the benefit of actually involving the parties. The parties get to participate a lot and explain their position and why it's important and why certain things should happen and not happen, and the mediator working with the parties can help creatively come up with a solution that the court could never order.

Arbitration can also be a little more flexible but it's a little more informal, and the process can be expedited because the parties can agree, for example, that they're not going to have a formal presentation of evidence.

The arbitration agreement actually states how long the arbitrator has to get the determination out. For most of them it's 30 days, sometimes it can be 45.

If you tried your case in the court — and this has happened — it takes months and months and months and months to get the judge to finish the opinion and get you the result. Where you know in your arbitration agreement once the case is closed and once the final submissions are presented to the arbitrator, that that result is going to happen in 30, 45, maybe at most 60 days.

The last benefit is an arbitrator can schedule a matter and say, "OK, you have me for the next five days. I'll get this case finished."

What are potential drawbacks of addressing these cases out of court for clients?

Judge Lihotz: Sometimes the parties view the process a little too informally.

If you go to court and you don't like what the judge orders, you think the judge made a mistake, factual mistakes or legal mistakes, then you can file an appeal.

If it's a binding arbitration, there are limits, statutory limits, for how an appeal could happen. It's available, but your agreement to arbitrate has to lay out in the very beginning what's going to happen, how it's going to happen, and what the parties agree to.

Zane: From a mediation perspective, litigants like it because they feel a little bit more in control of the process.

The con is, both parties have to be committed to it. Because mediation is only as good as the people who are participating.

How has this shift changed the way family law is practiced from the attorney perspective?

Zane: I don't know if this changes the way we're practicing law. Obviously it changes the setting where we're practicing law. But family law has to be very client-focused, and most attorneys, I will say, are mediation- and arbitration-friendly and are looking for ways to resolve cases as opposed to prolong them because there's no benefit to us in holding a case up for two years.

It is a different mindset, because whereas you're going into litigation and you're in an adversarial setting, mediation is a cooperative setting. So people need to be able to compromise and work towards a resolution that benefits them.

Through the arbitration, obviously, if we have to try a case through arbitration, it lets you put your litigator hat back on, but I will say it is much more focused and beneficial, because as Judge Lihotz just said, an arbitrator has the ability to say, "I'm going to do this this week," and for trial lawyers, we don't get that benefit in family court.

--Editing by Alex Hubbard.

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