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Kansas House Committee on Judiciary
Representative Fred Patton, Chair

RE: 2022 HB 2496: Uniform Family Law Arbitration Act

Hearing Date: March 9, 2020

TESTIMONY OF RONALD W. NELSON SUPPORTING HB2496

Chairman Patton and Members of the Committee:

I am a family law attorney in Johnson County. I have practiced family law in Johnson County and surrounding areas for over 30 years. My practice is focused in helping clients work their way through complex family law matters, including divorce, determination of parentage, and child custody matters in which parenting time and third party visitation is the primary issue. I represent both mothers and fathers in and out of court trying to help my clients through one of the most difficult and emotionally trying times of their lives. Although I am a family law trial attorney, I never try to go to court. Everything that I do for my clients is aimed at trying to help them avoid those difficult, expensive, and almost never satisfying trips into court. Sometimes it's necessary; but I try to impress on my clients that going to court is almost always the last choice.

But one of the additional difficulties families face in Kansas courts – in fact, throughout the United States – is that those families will often have their cases heard by judges without any specialized knowledge, training, or experience in areas that effect families going through separation and emotional trauma. Too often, families

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end up in front of a judge who, as a lawyer, focused her or his practice on an area of special interest at that time – intending to provide that expertise to hearing and deciding cases involving issues on that area when becoming a judge. That doesn't usually happen. Instead, judges are usually assigned to general dockets in which that judge hears criminal and civil cases, misdemeanor and felony crimes, business disputes, disputes between neighbors, contract disputes and breaches, collection on debts, evictions and foreclosures, automobile accidents, product liability claims, and many other kinds and types of matters that usually deal with litigants dealing with arms-length transactions in which they probably never previously had any contact or after which they won't have to again interact.

But family law cases are different. Family law involves litigants who have often had long and deeply intimate connections with one another. Although many cases – upwards of 80% – are resolved by the parties without having to involve a judge in deciding disputes, many others involve extremely complex, detailed issues that may require special expertise, knowledge, experience, and awareness that most trial court judges don't have (and frankly don't want to have to deal). Many lawyers will talk about how they never wanted to deal with family law cases – referring them out to lawyers who focus on family law practice – because of the high emotion, high conflict, detailed interactions, and complex law that is specific to family law. And these lawyers are the pool from which trial court judges are drawn.

Kansas has long had as part of its law provisions of the Uniform Arbitration Act – recently adopting the provisions of the Revised Uniform Arbitration Act (2000) in 2018. But issues involved in commercial litigation and commercial disputes vary dramatically from the issues that need to be addressed in family law cases as mentioned and, in addition, family law matters deal with trying to protect vulnerable children and adults, along with issues of emotional, physical, and financial abuse with family law decisions often needing to be revisited and revised unlike those matters that squarely fit into the terms of the Uniform Arbitration Act. Additionally, commercial arbitration does not allow an arbitrator to rule on substantive legal issues while in family law cases, an arbiter is called upon by the parties to make written findings that involve interpretation of broad legal principles, jurisdictional mandates, and ongoing matters that may constantly change because it deals with children's care, support, medical and psychological needs, and other issues that may stretch for decades. Unlike the finality contemplated for commercial disputes, family law matters involve a dynamic and evolving family relationship that needs a special kind of law instead of one meant for arms-length transactions. That is where the Uniform Family Law Arbitration Act comes in and that is why I – and other lawyers who focus

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our practices in family law – strongly support the enactment of HB2496 with the other proponents of this bill.

As pointed out in the testimony of other proponents, the Family Law Arbitration Act allows disputants to choose a person who has particular knowledge and expertise in the issues over which they disagree instead of random assignment to a judge who may not have any particular interest or affinity to that issue. With their ability to choose an arbiter that the disputants trust, their faith in the outcome will in all likelihood be higher. With faith that they are choosing a person who has special knowledge and expertise, the court system itself is likely to be relieved of some cases that keep coming back to one after another judge who is reassigned or has changed dockets.



Ronald W. Nelson