

Los Angeles Lawyer

A Remedy for Our Overcrowded Civil Courts

It is time to require the use of binding arbitration to resolve most civil disputes

BY LEE KANON ALPERT

The civil court system is not working. Individuals and businesses filing civil complaints still frequently wait years before they have their day in court. Equally important, as the report of the Los Angeles County Bar Association Blue Ribbon Commission on Superior Court Improvement documents, the system is not serving the needs of those it was intended to help. Reforming the superior court is long overdue, but perhaps it is time to think of more sweeping change. We need to consider whether a constitutional amendment or statute should be passed that would require the use of mandatory binding arbitration to resolve a majority of civil disputes.

To illustrate the need for mandatory binding arbitration in civil cases, consider typical real estate and construction disputes. In soured real estate deals, disputes usually arise during the escrow period when a seller attempts to back out of the purchase or the buyer makes additional demands on the seller. These disputes can grow into full-blown specific-performance lawsuits that easily take a year or more to resolve. Meanwhile, the property sits vacant, usually unattended and losing money. Invariably, such real estate disputes involve clear-cut issues that mandatory arbitration could easily resolve, usually within 90 days.

In construction disputes, time delays are equally deadly. If a dispute idles construction for any length of time, the entire project is in jeopardy. Both sides in the dispute (usually the developer and contractor or developer and lender) normally want to see the project completed as soon as possible in order to receive payment for their work or a return on their investment. As a court case drags on, all hope that a project can be completed on time and profitably vanishes. Mandatory arbitration could resolve the issues in months rather than years.

A speedier resolution to a dispute is not the only compelling argument for mandatory binding arbitration of civil cases. Increased confidence that the dispute will be heard by a fair and competent adjudicator is another. Judges, like members of other professions, have different levels of competency and expertise. While most judges are highly skilled, some are appointed solely for political reasons, while others may be elected because they are the lesser of two evils. As the Blue Ribbon Commission report indicates, litigators complain that complex litigation too often is assigned to the courtroom of an inexperienced or less competent jurist.

Crafting a New Law

Any law that requires mandatory, binding arbitration would necessarily (for constitutional, statutory, or practical reasons) exclude certain types of matters that should remain within the traditional judiciary system. Criminal cases, where defendants have a right to a jury trial and other appellate rights and freedoms, must always be

tried in court. It would be economically difficult to justify pulling traffic violations and civil misdemeanor cases from the court dockets. Child custody cases, where sensitive matters must be carefully monitored and reviewed by the state, should also remain within the court system.

That still leaves a tremendous number of civil disputes in which mandatory arbitration can do a better job than the current system. A mutually agreed upon arbitrator should not only be familiar with the legal aspects of the dispute but would often have expertise in the industry in which the dispute occurs. Industry-specific knowledge is invaluable in understanding the facts of a case and rendering a decision. This expertise is not always available from overworked judges who are required to hear a diversity of cases.

One criticism of ADR is that only the rich can afford it. This is simply not true. Parties in civil cases already incur large legal bills to try their cases in court. By resolving cases faster than through traditional methods, binding arbitration would lower legal costs, thus making access to the legal system more affordable for the less well-to-do.

Before considering whether mandatory arbitration would sacrifice due process for the sake of efficiency, remember that due process is being compromised now. We are at a crossroads where

we must decide how to reduce the number of cases clogging our legal system. California's population is increasing, the number of civil lawsuits is mushrooming (and is already undoing the progress made by fast track), marriages (and thus divorces) are on the rise, and yet the state has no policy to address the growing judicial needs of the population. We can stretch our resources only so far. We have too many litigants and too few judicial officers. If we don't modify the necessary constitutional and legislative provisions and incorporate mandatory arbitration into the judicial system, our courts will become gridlocked and the quality of justice will continue to deteriorate.

We have the opportunity to ease the burden on our court system while improving the public's ability to receive a fair and speedy resolution to civil disputes. If we act now, the judicial system will survive. If we wait much longer, it will be thrown into crisis. ■



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