

Sad State of County Court System Bolsters Arbitration

BY: WILL CARLESS ([HTTP://VOICEOFSANDIEGO.ORG/AUTHOR/WILLCARLESS/](http://voiceofsandiego.org/author/willcarless/))
25, 2013 | COMMENTS (3)

CONNECT

JUNE
Will Carless

Send an email

(mailto:will.carless@voiceofsandiego.org)



Photo by Sam Hodgson

A public defender looks over a case before holding homeless court at the Veterans Village of San Diego.

San Diego's civil court system is in a sad state, according to a report issued last week (<http://voiceofsandiego.org/wp-content/uploads/2013/06/CFAC-Annual-Report-6-7-2013RS.pdf>) by the San Diego County Bar Association.

Routine court hearings, once held within a few weeks, now take six months or more to schedule, the report found. Businesses can't quickly enforce contracts or fight unfair competition cases, it says, and family courts have been hit especially hard, so couples trying to resolve custody issues must now wait weeks for an initial appointment.

The impact of years of state budget cuts on the court system has been cited as one of the primary factors pushing the recent surge in the use of private arbitration to settle legal disputes in California. Last week's report backs up claims (<http://voiceofsandiego.org/2013/05/30/dont-understate-the-advantages-of-arbitration/>) that the local court system has become increasingly overburdened, highlighting some of the touted benefits of arbitration.

We examined the private world of arbitration in this series last month

(<http://voiceofsandiego.org/category/arbitration/>). Critics charge that arbitration is inherently biased against consumers (<http://voiceofsandiego.org/2013/05/20/justice-for-sale-part-one-arbitration-purgatory/>); arbitration providers have long ignored state transparency laws (<http://voiceofsandiego.org/2013/05/23/justice-for-sale-part-two-ignoring-the-law/>). The U.S. Supreme Court issued a game-changing 2011 decision that upheld the use of arbitration over class action lawsuits (<http://voiceofsandiego.org/2013/05/28/justice-for-sale-part-3-the-war-on-consumer-class-actions/>).

USD Law Professor Orly Lobel penned this op-ed (<http://voiceofsandiego.org/2013/05/30/dont-understate-the-advantages-of-arbitration/>) about the benefits of arbitration over the court system. Here's a snippet from Lobel's piece:

Civil litigation is heavily backlogged. Arbitration can usually be scheduled much sooner than a trial and will normally be speedier and cheaper. Agreeing to arbitrate a statutory claim is not the same as forgoing substantive legal rights — rather it allows the parties to agree on a different forum.

Going by the Bar Association's report, Lobel may have understated just how bad the civil court system has become in San Diego and elsewhere in California. Here are just a few of the claims made in the report:

- 46 courthouses in 18 California counties have been closed.
- The fiscal year 2012-13 budget calls for closing 20 courtrooms in San Diego County by June 2013, reducing the number of trial courtrooms in the county by 13 percent.
- All civil business offices in the East County, and South County have been consolidated into the Central Division downtown.
- In fiscal year 2012-13, the county's court workforce was reduced by 170 full-time positions, and remaining staff take a whopping 24 unpaid furlough days a year.

The report says the impact of these cuts has been significant. In its final section, titled "Real world impacts of court funding cuts on San Diegans," the report lays out some examples of how these cuts have hit home. Here's a snippet:

Business A is a small business which routinely extends credit to its customers in order to conduct its business. However, if those customers default on their payment obligations, Business A's "bottom line" and cash flow is substantially affected.

When it then institutes legal action in the San Diego trial courts to recover on those defaulted customer accounts, most of those legal suits are uncontested and proceed to the entry of a default in Business A's favor. However, because staff at the courts is substantially reduced due to continuing budget cuts, the entry of default judgments takes five to six months to process.

If there are any perceived problems with the documents submitted to support those requested default judgments, Business A is facing another five to six month delay before a collectible default judgment can be finalized. Additionally, once that process has concluded, the issuing of writs of execution now take an additional four to five months to process.

Consequently, by the time Business A successfully seeks and obtains a legal remedy, obtains a default judgment, and is in a position to proceed with collecting the amount the court had awarded, nearly a year has passed and the judgment debtor is either out of business or all of its assets have long been dissipated. Accordingly, Business A cannot afford to conduct business in San Diego, as it cannot be assured that it can enforce customer contracts or seek timely legal redress where those contracts are breached.

Jon R. Williams, who helped write the report, said that despite the problems in the judicial system, county courts don't currently have a backlog of trials. Cases that require pre-trial hearings and other "law-in-motion matters" are being held up significantly, he said, which gives ammunition to proponents of arbitration who argue that it's a quicker and cheaper alternative to the courts.

"Historically, we have seen that people who want to tilt the playing field in their favor will use delay in the trial courts as a justification for that," he said. "It has less resonance where cases get to trial efficiently and quickly as they had up until this latest round of five years of budget cuts."

Chuck Dick, a member of the Bar Association's Court Funding Action Committee, said there's no hard data to show the impact of the cuts, but he said more cases are bound to be pushed toward arbitration as a result of the delays.

"Some number of litigants will look at the choice of arbitration and the court system today and may very well opt to go to arbitration

because they don't want to deal with the inordinate delays that lead up to trial," Dick said.

Voice of San Diego (<http://voiceofsandiego.org>) is a nonprofit that depends on you, our readers. Please donate (<http://www.voiceofsandiego.org/donate/>) to keep the service strong. Click here (http://www.voiceofsandiego.org/support_us/about_us/#funding) to find out more about our supporters and how we operate independently.

Value investigative reporting? Support it.

Donate Now. (<https://co.clickandpledge.com/sp/d1/default.aspx?wid=63596>)



Will Carless (<http://voiceofsandiego.org/author/willcarless/>)



Will Carless is an investigative reporter at Voice of San Diego currently focused on local education. You can reach him at will.carless@voiceofsandiego.org or 619.550.5670.

12
Comments

296
Posts

Login (<http://voiceofsandiego.org/sign-in-sign-up/>)



