

Officials Dispute State Report On Mandatory Arbitration

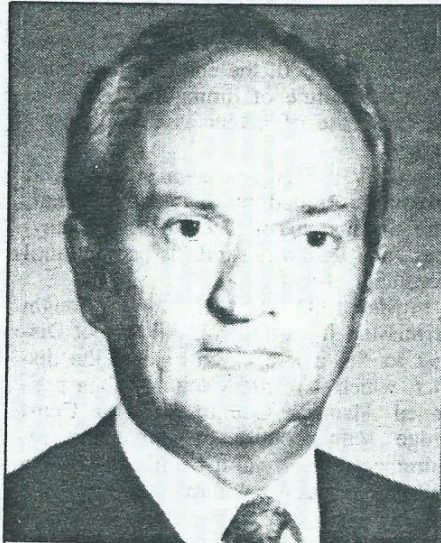
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A report by the state legislative analyst questioning the value of judicially mandated arbitration is being met with skepticism by county judicial officials who support mediation programs.

In an annual report issued last week on state reimbursement for mandated programs such as judicial arbitration, the Legislature's principal fiscal analyst concluded that state-mandated local compliance "has not achieved results consistent with the Legislature's intent."

Based on "the available evidence," the analyst concluded that the county programs "are not worth the cost to the state." Judicially mandated arbitration, which cost the state \$6.27 million in fiscal 1988, has not achieved the Legislature's objective of reducing court costs and congestion, the analyst said.

Meanwhile, because of a legislative tug-of-war over funding for arbitration, the counties had no state funding for arbitration in the first six months of 1988.



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CLAUDE PERASSO: "Obviously, arbitration is cost-effective."

They paid for those programs out of their own budgets.

"I don't know of a county that has stopped mandating arbitration, and I'd be

in a position to know," said Stan Colfts, assistant director of court services for the California Administrative Office of the Courts. "The counties think that arbitration is worthwhile."

The 1978 legislative mandate required superior, municipal and justice courts to submit to arbitration in specified civil cases involving less than \$25,000 (\$50,000 as of Jan. 1) per plaintiff. According to the analyst, the expense of judicial arbitration jumped to \$6.27 million this year from \$4 million in 1987 and \$2.5 million in 1980.

San Francisco County Superior Court Presiding Judge Claude Perasso also disputed the analyst's conclusion. "Obviously, arbitration is cost-effective," Perasso said. "The fee that arbitrators get is *de minimis*."

"If they settle one case a year, it's effective. I cannot comprehend anyone saying it's not cost-effective. To try one case vs. the \$150 a day [cost of the arbitrator] — there's no comparison."

The total estimated daily cost of operations in superior court per judge is

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\$2,698 for fiscal 1987, according to the Judicial Council.

Perasso indicated that the San Francisco court would be willing to go again to the county's Board of Supervisors to seek funding for arbitration if the state stops paying for it.

"Sure. Absolutely," he said. "Because it is cost-effective. However, in these times, the [budget] problems are obvious."

If the Legislature follows the analyst's recommendation, counties that chose to participate in the recently enacted Trial Court Funding Act program could fund judicial arbitration through judicial block grants, which begin Jan. 1, 1989.

But counties that did not opt into that program would have to find county funds if they choose to maintain an arbitration program. Counties have until Aug. 1 to make their decisions. So far, only rural Modoc County has announced it will join the court funding program.

Assembly Speaker Willie Brown has introduced a bill to extend the deadline to Sept. 1 to join the program.

If the Legislature ignores the analyst's recommendation and leaves the law untouched, counties will be required to operate arbitration programs. Whether the county is reimbursed for the costs of the program will depend on whether the county has opted to join the Trial Court Funding Act.

If the county joins, it must turn over court revenues to the state in exchange for a state block grant based on the number of judges in the county.

The counties are free to use the block grant for any court program they wish. By joining the program, counties waive additional compensation for mandated programs, including arbitration.

Opting to participate in trial court funding also binds the counties to continue operating such mandatory programs at the same levels they established in fiscal 1987.

On the other hand, counties that do not opt to join the program will be reimbursed for the costs of mandatory arbitration, assuming that lawmakers take no action in response to the legislative analyst's suggestion.

The analyst's recommendation, which was part of an annual report on state-mandated programs, drew mostly negative reactions.

Assembly Speaker Willie Brown's top aide, Frank Russo, had not seen the report, but he had an opinion on it.

"That conclusion is inconsistent with what I know and my experience as a lawyer," Russo said. "Arbitration is cost-effective in reducing the costs of litigation."

San Mateo County Superior Court Judge Gene McDonald, president of the California Judges Association, who also hadn't seen the report by Friday, speculated that the analysis was based on fiscal considerations — particularly state responsibility for court expenses — rather than on effectiveness.



STAN COLLIS: "The counties think that arbitration is worthwhile."

"My impression as a trial judge is that it is very effective," McDonald said. In San Mateo County, he said, "very few" cases that have gone to arbitration have returned for trial. And, if they did, they were relatively easy to settle because the issues already had been given an objective review, he said.

"The garden-variety, bread-and-butter trial was a whiplash case," he said. "[Now] those cases simply don't get to trial. They go to arbitration instead."

Cases that do go to trial, he added, tend to require more time.

State Judicial Council and judges association representatives strongly supported arbitration as a means to reduce court congestion.

"Certainly, the courts think [arbitration] is a good thing," said David Halperin, a senior staff attorney with the Judicial Council, the policy-making body for the state's courts. "The superior courts definitely remain very enthusiastic about the arbitration program and were very pleased when the limit went up to \$50,000."

Judicial Council spokeswoman Lynn Holton cited a 1983 council report that concluded that "arbitration was a valuable dispute resolution program and is cost-effective."

But Laura Carter, who helped research the legislative analyst's report, said her office's position on state-funded arbitration is not new and has the support of the state Department of Finance. State Department of Finance court data showed that the arbitration program had no significant impact on settlement rates, Carter said.

"The legislative analyst position is nothing new," said William Davis, director of the Administrative Office of the Courts. "It's an ongoing position . . . The savings really accrue to those who get their cases resolved earlier. It's not a hard-dollar cost savings that shows up in the number of courtrooms, number of judges or number of staff because the demand for courtrooms keeps going up."