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An Analysis of the Bakersfield Municipal Courts' Mandatory
Civil Arbitration Program

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Institute for Court Management
Court Executive Development Program
Phase III Project
May 1996

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Acknowledgements

I would like to acknowledge the love and support of Gene Cates and my parents who encouraged me to complete this study, in spite of the many personal challenges I have faced since Phase II, and of course, Dan Straub and Tom Diggs for taking the time to listen and offer encouragement throughout this program.

ABSTRACT

The purpose of this study is to analyze the mandatory civil arbitration program in the Bakersfield Municipal Court (BMC). The significance of this analysis for the court is to determine if 1) mandatory arbitration is effective in avoiding the delay and the expense of litigating civil cases in the courts, and 2) the program warrants the costs (\$150 a referral).

The goals of the mandatory arbitration program being analyzed are to reduce litigant costs, increase the pace of case disposition, and improve judicial economy. To conduct the analysis for this study, data was gathered from all cases referred to mandatory arbitration in the fiscal year 1993-94. Arbitration outcomes and case dispositions were analyzed, and these findings were compared to statistics from a California court with a widely recognized arbitration program, Ventura County.

After conducting this analysis, it appears that the program as currently structured is defeating the original intent of minimizing cost and delay in civil litigation. This observation is based on 1) the number of post-arbitration settlement conference interventions; 2) the lack of a firm trial de novo date; 3) the apparent use of the mandatory arbitration process by attorneys as a means to delay civil cases; and 4) the added time to the life of a civil case caused by the arbitration referral.

In conclusion, my analysis indicates that the mandatory civil arbitration program as it is currently structured in BMC is not as effective as it could be. I recommend that the arbitration program be restructured as follows: 1) eliminate post -arbitration settlement

intervention and other appearances, and set firm trial de novo dates; or 2) eliminate mandatory arbitration program and in its place, set a mandatory settlement conference prior to each civil trial.

Introduction

Civil and criminal caseloads have increased in California. No new Judgeships are being created and with the passage of "three strikes" legislation, the civil and criminal courts are being stretched to the limit. The term "three strikes" refers to legislation that mandates the sentencing of defendants with three felony convictions to a mandatory 25 years to life in state prison. As a consequence, many criminal defendants are opting for taking their chances on a trial for their third felony "strike", due to the mandatory sentence, if convicted. This phenomena is increasing the number of criminal trials heard in many jurisdictions, and since criminal statutory time frames give criminal cases priority over civil cases, many courts are "bumping" civil court proceedings from their dockets to allow for the additional criminal trials.

Efforts to manage cases more effectively are not new. In 1979, the California Legislature declared that the Courts should encourage or require the use of arbitration in the resolution of small civil claims, and in 1986 the Legislature enacted the Trial Court Delay Reduction Act. As a result, courts were required to manage criminal and civil cases from filing to disposition with major procedural events subject to uniform minimum time frames. As a result of burgeoning caseloads, a need for judicial/litigant economy, and the mandated "fast track" for civil cases, many courts in the State began looking at creative alternatives to settlement conferences and trials heard by the court. Of these alternatives, judicial arbitration is perhaps the most well known alternate dispute resolution technique.

To alleviate congestion in the civil court, the Bakersfield Municipal Court (BMC)

adopted the requirement that all contested civil matters be referred to mandatory arbitration (pursuant to Section 1141.11 of the California Civil Code of Procedure). The actual costs of the mandatory arbitration are paid by the County from the court's budget. Each referral to arbitration costs the court \$150.00. Matters are referred to arbitration in the Municipal Court by the Clerk when any of the following occurs:

1. The filing of a stipulation of the parties that the action can be arbitrated;
2. The filing of a Request to Set Trial with a time estimate of more than one day if the time estimate is not disputed by a counter memorandum;
3. The filing of a demand for jury trial; or
4. Order of the Court.

The exceptions to the arbitration program are:

1. Amount in controversy exceeds \$50,000 for each plaintiff;
2. Class actions;
3. Small claims actions;
4. Unlawful detainer actions
5. Family law act proceedings;
6. Any action found by the Court to be not amenable to arbitration on the ground that arbitration would not reduce the probable time and expense necessary to resolve the litigation.

The parties appoint an arbitrator from a list of three names provided by the court. The selected arbitrator contacts the parties to obtain a mutually agreeable date, time and place for the hearing, and notices the parties and the Court of the date. The Superior

Court has assumed coordination of the arbitration panel for both the Superior and Municipal Courts.

The arbitration shall be scheduled to take place not sooner than 35 days nor later than 60 days of the date of the appointment of the arbitrator. No continuances of the arbitration date over ninety days from the date of the appointment of the arbitrator are allowed except on the order of the Court. Within ninety days from the appointment of the arbitrator, the hearing is held and an award shall be filed by the arbitrator with the Court within 10 days after the conclusion of the arbitration hearing.

The arbitration award shall be final unless a request for trial de novo is filed by the parties within thirty days of the date the arbitrator files the award with the Court. Any party may elect to have a trial de novo, by court or jury, as to both law and facts. The trial shall be calendared, insofar as possible, so that the trial shall be given the same place on the active list as it had prior to arbitration, or shall receive priority on the next setting calendar.

However, pursuant to BMC local rules of court, upon setting of the trial de novo, a settlement conference shall be held thirty days prior to the trial. The theory behind this practice is that the arbitration award becomes the focal point of the settlement and the arbitrated case is therefore much more likely to settle. This post-arbitration settlement intervention is an uncommon technique and often leads to continuances of the trial date or the settlement conference.

The intent of mandatory arbitration in these matters is to reduce litigant costs and increase the pace of the litigation (i.e., case disposition). But is the BMC arbitration program meeting this intent? Is the mandated settlement conference prior to the trial de

novo a useful component of the court's arbitration program or does it impose an unnecessary layer of litigation? Granting post-arbitration conference intervention may erode confidence in the arbitration process and will almost certainly defeat the intent of arbitration programs to reduce litigant costs and increase the pace of case disposition. This study will examine this issue for BMC by reviewing cases that the court has referred to mandatory arbitration and comparing dispositions with Ventura County, which does not have mandatory post-arbitration settlement conferences.

Review of Literature

In my review of relevant literature pertaining to arbitration, I found that others have expressed the same concerns that I attempt to address in this study: does arbitration meet the goals of reducing delay and costs?

According to the California Arbitration Practice Guide, arbitration has many distinct advantages. The dispute is submitted to a third-party for resolution after a hearing in which each side presents evidence and argument of counsel. It allows the parties to select the decision-maker as well as the procedural rules governing resolution of their dispute. Proceedings occur at a place and at times mutually convenient to the parties and are not subject to delays imposed by a court's busy calendars. A client does not have to invest the amount of time in arbitration proceedings that is normally required in a court trial and they get their "day in court" without ever stepping into a courtroom. Because of the savings and efficiency of the arbitration system, counsel can represent more clients.

Among the disadvantages to arbitration is that discovery is limited, which may disadvantage a party needing compulsory process to obtain information to support their case. Furthermore, some critics argue that arbitrators often try to give something to each side, rather than rule strictly on the facts and law.

In spite of any disadvantages, arbitration has experienced great success in many courts in California. The success is in three areas: First, arbitration has afforded earlier case dispositions. Second, arbitration is affording parties and counsel a less expensive alternative for the disposition of cases. Third, arbitration is saving judicial time. There are

fewer trials and pretrial procedures for cases submitted to arbitration. The California Arbitration Guide found that only two to three percent of all cases (in the State of California) submitted to arbitration proceed through trial.

For example, in Los Angeles Superior Court, it has been estimated that arbitration has saved a year or more in the resolution of a case when compared to trial. In San Francisco, until a strong emphasis was placed on arbitration and settlement procedures reduced the case load by 40 percent, bottlenecks in civil cases made it not unusual for parties to prepare their cases for trial five times before going to court. With the implementation of "three strikes" legislation, the civil case crisis of the eighties is expected to return and may place a renewed emphasis on the use of arbitration.

Many courts find that arbitration is consumer oriented and saves taxpayers' money. According to the California Arbitration Practice Guide, the early resolution of civil matters saves the litigants money by reducing the number of days in court, witness and attorney fees. Arbitration is also saving Judicial time because the number of pre-trial hearings and trials are significantly reduced. Arbitration has also been a substantial factor in reducing case loads and cutting the time for trial. Finally, arbitration appears to be an equitable method for resolving small civil claims. The low volume of trial de novo requests throughout the State indicates that parties find arbitrator's awards to be fair.

However, other research findings on the effects of arbitration are less positive. Court Annexed Arbitration, a working paper prepared for the National Symposium on Court Connected Dispute Resolution Research, synthesized the findings of thirteen case studies of arbitration programs in Hawaii, Illinois, Colorado, New Jersey, North Carolina,

Washington D.C., and several Federal courts. This paper reports that the research regarding delay reduction and appeal rates as a result of arbitration is mixed. Further, the report states that research has not clearly shown that arbitration results in cost savings to litigants or the courts. So it appears that other courts across the Country may be facing the same dilemma as BMC, of trying to quantify the success or failure of their arbitration programs and whether or not to continue these programs.

Methodology

This study compares civil matters referred to arbitration in the Bakersfield Municipal court and in the Ventura County Municipal Court during the fiscal year 1993-1994 (July - June). The variables examined include the manner of case disposition, trial de novo requests and hearings. The time frame (1993-94) was selected because cases would be more likely to be adjudicated than more recent arbitration referrals. The study period could not be earlier than 1993, because in that year BMC reinstated its mandatory arbitration program, which had been eliminated previously due to budgetary constraints.

Of the 7,058 civil filings during this time frame, one hundred and nine matters were referred to arbitration. Each case referred was manually reviewed because at the time the data was collected, the court did not have an automated civil system. The manual data collection was conducted in the spring of 1995 by the author (with the help of the Civil Division gathering case files). Data collection lasted several weeks because of difficulties in locating files and tracking information missing from files.

Also as part of developing my analysis, I contacted the National Center for State Courts (NCSC) for more information regarding other court's programs and experiences with respect to mandatory arbitration. At the Center's recommendation, I contacted the Ventura County Courts, which has a very successful program. I also contacted the Kern County Bar Association's Municipal Courts' representative to obtain a local attorney's perspective on the court's mandatory arbitration program.

The comparison of BMC to Ventura County was very useful for several reasons: 1)

the Ventura arbitration program is widely regarded as very successful; 2) the court does not use post-arbitration intervention such as BMC's settlement conference; and 3) their arbitration statistics for the 1993-94 fiscal year were readily available and easily comparable to BMC's.

This study did not directly address differences in costs to litigants and the court or disposition times between cases referred to arbitration and similar cases not referred. This examination would have required establishing a control group of cases eligible for, but not referred to arbitration. This approach was not feasible due largely to time constraints, the difficulty of quantifying/measuring case processing costs, and the burdens of gathering and tracking these cases in a system that at the time was not automated.

Findings

As a basis for comparison, I reviewed the 1993-94 arbitration statistics from Ventura County Municipal Court and the Bakersfield Municipal Court. Although Ventura's number of arbitration referrals is higher than BMC's, other statistical measures of the arbitration caseload, such as the percentage of awards, and requests for trial de novo, are very similar across the two courts.

The major difference between the figures of the two courts is the portion of cases with matters addressed by the court post-arbitration. The percentage of cases requiring the court's attention, post-arbitration, is much smaller for Ventura County than BMC. Ventura County stands behind firm trial de novo dates and in conjunction with the potential financial disincentive of the trial de novo, this is very effective. Because of BMC's local rule, a mandatory settlement conference is held prior to the trial de novo. Although very few of BMC's arbitrated cases proceed to a trial de novo (1.8%), when post-arbitration settlement conferences are considered, 56.9% of the cases in which an arbitrator's award was filed have some sort of post-arbitration intervention hearing. In contrast, the proportion of cases requiring a post-arbitration intervention in Ventura County is 6.8% .

TABLE 1 - Bakersfield Municipal Court

	No. of Cases	Percentage
Total civil filings (including unlawful detainer)	7058	
General civil filings June 1993 - June 1994	3394	
Percentage of general civil filings referred to arbitration		3.2
Percentage of general civil filings disposed of (with no further hearings) after and arbitration award		0.4
Number of cases referred to mandatory arbitration	109	
Before arbitration		
Settlement prior to arbitration or no hearing	39	35.8
Arbitration canceled (Court approved, clerical error, etc.)	4	3.7
Cases still pending (no disposition)	1	0.9
Cases consolidated	2	1.8
No data (case files not found)	5	4.6
Post arbitration		
Arbitration award filed	58	53.2
Dismissal or judgement filed after arbitration (no further hearings after arbitration)	13	11.5
Request for trial de novo	39	35.8
Settlement conferences heard after trial de novo request	31	28.4
Trial de novos heard	2	1.8

TABLE 2 - Ventura County Municipal Court

	No. of Cases	Percentage
Civil filings (including unlawful detainer)	11229	
Referrals to arbitration	351	
Settled before arbitration award	122	34.8
Arbitrator's awards	218	62.1
Trial de novo requests	161	45.9
Trial de novos heard	24	6.8

Conclusions

The cost to the Bakersfield Municipal Court to arbitrate 58 cases at \$150 is \$8,700. This is not an inordinate amount of money, especially if the goals of mandatory arbitration are being achieved. But if litigant costs are not reduced, the pace of litigation is slowed, and confidence in the arbitration program is eroding, should the court continue the mandatory arbitration program in its current format? The statistics outlined in this study give rise to the concerns noted in the introduction: is BMC's arbitration program meeting the traditional goals of arbitration, that is, reducing litigant and court costs, and increasing the pace of civil litigation?

With a 56.9% post-arbitration settlement intervention rate, and an addition of at least 160 days (the statutory time frame for arbitration from referral to award) to the life of a civil case that is referred to mandatory arbitration, my recommendation is that the program be restructured. The number of post-arbitration interventions indicate that the intent of the program is defeated.

Traditionally, the economic risks of a trial de novo have been an incentive for litigants to accept the award of the arbitrator. Many parties in reality cannot afford to go to trial, and in the trial process, all savings of arbitration are lost. In addition to the costs of trial are the sanctions in the arbitration statutes (see below). If the party that requests the trial de novo does not have an outcome at trial that is more favorable than the arbitration award, the party may face the following sanctions:

- Payment of the arbitrator's fees
- Payment of the other parties' statutory costs incurred after arbitration

- Loss of any costs awarded by the arbitrator
- Payment for the other parties' reasonable costs of expert witnesses incurred after arbitration.

The disincentives that are the purpose of the sanctions are lost when parties are allowed to haggle over an arbitrator's award in a mandatory settlement conference rather than adhering to a firm trial de novo policy.

Effective case management procedures (firm trial dates, limited pre-trial hearings, uniform minimum time frames for case events and dispositions) also can discourage trials de novo and litigants using the arbitration process as a delay tactic. When cases referred to arbitration are allowed to be repeatedly continued, and post-arbitration hearings are continued and drag on, confidence in the arbitration process is eroded, disincentives for trial de novo are lost, litigant costs increase, and case management principles fall by the wayside. The delay reduction standards in California require that 100% of all civil cases should be disposed of within 24 months from filing. During the 1992-93 fiscal year, 1% of all BMC general civil cases were still pending after 24 months. During the 1993-94 fiscal year (the year the mandatory arbitration program resumed), this figure increased to 10%. Although many factors may have contributed to the rise (for example change in Judicial officers hearing civil matters and an increased number of continuances), I believe mandatory arbitration in a small way has contributed to it.

With the goal of the mandatory arbitration program at the Bakersfield Municipal Court being reduction of litigant costs and delay, it appears that the program as currently structured is defeating its original intent. This observation is based on:

- the large number of post-arbitration settlement conference interventions
- no firm trial de novo date
- an interview with the local Municipal Court State Bar representative, in which she stated that attorneys are routinely using the mandatory arbitration process as a means to delay civil cases
- the added time to the life of some civil cases as a result of the arbitration referral.

As previously stated, my recommendation in lieu of the program as currently structured, would be to eliminate the post-arbitration settlement conference intervention and follow the firm trial de novo dates as adopted by the Ventura County Courts, to restore the integrity of the program. If BMC's 56.9% post arbitration intervention hearing rate is compared to Ventura's 6.8% trial de novo rate, and if the firm trial de novo date were enforced at BMC, the court could potentially realize 50.1% decrease in post-arbitration hearings. The other alternative is the elimination of the program altogether and replace it with mandatory settlement conferences prior to trial.

The implications of the success of arbitration in other courts are clear for the Bakersfield Municipal Court. The court must find a way to structure the arbitration program based on other court's models to achieve a greater degree of success with the program.

If I had to do this study differently, (and had unlimited staffing resources and time) I would have contacted more courts throughout the state to compile such a model(s) for analysis and comparison to the existing arbitration program. I also would have taken the time to interview more local attorneys and litigants regarding the arbitration program, their satisfaction and any suggestions they may have to improve the program.

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Ventura County Superior and Municipal Courts. Ventura County Superior and Municipal Courts Multi-Door Court Dispute Resolution Programs, Ventura, 1993.

ATTORNEY FOR _____

ADDRESS _____

TELEPHONE _____

This Space For Court Use Only

BAKERSFIELD MUNICIPAL COURT DISTRICT
COUNTY OF KERN, STATE OF CALIFORNIA

VS.

Plaintiff(s)

Defendant(s)

No. _____

**MEMORANDUM
 TO SET CIVIL CASE FOR TRIAL**

1. Nature of action _____
2. Is Jury demanded _____ Time estimated for trial _____
3. What dates, if any, are NOT acceptable to you _____
4. Is court reporter or electronic recording requested? (Please specify.) _____
5. If a court reporter or electronic recording is selected, the following fees must be deposited with the Clerk at least 30 days before date of trial:

Court reporter:	1 Hr. to 1/2 Day (trial estimate) - \$177
Electronic recording:	" " - \$ 27
6. Is this case entitled to legal preference in setting? _____
7. (If Yes, state reasons citing section of the code or statute granting such preference.)
 The names, addresses and telephone numbers of attorneys for the parties or of parties appearing in person are:

For Plaintiff	For Defendant	For
---------------	---------------	-----

**NOTE: JURY FEES MUST BE DEPOSITED
 WITH THE CLERK AT LEAST 25 DAYS
 BEFORE DATE OF TRIAL.**

I certify that, to my knowledge this case is at issue.

(Must Be Signed by Attorney of Record)

Attorney(s) for _____

Set for _____ trial on _____, 19____ at _____

Notice mailed _____ By _____

APPENDIX B

Please mail all correspondence to:
Superior Court
1415 Truxtun Avenue
Bakersfield, CA 93301
Attn: Pamela Watson
Arbitration Coordinator
(805) 861-2164

**BAKERSFIELD MUNICIPAL COURT DISTRICT,
COUNTY OF KERN**

1215 Truxtun Avenue, Bakersfield, California 93301

)	CASE NO.
)	ARBITRATION NO.
Plaintiff (s))	
)	NOTICE OF SELECTION OF ARBITRATORS
)	PURSUANT TO RULE 1605
)	
vs.)	
)	
Defendant (s))	
)	
)	
)	

PLEASE INCLUDE ARBITRATION NO. ON ALL CORRESPONDENCE

TO THE ABOVE NAMED PARTIES AND THEIR ATTORNEY(S) OF RECORD:

You are hereby notified that pursuant to the:

- (x) Order of the Court
- () Stipulation Re Arbitration
- () Plaintiffs Election for Arbitration

The following names have been randomly selected from the Kern County Superior Court Arbitration Panel.

Pursuant to Rule 1605 of the California Rules of Court each side has (10) days from the date of mailing of this Notice to file a rejection, in writing, of no more than one name on the above list. If there are two or more parties on a side, the parties must join in the rejection of a single name.

Promptly on the expiration of (10) days from the date of mailing of this notice, the Arbitration Administrator shall appoint, at random, one of the persons on the list whose name was not rejected, if more than one name remains.

In lieu of rejecting names from the above list the parties may stipulate as to an arbitrator as provided in Rule 1602(b), whether or not the person selected is on the list.

DATED:

ARBITRATION ADMINISTRATOR

By _____
Deputy

PETER D. LEWIS, ARBITRATOR
1675 CHESTER AVE., 4TH FLOOR
BAKERSFIELD, CA 93301
(805) 635-3000

APPENDIX C

FILED

95 JUN 8 P 3: 20

SUPERIOR COURT OF CALIFORNIA, COUNTY OF KERN
1415 TRUXTON AVENUE, BAKERSFIELD, CALIFORNIA 93301

BY: _____ DEPUTY

CHRISTOPHER MARIN,

Plaintiff (s)

Case No. 117214

vs.

ENTERED

TINA ADAMS, FRANK ADAMS, et al.,

Defendant (s)

Arb. No. 3649
AWARD OF ARBITRATOR

The undersigned arbitrator designated pursuant to the stipulation of the parties herein, having been duly sworn and having heard the cause on May 16, 1995, and having considered the evidence of the parties, awards in full and final settlement of all claims submitted to arbitration under the Kern County Attorneys' Special Arbitration Plan as follows:

Check appropriate box:

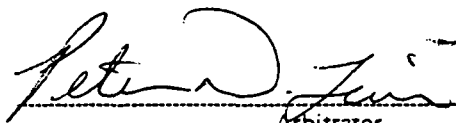
*

☒ Plaintiff shall recover from defendant (s) as damages the sum of \$ 14,114.35.

☒ Together with statutory costs of suit.
(NOTE: Statutory costs shall be awarded plaintiff only in the event recovery is \$2,500.00 or more.)

☐ The plaintiff's claim is denied. Defendant (s) is awarded statutory costs of suit.

DATED: June 7, 1995


PETER D. LEWIS
Arbitrator

*Medical \$2,898.35; Wages \$6,216.00; Gen. Damages \$5,000.00.

BAKERSFIELD MUNICIPAL COURT DISTRICT

STATE OF CALIFORNIA

County of Kern

AFFIDAVIT OF SERVICE BY MAILING

ss.

_____ being duly sworn, says,
that affiant is a citizen of the United States, over eighteen years of age, a resident of Kern County, and not a party to
the within cause, the title which appears in the foregoing MEMO TO SET; that affiant's (residence/business) address is

that on the _____ day of _____, 19_____, affiant served said notice upon the party
hereinafter mentioned by depositing a full, true and correct copy of said MEMO TO SET in the United States Postoffice
in said city addressed to each of said parties; that each person hereinafter named at (his or her) respective address, as
hereinafter given; that there is delivery service by United States mail at each place so addressed, and that there is regular
daily communication by mail between the place of mailing and each place so addressed. That the names and addresses
of the parties so served are as follows:

NAME

ADDRESS

I declare under penalty of perjury that the foregoing is true and correct.

Executed _____, 19_____, at _____ California.

(Affiant)

RECEIVED COPY OF THE FOREGOING NOTICE this _____ day of _____, 19_____.

Attorney _____ for _____