Alternative Dispute Resolution

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Abstract

While many state and federal courts have been experimenting with various forms of alternative dispute resolution in hope of saving money and speeding up case processing, empirical research has not yet born out the contention that ADR saves courts substantial amounts of money. Further, some critics charge that mandatory ADR is bad policy, claiming that it offers a lesser degree of justice and interferes with right to trial, and that in some cases ADR neutrals are poorly qualified. These objections may cause litigants to not participate in mandated ADR fully and contribute to the lack of demonstrable savings.

The key step now in devising effective, fair and economical ADR policies is research to provide clear empirical data on which to base decisions. One reason for the lack of evidence on cost savings may be that evaluating the cost effectiveness of ADR programs is technically very difficult. Generally, program evaluation require a test and control group to determine comparisons between the two, and lawsuits are too variable to be able to make valid comparisons.

Several alternatives to simply imposing mandatory ADR exist that may prove more economical and effective. One proposal is that courts sanction litigants who appeal the results of mandated ADR programs, but fail to win more at trial. Another proposal is that courts abstain from mandatory ADR, beyond the current early resolution conference process, but instead try to educate litigants regarding private ADR services that are available. Such voluntary programs seem to be much more effective than mandatory programs.

* This paper is one in a series of six papers in this volume on issues relating to reducing litigation costs. The other papers are*: What are the Costs of Litigation?*, *Discovery Reform*, *Local Rules*, *Using New Technologies*, and *Appeals*.