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### CONSUMER REDRESS THROUGH THE SMALL CLAIMS COURT: A PROPOSED MODEL CONSUMER JUSTICE ACT

BY

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Many critics in recent years have questioned the value of small claims courts<sup>1</sup> as a means of providing consumer redress.<sup>2</sup> These critics have generally maintained that small claims have failed to fulfill

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<sup>1</sup> The impetus for the American small claims court system can be traced back to the early years of the twentieth century when Roscoe Pound wrote an article urging the creation of an alternate mechanism for resolving small consumer disputes. See Pound, *The Administration of Justice in the Modern City*, 26 HARV. L. REV. 302, 315-321 (1913). See also R. SMITH, *JUSTICE AND THE POOR* ch.-VIII (3d ed. 1924). The first true small claims court in the United States was established in Kansas in 1918. See KAN. STAT. §§ 20-1301-20-1312. See generally Driscoll, *De Minimis Curat Lex—Small Claims Courts in New York City*, 2 FORDHAM URB. L.J. 479, 481 & n.9 (1974) [hereinafter cited as *De Minimis*]. Shortly thereafter, small claims courts were established in Cleveland and Chicago. See Dempsey, *Conciliation in the City of Cleveland*, 9 A.B.A.J. 749 (1923); Levine, *Conciliation Court of Cleveland*, 2 J. AM. JUD. SOC'Y 10 (1918); *Informal Procedure in Chicago*, 2 J. AM. JUD. SOC'Y 23 (1918). These courts soon spread throughout the country. A comprehensive bibliography detailing the early growth of the small claims court is found in Northrop, *Small Claims Courts and Conciliation Tribunals: A Bibliography*, 33 LAW LIB. J. 39 (1940); see also INSTITUTE OF JUDICIAL ADMINISTRATION, *SMALL CLAIMS COURTS IN THE UNITED STATES* (1955) & (Supp. 1959) [hereinafter cited as *IJA STUDY*].

<sup>2</sup> Critics have presented arguments that range from criticizing small claims courts as mere bill collection agencies for unscrupulous businessmen to charging that these courts are overly complicated and inaccessible to those for whom they were meant to serve. E.g., D. CAPLOVITZ, *THE POOR PAY MORE* 175 (1963) (small claims courts inaccessible to the poor); *De Minimis*, *supra* note 1, at 484-85, 501-04 (New York small claims courts dominated by corporations and small businesses; too many individual de-

their purported goals<sup>3</sup> of providing people—especially the poor—with a fair, inexpensive, speedy, and effective mechanism for resolving their grievances.<sup>4</sup> Due to the wide variety of procedures established for small claims courts in the various states,<sup>5</sup> the reasons for these perceived failures are not entirely clear. Several factors, however, seem to predominate.

One basic factor responsible for the failure of small claims courts to provide an effective tribunal for consumer redress is that they re-

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fendants suffer default judgments; too difficult to get a sheriff or marshal to help collect small judgments); Jones & Boyer, *Improving the Quality of Justice in the Marketplace: The Need for Better Consumer Remedies*, 40 GEO. WASH. L. REV. 357, 359-61 (1972) [hereinafter cited as Jones & Boyer] (small claims courts have become collection agencies for business; consumers have "incomplete or distorted knowledge" of their rights and duties; cost of litigation too high; small claims courts inaccessible to poor and uneducated); Stoller, *Small Claims Courts in Texas: Paradise Lost*, 47 TEX. L. REV. 448, 451-54 (1969) [hereinafter cited as *Paradise Lost*] (Texas small claims statute too broad in subject matter jurisdiction; small claims courts have become debt collection agencies; costs of litigation too high; small claims courts underutilized); Note, *Due Process Denied: Consumer Default Judgments in New York City*, 10 COLUM. J.L. & SOC. PROB. 370, 383-84, 389-90 (1974) (too many individual defendants suffer default judgments); Note, *Small Claims Courts and the Poor*, 42 S. CAL. L. REV. 493, 495-99, 504 (1969) (small claims court a "judicial collection agency" for retailers and utility companies; small claims court inaccessible; too many individual defendants suffer default judgments); *Special Project—Judicial Reform at the Lowest Level: A Model Statute for Small Claims Courts*, 28 VAN. L. REV. 711, 723-25 (1975) [hereinafter cited as *Special Project*] (small claims courts cater to general creditors and collection agencies; community does not receive adequate information about small claims procedures; too many default judgments; costs of litigation high). See also Willner, *More Justice Under Law*, 55 ORE. L. REV. 183 (1976); Note, *Small Claims Courts: Justice for the Poor or Convenience for Businessmen*, 1 PEPPERDINE L. REV. 171 (1973); Note, *Small Claims Courts as Collection Agencies*, 4 STAN. L. REV. 237 (1952).

Some of the criticisms provide the basis upon which the system should be restructured. One critic notes:

The small claims court concept has much to recommend it: simplified pleadings, informal procedures, and a substantial reduction in the expense and delay of ordinary litigation. These features should be preserved where they are compatible with guarantees that both parties will have a fair hearing. Economy and efficiency of operations, however, desirable though they may be, cannot justify a wholesale denial of justice to low-income litigants. The expense to society of such continual indifference goes far beyond the dollars-and-cents cost of court administration. The price tag of the consequences of accumulated injustice—an accumulation to which small claims courts must be added—may prove in the long run to be exceedingly high.

Note, *The Persecution and Intimidation of the Low Income Litigant as Performed by the Small Claims Court in California*, 21 STAN. L. REV. 1657, 1684 (1969).

<sup>3</sup> Dean Pound described the goals of small claims courts to be a mechanism "to provide for disposing quickly, inexpensively, and justly of the litigation of the poor . . . ." R. POUND, *ORGANIZATION OF COURTS* 260 (1940).

<sup>4</sup> E.g., Wright, *The Courts Have Failed the Poor*, N.Y. Times, March 9, 1969, § 6 (Magazine), at 102.

<sup>5</sup> A small claims court system exists formally in thirty-six states and the District of Columbia. Other states utilize informal procedures or allow justices of the peace to handle small claims. A study surveying the small claims procedures for each state is provided in an appendix to this article [hereinafter referred to as APPENDIX].

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main relatively inaccessible to many complainants.<sup>6</sup> A number of states simply do not have formal small claims procedures.<sup>7</sup> Other states have a formal procedure but exclude many potential plaintiffs by centralizing the courts in the downtown areas of large cities.<sup>8</sup> Access to small claims courts is further restricted because most of these courts are open only during the day on weekdays, when many potential plaintiffs must remain at work.<sup>9</sup>

The second criticism of small claims courts focuses on the factors inherent in the various enabling statutes which establish the small claims system in each state. In particular, it is maintained that jurisdictional limits which place a ceiling on the dollar amounts of claims that may be brought in the small claims courts remain too low<sup>10</sup> and available remedies too restricted<sup>11</sup> to permit redress of common but significant consumer grievances.<sup>12</sup> Furthermore, it is argued that court procedures are often too complex and cases too protracted to permit the expeditious resolution of grievances.<sup>13</sup>

Third a number of critics have claimed that the increasing costs

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<sup>6</sup> In 1972, the National Institute for Consumer Justice (NICJ) published a report summarizing its findings and recommendations as to the adequacy of existing mechanisms for resolving consumer disputes. In preparing its report, the NICJ sponsored several empirical studies to gather data on the efficacy of existing small claims court systems. A significant finding of these studies was that relative inaccessibility of a small claims court constituted a significant bar to potential consumer plaintiffs. NATIONAL INSTITUTE FOR CONSUMER JUSTICE, REPORT, REDRESS OF CONSUMER GRIEVANCES 13-15 (1972) [hereinafter cited as NICJ REPORT].

<sup>7</sup> See note 5 *supra*.

<sup>8</sup> NICJ REPORT, *supra* note 6, at 14.

<sup>9</sup> *Id.* A detailed study of the operation of the Philadelphia Municipal Court, which has jurisdiction of all small claims in the county of Philadelphia, also touches on this problem. Steadman & Rosenstein, "Small Claims" Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study, 121 U. PA. L. REV. 1309 (1973) [hereinafter cited as Steadman & Rosenstein]. The Philadelphia court requires the complaint to be filed in the Clerk's office which is open only during regular business hours. *Id.* at 1318-19.

<sup>10</sup> See generally *De Minimis*, *supra* note 1, at 488-90 NICJ REPORT, *supra* note 6, at 18. The District of Columbia provides an example of a low jurisdictional limit. The maximum claim that may be brought in the D.C. small claims court is \$150.00 D.C. CODE ENCYCL. ANN. § 11-1341 (1966).

<sup>11</sup> See generally Jones & Boyer, *supra* note 2, at 361-62, 367-68.

<sup>12</sup> A study of formal and informal small claims procedures in forty-two states revealed that the most common types of disputes that appeared before small claims tribunals involved consumer goods and services. SMALL CLAIMS STUDY GROUP, THE SMALL CLAIMS COURTS AND THE AMERICAN CONSUMER 141 (1972). The largest number of consumer-initiated actions involved suit against landlords for the return of security deposits. *Id.* at 152. A far greater number of suits, however, appear to be brought by businesses for collection of unpaid debts on retail installment purchases. See Note, *The California Small Claims Court*, 52 CALIF. L. REV. 876, 884 (1964)). See also Jones & Boyer, *supra* note 2, at 360. A study of the Philadelphia small claims court indicated that the largest single category of consumer-initiated suits involved disputes arising out of home improvements and repairs (22% of the total). Complaints about unsatisfactory products (13%) and for return of rental security deposits (12%) were the next largest categories. See Steadman & Rosenstein, *supra* note 9, at 1327.

<sup>13</sup> E.g., *Toward the Informal Resolution of Consumer Disputes*, 27 RECORD A.B. CITY N.Y. 419 (1972).

of litigation—especially where an attorney must be hired—do not permit the inexpensive resolution of disputes. It is argued that few consumers can afford the filing fees, the service of process costs, or the time away from work necessary to press what may be a meritorious, but monetarily insignificant grievance.<sup>14</sup> Businesses and collection agencies, on the other hand, have been able to absorb the increased litigation costs by "grouping" their claims for expeditious disposition by an employee or collection attorney who is familiar with the local small claims practice. This ability to absorb the costs of litigation and to hire those familiar with the practice has hastened the growing domination of small claims courts by businesses to the relative exclusion of the individual consumer.<sup>15</sup> This trend has led to the recurrent criticism that small claims courts have become judicial collection agencies for general creditors.<sup>16</sup>

Despite this large body of academic criticism, there has been a growing movement to improve the small claims courts as a dispute solving mechanism.<sup>17</sup> This "movement" takes the position that the small claims courts still possess "considerable potential for the redress of injuries done to individual consumers and as a stimulus to potential defendants to improve other means of redress."<sup>18</sup> This article then, as an outgrowth of this movement, will set forth a "Model Consumer Justice Act" as means of fulfilling that potential. This Act proposes the establishment in each state of a model small claims system designed to produce better and more accessible justice. It is intended to achieve the previously unrealized promise of the small claims courts by maximizing the use of a forum in which grievances can be swiftly and fairly resolved with minimum expense to the parties.

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An Act to establish an accessible, convenient and informal small claims court in which disputes can be resolved and redressed inexpensively, expeditiously, fairly and effectively.

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<sup>14</sup> E.g., Jones & Boyer, *supra* note 2, at 360; *Special Project*, *supra* note 2, at 725; NICJ REPORT, *supra* note 6, at 20, 23.

<sup>15</sup> E.g., Jones & Boyer, *supra* note 2, at 359-60; *Paradise Lost*, *supra* note 2, at 452; *Special Project*, *supra* note 2, at 723-25.

<sup>16</sup> *Id.*

<sup>17</sup> The National Institute of Consumer Justice has proposed twenty-one recommendations which are directed mainly towards increasing the accessibility of small claims courts and encouraging individual consumers to utilize the small claims procedures. NICJ REPORT, *supra* note 6, at 13-25. See also CONSUMER COUNCIL, JUSTICE OUT OF REACH: A CASE FOR SMALL CLAIMS COURTS (1970) (an English Study of American small claims courts); SMALL CLAIMS STUDY GROUP, CENTER FOR AUTO SAFETY, LITTLE INJUSTICES: SMALL CLAIMS COURTS AND THE AMERICAN CONSUMER (1972) [hereinafter cited as NADER STUDY]; *Special Project*, *supra* note 2, at 727-29, 749-94.

<sup>18</sup> NICJ REPORT, *supra* note 6, at 13. The NICJ also included within its report recommendations concerning business sponsored mechanisms such as mediation and arbitration as a means for resolving consumer disputes. *Id.* at 1-12.

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### PART I

#### TITLE, CONSTRUCTION, PURPOSES

##### TITLE

SECTION 1.1. This Act shall be known as the Consumer Justice Act.

##### RULES OF CONSTRUCTION; PURPOSES

SECTION 1.2. (a) This Act shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this Act are to—

(1) establish an accessible, convenient, and informal forum in the small claims court in which the small claims of all complainants can be resolved and redressed inexpensively, expeditiously, fairly and effectively, and

(2) maximize the use of the small claims court by publicizing its availability and removing those deterrents confronting prospective litigants from prosecuting or defending a claim therein.

*Comment:* The Model Act seeks to encourage consumers with meritorious grievances to utilize the simple and informal small claims procedure. To that end, Part I sets forth a basic philosophy that the Act is to be liberally construed in a manner best calculated to fulfill its underlying purposes and policies. To illustrate, pleading and practice requirements are not intended to be construed in such a manner as to present obstacles to obtaining fast and efficient redress; rather they are simply channeling devices to expedite consumer justice. In this regard, it is intended that claimants will be spared complex or confusing forms and procedures requiring legal expertise, and instead may pursue their claims in the fastest and simplest manner possible.

To promote the utility of the small claims court system, states are encouraged to take independent steps to publicize the availability of the small claims procedure. Booklets and pamphlets should be systematically distributed and publicity campaigns continually undertaken to educate the general public. By these steps, it is expected that a significant number of citizens will seek to resolve grievances that would otherwise have remained unredressed.<sup>19</sup>

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<sup>19</sup> The NICJ conducted a telephone survey in Boston and found that 75% of the persons contacted did not know of the existence of small claims courts. *Id.* at 13. The NICJ recommended radio and television announcements and newspaper columns to publicize the presence and functions of small claims courts. *Id.* Other commentators have similarly noted that many citizens have incomplete or distorted knowledge of their legal rights and duties and a complete lack of knowledge that the informal tribunal of small claims court exists. *See, e.g., Jones & Boyer, supra* note 2, at 360.

PART II  
COURT ESTABLISHMENT; GENERAL ADMINISTRATION  
COURT ESTABLISHMENT

SECTION 2.1. (a) There is hereby established in each county a small claims court as a separate division of either the county civil court of general jurisdiction or a civil municipal court situated within the county.

(b) The administrative judge of the civil court of which the small claims court is part shall implement the establishment of the small claims court and shall appoint a judge from such court to serve as the administrative judge of the small claims court.

(c) The administrative judge of the small claims court shall administer the court as provided by the provisions of this Act, including the assignment of civil court judges to the small claims court on any reasonable basis he deems appropriate.

*Comment:* To effectuate the purpose and policy of the Model Act to provide an accessible and convenient tribunal for the resolution of consumer grievances, section 2.1(a) of the Model Bill is a statutory mandate creating small claims courts throughout the state. These courts would be established in each county as a separate division of either the county civil court of general jurisdiction or of a civil municipal court situated within the county.<sup>20</sup> The courts would remain within the state's existing judicial framework in order to benefit from the experience of the current personnel in the civil courts and to avoid the difficulty and expense of creating a completely separate court system.<sup>21</sup>

Section 2.1(b) of the Act delegates the responsibility of actually implementing the establishment of the small claims court to the administrative judge of the civil court of which the small claims court is to be a part.<sup>22</sup> The administrative judge of the civil court is further required by section 2.1(b) to appoint a judge from the existing civil court to act as the administrative judge of the small claims court. Together these two judges are to work out the details of the actual court operations in a manner consistent with the provisions of the Act. This responsibility will include providing court space, personnel, as well as administering funds for the small claims court, along with whatever other administrative details are necessary for an efficient court system.

<sup>20</sup> This is the system in Philadelphia where the Philadelphia Municipal Court has jurisdiction for all small claims in the county. See Steadman & Rosenstein, *supra* note 9, at 1311-17.

<sup>21</sup> Other studies have likewise acknowledged the benefits to be derived from establishing the new small claims court system within the existing judicial framework. See NICJ REPORT, *supra* note 6, at 16; *Special Project*, *supra* note 2, at 750.

<sup>22</sup> Similar statutory systems have been adopted in other states. E.g., CAL. CIV. PROC. CODE § 117 (West 1972); NEB. REV. STAT. § 24-521 (1975); R.I. GEN. LAWS ANN. § 10-16-1 (1976 Supp.); TEX. REV. CIV. STAT. ANN. art. 2460a § 1 (Vernon 1971).

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If necessary, the administrative judges of the civil and small claims courts shall establish branch courts in those counties maintaining branch courts throughout the county or in those cities maintaining city courts throughout the city.

Section 2.1(c) of the Act is intended to give the administrative judge of the small claims court broad authority to "administer" the court. He may appoint judges to the court in any manner deemed appropriate, either for definite periods or on a rotating basis. Moreover, the administrative judge may assign regular civil court judges to sit in small claims court. This utilization of regular judges in such courts will enhance the legitimacy and authority of the court<sup>23</sup> and will provide an experienced, diversified pool of part-time, small claims court judges. Such a use of regular judges might be particularly appropriate during the transition period in which these courts are initially established.

### STATE SUPERVISORY AGENCIES; COMMUNITY ADVISORY PANELS

SECTION 2.2. (a) The governor shall name or establish an appropriate state body to—

(1) insure and oversee the implementation of the establishment of small claims courts throughout the state pursuant to Section 2.1, and

(2) oversee the operation of small claims courts once established.

(b) Pursuant to Section 2.2(a)(2), the state body shall establish community advisory panels in each county or municipality in which a small claims court is located.

(1) The community advisory panel shall be comprised of representative segments of the community.

(2) The duties of the community advisory panel shall include, but shall not be limited to—

(a) assisting the small claims court in the selection of arbitrators and mediators;

(b) promoting the use of the courts;

(c) serving as a liaison between the court and the community and the community and the state body establishing it;

(d) maintaining a continuing review of small claims court operations and filing an annual report relating thereto with the state body establishing it.

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<sup>23</sup> The NICJ concluded that although an "ideal" small claims court might be a separate "neighborhood court" employing people from the community, the small claims courts need "the legitimacy and authority that comes from being a part of the regular court system." NICJ REPORT, *supra* note 6, at 16.

*Comment:* The Model Act envisions a state supervisory agency whose task it would be to improve and to oversee the implementation of the small claims courts throughout the state. The Act also contemplates that this agency would oversee the courts' operations. This oversight function is to be facilitated through the operation of section 2.2(b), under which the agency must establish community advisory panels comprised of community representatives in each area where a court is located. The creation of a state agency which would in turn create community advisory panels is a novel idea in the administration of state small claims courts.<sup>24</sup> As with all local, appointed bodies this advisory panel is susceptible to unwanted political influences. However, this danger should be minimized by ensuring that the panel remain strictly advisory, and be divorced from the actual administration of the court. The utility of an advisory panel is in its ability to suggest reforms which would be purely local in character, such as ascertaining the best locations, the best days, or the best times for the individual community's small claims system. These panels then are designed to assist the small claims courts in the effectuation of the policies of the Act.

#### COURTHOUSE HOURS; LOCATION

SECTION 2.3. (a) The administrative judge of the small claims court shall provide that the court be open for the filing of claims and the adjudication of controversies during its regular working hours and during at least one evening a week and one Saturday morning a month

(b) Alternatively, the court shall insure that the court remain open for such purposes at such hours and days as will enable litigants to conveniently utilize it.

(c) As prescribed by the administrative judge of the small claims court, claims shall be filed and/or heard in the courthouse of the municipal or county court of which the small claims court is part or in a suitable and convenient community facility.

*Comment:* To increase the accessibility and convenience of the small claims courts to potential litigants, the Model Act envisions courthouse hours beyond regular working hours.<sup>25</sup> In this manner, claimants who might otherwise forego their legal rights because they cannot afford

<sup>24</sup> Although a few states have administrative agencies to oversee operation of the courts, apparently this has never included the establishment of community advisory panels. See APPENDIX, *supra* note 5.

<sup>25</sup> The NICJ study concluded that the hours a court was open was a significant factor in determining court use and thus recommended that the small claims court should be open at hours when the consumer plaintiff is not at work. NICJ REPORT, *supra* note 6, at 15. The New York City small claims procedure attempts to solve this problem, at least in part, by opening at 6:30 p.m. See NATIONAL INSTITUTE FOR CONSUMER JUSTICE, STAFF REPORT ON THE SMALL CLAIMS COURTS 678 (1972) [hereinafter cited as STAFF REPORT].



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to lose time from work to press minor claims<sup>26</sup> will be able to utilize the small claims procedure. Furthermore, individual defendants who may have hitherto been unwilling to contest small claims actions because of the inconvenience of attending court during working hours will be able to defend themselves instead of conceding through default.<sup>27</sup>

The Model Act does not, however, set forth an ideal scheme for courthouse hours. The Act simply prescribes at least one evening session a week and one Saturday morning a month. In other respects, the administrative judge of the small claims courts is allowed flexibility to schedule the exact number of evening or weekend sessions in accordance with the peculiar needs of the community the court serves.

The Model Act also seeks to make small claims courts convenient by enabling the small claims administrative judge to utilize community facilities more accessible to potential litigants.<sup>28</sup> To that end, the Act does not require formal and fixed locations or furnishings for the actual court hearings. Instead, hearings may be held in small rooms with only the essential parties in attendance, either within the courthouse or at a community facility such as a library, church, school, or post office.<sup>29</sup> The impression of legitimacy and judicial authority, however, should be maintained despite such informal courthouse or community hearings.

### COURT PERSONNEL

SECTION 2.4. The administrative judge of the small claims court shall staff the court with the personnel necessary to effectively operate the court, including a court om-

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<sup>26</sup> The empirical relationship between courthouse hours and consumer willingness to sue is difficult to demonstrate. The Philadelphia study revealed that 76% of 156 small claims plaintiffs experienced some problem in finding the time to file their claim and 79% experienced difficulty in attending the hearing. Steadman & Rosenstein, *supra* note 9, at 1337, 1358. Of course, these statistics reflect a "highly motivated" cross-section of the population and are not representative of the nature and extent of aggrieved consumers who did not use small claims court. *Id.* at 1319 n.76. They are useful indicia, however, on which to base an inference that some people are deterred by restrictive courthouse hours.

<sup>27</sup> As in the case of potential consumer plaintiffs, it is difficult to demonstrate a precise empirical relationship between restrictive courthouse hours and individual defendant defaults. Nevertheless, because the large number of such defaults has been a major failing of existing small claims systems, *see, e.g.,* Note, *Small Claims Courts and the Poor*, 42 S. CAL. L. REV. 493, 498-99 (1969) (estimated 60% default rate in collection actions by retailers), the Model Act assumes that restrictive courthouse hours fosters default judgments and, accordingly, takes steps to alleviate the problem.

<sup>28</sup> Commentators have found some relationship between the physical inaccessibility of the courthouse and the failure to press small claims. *See, e.g.,* Jones & Boyer, *supra* note 2, at 397; NICJ REPORT, *supra* note 6, at 15.

<sup>29</sup> One commentator has suggested that judges could "ride circuit" with periodic sittings at various locations throughout the jurisdiction. The court could even employ "mobile units" similar to those used successfully in the public health field. Jones & Boyer, *supra* note 2, at 397. The Model Act does not seek to define the methods by

budsman, whose duties, prescribed by the administrative judge and consonant with the provisions of this Act, may include, but shall not be limited to—

- (1) apprising litigants of hearing dates;
- (2) assisting litigants in the preparation of their cases;
- (3) serving as court appointed mediators and judgment collectors;
- (4) identifying abuses of the court by litigants, soliciting community response to the efficiency and effectiveness of the small claims court and relaying all findings to the court; and
- (5) publicizing the availability of the court to the community.

*Comment:* Section 2.4 of the Model Act gives the administrative judge of the small claims court broad authority to appoint such personnel as may be necessary to assure the effective operation of the Act. The Act does not attempt to define specifically which personnel are necessary, but instead leaves the small claims judge with the flexibility to appoint personnel in accordance with the nature of the local demands upon the court.

Without attempting in any way to restrict the small claims judge's authority to appoint necessary personnel, the Act also suggests the appointment of a court ombudsman, who may serve the court in a variety of ways. For example, the ombudsman could supplement service of process machinery by attempting to contact the defendant by phone if service of process by registered mail has failed.<sup>30</sup> He could also inform the parties of approaching hearing dates and assist them in the preparation of their cases by instructing them on what they should bring to court and what they could expect in the way of courtroom proceedings. In addition, he or she could expedite the proper resolution of grievances by serving as a court-appointed mediator or judgment collector.

These suggestions meet the demands made by critics of the present small claims systems who emphasize the need for simplified procedures and the utilization of court personnel to serve as quasi-attorneys in aid of the parties.<sup>31</sup> These proposals differ from those of the critics because they offer more certainty with respect to division of labor at the small claims court. For example, under the Model Act the judge may be spared the conflicting roles of "devil's advocate and counsel for the litigants."<sup>32</sup> Similarly, the clerk will not be required to

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which each state provides justice to its citizens, but simply seeks to leave states with the flexibility to adapt to the needs of each judicial district. What may be appropriate in a rural setting could prove inadequate in a city. See NICJ REPORT, *supra* note 6, at 15.

<sup>30</sup> Service of process is governed by § 4.4 of the Act.

<sup>31</sup> See NICJ REPORT, *supra* note 6, at 19-20. See also, *Special Project*, *supra* note 2, at 764-66.

<sup>32</sup> *Special Project*, *supra* note 2, at 774-75.

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assist the litigants in filing necessary papers. Instead, the ombudsman would be available to provide many of these services which previously devolved upon other court personnel.<sup>33</sup> The appropriate roles for the ombudsman will, of course, vary with the needs of the particular small claims court.<sup>34</sup> The only definite criterion of the position is that it should be utilized in a manner best calculated to effectuate the policy of the Act to provide fast, fair, and efficient resolution of consumer grievances.

### RULES OF COURT

SECTION 2.5. To the extent that they are not inconsistent with provisions of this Act, rules of practice prescribed in the civil court of which the small claims court is part and rules adopted by the administrative judge of the small claims court to implement this Act shall apply to all claims litigated in the small claims court.

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<sup>33</sup> NICJ REPORT, *supra* note 6, at 19.

<sup>34</sup> The ombudsman might also be used as fact investigator, assisting parties to procure the necessary evidence. He could also fulfill a valuable public relations function by publicizing and encouraging the use of small claims courts in the community. One commentator has proposed the development of an "administrative support system" to improve the handling of consumer grievances. This system would feature "intake personnel" who would be available at locations throughout the county to inform potential litigants of their rights and duties as well as the details of utilizing the small claims procedure. Jones & Boyer, *supra* note 2, at 403-04. The NICJ has also recommended that small claims courts appoint personnel to assist the parties in drafting complaints and preparing and presenting cases. NICJ REPORT, *supra* note 6, at 19-20.

The Harlem small claims court employs paraprofessionals to assist in court operations. The STAFF REPORT, *supra* note 24, states:

The Harlem Court is the only small claims court in New York City to employ paraprofessionals called community advocates. The community advocates are young men and women given a special training in consumer affairs, laws, tactics, etc. They work under the aegis of the New York City Department of Consumer Affairs. Most, but not all, of the community advocates reside in the community where the court is located.

The community advocates act as . . . jacks of all trades in the courtroom. They help litigants prepare cases, tell litigants what to bring to court, answer any and all questions that people pose, and even sit in on arbitration and judicial proceedings to help fearful or shy litigants or merely to observe the proceedings.

The community advocates also act as P-R men for the Harlem Court. They talk to civic groups, drug rehabilitation groups, political groups, etc. in the community in an attempt to let the people know about the Harlem Court and how it operates. They also try to dissipate some of the cynicism and fear many poor people feel about any court process.

The New York City Department of Consumer Affairs also runs Consumer Complaint Centers. One of these is in West Harlem (the Harlem Court is in East Harlem). Where appropriate (e.g., meets venue requirements), these offices will refer people to the Harlem Court. The community advocates are technically not court personnel. They do act as an adjunct to the court and often perform some minor court functions like filing records and passing out instruction sheets.

*Id.* at 691-92.

*Comment:* An important feature of the Model Act is to provide a flexible procedure with rules of practice easily understandable to laymen and without the formal requirements of the ordinary civil court. To that end, the Act incorporates the rules of practice of the civil court only to the extent that they are not inconsistent with the flexible pleading and practice rules of the small claims court. In this manner, continuity with civil practice is preserved as much as possible but the small claims court clearly maintains its own identity as a more informal and speedy tribunal.<sup>35</sup> While at the present it appears that most states have instituted informal procedures in their small claims courts, a small number still adhere to formal rules of court.<sup>36</sup>

Section 2.5 also gives the administrative judge of the small claims court the authority to adopt supplemental rules of practice and procedure in accordance with the needs of the particular community in which the court is located. In this manner, the Act will provide a flexible court system which affords to all potential litigants a greater opportunity to air their grievances in an atmosphere that is comfortable and familiar to them. For example, the Model Act would not require either party to make formal written motions, demands or responses.<sup>37</sup>

### PART III JURISDICTION; VENUE SUBJECT MATTER JURISDICTION

SECTION 3.1. (a) The small claims court shall exercise concurrent jurisdiction with the civil courts over tort and contract actions wherein the amount in controversy does not exceed \$1000.

(b) The small claims court may grant monetary and equitable relief, except that—

(1) monetary relief shall not include punitive damages, and

(2) equitable relief shall be granted only as between the parties and shall be limited to orders to repair, replace, refund, reform and rescind.

(c) Class actions are prohibited in the small claims court.

*Comment:* Section 3.1(a) of the Model Act provides that small claims courts exercise concurrent rather than exclusive jurisdiction over tort and contract actions.<sup>38</sup> While the framers of the Act recognize that ex-

<sup>35</sup> A flexible and simple rules practice is of course the goal of any small claims court system. See *Paradise Lost*, *supra* note 2, at 449-52.

<sup>36</sup> See APPENDIX, *supra* note 5.

<sup>37</sup> See NICJ REPORT, *supra* note 6, at 19.

<sup>38</sup> Most states have already adopted this approach. *E.g.*, OHIO REV. CODE ANN. § 1925.02 (Page Supp. 1973); TEX. REV. CIV. STAT. ANN. art. 2460a, §2 (1971); *contra* D.C. CODE ANN. § 11-1321 (1973) (exclusive jurisdiction over small claims to \$750). Commentators have uniformly recommended that small claims courts exercise concurrent juris-

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clusive jurisdiction over such action would tend to maximize the court's use by litigants—an express purpose of the Act—they have concluded that there are more drawbacks than advantages in granting exclusive jurisdiction to small claims court.

This proposal is in accord with the majority of states which presently have a small claims court system.<sup>39</sup> Nevertheless, a substantial minority of states employ exclusive jurisdiction. The strongest argument favoring exclusive jurisdiction is that all parties are required to appear in the same forum and thus forum-shopping is prevented.<sup>40</sup> However, exclusive jurisdiction means denying a party the use of the regular civil courts. Therefore, if the small claims court bars attorneys, and the jurisdictional limit prevents the claim from being brought in civil court, then the party is not permitted any representation for his claim. Most significantly, providing for exclusive jurisdiction might present constitutional barriers if the small claims court Act denies access to the court to certain corporate plaintiffs.<sup>41</sup> It might appear that exclusive small claims jurisdiction would help relieve the burden on the congested civil docket. It is not clear, however, that such congestion is attributable to suits involving an amount in controversy less than \$1000.

Concurrent jurisdiction as already mentioned is potentially subject to abuse by forum-shopping. Institutional plaintiffs could force consumers into the more expensive civil court in the hope of having them default rather than mount costly and time-consuming defenses. However, establishing concurrent jurisdiction makes possible a greater flexibility in limiting the appearances of institutional plaintiffs in small claims court because such plaintiffs can always sue in the regular courts if barred from small claims.<sup>42</sup>

Section 3.1(a) of the Model Act limits the subject matter jurisdiction of the small claims court to tort and contract actions wherein the amount in controversy is less than \$1000.<sup>43</sup> By so limiting the subject matter jurisdiction, the Act seeks to insure maximum use of the small claims courts by consumers, a group whose claims traditionally are

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diction with the corresponding civil court. See also *PARADISE LOST*, *supra* note 2, at 458; *Special Project*, *supra* note 2, at 751-52; *NICJ REPORT*, *supra* note 6, at 16-17.

<sup>39</sup> *Special Project*, *supra* note 2, at 751.

<sup>40</sup> *Cf. id.* (concurrent jurisdiction promotes forum shopping).

<sup>41</sup> See text at note 53 *infra*.

<sup>42</sup> Provisions limiting the appearances of institutional plaintiffs are set forth in §§ 4.1(a) & (b) of the Act, *infra*.

<sup>43</sup> Commentators have generally agreed that small claims courts should have the same subject matter jurisdiction, with few exceptions, as the corresponding regular civil courts. See *Special Project*, *supra* note 2, at 753 (jurisdiction over all civil actions except libel and slander); *NICJ REPORT*, *supra* note 6, at 16-17 (subject matter jurisdiction over tort, contract, landlord and tenant cases, "and perhaps over others as well"). Another commentator has complained, however, that broad enabling acts which confer jurisdiction simply "in all actions for the recovery of money" may defeat the purposes of small claims to provide simple and informal justice by allowing complex actions not conducive to small claims procedure to be brought. See *Paradise Lost*, *supra* note 2, at 451 (criticizing Texas small claims court act).

based on a theory of contractual or tortious liability.<sup>44</sup> However, in contrast to other state enactments,<sup>45</sup> the Act does not limit the *type* of tort claims that may be brought in small claims court; rather, it grants the courts jurisdiction over all tort actions including defamation, false imprisonment and malicious prosecution.<sup>46</sup>

Section 3.1(a) of the Act sets the jurisdictional limit of small claims court at \$1000.<sup>47</sup> This sum is intended to channel the larger and perhaps more important claims to the civil court where more elaborate procedural safeguards, such as stricter adherence to the rules of evidence, are available.<sup>48</sup> As a result, small claims courts will be able to devote more time to handling the simpler and more frequent grievances which consumers tend to have.<sup>49</sup> This division of labor will allow small claims courts to develop the expertise to handle small claims more efficiently and speedily while effecting a balance between the seriousness of the case and the formalities of the procedures required.<sup>50</sup>

Section 3.1(b) of the Model Act governs the scope of relief which a small claims court has power to grant. Unlike enactments in other

<sup>44</sup> The authors of the Act acknowledge that the choice of actions over which a state wishes to confer jurisdiction may vary according to the nature of the practice in that state. Accordingly, the authors realize that states may vary the subject matter jurisdiction of their small claims courts. The inclusion of jurisdiction over landlord and tenant cases may be particularly appropriate in states where such cases are common. See note 12 *supra*.

<sup>45</sup> *E.g.*, MICH. COMP. LAWS § 600.8424 (1974) (excluding fraud); OHIO REV. CODE ANN. § 1925.02 (Page Supp. 1973) (excluding suits for alienation of affections, malicious prosecution and abuse of process).

<sup>46</sup> In order not to burden small claims courts with time-consuming cases involving intricate questions of law and fact, § 7.5 of the Act, *infra*, provides for transfer of cases to the regular civil court on the initiative of the small claims judge or upon the motion of either party for good cause shown.

<sup>47</sup> Jurisdictional limits currently range from \$200 in Utah, UTAH CODE ANN. § 78-6-1 (Supp. 1975) to \$2000 in New Mexico, N.M. STAT. ANN. § 16-5-1 (1970).

<sup>48</sup> See Jones & Boyer, *supra* note 2, at 399-400.

<sup>49</sup> Some commentators have argued that a lower jurisdictional limit is appropriate:

One of the principal virtues of a small claims court is that because of its informal procedures, a litigant may sue in his own behalf and thereby forgo the expense of an attorney. This benefit may be lost by setting a high monetary limit since suits involving higher amounts will be important enough to justify the trouble and expense of hiring an attorney.

*Special Project*, *supra* note 2, at 756. The commentators recommended a ceiling of \$250. *Id.* at 757. Nevertheless, the trend has been to increase the monetary jurisdictional limitation of small claims court. This trend reflects the ever-increasing costs of goods and services over which many grievances arise. See Skoler, *Monetary Limitations on Civil Jurisdiction in Minor Courts*, 36 S. CAL L. REV. 55, 57-61 (1962).

<sup>50</sup> The authors recognize that the appropriate jurisdictional limit may vary according to the nature of the practice in each state. Accordingly, states may choose to set a different jurisdictional limit. The \$1000 figure, is consistent with the suggestion of the NICJ, see NICJ REPORT, *supra* note 6, at 18, and sets a dividing line which, in the authors' opinion is high enough to cover common consumer complaints but low enough to exclude the more difficult and time-consuming case which the small claims courts are not intended or equipped to handle.

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states,<sup>51</sup> the Act does not limit such relief to money damages but grants small claims courts equitable power to order repairs, to rescind or reform a contract, or to refund the purchase price on or replace defective goods. In this manner, small claims courts will have the power to adopt the easiest and cheapest method of remedying a defect or correcting a misunderstanding.<sup>52</sup>

Punitive damages, however, will not be available in small claims court. Recovery of punitive damages is generally awarded only upon the commission of an intentional tort with accompanying malicious intent.<sup>53</sup> Proof of such intent, however, would involve small claims courts in difficult evidentiary formalities of the type such courts are not intended or equipped to consider. Litigants with claims in those torts peculiarly susceptible to the imposition of punitive damages—intentional torts where compensatory damages are minimal but the wrong is egregious—will be channelled to the regular civil court for redress.<sup>54</sup> In this manner, the small claims court can remain the exclusive forum for the simple grievance more appropriately litigated under the informal procedures contemplated by the Act.<sup>55</sup>

Finally, section 3.1(c) of the Model Act prohibits class actions in small claims court. Small claims courts are intended to be simple and informal forums for the resolution of grievances. Class actions, on the other hand, invariably entail time-consuming and complicated procedural issues that are more appropriately litigated in the regular civil court.

### PERSONAL JURISDICTION

SECTION 3.2. The personal jurisdiction of the small claims court shall be coextensive with that of the civil court of which the small claims court is part.

*Comment:* There is no reason to vary the personal jurisdictional reach of the small claims court from that of the regular civil court. If prop-

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<sup>51</sup> *E.g.*, TEX. REV. CIV. STAT. ANN. art. 2460, § 2 (Vernon 1971). A survey of small claims systems revealed that forty-four states provide for monetary relief only. See APPENDIX, *supra* note 5.

<sup>52</sup> This was the recommendation of the NICJ. NICJ REPORT, *supra* note 6, at 17-18.

<sup>53</sup> W. PROSSER, THE LAW OF TORTS 9-14 (4th ed. 1971).

<sup>54</sup> Section 7.5 of the Act provides that the small claims court can on its own initiative or at the motion of either party for good cause shown, transfer a case from small claims to the regular civil court. Cases properly before the small claims court might pose such intricate questions of law and fact, such as complex questions of proof in personal injury cases or complicated issues of law in contractual disputes, as to merit their transfer to the regular civil court with its formal procedure and evidentiary rules. In a similar vein, the small claims court, in hearing a tort claim, could exercise its transfer discretion under § 7.5 and decide that a plaintiff who may be entitled to punitive damages would be more likely to secure full redress in the regular civil court.

<sup>55</sup> The authors' survey of small claims statutes revealed that no state bars small claims courts from awarding punitive damages though eighteen states do not give these courts jurisdiction to hear all or some tort claims. See APPENDIX, *supra* note 5.

erly staffed and operated, a small claims court should be able to handle whatever complexities of procedure, jurisdiction and collection that arise in effecting personal service and collection of judgments, even if the state confers long-arm jurisdiction on state courts. A \$100 claim may well be as important to one litigant as a \$10,000 claim is to another, and the small claims courts and the regular courts should exercise the same personal jurisdiction in redressing the grievances of both claimants.

## VENUE

SECTION 3.3.(a) The venue of the small claims court shall be coextensive with that of the civil court of which the small claims court is part.

(b) Actions commenced in the small claims court may be transferred to any other small claims court wherein the action might have been brought on the initiative of the court or upon the motion of either party for good cause shown.

*Comment:* While unique in handling only small claims, the small claims court will not, as a result, be subject to a venue provision more restrictive than that prevailing in the corresponding civil court.<sup>56</sup> As with the rationale in providing the small claims court with the same personal jurisdiction exercised by the regular civil court,<sup>57</sup> a small claims court can best fulfill its purpose, and at the same time remain compatible with the court system of which it is a division, by possessing a venue provision that is coextensive with that of the civil court.

The coextensive venue requirements are not, however, intended to allow business plaintiffs to select a forum that may work a serious hardship upon the individual defendant who may be greatly inconvenienced in attending litigation in a distant forum.<sup>58</sup> Accordingly,

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<sup>56</sup> Some critics have concluded that a more restrictive small claims venue provision is likely to provide the individual consumer defendant with a greater opportunity to defend himself, thereby lessening default judgments. *E.g.*, Jones & Boyer, *supra* note 2, at 396 (venue where transaction took place ensures that suit is more likely to be physically near the consumer); *Due Process Denied: Consumer Default Judgments in New York City*, 10 COLUM. J.L. & SOC. PROB. 370, 389-90, 406-07 (1974) (venue in consumer cases limited to county where defendant resides or works or in county where transaction occurred will reduce consumer default). The NICJ study recommended that a business plaintiff be required to bring its actions in the small claims district where the defendant resides, but that an individual plaintiff have the option to choose where he sues. NICJ REPORT, *supra* note 6, at 17.

<sup>57</sup> See text and notes at notes 32-34 *supra*.

<sup>58</sup> As one commentator noted, "the primary objective in drafting a small claims court venue provision is to designate a forum that is convenient for both litigants, thereby minimizing expense and delay." *Special Project*, *supra* note 2, at 759. The authors agree with this philosophy but believe that its goals can best be accomplished by leaving small claims courts with the equitable discretion to transfer cases to the small claims district most accessible and convenient to the litigants. Provisions restricting venue to the county where the defendant resides would, on occasion, work an undue



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section 3.3(b) of the Act gives small claims courts the power to transfer cases to any other small claims court where the action may have been brought. By this provision, the court is assured the flexibility to transfer a case to the district where a defendant resides if, on balance, the equities of convenience to the parties require such a change.<sup>59</sup>

### PART IV PARTIES; COMMENCEMENT OF ACTION; SERVICE WHO MAY SUE

SECTION 4.1. (a) Any natural person or legal entity may sue in the small claims court.

(b) The court shall impose mass filing limitations on all claimants filing claims in the small claims court in the manner prescribed by the administrative judge of the court.

(c) The court shall not allocate more than 50% of the time allotted for hearings to hearings of claims filed by non-individual claimants, except that the court may waive this provision if the use of the court by individual claimants is not sufficiently high to warrant the limitation.

(d) The court shall reserve Saturday and evening hearing sessions, conducted pursuant to Section 2.3(a), for claims filed by individuals, except that the court may waive this provision upon a motion by a non-individual claimant for good cause shown.

*Comment:* The growing domination of small claims courts by business organizations, particularly assignees,<sup>60</sup> has served to alienate the individual citizens that small claims courts were designed to serve. In order to reverse this trend, several jurisdictions have withdrawn access to small claims court where the plaintiffs are corporations, associations, assignees or businesses, or a combination of them.<sup>61</sup> The Model Act, however, recognizes the harmful consequences of barring completely all such plaintiffs from the small claims court. For example, an organization that is prohibited from using the small claims court is likely to pursue its grievance in another fashion.<sup>62</sup> The best interests

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hardship on an individual plaintiff. Moreover, at present, most jurisdictions limit small claims venue to the county where the defendant resides or does business. *See id.*

<sup>59</sup> The NICJ also recommended that the small claims court be given the discretion to transfer a case for "proper cause." NICJ REPORT, *supra* note 6, at 17. The authors intend no semantic distinctions to be drawn between the Model Act's criteria of "good cause shown" and "proper cause." The primary goal of the provision is simply to allow the small claims court to determine which forum is most convenient to all parties.

<sup>60</sup> *See Special Project, supra* note 2, at 723-25, 764-66.

<sup>61</sup> *E.g.*, CAL. CIV. PROC. CODE § 117(r) (West Supp. 1974) (no assignees); N.Y. CITY CIV. CT. ACT, § 1809 (McKinney's Supp. 1976).

<sup>62</sup> For example, an organization that possesses adequate resources might seek relief in civil court. Another possibility is the use of self-help remedies, where such are allowed. *See, e.g.*, UNIFORM COMMERCIAL CODE § 9-503 (secured party's right to take possession after default).

of a defendant are served if he can defend himself against grievances in the small claims court. The typical small claims court defendant can rarely afford to defend himself in the regular court and he is oftentimes vulnerable to out-of-court intimidations by organizational claimants.<sup>63</sup> Furthermore, a complete ban on organizations in the small claims court ignores the many honest organizations that have legitimate claims. They too should have access to an informal forum where claims are swiftly and inexpensively resolved. Accordingly, the Model Act provides that any natural person or legal entity, including corporations, partnerships, collection agencies, and associations, may sue in the small claims courts. Restrictions on the number of claims that may be filed by all plaintiffs, and by business plaintiffs in particular, however, will prevent domination of the small claims procedure by any single plaintiff or type of plaintiff. Thus, section 4.1(b) of the Act gives the administrative judge of the small claims court broad powers to impose mass filing limitations on both individual and non-individual plaintiffs in the number of claims they may file at any one time or any given period of time. No exact numerical limitation on the number of claims that can be filed by one claimant is prescribed. Rather, the administrative judge of the small claims court is left to establish limitations consistent with the particular needs of the district where he presides.<sup>64</sup> Some attempt must be made to guard against potential abuse by the judge in his use of Section 4.1(b), to deny access to the court by institutional plaintiffs. However, vigorous scrutiny by the advisory panel which reports annually to the administrative agency may be a sufficient deterrent to any such abuse.

A second restriction upon the number of claims that can be filed applies only to business plaintiffs. Section 4.1(c) of the Act *requires* that the small claims court allocate at least fifty percent of the time normally allocated to hearing sessions to claims filed by individual plaintiffs.<sup>65</sup> Furthermore, the small claims court must, under section 4.1(d),

<sup>63</sup> President Judge Joseph Glancey of the Philadelphia Municipal Court advanced similar reasoning to justify his conclusion that no restrictions on the number or type of cases brought in small claims court should be imposed:

I would be opposed to any limitation on the filing of "collection" type cases by creditors since I am strongly of the belief that the Small Claims Court is the best forum for the person being sued. . . . I think court room allocation restrictions are to be preferred over any limitation on filing.

Letter from President Judge Joseph Glancey to the United States Chamber of Commerce (July 6, 1976) (copy available at the offices of Boston College Industrial & Commercial Law Review).

<sup>64</sup> Other commentators have suggested specific limitations. See *Special Project*, *supra* note 2, at 768 (any person, association, or business may bring suit in small claims court, but each plaintiff is limited to no more than two claims per week and twenty-five claims per year). The NICJ would not exclude anyone from small claims court, but would, like the Model Act, permit courts to establish limitations on the number of cases filed by a plaintiff within a specific period of time or to limit professional creditors' use of the court to specific hours or days. NICJ REPORT, *supra* note 6, at 15-16.

<sup>65</sup> Challenges to the Model Act's court allocation restrictions under the Equal Protection Clause of the United States Constitution by business plaintiffs who have been

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reserve Saturday and evening sessions—the times most convenient to the average non-business plaintiff—for claims filed by individuals. Only when individual claims are not sufficient in number to take up half the court's time may the fifty percent requirement be ignored. The non-individual plaintiff, however, may have its case heard during Saturday or evening sessions "for good cause shown." By these provisions, the individual consumer-plaintiff, who most likely cannot afford or endure the expensive and difficult litigation of the regular civil court, is guaranteed a forum in small claims, while the better-equipped institutional plaintiff is accommodated to the greatest extent possible.

### COMMENCEMENT OF ACTION

SECTION 4.2. (a) Actions shall commence in the small claims court whenever a qualified claimant appears before the clerk and requests that his case be heard.

(b) A qualified claimant is one who—

(1) supplies the court with a full statement of the claim and the correct name and address of the defendant, and

(2) signs a sworn statement that he has made a good faith effort to resolve the dispute with the defendant.

(c) The clerk shall—

(1) prepare the claim on a standard form upon the information provided by the claimant;

(2) secure the claimant's signature to the claim;

(3) schedule the claim for a hearing at a time as convenient to the claimant as possible, but not less than 15 days nor more than 45 days from the date of the filing; and

(4) prepare and present to the claimant a memorandum stating

(a) the time and place set for the hearing;

(b) the necessity that the claimant produce all supporting documents, receipts and witnesses at the hearing;

(c) the availability, upon request, of court-ordered subpoenas of witnesses; and

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denied access to the small claims courts are not likely to succeed because such plaintiffs still have the remedy of suing in the normal civil court, which under § 3.1 of the Model Act, has concurrent jurisdiction with the small claims court. *Cf.* *People ex rel. Brixton Operating Corp. v. La Fetra*, 194 App. Div. 523, 186 N.Y.S. 58 (1920), *aff'd sub nom.*, *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N.Y. 429, 130 N.E. 601 (1921) (state statute prohibiting access by landlords to lower courts for the purpose of initiating summary process eviction proceedings upheld because landlords had another adequate remedy in an action for ejectment).

(d) the right to counsel as prescribed by Section 7.1 of this Act.

*Comment:* An efficient small claims court system should seek to encourage aggrieved consumers who are unfamiliar with the legal process of initiating suit to nonetheless utilize the small claims procedure. To that end, the Model Act provides for a simple filing mechanism by which the clerk of the court takes an active role in assisting the plaintiff in filing his claim. Simplified standard forms are to be used so that the claimant can avoid the inconvenience and confusion that often attends the self-preparation of a grievance form.<sup>66</sup>

Aggrieved consumers will also be encouraged to utilize small claims procedures because of the Act's mandate to the court clerk to schedule hearings on claims at times most convenient to the plaintiff. To the extent possible, the plaintiff should be allowed both to specify the date upon which he wishes the hearing to be held and to choose between day and evening sessions. A speedy hearing is guaranteed by section 4.2(c)(3)'s requirement that the hearing be scheduled no more than forty-five days from the date of filing the claim. A fifteen day minimum period between the date of the filing and the date of the hearing is prescribed in order to provide the defendant with sufficient time to be served and to prepare his defense.

#### FEEs

SECTION 4.3. (a) The clerk shall, subject to Section 4.3(b), collect the following fees from the claimant at the time the claim is filed at the court:

(1) a small filing fee, established by the administrative judge of the small claims court, but never to exceed \$10, and

(2) a service fee equal to the then prevailing postal rate for registered mail, return receipt requested.

(b) The clerk shall, upon an assertion of indigence and request by the claimant at the time the claim is filed, waive all or part of the filing and service fees and other fees required to obtain necessary process or other remedies provided in this Act.

(c) The court shall assess the fee required by this section to the judgment loser, except that the court may, in the interests of justice, or upon sufficient showing of inability to pay, disallow such assessment or allocate the same between the parties.

*Comment:* The fee schedule for the small claims court is designed to encourage and maximize the use of the courts and to minimize the

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<sup>66</sup> Most states which have small claims systems have simplified procedures and filing forms. See APPENDIX, *supra* note 5.

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burden of using the court. The filing fee collected by the clerk from the claimant when the claim is filed is necessary to defray part of the operating expenses of the court and deter claimants from filing frivolous claims. The fee should be one that entails more expense for the claimant than he would incur by simply contacting the defendant on his own; but it should not be so high as to deter litigants from filing those legitimate claims which do not involve an amount of money well in excess of the filing fee.<sup>67</sup> The administrative judge will have to weigh the needs and expenses of the court in order to arrive at a suitable fee, but it is recommended that the filing fee be no higher than ten dollars.

### SERVICE OF PROCESS

SECTION 4.4. (a) Service of process shall be primarily effected by the court by registered mail, return receipt requested.

(b) If the registered letter is returned undelivered, the court shall notify the plaintiff and shall permit another attempt at service by mail or personal service, at the option of the plaintiff.

(1) Personal service shall be effected by a county or city sheriff, or his designee, at a minimum fee to the plaintiff.

(2) A sworn affidavit attesting to the fact that the summons has been personally served shall be signed by the process server and presented to the court.

(c) Refusal to accept delivery of the summons served personally or by registered mail constitutes good service and may lead to a default judgment.

(d) Failure to effect service within 45 days from the date the action was filed shall result in a dismissal of the suit without prejudice.

### NOTIFICATION TO DEFENDANT

SECTION 4.5. (a) The clerk shall, as soon as possible, but no later than 3 working days after the claim is filed, attempt to serve the defendant, as prescribed in Section 4.4, with a notice which shall state—

- (1) the claimant's name;
- (2) a description of the claim and the relief sought;
- (3) the time, date and location of the hearing;
- (4) the necessity that any set-off or counterclaim be

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<sup>67</sup> The NICJ similarly recommended low filing fees and suggested that sliding scale fees geared to the amount of the claim could be appropriate. The NICJ further recommended that filing fees be waived for indigent plaintiffs. See NICJ REPORT, *supra* note 6, at 20.

filed with the court by the defendant before or on the date of the hearing;

(5) the necessity that the claimant produce all supporting documents, receipts and witnesses at the hearing;

(6) the availability, upon request, of court-ordered subpoenas or witnesses; and

(7) the right to counsel as prescribed by Section 7.1 of this Act.

(b) If the defendant is served with notice within 5 days of the date of the scheduled hearing, the clerk shall—

(1) continue the case 10 to 15 days, unless the defendant waives the continuance, and

(2) inform the parties of rescheduled hearing dates if the case is so continued.

*Comment:* Sections 4.4 and 4.5 of the Model Act govern the method of serving process upon the defendant. Service of process shall be by registered mail, return receipt requested. The use of registered mail is a common method of notice in many jurisdictions. This method is simpler, cheaper, and more efficient than service of process by a personal officer of the state.<sup>68</sup> By informing the defendant fully of his rights and obligations, it is hoped that the individual defendant in particular will be encouraged to prepare and defend his case on the merits and not default, as many have done in the past.

The Model Act further recognizes, however, that service of process by registered mail will not always be successful. Accordingly, section 4.4(b) of the Act permits, in the alternative, personal service at the plaintiff's option, to be effected by a county or city officer if service by registered mail fails. Such personal service should be made available for a minimal fee so that the plaintiff bringing a minor claim will not be deterred by the steep costs that normally characterize sheriff service.

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<sup>68</sup> There exists some controversy over the use of registered mail. Some feel that a process server would be more appropriate. The Philadelphia Municipal Court utilizes writ servers who are employed at the pleasure of the court. See Steadman & Rosenstein, *supra* note 9, at 1320.

President Judge Glancey, *supra* note 63, has examined the subject and concluded: I am opposed to service of process and the entry of default judgments where service is by registered mail. Such matters require that the Judge act as a handwriting expert to determine if the defendant actually received notice of the letter. I would prefer service by writ servers who are appointed by the Court and who serve at the pleasure of the Court, in order that their method of operation is under continuous surveillance.

Service of writs has long been an area fraught with problems. At one point there existed a plague of "sewer service" where process servers, especially in New York City, never completed service and default judgments were improperly taken. See Comment, *Abuse of Process: Sewer Service*, 3 COLUM. J.L. & SOC. PROB. 17 (1967). Registered mail service has, however, met with success in jurisdictions where it has been employed. See Comment, *Small Claims Courts: Reform Revisited*, 5 COLUM. J.L. & SOC. PROB. 47, 52 (1969). Most jurisdictions provide for service of process by registered mail in small claims courts. See generally *Paradise Lost*, *supra* note 2, at 453-54 & n.41.

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Claims which have not been served within forty-five days from the date the claim was filed would be dismissed without prejudice to avoid having claims sit in the court for an endless period of time. Failure to effect service within forty-five days is deemed to indicate that the defendant is unavailable and that little purpose is served by attempting further service. A claim would remain on file in the small claims court and the claimant, incurring only another service fee, could always bring his claim again.

### COUNTERCLAIMS

SECTION 4.6. (a) The defendant shall claim any compulsory counterclaim, and may claim any permissive counterclaim he may have against the plaintiff, before or at the hearing.

(b) The counterclaim shall be entered by the clerk and subscribed by the defendant in the space designated for same on the standard claim form prepared by the clerk and subscribed by the claimant.

(c) The court shall hear compulsory counterclaims, and may hear permissive counterclaims, at the same hearing in which the plaintiff's claim is heard, except that the court shall—

(1) transfer any case in which the defendant has filed a colorable compulsory counterclaim in excess of \$1000 to the civil court of which the small claims court is part, and

(2) transfer any permissive counterclaim in excess of \$1000 to such civil court and proceed to a hearing on the plaintiff's claim.

(d) Subject to Section 4.6(c)(1) and (2), the defendant's counterclaim may be answered by the claimant at the hearing, or the court may, upon the claimant's motion, continue the hearing to a later date.

*Comment:* The Model Act seeks to promote judicial economy and convenience by encouraging the litigation of all claims between the disputants at one hearing in the small claims court. To that end, a defendant is required to advance all counterclaims which relate to the facts and circumstances of the plaintiff's claim before or during the hearing. Such claims will usually involve the same evidence presented in the plaintiff's main action and thus will not tend to delay or confuse the hearings. The goals of judicial economy and convenience, however, are not truly furthered by requiring a defendant to advance any *permissive* counterclaim which he may have against the plaintiff. Such claims are not related to the facts and circumstances of the plaintiff's claims and, as such, would involve different evidence relating to a different cause of action. Accordingly, a defendant may, but is not required, to advance permissive counterclaims.

PART V  
PRE-TRIAL PROCEEDINGS  
SETTLEMENT; MEDIATION

SECTION 5.1. (a) Prior to the commencement of a hearing with the parties present, the court shall determine what efforts have been made by the parties to settle their dispute.

(1) If unsatisfied that previous good faith settlement efforts have been made, the court shall require the parties to meet in the courthouse, in private or before a mediator, at their election, to attempt to settle their dispute.

(2) If satisfied that such efforts have been made, the court shall proceed to the hearing without delay.

(b) Alternatively, the court may establish a mandatory mediation mechanism conducted prior to all hearings by mediators selected and assigned to mediation in the manner prescribed by the administrative judge of the small claims court.

(c) If settlement efforts pursuant to Section 5.1(a)(1) or Section 5.1(b) have failed to produce a settlement, the court shall proceed to the hearing without delay.

(d) Every settlement reached by the parties acting either alone or through mediation shall be submitted to the court for approval.

(e) Every reasonable settlement shall be—

(1) approved by the court;

(2) regarded as a judgment entered by the court;

and

(3) processed for collection as prescribed by Section 8.2.

*Comment:* At present, only two states formally provide for mediation in the small claims court system.<sup>69</sup> Under the Model Act, prior to the commencement of a hearing, the court may question the parties to determine whether they have made a good faith effort to settle their dispute. This effort is made to avoid further litigation if at all possible. There is no need to spend court time and money on disputes which could have been settled out of court had the parties taken the time and effort to resolve them. However, if the court is not satisfied that the parties have in fact made a good faith effort, the parties will be required to meet before a mediator to attempt to resolve their dispute. The administrative judge of the small claims court shall prescribe the manner in which mediation should be conducted and by

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<sup>69</sup> See APPENDIX, *supra* note 5.



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which mediators are selected and assigned to mediation.<sup>70</sup> It is hoped by this provision that mediation would be fast and fair and would not result in coerced settlements. Mediation would be a condition precedent to proceeding to a hearing. Any settlements reached through mediation and approved by the court would be given the same effect as court judgments—they would be as binding and enforceable as a regular small claims court judgment.

### ARBITRATION

SECTION 5.2. (a) The small claims court shall provide an arbitration alternative to the regular courtroom adjudication of controversies.

(b) The clerk shall inform litigants appearing for a hearing that—

(1) they have the right to choose a hearing by binding, nonappealable arbitration or by appealable courtroom adjudication;

(2) arbitration requires the consent of all parties to an action; and

(3) parties cannot withdraw from arbitration subsequent to its commencement without the consent of the court.

(c) The provisions of this Act shall govern the arbitration hearing, except that an arbitrator cannot continue or transfer a case without the approval of the court.

(d) An arbitrator's decision is reviewable by the court upon a sufficient showing by a litigant that the arbitrator exceeded his authority or was biased.

(e) An award granted by an arbitrator shall be regarded as a judgment entered by the court and processed for collection as prescribed by Section 8.2.

(f) Arbitrators shall be selected and assigned to hearings in the manner prescribed by the administrative judge of the small claims court.

*Comment:* For those who do not prefer mediation, but are wary of appearing before a judge in court, in-court arbitration would also be available under the Model Act.<sup>71</sup> The court clerk would advise the litigants of the availability of arbitration, and they would be free to choose that alternative. Presently, only three states provide for a formal arbitration procedure in small claims courts.<sup>72</sup>

Arbitration would be voluntary, but once it commences, the par-

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<sup>70</sup> Mediation for the purposes of this act is a device for solving disputes through the aid of a neutral third party. This negotiation and compromise between the principal parties is the primary function of mediation.

<sup>71</sup> For the purposes of the Act, arbitration is a dispute-solving mechanism which determines which party is correct on the merits through a factfinding process.

<sup>72</sup> See APPENDIX, *supra* note 5.

ties could not withdraw their consent, either individually or mutually, except with the consent of the court. The advantages that arbitration brings to the small claims court as an alternative dispute mechanism would be largely lost if parties, having voluntarily submitted to arbitration, could withdraw from it if dissatisfied. However, circumstances might exist where impropriety, bias, or other traditional allegations made in seeking review and in obtaining reversal of a decision of an arbitrator<sup>73</sup> might blatantly attend the arbitration proceedings and militate against its continuance. The small claims court would be counterproductive to its mandate to secure swift justice if obvious situations of bias and impropriety had to await the review of a small claims court judge at the termination of the arbitration proceeding. Consequently, parties may withdraw from arbitration in appropriate circumstances with the consent of the court.

The decision of the arbitrator would be final—a continuance or a transfer of the case would only be obtained with the approval of the presiding judge. The decision of the arbitrator would not be appealable—except for the reasons mentioned above—and the settlement reached in arbitration will be regarded as a judicial disposition and processed for collection in the same manner as a judgment entered by the court.

Arbitration, like mediation, offers the individual an alternative to instigating court action. If properly established, it should not only help save the parties money, but it is less likely to provoke enduring animosity between the parties involved.<sup>74</sup> While the Act provides that both mediation and arbitration be available to the parties, it recognizes that neither procedure standing alone may be sufficient. Mediation, which must depend on the good faith of the parties, cannot be relied upon to resolve all disputes. It may also be too cumbersome a mechanism to employ where there are more than two interested parties.<sup>75</sup> Arbitration, without provisions for preliminary mediation would appear costly, wasteful and inefficient. The use of the two procedures in conjunction with one another would ensure a maximization of pre-trial dispute-resolving mechanisms.

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<sup>73</sup> This in-court voluntary arbitration alternative is practiced in the small claims courts of New York City. See STAFF REPORT, *supra* note 25, at 687. President Judge Glancey, *supra* note 63, has raised some objections over this procedure:

The New York In-Court Arbitration alternative is coercive since the parties are made to understand quite clearly that their case will take longer, that it will be heard in open court, and that the decision is appealable, if they insist on proceeding before a Judge rather than an arbitrator. I would prefer an in-court mediation alternative such as we have here in Philadelphia, when after the list of cases is called and default, continuances, etc. are disposed of, the Court recesses for a short period of time and the Presiding Judge informs all the parties that they must discuss the matter with each other and make a firm attempt to settle the case before the Court resumes after the recess. Surprisingly, about 20% of the contested cases are settled in this manner by the parties, voluntarily, and I think with a better attitude.

<sup>74</sup> Jones & Boyer, *supra* note 2, at 382.

<sup>75</sup> See *id.*

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PART VI  
COURT APPEARANCE  
PLAINTIFF'S NON-APPEARANCE

SECTION 6.1. (a) If the claimant fails to appear for a hearing, or if both parties fail to appear for a hearing, the court shall in its discretion dismiss the case for want of prosecution, continue the case or order whatever disposition thereof justice requires.

(b) Cases dismissed with prejudice pursuant to Section 6.1(a) may be reopened within one month of the date of dismissal upon the motion of the plaintiff for good cause shown.

DEFAULT JUDGMENTS

SECTION 6.2. (a) When the defendant fails to appear for a hearing at which the plaintiff appears, the court shall, in lieu of a hearing, conduct an inquest into—

(1) the circumstances of the defendant's failure to appear;

(2) the circumstances surrounding the incident or transaction from which the claim arose; and

(3) the merits of the case.

(b) The court shall enter a default judgment against the defendant when—

(1) the court is satisfied that the defendant received proper notice of the hearing;

(2) the court is satisfied that unconscionable practices did not attend the plaintiff's conduct in the incident or transaction from which the claim arose; and

(3) the claimant establishes a *prima facie* case for his claim.

(c) A default judgment may be vacated or reopened within six months of the entering thereof on the initiative of the court or upon the motion of the defendant with good cause shown.

(d) A default judgment can be appealed only upon—

(1) the denial by the court of the defendant's motion to vacate or reopen the case, or

(2) the affirmance by the court of a default judgment hearing incident to the granting of a motion to reopen judgment.

*Comment:* The large number of default judgments entered against individual defendants has long been acknowledged as one of the major shortcomings of small claims courts.<sup>76</sup> The Model Act recognizes that

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<sup>76</sup> See note 2 *supra*.

default judgments are often entered in cases where good cause existed for the defendant's non-appearance or little merit existed in the plaintiff's claim. In order to reduce the number of default judgments and prevent the unfairness attending the summary entry of such judgments, the Act requires the small claims court, either through the small claims judge or the arbitrator, to conduct an inquest when the defendant fails to appear for the hearing in order to determine whether the circumstances warrant the entry of a default judgment. The procedure envisioned by the Act would involve the court in investigating the circumstances of the defendant's non-appearance, including an inquiry into the manner and date of service, questioning of the process server if necessary, discovering if the defendant had attempted to establish contact with either the court or the plaintiff, and questioning the plaintiff to determine if he had ever communicated with the defendant about the pending appearance, or if the plaintiff knew or suspected why the defendant did not appear.<sup>77</sup> The court would also scrutinize the circumstances surrounding the incident or transaction from which the claim arose as well as the merits of the claim itself. It is not intended that the court's inquest entail a long detailed investigation. On the contrary, the inquest would not be any more protracted than a regular small claims court hearing.

One predominate feature of most existing small claims courts is the large percentage of default judgments.<sup>78</sup> The above-mentioned procedures of the Model Act are designed to reduce default judgments and protect defaulters from invalid claims. While default judgments are an obvious debt-collecting mechanism, the Model Act is designed to provide fair treatment to both plaintiff and defendant alike. Thus individuals who failed to realize the consequences of not appearing in court would be protected while the court assures itself of the validity of the claim, and provides the defendant with an opportunity to present his case. It is submitted that those most likely to have default judgments rendered against them are those least likely to have even a rudimentary knowledge of the workings of the small claims system, and thus most in need of the protection the Act seeks to provide.

It is contemplated that the court will enter a default judgment against a defendant only when it is satisfied that the defendant received proper notice of the hearing, that the plaintiff's conduct at the time of the alleged wrongdoing was free of unconscionability, and that the claim is meritorious. If the court finds that proper notice was not received, or if circumstances clearly indicate that the defendant could not have understood the nature of the claim, as where a foreign-speaking defendant is involved, the case should be continued until the defendant has received proper notice and has thus been made aware of the nature of the claim against him. If self-dealing and fraudulent

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<sup>77</sup> See NICJ REPORT, *supra* note 6, at 22.

<sup>78</sup> *Special Project*, *supra* note 2, at 783.

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practices accompany the plaintiff's conduct in the incident from which the claim arose, the court should dismiss the case with prejudice. If the claimant fails to establish a *prima facie* case for his claim, the court should likewise dismiss the case with prejudice.<sup>79</sup>

The court, on its own initiative or upon the motion of the defendant for good cause shown, may reopen or vacate the default judgment within six months after the judgment was entered. For two reasons, six months is deemed to be a reasonable period in which such order or motion must be made. First, any facts or developments which would cast suspicion on the default judgment would usually become known to the court or to the defendant within that period. Second, because small claims should be resolved and finally disposed of as soon as possible, the six month period represents a reasonable time within which a default judgment could be vacated or reopened, yet would not be unduly protracted.

### PART VII TRIAL PROCEEDING LAWYERS

SECTION 7.1. (a) Attorneys may accompany and assist parties in the small claims court, but shall not appear on behalf of parties, other than to provide information and suggestions, and then only with the permission of the court.

(b) The small claims court shall attempt to obtain the services of counsel who shall serve as court-appointed counsel, and the clerk of the small claims court shall inform litigants if court-appointed counsel is available and shall appoint counsel to indigent litigants upon request.

(c) Personnel serving as court-appointed counsel may be full-time salaried court attorneys, legal aid society or legal services lawyers, law students, or pro bono attorneys.

*Comment:* The Model Act recommends that lawyers not be allowed to represent clients before the small claims court.<sup>80</sup> This provision seeks

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<sup>79</sup> The NICJ similarly recommended that the court award a default judgment only after the plaintiff has made a *prima facie* showing of service and of the merits of the actual claim. NICJ REPORT, *supra* note 6, at 22. Wisconsin provides a similar statutory framework. See WIS. STAT. ANN. § 299.22 (West Supp. 1976).

<sup>80</sup> A minority of the states prohibit the use of lawyers in small claims courts unless the lawyers are suing on their own behalf. *E.g.*, CAL. CIV. PROC. CODE § 117g (West Supp. 1976); NEB. REV. STAT. § 24-523 (2) (1975) (refer to appendix).

The Supreme Court of California has upheld the barring of attorneys on the policy ground that exclusion was necessary to fulfill the basic objectives of the Act. Due process objections were met by holding that the plaintiff had the option of bringing the case in a regular court and the defendant had the right to *de novo* review in the superior court where an attorney would be allowed. *Prudential Insurance Co. v. Small Claims Court*, 76 Cal. App. 2d 379, 173 P. 2d 38 (1946).

In New York, a corporate party *must* appear through its attorney. N.Y. CITY CIV. CT. ACT § 1809 (McKinney's Supp. 1976). A 1976 amendment now allows a sharehol-

to facilitate the expeditious and fair resolution of disputes in the small claims courts by limiting the role of attorneys in such a manner as to preclude the delay, technicality and unequal representation which oftentimes result from attorneys' unfettered small claims court appearances, while at the same time providing litigants with the right to assistance of counsel.

The appropriateness of utilizing attorneys in the small claims courts is a question that has been continually debated. The arguments advanced both pro and con, range from the belief that lawyers bog down the process of small claims by becoming too deeply involved in procedural questions to the belief that lawyers, in fact, do expedite the matter as they are obviously well-versed in court proceedings.<sup>81</sup> One of the primary concerns in prohibiting the appearance of attorneys in small claims courts is the unequal representative strength of litigants when one party is represented without the other also having representation.<sup>82</sup> While lawyers may or may not have a significant impact upon the outcome of cases in small claims court, they undoubtedly have a significant psychological and reassuring impact on the litigants they represent. Moreover, the unrepresented litigant oftentimes feels disadvantaged in not being represented. Some litigants are certainly deterred from prosecuting and defending suits when they know they confront an adversary who is represented by an attorney.<sup>83</sup> Further, uneven representation might disrupt the hearing process, as a judge may favor a party who is represented by a fellow professional, or over-compensate the inequity by becoming the advocate of the un-

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der of at least one-third of the issued shares of voting stock, or, in close corporations with no more than 10 holders of issued shares of voting stock, to defend cases *pro se*. Ch. 200, § 2, N.Y. Laws 1976.

<sup>81</sup> The NICJ report stated the argument against lawyers quite well:

There are many reasons why lawyers should be kept out of the small claims court. The typical individual plaintiff will not have a lawyer; he comes to small claims court because his claim is not large enough to warrant hiring one. If the other side appears with a lawyer, the individual litigant will be at a considerable disadvantage. The presence of a lawyer in a proceeding may affect it in a variety of obvious and subtle ways. It may cause the judge to take a less active role in the trying of the case. The judge may be more hesitant to cross-examine and slower to draw out the plaintiff. The lawyer will inevitably complicate the procedure by use of evidentiary objections, by making motions, and perhaps in other ways. By these and other means he may effectively intimidate the individual plaintiff; he will surely put that plaintiff at a disadvantage.

NICJ REPORT, *supra* note 6, at 23.

President Judge Glancey, *supra* note 63, presents the counter-argument:

My experience is that attorneys are able to bring the parties together in a settlement much more often prior to trial than unrepresented parties, and that during the trial of the case the attorneys are able to focus on the actual issue involved rather than peripheral matters which are in many instances, immaterial and irrelevant.

See generally Steadman & Rosenstein, *supra* note 9, at 1333.

<sup>82</sup> See *Special Project*, *supra* note 2, at 725-26.

<sup>83</sup> *Id.* at 725-26, 729.

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represented party. On the other hand, the Model Act recognizes that lawyers in a small claims court may identify and develop issues, detect abuses in the court, protect the interests and rights of litigants, and significantly, provide litigants, especially inhibited or complacent ones, with the assistance, or at least the reassuring presence, they deem necessary in effectively presenting their case.

The Model Act seeks to work an accommodation of these conflicting policies in section 7.1. This provision proceeds from two basic premises: first, the deleterious effect of attorneys in the small claims court results both from the technicality and delay that attend their appearance on behalf of litigants, and the inequities and disruptions that attend cases in which only one party is represented; and, second, attorneys do provide a beneficial service to litigants in the small claims court, even if only the emboldening and psychological effect they have on their clients. Accordingly, by limiting the representative role of the attorney and by effecting representative parity to the maximum extent possible, this provision cures the ill effects of unequal representation and untrammelled representation by counsel without banning attorneys entirely from the small claims court. Attorneys, then, may assist litigants in the presentation of their cases, including assisting in the preparation of the case and accompanying and advising the litigant at the trial, but the attorney may not appear on behalf of the litigant, except where information and suggestions of counsel are requested by the court. Thus, the Model Act provides for the beneficial use of attorneys in the small claims courts, yet preserves the basic framework for a true "consumer" small claims court.

By permitting attorneys to assist and accompany litigants in the presentation of their cases, the Model Act does not prevent the disparity in representative strength which results when a regular user of the court, such as a corporate litigant, sends a sophisticated, intelligent corporate official, well-versed in courtroom procedure, to challenge a less sophisticated litigant. However unavoidable this situation may be, under the Model Act the litigant at least can obtain limited assistance of counsel.

### JURY TRIAL

SECTION 7.2. (a) Jury trials are unavailable in the small claims court.

(b) Actions commenced in the small claims court are not transferable to the civil court upon a party's motion for jury trial.

(c) Either party as a judgment loser can secure a jury trial, where the right exists, in a trial *de novo* on appeal.

*Comment:* Jury trials would not be available in small claims court.<sup>84</sup>

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<sup>84</sup> The right to a civil jury trial in the federal courts is protected by the seventh amendment to the United States Constitution. U.S. CONST. amend. VII. All states have

This is consistent with the practice in the majority of states currently employing small claims procedures.<sup>85</sup> A jury trial is best conducted in the formal atmosphere of the regular civil court where the strict rules of practice and evidence apply. Indeed if a jury trial were permitted it might become necessary to require formal rules of evidence and necessitate the use of attorneys.<sup>86</sup>

Since the Model Act provides for concurrent jurisdiction, a plaintiff can be deemed to have waived his right to a jury trial by initiating his action in small claims court. Prohibiting juries from small claims court saves the time involved in selecting a jury, reduces the expense of the small claims system, and insures that the proceedings remain informal. In addition, actions commenced in small claims court are not transferable to the civil court upon a party's motion for a jury trial. In this manner, a defendant will not be able to delay or avoid litigation by transferring a case to the regular civil court with its slower, more difficult, and more expensive legal machinery.<sup>87</sup>

#### FORMAL RULES

SECTION 7.3. (a) Formal rules of pleading, practice and evidence shall not be applied in the small claims court.

(b) The court shall proceed to hear the case when both parties appear for the hearing.

(c) The court shall listen to the testimony of the parties and admit all evidence it deems necessary to an understanding and determination of the dispute.

(d) The court shall assist in the development of all relevant facts in the case and shall decide the claim so as to effect substantial justice between the parties in accordance with substantive law.

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similar state constitutional guarantees of a jury trial in civil cases. See *Special Project*, *supra* note 2, at 779. A state may, however, deny a jury trial at a lower court if it makes available a jury trial at the appellate level. See *Capital Traction Co. v. Hof*, 174 U.S. 1, 23 (1899). See also *North American Provision Co. v. Kinman*, 288 Ill. App. 414, 416-17, 6 N.E.2d 235, 236 (1937). Most jurisdictions do not permit jury trials in small claims court. See *Special Project*, *supra* note 2, at 780-81. Commentators have generally concluded that the use of a jury trial in small claims court is wasteful, inconvenient and inefficient. E.g., *Paradise Lost*, *supra* note 2, at 456-57.

<sup>85</sup> See APPENDIX, *supra* note 5. See also *Special Project*, *supra* note 6, at 780.

<sup>86</sup> *Id.*

<sup>87</sup> An unsuccessful defendant in small claims will be able to prolong litigation and delay execution of judgment by exercising his *de novo* appeal rights under § 7.2(c). It is not possible to prevent such delay because of the state constitutional guarantees of a jury trial in civil cases. See note 84 *supra*. Nevertheless, the unsuccessful defendant may be less likely to press his full legal rights when he has lost his case once at the small claims stage. The ideal resolution to this dilemma is not clear. Some form of jury guarantee is constitutionally mandated. The Model Act takes the position that this guarantee should be effectuated in the regular civil court because that is the forum most suited to employ the formalized procedures and rules of evidence a jury trial requires. Accordingly, the right to a jury trial is protected by permitting either party to secure a jury trial in a trial *de novo*. Thus, the right to a jury is a right merely delayed



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(e) The court shall regulate and control abusive court practices, including, but not limited to, unconscionable and harassing claims, by citing the offending party in contempt of court and imposing whatever monetary fine it deems appropriate.

*Comment:* Section 7.3 seeks to promote the simple, speedy and inexpensive resolution of grievances by banning from small claims courts the more difficult and ponderous rules of pleading, practice and evidence applied in the regular civil court.<sup>88</sup> The Model Act requires the court to do substantial justice in accordance with substantive law. Given the role of the judge as a sometime inquisitor, the informality of the rules, and the absence of attorneys, it might well be impossible for a judge rigidly to apply substantive law. Rather, the emphasis should be placed on his performing "substantial justice" in accordance with the remedial purposes of the Act, while remaining within a broad framework of substantive law.<sup>89</sup> A defendant in a case involving complicated legal or factual issues, which are best litigated under the formal rules, is not prejudiced by this provision because such a defendant could normally transfer such a case to the regular civil court pursuant to section 7.5 of the Act.

CONTINUANCE

SECTION 7.4. (a) A continuance shall be granted by the court before or during a hearing only upon the motion of a party for good cause shown.

(b) Continuances shall be as short-termed as possible and shall not in any case exceed 30 days.

(c) The clerk shall notify the non-moving party of continuances granted prior to scheduled hearings.

(d) the hearing shall be rescheduled at a time and date as convenient to the non-moving party as possible.

*Comment:* Continuances should be discouraged in order that grievances will be resolved quickly and efficiently. No attempt to define "good cause" is attempted, though mere inconvenience to a party is not sufficient once a date has been set for a hearing.

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and not irretrievably lost. An alternative would be to permit jury trials in small claims court and ban all appeals therefrom. *See id.*

<sup>88</sup> Commentators have uniformly recommended that the small claims court should not be required to adhere to the rules of evidence. NICJ REPORT, *supra* note 6, at 21-22; *Special Project*, *supra* note 2, at 777-79. Most states do not follow the technical rules of evidence except as they relate to privileged communications. *Special Project*, *supra* note 2, at 778. *See* NICJ REPORT, *supra* note 6, at 22.

<sup>89</sup> *See Special Project*, *supra* note 2, at 779.

TRANSFER

SECTION 7.5. Actions commenced in the small claims court may be transferred by the court to the regular civil court on the initiative of the court or upon the motion of either party for good cause shown.

*Comment:* This provision is intended to remedy whatever injustice may result by allowing the plaintiff to choose his forum pursuant to section 3.1(a)'s provision for concurrent jurisdiction of the civil and small claims courts. Motions to transfer cases involving complicated issues of law and fact more suitable for the formalized procedures of the regular civil court should generally be granted though the small claims judge retains discretion to determine which forum is the more appropriate one to hear the grievance.

PART VIII  
DISPOSAL OF CASES  
JUDGMENT

SECTION 8.1. (a) The court shall render judgment at the hearing, except that the court may reserve judgment in unusual circumstances, but not for a period to exceed 14 days from the date the hearing was conducted.

(b) The court shall explain its decision in reaching or reserving the judgment to the parties.

(c) The judgment obtained in the small claims court shall be *res judicata* only as to the amount involved in the particular action and shall not be an adjudication of any fact at issue or found therein in any other action or court.

*Comment:* The Model Act contemplates that small claims courts will usually be the forum for relatively uncomplicated legal and factual issues. Accordingly, the judge will ordinarily be able to render a decision at the hearing, thus enabling the speedy initiation of collection procedures under section 8.2 of the Act or appeals under section 8.3. In no case may the judge take longer than fourteen days to render a decision.

The Model Act recognizes that small claims hearings, being informal and speedy mechanisms for resolving disputes, are not suitable for application of *res judicata* principles. Most parties will be unassisted by counsel and thus unequipped to present a case giving complete or adequate treatment to every legal or factual issue. The small claims judge, in addition, is expected actively to hasten resolution of the issues in dispute and not to inquire into every issue which could be litigated. Accordingly, the Model Act provides that the judgment obtained in small claims court is *res judicata* only as to the amount involved in the particular action because this amount reflects only the

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resolution of those issues on which the parties and the judge have properly focused.<sup>90</sup>

COLLECTION

SECTION 8.2. Judgments entered by the small claims court shall be processed and collected as follows:

(1) Incident to the entering of the judgment while the parties are still under oath—

(a) the court shall arrange a judgment satisfaction plan and enter a writ of execution, and

(b) the clerk shall secure a listing and description of the defendant's assets from the defendant in case subsequent attachment of property becomes necessary to collect an unsatisfied judgment.

(2) If the defendant fails to satisfy the judgment in accordance with the judgment plan, the plaintiff shall attempt to contact the defendant and collect the same.

(3) If the defendant still fails to satisfy the judgment, the plaintiff shall notify the court of same and the court shall, upon receipt from the plaintiff of a collection fee, subject to reduction or waiver upon good cause shown, in an amount prescribed by the administrative judge, but not to exceed 5% of the judgment—

(a) issue the previously entered writ of execution to a salaried court official who shall be empowered to enforce the judgment in the same manner as civil court judgments;

(b) assess the collection fee to the defendant and refund the same to the plaintiff to the extent that it is collected from the defendant in excess of the judgment, except that the court may reduce or waive such assessment upon good cause shown; and

(c) institute, in its discretion, contempt proceedings, subject to penalties limited to monetary fines not to exceed 50% of the judgment, against the defendant for failure to satisfy the judgment in accordance with the judgment plan arranged while the defendant was under oath.

*Comment:* To insure more readily the court's edict, the court would administer a court collection apparatus designed to collect any judgments it renders.<sup>91</sup> This type of internal, judgment-collecting

<sup>90</sup> See *id.* at 786-87.

<sup>91</sup> The inability of the individual plaintiff to collect his judgment has been a major shortcoming of small claims courts. Many defendants, particularly landlords and certain fly-by-night businesses, frequently seek to avoid payment of judgment. See *De Minimis*, *supra* note 1, at 501-03. The Model Act seeks to reverse this process by assisting plaintiffs, especially the individual consumer unfamiliar with judgment collection procedure, in commencing the collection process. The NICJ recommended that courtroom personnel be made available to advise plaintiffs of the mechanics of the collection pro-

mechanism is not presently employed in state small claims systems;<sup>92</sup> however it serves to facilitate the collection process for the individual consumer who may be unfamiliar with collection procedures or unable to pursue reluctant defendants. Thus while the parties are still before the court, a payment plan will be fashioned. Any suitable plan arranged by the court will be adopted by the judgment loser under oath.<sup>93</sup> Also, while the parties are present, the court will enter a writ of execution in accordance with the payment plan in order to further signify the seriousness and reach of the judgment. The writ shall be executed only upon failure to satisfy the judgment. A list of the defendant's assets and their locations, from which an attachable list will be made by the clerk and used by the judgment collector in case subsequent attachment of assets becomes necessary to satisfy the judgment, will be obtained.

If the defendant fails to begin payments on the judgment in accordance with the terms of the payment plan, the plaintiff must make a good faith effort to contact the defendant to secure the payments. If unable to collect the judgment, however, the plaintiff is to contact the court. While it is the intention of this provision to provide the defendant with notice of his delinquency and with an opportunity to honor the payment plan without recourse to the court, the court itself shall become the collection apparatus if the plaintiff cannot collect the judgment. By having the court so involve itself in the collection of judgments, the risk of the judge losing his objectivity arises.<sup>94</sup> The cost to the court system in instituting a collection apparatus could also be prohibitive. However, on balance, the goals of the Act mandate that individual consumers, lacking knowledge of the workings of judgment collection and often prey to illegitimate fly-by-night merchants, must be given all the aid possible by the small claims court.

Upon collection of a fee, no greater than five per cent of the judgment involved from the plaintiff, the court will issue the previously entered writ of execution to a salaried court collection official. The court can, simultaneously with the issuance of the writ of execution to the judgment collector, institute a contempt proceeding against the defendant for violating his oath that he would commence payment on the payment plan. The availability of contempt power by the court would deter judgment delinquency and would produce income through fines to fund the court's collection apparatus. Discretion of

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cess and to assist them in making out the appropriate papers. NICJ REPORT, *supra* note 6, at 22-23.

<sup>92</sup> See APPENDIX, *supra* note 5.

<sup>93</sup> If the defendant is in default, the court of course will not be able to compel the adoption of a judgment satisfaction plan under oath. The court in this instance should subpoena the defendant into court so that it may compel him to adopt the plan under oath.

<sup>94</sup> President Judge Glancey, *supra* note 63, has recommended that the court not get involved in the collection process because such involvement would tend to cause courts to lose their objectivity. The opposite view has been expressed. See *De Minimis*, *supra* note 1, at 501-03.

## PROPOSED MODEL CONSUMER JUSTICE ACT

the court would be used in exercising the contempt power and only monetary fines could result from a contempt proceeding. A limit of fifty percent of the judgment would be set, with the actual fee in any case determined by the seriousness of the defendant's violation in failing to pay the judgment.

### APPEALS

SECTION 8.3. Subject to Section 6.2(d), either party may appeal a judgment of the small claims court in a trial *de novo* in an appropriate civil court by—

(1) filing the appeal with the civil court within 30 days from the date of judgment in the small claims court, and

(2) paying an appeal fee to the civil court in an amount not to exceed the filing and service fees required of claimants in commencing actions in the civil court.

*Comment:* Either party may appeal a decision of the small claims court in a trial *de novo* by filing the appeal with the civil court within thirty days from the date of judgment and paying an appeal fee to the civil court in an amount not in excess of the filing and service fees required of claimants who sue in the civil court. This is the current practice followed by a majority of state small claims systems.<sup>95</sup> The appealing party would not be required to post a bond in the amount of the small claims court judgment to insure the payment should he lose on appeal because it is felt that litigants should not be burdened in protecting their rights when the informal forum of the small claims court has decided adversely to them. The requirement that an appealing party post a bond as a condition precedent to appeal deters litigants, particularly those of limited resources, from appealing.

While appeals prolong the resolution of disputes and thus interfere with the small claims court's mandate to effect swift justice between disputants, the interests of justice, which guide all small claims court operations, commands that the right of appeal be unencumbered and available to plaintiff and defendant alike. The fair resolution of disputes in the small claims court, the financial inability of many litigants to litigate on appeal, however inconsequential the appeal fees, and the natural inclination of people not to pursue adverse decisions on appeal will effectively prevent mass appeals from the small claims courts.

### CONCLUSION

Legal mechanisms exist in the states for the handling of disputes

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<sup>95</sup> The right to an appeal has not been held essential to due process. *Special Project, supra* note 2, at 784-85.

of a limited nature. However, all too many are extremely weak, improperly operated or ineffectively promoted.<sup>96</sup> The result is that the small claims court cannot achieve its proper mission of being a quick, low-cost means for effecting legal redress over minor claims.<sup>97</sup>

The "Model Consumer Justice Act" should serve as a guide for the states in adopting, reviewing or revising its small claims court system. These proposals, while forming a unified system, have the flexibility to be adapted to the individual needs of each state. The authors of this Act maintain that the small claims court can become the best forum for the consumer to obtain the justice he seeks in minor disputes. It is now up to business, consumers and government to adopt a program that will truly achieve these ends.

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<sup>96</sup> As has already been noted the Model Act is an ideal with which present small claims systems should attempt to conform. The present systems are too often used not by individuals but by institutional plaintiffs. This leads to an undesirable number of default judgments. Thus the intended beneficiary of the small claims system, the individual and his community, don't benefit from its existence. See *Special Project, supra* note 2, at 720-24. To help correct these problems the Model Act would focus on both lessening the cost of instituting an action in small claims court and distributing information concerning the availability of the court in the community.

<sup>97</sup> Another small claims study found similarly:

With the increased volume of consumer claims for small amounts and the rise in costs of litigation, efficient small claims courts are needed more urgently today than in 1913. If the administration of justice is truly to provide an opportunity for the redress of all grievances, the prospective litigant with a valid but small claim must have access to an inexpensive alternative to formal court procedures.

*Id.* at 727.

# **APPENDIX**

## **PROPOSED MODEL CONSUMER JUSTICE ACT**

### **A State by State Comparison**

MODEL ACT	Name/Location of Court	Method of Establishment	Claims and Relief Allowed	Max. Jurisdictional Amount	Who May Sue / Restrictions	Cost to Sue	Filing to Hearing Time	Saturday/ Evening Sessions	In-Court Mediation/ Arbitration	Condition Precedent to Entry of Default Judgment	Attorneys	Jury trial	Informal Rules	Collection Apparatus	Appeals	State Supervisory Agency
	Small claims court, division of county court or municipal court in every county.	State statutory mandate	Contract and tort claims; monetary and equitable relief.	\$1000	Any person or entity may sue; mass filing and court allocation restrictions.	Maximum \$10 filing fee plus prevailing postage rate for service fee.	Maximum 45 days.	At least one Saturday a month and one evening a week.	Both available as in-court mechanisms.	Entered only after request into service and merits of case.	Not permitted, except with consent of court.	Not available at request of either party; available to both in new trial on appeal.	Yes.	Internal court collection mechanism.	Available to both parties; no board of requirements.	State agency to oversee operation of the court
ALABAMA	Small claims docket in District court; every county seat.	State statutory mandate; implementing Constitutional amendment; 1977.	Civil claims for monetary relief; equitable defenses and equitable relief; compulsory counterclaims permissible.	\$500.	Any person or entity may sue.	Not prescribed by statute.	Not prescribed by statute.	Not prescribed by statute.	Not prescribed by statute.	Not prescribed by statute or current civil rules of procedure.	Permitted.	Not available at request of either party.	Actions governed by uniform rules of simplified procedure as promulgated by Supreme Court.*	Normal collection apparatus external to court.	Both parties may appeal; bond required.	Administrative director of the courts.
ALASKA	Small claim procedure in district court in each judicial district in state.	State statutory mandate; 1959.	Any civil claim-contract or tort-except libel and slander-for monetary relief only.	\$1000.	Any person or entity may sue.	Not prescribed by statute or current court rules.*	8 days from date of notice mailed.	Not prescribed by statute or current court rules.*	Not available.	Not prescribed by statute or uniform rule.	Permitted.	Available at request of either party.	Yes.*	Normal collection apparatus external to court.	Either party may appeal if judgment greater than \$50.00; on record appeal, except that court may in its discretion order new trial on appeal.	State Supreme Court.
ARIZONA*	Justice Courts; every county.	State statutory mandate.	Civil claims; monetary relief.	\$999.99	Any person or entity may sue; no restrictions.	Sliding fees depending on amount in controversy; maximum \$10 plus 55¢ per mile service fee.	Not prescribed by statute or uniform court rules; varies from court to court.*	Not prescribed by statute or uniform court rules; generally not available.	Not available.	No inquest if liquidated claim; if unliquidated claim, inquest into merits.	Permitted.	Available at request of either party.	No.	Normal collection apparatus external to court.	Available to both if judgment greater than \$20; bond required.	Administrative Director of courts oversees courts, keeping statistics, insuring uniformity of practice, conducting seminars, etc.
ARKANSAS*	Municipal and justice courts; municipal court in every municipality; justice court in every township not served by a municipality.	State statutory mandate.	Contract and personal property damage; monetary relief; only claims.	\$300, but \$100 in personal property.	Any person or entity may sue; no restrictions.	Not prescribed by statute or uniform court rules; varies from court to court.*	Not prescribed by statute or uniform court rules; varies from court to court.*	Not prescribed by statute or uniform court rules; generally not available.	Not available.	No inquest if suit on an instrument or liquidated claim; otherwise, an inquest.	Yes.	Not available at request of either party; defendant can transfer case to get a jury trial; no jury trials in municipal court.	Yes.	Normal collection apparatus external to court.	Available to both parties; bond required.	Administrative Director of General Court System; little involvement with municipal and justice courts.



CALIFORNIA	Small Claims Court; part of municipal court in every judicial district in state.	State statutory mandate; 1933.	Civil claims; monetary relief only.	\$500.	Any person or entity may sue except as-signees.	\$ filing fee plus \$1.50 service fee.	10-30 days from date of notice sent to defendant if he resides in county; 30-60 days otherwise.	Not prescribed by statute or uniform rules; generally not available. <sup>13</sup>	Not available.	Plaintiff must give evidence to prove his claim.	Not permitted.	Plaintiff waives it; available to defendant in new trial on appeal.	Yes.	Normal collection apparatus to external court.	Only defendant can appeal new trial; bond required.	State Judicial Council oversees overall efficiency of court system in an advisory capacity.
COLORADO	County court; every county.	State statutory mandate.	Contract and tort claims; monetary relief only.	\$1000.	Any person or entity may sue.	Not prescribed by statute or uniform rules; varies from court to court. <sup>14</sup>	Not prescribed by statute or uniform rules; varies from court to court. <sup>15</sup>	Not prescribed by statute or uniform rules; generally not available.	Not available.	Entered upon showing by plaintiff that defendant got notice of suit.	Yes.	Available at request of either party.	Each court adopts its own rules as long as consistent with rules of Supreme Court; varies from court to court.	Normal collection apparatus to external court.	Available to both parties; new trial only at District court's motion; bond required.	No.
CONNECTICUT	Small claims procedure in Court of Common Pleas; 19 geographical areas throughout state.	State statutory mandate; 1963.	Civil claims except libel and slander; monetary relief only.	\$750.	Any person or entity may sue.	\$5.00	"Early hearing" <sup>16</sup>	Not prescribed by statute or uniform rules; generally not available. <sup>17</sup>	Not available.	Summarily entered if satisfactory service.	Permitted.	Defendant can transfer case to regular docket, and then both parties can demand jury trial if amount greater than \$250.	Yes.	Normal collection apparatus to external court.	Not available to either party.	No.
DELAWARE	Justice of Peace Courts; every county.	State statutory mandate.	Contract claims; monetary relief only.	\$1500.	Any real party (person or entity) in interest may sue.	\$15.00.	15 days from issuance of summons. <sup>18</sup>	Yes, to accommodate conflicts in schedules as they arise. <sup>19</sup>	Not available.	Entered summarily by clerk if undisputed by defendant after hearing.	Yes.	Plaintiff waives; defendant can transfer to Court of Common Pleas for jury trial.	Yes.	Normal collection apparatus to external court.	Available to both parties; new trial; security required.	Deputy Administrator to Chief Justice of state.
DISTRICT OF COLUMBIA	Small claims and conciliation branch of Superior Court; located in District of Columbia.	Federal statutory mandate; 1963.	Contract and tort claims; monetary relief only.	\$150.	Any person or entity may sue.	\$1.50.	2 weeks.	Wednesday evening sessions prescribed by statute; but not sessions not held regularly.	Both available by statute; arbitration not held in actual practice.	Summarily entered if liquidated claim; hearing on damages statute; but unliquidated claim.	Permitted.	Available at request of either party; certified to civil division of Superior Court.	Yes.	Normal collection apparatus to external court.	Either party may appeal; new trial; no bond.	No.
FLORIDA	Small claims jurisdiction of civil division of county court; every county.	State supreme Court rule; 1973.	Civil claims; monetary relief only.	\$1500.	Any person or entity may sue.	Sliding scale: depending on amount of claim; maximum \$15 plus \$7.50 per-hour service fee.	14 days. <sup>20</sup>	Not available.	Not available.	Plaintiff required to produce evidence of claim as a condition precedent to entering default judgement.	Permitted.	Available at request of either party in Small Claims Division.	Yes.	Normal collection apparatus to external court.	Available to both parties.	Chief Justice of State Supreme Court.

Name/Location of Court	Method of Establishment	Claims and Relief Allowed	Max. Jurisdictional Amount	Who May Sue / Restrictions	Cost to Sue	Filing to Hearing Time	Saturday/ Evening Sessions	In-Court Mediation/ Arbitration	Condition Precedent to Entry of Default Judgment	Attorneys	Jury trial	Informal Rules	Collection Apparatus	Appeals	State Supervisory Agency
MODEL ACT															
Small claims court; division of county court or municipal court in every county.	State statutory mandate	Contract and tort claims; monetary and equitable relief.	\$1000	Any person or entity may sue; mass filing and court allocation restrictions.	Maximum \$10 filing fee plus prevailing postage rate for service fee.	Maximum 45 days.	At least one Saturday a month and one evening a week.	Both available as in-court mechanisms.	Entered only after inquest into service and merits of case.	Not permitted, except with consent of court.	Not available at request of either party; available to both in new trial on appeal.	Yes.	Internal court collection mechanism.	Available to both parties; new trial; no board of requirements.	State agency to oversee operation of the court
GEORGIA <sup>18</sup>															
Justice of Peace in each militia district in state.	State statutory mandate.	Claims on contracts and damages to personal property; monetary relief only.	\$200.	Any person or entity may sue.	No cost for residents; \$2.00 for non-residents.	Not prescribed by statute or uniform court rule; varies from court to court.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Summarily entered on defendant's non-appearance.	Permitted.	Available to both parties if both consent; available at demand of either after decision of Justice of the Peace, as an intermediary step to appeal.	No.	Normal collection apparatus to external court.	Available to both parties to claim greater than \$50; new trial; no bond requirement.	State Administrative Office of Court — Judicial Council of Georgia — takes active role in overseeing courts.
HAWAII															
Small claims division of District Court; every judicial district in state.	State statutory mandate; 1970.	Civil claims for recovery of money only.	\$300.	Any person or entity may sue.	\$5.00.	Not prescribed by statute or uniform court rule; varies from court to court. <sup>20</sup>	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Courts require proof of allegations in complaint before default judgment entered.	Permitted except in landlord-tenant security deposit cases.	Case can be certified over to Circuit Court for a jury trial at the demand of either party.	Yes.	Normal collection apparatus to external court.	Not available to either party.	State Supreme Court.
IDAHO															
Small Claims Department of Magistrate's District Court; in every judicial district in state.	State enabling statute; 1969	Contract and tort claims; monetary relief only.	\$300.	Any party or entity may sue except assignees.	\$5 filing fee plus current cost of personal service.	5-10 days from date of service.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Not prescribed by statute or uniform court rules.	Not permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; bond required.	No.
ILLINOIS															
Small claims division of circuit courts and Pro Se court; small claims division of municipal division of Cook County Circuit Court.	State statutory mandate; 1968.	Civil claims on tort or contract for monetary relief only.	\$1000, and \$300 in pro se Cook County.	Any person or entity may sue except that partnerships, corporations, and associations cannot sue in the Pro Se Court in Cook County.	Filing fee not prescribed by statute or uniform court rules; varies from court to court. Mailing fee \$1.50 <sup>21</sup>	14-40 days from issuance of summons, or 30 days from date of service.	Not prescribed by statute or uniform court rule; generally not available. <sup>22</sup>	Not available.	Generally summary entered upon defendant's nonappearance.	Permitted, except in Pro Se Court in Cook County.	Available at plaintiff's demand at commencement of defendant's suit or at defendant's demand on appearance date; transferred to regular court if required; not available if plaintiff's demand in Pro Se Court in Cook County.	Yes.	Normal collection apparatus to external court.	Available to either party to appellate court or record appeal.	Administrative section of State Supreme Court.

INDIANA	Small claims procedure in Superior Court, Circuit Court and County Court; Small Claims Court in Marion County. <sup>28</sup>	State statutory mandate; 1976. <sup>29</sup>	Civil claims based on contract and tort; monetary relief only.	\$3000.	Any person or entity may sue.	\$10 (filing and service).	40 days from date of filing.	By court rule, one session a week, more evening sessions as defendant requires.	Not available.	Not entered on defendant's non-appearance; some requests into merits.	Permitted.	Plaintiff waives by suing for a small claim; defendant may request jury trial and case may be longer than usual as a small claim.	Yes.	Normal collection apparatus to external court.	Available to both parties; appealed to Indiana Court of Appeals. Interested to Questions of Law; bond necessary to stay execution on judgement.	Office of Judicial Administration — oversees caseload management.
IOWA	Small claims procedure in District Court in each judicial district in state.	State statutory mandate; 1973.	Civil claims; monetary relief only.	\$1000.	Any person or entity may sue.	\$5 plus postage.	20 days for resident defendants; 60 days for non-resident defendants.	Not prescribed by statute or uniform court rule; generally not available. <sup>30</sup>	Not available.	Clerk gives relief if proper notice given, except that a hearing is held on receipt if damages are not readily available.	Permitted.	Not available to either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; appeal on record of court below, but new evidence if court decides record inadequate; bond necessary to stay execution on judgement.	State Supreme Court.
KANSAS	Small claims procedure in every county.	State statutory mandate; 1973.	Civil claims for the recovery of money only.	\$300.	Any party or entity may sue except assignees; limit of 5 claims per year per party.	\$5.	Not prescribed by statute or uniform court rule; varies from 15 to 30 days from court. <sup>31</sup>	Not prescribed by statute or uniform court rule; varies from court to court.	Not available.	Court may conduct hearings as it deems proper in order to enter judgment or to carry it into effect.	Not permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; new trial; no bond requirement.	No.
KENTUCKY <sup>32</sup>	Quarterly Court and Justice of the Peace Court in every county seat of every county. <sup>33</sup>	State statutory mandate.	Civil claims for recovery of money or personal property.	\$500.	Any person or entity may sue if real party in interest; assignees may sue if entire claim has been assigned to him.	\$5.50 if damages less than \$50; \$21.50 if damages greater than \$50.	Usually within 20 days of filing.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Court may hold hearing on merits or damages in order to enter a default judgment or to carry judgment into effect.	Permitted.	Available at request of either party if amount of claim greater than \$20.	No.	Normal collection apparatus to external court.	Available to both parties; new trial; bond required.	No.
LOUISIANA	District courts, City courts and Justice of the Peace Courts.	State statutory mandate.	Contract claims; monetary relief only.	\$300. <sup>34</sup>	Any person or entity may sue.	Varies from \$5 to \$22.50.	4-8 weeks.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Plaintiff must establish meritorious claim.	Permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Both parties may appeal; new trial; bond requirement.	State Supreme Court.
MAINE	Small Claims procedure in District Court in every county.	State statutory mandate; 1954.	Civil claims; monetary relief only.	\$800.	Any person or entity may sue.	\$5.00 (filing and service by mail).	14 days from date of notice mailed.	Not prescribed by statute or uniform court rule; generally not available.	Not provided.	Summarily entered on defendant's non-appearance.	Yes.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to either party; new trial; bond required.	No.

Name/Location of Court	Method of Establishment	Claims and Relief Allowed	Max. Jurisdictional Amount	Who May Sue / Restrictions	Cost to Sue	Filing to Hearing Time	Saturday/ Evening Arbitration	In-Court Mediation/ Arbitration	Condition Precedent to Entry of Default Judgment	Attorneys	Jury trial	Informal Rules	Collection Apparatus	Appeals	State Supervisory Agency
<b>MODEL ACT</b>															
Small claims court, division of county court or municipal court in every county.	State statutory mandate 1976.	Contract and tort claims; monetary and equitable relief.	\$1000	Any person or entity may sue; mass filing and court allocation restrictions.	Maximum \$10 filing fee plus prevailing postage rate for service fee.	Maximum 45 days.	At least one Saturday a month and one evening a week.	Both available as in-court mechanisms.	Entered only after request into service and merits of case.	Not permitted, except with consent of court.	Not available at request of either party; available to both in new trial on appeal.	Yes.	Internal court collection mechanism.	Available to both parties; no new trial; no board of requirements.	State agency to oversee operation of the court
<b>MARYLAND</b>															
Jurisdiction over small claims actions in District Court; every judicial district in Maryland; effective April 1, 1976.	Uniform court rule; 1976.	Civil claims; monetary relief only.	\$500.	Any person or entity may sue.	Not prescribed by court rule. <sup>28</sup>	30 days from filing date.	Not prescribed by court rule. <sup>29</sup>	Not available.	Not prescribed by court rule. <sup>30</sup>	Permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; no new trial; no bond requirement.	State Supreme Court.
<b>MASSACHUSETTS</b>															
Small claims procedure in District Courts and Boston Municipal Court. Boston and every judicial district.	State statutory mandate; 1960.	Contract and tort claims, but no libel and slander; monetary relief only.	\$400.	Any person or entity may sue.	\$3.55.	2-6 weeks after filing.	Not prescribed by statute or uniform court rule; generally, not available; court open one Saturday a month in Boston municipal court.	Not available.	Summarily entered on defendant's non-appearance.	Permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available only to defendant; new trial with jury at defendant's request; bond required.	Chief Justice of District Courts and Supreme Court of Massachusetts.
<b>MICHIGAN</b>															
Small claims division of District Court; each judicial district in State. <sup>32</sup>	State statutory mandate; 1958.	Civil claims for recovery of money only.	\$300.	Any person or entity may sue except assignees and third party beneficiaries.	\$5.00 filing fee; \$2.00 mail service fee or prevailing personal service fee.	15-30 days from date of mailing notice.	Not prescribed by statute or uniform court rule—generally, not available.	Not available.	Generally summarily entered on defendant's non-appearance.	Not permitted.	Either party can remove case to district court where jury trial available at motion of either party.	Yes.	Normal collection apparatus to external court.	Appeals from Small Claims Division to not available to either party; appeal available to both if case had been removed to District Court.	State Supreme Court.
<b>MINNESOTA</b>															
Conciliation Court in every county.	State Enabling Act and Supreme Court Rules for establishment of Conciliation Courts; 1975.	Civil claims; monetary relief only.	\$1000. Except \$500 in St. Paul and Minneapolis.	Any person or entity may sue.	Not prescribed by statute or uniform court rule; varies from court to court, approximately \$7.00.	10 days from date of mailing of notice.	Not prescribed by statute or uniform court rule; generally, not available.	Conciliation highly encouraged, but no in-court conciliation mechanism.	The court will hear plaintiff's case or continue.	Not permitted, except with leave of court.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; new trial; bond required.	No.

MISSISSIPPI	Justice of the Peace; every county.	State statutory mandate.	Civil claims for recovery of debt, damages and personal property; monetary relief only.	\$500.	Any person or entity may sue.	\$5.00.	30 days.	Not prescribed by statute or uniform court rules; generally not available.	Not available.	Entered on pleadings if liquidated claim; otherwise, an inquest into proof of claim.	Yes.	Available at request of either party.	Yes.	Judgment entered on property of defendant in judicial area, otherwise normal collection apparatus to external court.	Available to both parties; bond required.	Attorney General required by law to instruct of Justices of Peace on their duties.
MISSOURI	Magistrate court in every county. <sup>30</sup>	State statutory mandate.	Contract and tort claims; monetary recovery only.	Between \$2000 and \$35000 depending on population of county.	Any person or entity may sue.	Not prescribed by statute or uniform court rule; varies from court to court. <sup>30</sup>	Not prescribed by statute or uniform court rule; varies from court to court. <sup>30</sup>	Sessions held whenever magistrate de-appears if a liquidated claim; Saturday evening court to sessions not generally available. <sup>31</sup>	Not available.	Summarily entered on defendant's non-appears if a liquidated claim; hearing on merits of claim if not liquidated.	Permitted.	Available at request of either party.	Rules become more formal the more populated the county.	Normal collection apparatus to external court.	Available to both parties; new trial in Circuit Court. Appeal bond necessary to stay execution on judgment.	State Supreme Court.
MONTANA	Small claims court; part of District Court in every judicial district in state.	State enabling Act. <sup>32</sup> Counties may establish small claims court; 1975.	Contract claims; monetary relief only.	\$1500.	Any person or entity may sue except assignees.	\$5.00.	10-30 days from date of order to defendant.	Not prescribed by statute or uniform court rules; open as required by District Judge.	Not available.	Plaintiff presents his case prior to entry of default judgment.	Permitted, if all parties represented.	Plaintiff de-appears; defendant gets it upon request.	Yes.	Normal collection apparatus to external court.	Available to both parties; new trial; no appeal bond required.	No.
NEBRASKA	Small Claims Department in each County and Municipal Court.	State statutory mandate; 1972.	Civil claims for money, damages or value of property; equitable relief to disaffirm, avoid or rescind a contract involving jurisdictional amounts.	\$500.	Any person or entity except assignees, 2 maximum claims in any week, 10 per year per party.	\$2.00 and cost of service.	Not prescribed by statute or uniform court rule; varies from court to court. <sup>33</sup>	Not prescribed by uniform court rule; generally not available. <sup>34</sup>	Not available.	Plaintiff must ordinarily offer evidence to establish his case.	Not permitted.	Available only upon defendant's motion to remove to regular court.	Yes.	Normal collection apparatus to external court.	Available to both parties; new trial; bond requirement.	State Supreme Court.
NEVADA	Small claims section in Justice Courts or small claims procedure in Justice Court, depending on size of courts; every township.	State statutory mandate; 1923.	Same as civil actions in other lower courts; monetary recovery only.	\$300.	Any person or entity may sue.	\$5.00 to \$7.50.	5-15 days from date of order.	Not prescribed by statute or uniform court rules; generally not available.	Not available.	Summarily entered on defendant's non-appears.	Permitted.	Not available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; bond required.	No.

Name/Location of Court	Method of Establishment	Claims and Relief Allowed	Max. Jurisdictional Amount	Who May Sue / Restrictions	Cost to Sue	Filing to Hearing Time	Saturday/ Evening Sessions	In-Court Mediation/ Arbitration	Condition Precedent to Entry of Default Judgment	Attorneys	Jury trial	Informal Rules	Collection Apparatus	Appeals	State Supervisory Agency
MODEL ACT															
Small claims court, division of county court or municipal court in every county.	State statutory mandate	Contract and tort claims; monetary and equitable relief.	\$1000	Any person or entity may sue; mass filing and court allocation restrictions.	Maximum \$10 filing fee plus prevailing postage rate for service fee.	Maximum 45 days.	At least one Saturday a month and one evening a week.	Both available as in-court mechanisms.	Entered only after inquiry into service and merits of case.	Not permitted, except with consent of court.	Not available at request of either party; available to both in new trial on appeal.	Yes.	Internal court collection mechanism.	Available to both parties; new trial; no board of requirements.	State agency to oversee operation of the court
NEW HAMPSHIRE	Small claims procedure in municipal courts and in district courts in areas not served by municipalities.	Same as civil action for recovery of money; no slander or libel cases.	\$500.	Any person or entity may sue.	\$1.50 plus postage.	Not prescribed by statute or uniform court rules; varies court to court.	Not prescribed by statute or uniform court rules; generally varies court to court.	Not available.	Summarily entered on defendant's non-appearance.	Yes.	Not available at request of either party.	Yes.	Normal collection apparatus external to court.	Available to both parties on questions of law; no bond required.	Attorney General oversees courts in general way.
NEW JERSEY	Small Claims Division of District Court; every county.	Contract claims and claims for property damages in motor vehicle accidents; monetary relief only.	\$500.	Any person or entity may sue except assignees.	\$2.10 plus service fee.	Not prescribed by statute or uniform court rule; varies court to court; usually within a month to 6 weeks.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Summarily entered on defendant's non-appearance.	Permitted.	Not available at request of either party.	Informal to some extent regarding discovery and method of service.	Normal collection apparatus external to court.	Available to both parties.	Administrative Office of Courts of New Jersey — take active administrative role.
NEW MEXICO	Magistrate Court in every county. <sup>40</sup>	Contract and tort claims; monetary relief only.	\$2000.	Any person or entity may sue.	Not prescribed by statute or uniform court rules; varies court to court.	Not prescribed by statute or uniform court rules; varies court to court.	Not prescribed by statute or uniform court rules; generally not available.	Not available.	Summarily entered on defendant's non-appearance.	Permitted.	Plaintiff waives jury trial; defendant can transfer case to District Court to obtain jury trial.	Rules of Civil Procedure of District Court apply.	Normal collection apparatus external to court.	Available to both parties limited to review of questions of law; bond requirement.	Court Administrator.
NEW YORK	Small claims jurisdiction in District Court — every judicial district in state and in every city, town or village in civil court in state. <sup>41</sup>	Any civil claim for money only.	\$1000, but equal to monetary jurisdiction of any city or town or village civil court less than \$1000.	Any person or entity may sue except corporations and assignees; insurer cannot sue in its name or name of insured. <sup>42</sup>	\$2.00 plus cost of registered mail.	Not prescribed by statute or uniform court rules; varies court to court.	Not prescribed by statute or uniform court rules; generally not available outside New York City. <sup>43</sup>	Arbitration available as in-court alternative in New York City Civil Court System.	Generally an inquiry into proof of plaintiff's case.	Permitted.	Unavailable to plaintiff; defendant can request jury trial and case transferred to regular docket.	Yes.	Normal collection apparatus external to court, except that plaintiff who collects judgment within month of judgment against one with 3 small claims judgments against him may sue for treble damages.	Plaintiff waives right, but defendant can appeal — and either party may appeal on grounds that judgment has been done; bond requirement.	

NORTH CAROLINA	Small claims action in District Court; every judicial district in state.	State statutory mandate; 1968.	Civil claims; monetary relief only.	\$500.	Any person or entity may sue.	Not prescribed by statute or uniform court rule; varies court to court.	30 days from time action commenced.	Not prescribed by statute or uniform court rule; generally not available.	Entered after plaintiff presents and establishes a claim.	Permitted.	Not available to plaintiff; defendant may transfer case to District Court to get jury trial, but effect	Simplified pleadings, but regular rules of practice governed by District Court in effect	Normal collection apparatus to external court.	Available to both parties; trial de novo; bond required to stay execution on judgement.	Administrative Office of the Courts.
	Small claims jurisdiction exercised by county court judges and justices when presiding over small claims; every county.	State statutory mandate; 1971.	Civil claims for money, cancellation of agreement involving fraud, deception, misrepresentation or false promise.	\$200 before county court; \$300 before judge of county court.	Any person or entity may sue except assignees.	\$2.00 filing fee plus \$1.00 service fee.	5-30 days from service of notice.	Not prescribed by statute or uniform court rule; generally not available.	Summarily entered.	Permitted.	Defendant can remove case to county court to get jury trial; plaintiff waives.	Yes.	Normal collection mechanism external to court.	Available to both only if defendant has removed to county court; if not removed, not available to either party.	State Supreme Court.
OHIO	Small claims division of each county and municipal court throughout state.	State statutory mandate; 1967.	Civil claims for monetary relief only.	\$300.	Any person or corporation which is a real party in interest; filing limit of 6 claims in any 30 day period.	Not greater than \$3.00.	Within 30 days.	Not prescribed by statute or uniform court rule; generally not available.	Summarily entered.	Permitted.	Plaintiff waives; defendant waives if he doesn't move to transfer to regular court.	Yes.	Regular collection apparatus external to court; court has contempt power if judgement debtor does not satisfy judgement.	Both parties can object to referee's decision to court of which the Division is a part; and can appeal court's decision on objection; bond required.	Administrative office of Courts — no systematic supervision.
	Small claims procedure in District Court; every judicial district in state.	State statutory mandate; 1969.	Claims in real money based on contract or tort and to recover property the value of which is less than the jurisdictional limit; no standard or fee.	\$400.	Any person or entity may sue except assignees, collection agencies and collection agent.	\$3.00 filing fee; \$10.00 for possession of personal property.	10-30 days from date order sent to defendant.	Not prescribed by statute or uniform court rule; generally not available.	Automatic if a liquidated claim; court holds hearing if not liquidated; clerk can hold hearing on a promissory note.	Permitted.	Available at request of either party.	Yes.	Normal collection apparatus external to court.	Available to both parties; to Supreme Court of State; bond required to stay execution on judgement.	State Supreme Court has general administrative control over court system.
OREGON	Small claims department in each judicial district; every judicial district.	State statutory mandate; 1971.	Regular civil claims; monetary relief only.	\$500.	Any person or entity may sue.	\$1-\$6 depending on amount in controversy. \$3 for per-sonal service and postage cases for mail service.	5-10 days from service of notice in District Court.	Not prescribed by statute or uniform court rule; generally not available.	Summarily entered if defendant doesn't demand a hearing or jury trial after he hasn't appeared.	Not permitted, except with consent of court.	Plaintiff waives; defendant can readily register jury court for jury trial.	Yes.	Normal collection apparatus external to court.	Not available to plaintiff; available to defendant with bond.	State Court Administrator.

Name/Location of Court	Method of Establishment	Claims and Relief Allowed	Max. Jurisdictional Amount	Who May Sue / Restrictions	Cost to Sue	Filing to Hearing Time	Saturday/ Evening Sessions	In-Court Mediation/ Arbitration	Condition Precedent to Entry of Default Judgment	Attorneys	Jury trial	Informal Rules	Collection Apparatus	Appeals	State Supervisory Agency
MODEL ACT															
Small claims court; division of county court or municipal court in every county.	State statutory mandate	Contract and tort claims; monetary and equitable relief.	\$1000	Any person or entity may sue; mass filing and court allocation restrictions.	Maximum \$10 filing fee plus prevailing postage rate for service fee.	Maximum 45 days.	At least one Saturday a month and one evening a week.	Both available as in-court mechanisms.	Entered only after request into service and merits of case.	Not permitted, except with consent of court.	Not available at request of either party; available to both in new trial on appeal.	Yes.	Internal court collection mechanism.	Available to both parties; new trial; no board of requirements.	State agency to oversee operation of the court
PENNSYLVANIA	District Justice of the Peace courts; every judicial district in state. <sup>22</sup>	Claims arising from contract and trespass; monetary relief only.	\$1000.	Any person or entity may sue.	Between \$7.50 and \$15.00 plus any postage fee for service fee.	14-60 days from date complaint filed.	Not prescribed by statute or uniform court rule; generally not available.	Not available.	Varies from court to court.	Permitted.	Plaintiff defendant can remove to Court of Common Pleas for a jury trial.	No.	Normal collection apparatus to external court.	Both parties new trial on appeal; in Court of Common Pleas, no bond.	Court Administration of State oversees operation of court.
RHODE ISLAND	Small claims procedure in District Courts; every judicial district in state.	Civil claims; monetary relief only.	\$300.	Any person or entity may sue.	\$1.70.	6 weeks.	Not prescribed by statute or uniform court rules; generally not available.	Not available.	Proof of claim by affidavit-court grants amount claimed, on amount it finds owing.	Permitted.	Not available at request of either party; available to defendant in new trial on appeal.	Yes.	Normal collection apparatus to external court.	Available only to defendant; as a regular appeal from district court.	No.
YOUTH CAROLINA	Magistrate court; counties.	Contract and tort claims; monetary relief only.	Varies from \$200 to \$3000.	Any person or entity may sue.	Not prescribed by statute or uniform court rules; varies from court to court.	Not prescribed by statute or uniform court rules; varies from court to court.	Not prescribed by statute or uniform court rules; varies from court to court.	Not available.	If liquidated claim, need proof of service; if unliquidated, must prove damages; in all other cases, plaintiff must prove case.	Yes.	Available at request of either party.	Yes.	Normal collection apparatus to external court.	Available to both parties; bond necessary to stay execution on judgement.	Court administrator in Supreme Court; Attorney General advises court.
SOUTH DAKOTA	Small claims procedure in Magistrate Court in every county.	Contracts and tort claims; no slander & libel; monetary relief only.	\$500.	Any person or entity may sue.	\$4.00 (approximately)	Not prescribed by statute or uniform court rules; varies from court to court.	Not prescribed by statute or uniform court rules; generally not available. <sup>23</sup>	Not available.	Entered summary upon defendant's non-appearance.	Permitted.	Available only to defendant upon request to remove.	No — Normal civil rules.	Normal collection apparatus to external court.	Available to both parties; only if defendant had previously removed case to regular court for jury trial.	State Supreme Court.



<p>TENNESSEE</p> <p>General Sessions Court in every county seat.</p>	<p>State statutory mandate.</p>	<p>Civil claims; monetary &amp; equitable relief.</p>	<p>\$3000 in civil cases; \$7500 in actions to recover personal property.</p>	<p>Any person or entity may sue.</p>	<p>Varies from \$7.50 to \$15 depending on county.</p>	<p>Not prescribed by statute or uniform court rule; generally not available.<sup>66</sup></p>	<p>Not available.</p>	<p>Court hears allegations and proof from plaintiff prior to entry of default judgment.</p>	<p>Permitted.</p>	<p>Not available at request of either party; both in new trial on appeal.</p>	<p>Normal collection apparatus to external court.</p>	<p>Available to both parties; new trial; bond requirement.</p>	<p>State Supreme Court.</p>
<p>TEXAS</p> <p>Small court in every county.</p>	<p>State statutory mandate; 1953.</p>	<p>Civil claims; monetary relief only.</p>	<p>\$150 for damages; \$200 for employment/ labor claims.</p>	<p>Any person or entity may sue, except assignees, co-defendants, agencies &amp; any person or entity lending money for interest as a primary or secondary business.</p>	<p>\$3.00 filing fee plus \$2.00 per person service fee.</p>	<p>Not prescribed by statute or uniform court rule; generally not available.<sup>66</sup></p>	<p>Not available.</p>	<p>Entered if proof of service and amount due.</p>	<p>Permitted.</p>	<p>Available at request of either party.</p>	<p>Normal collection apparatus to external court.</p>	<p>Available to both parties if amount involved is greater than \$20; new trial.</p>	<p>State Supreme Court.</p>
<p>UTAH</p> <p>Small Claims Court as designated in city and Justice of Peace Courts throughout state.</p>	<p>State statutory mandate; 1951.</p>	<p>Civil claims; monetary relief only.</p>	<p>\$200.</p>	<p>Any party (person or entity) may sue except assignees.</p>	<p>\$3.00 filing fee plus \$1.00 &amp; 20c per mile for personal service.</p>	<p>Not prescribed by statute or uniform court rules; generally not available in city courts; sometimes available in Justice Court.<sup>66</sup></p>	<p>Not available.</p>	<p>Varies with judge; rarely more cursory examination into plaintiff's claim.<sup>66</sup></p>	<p>Permitted, but some judges refuse to hear attorneys.</p>	<p>Not available at request of either party.</p>	<p>Normal collection apparatus to external court.</p>	<p>Plaintiff cannot appeal; defendant appeal — new trial; cost bond &amp; bond to stay execution on judgment.</p>	<p>Court Administrator.</p>
<p>VERMONT</p> <p>Small Claims procedure in district courts; every judicial district in state (all counties).</p>	<p>State statutory mandate; 1925.</p>	<p>Claims or civil nature for recovery of money; no slander or libel.</p>	<p>\$250.</p>	<p>Any person or entity may sue.</p>	<p>\$2.55 — claims of \$100 or less; \$5.55 — claims greater than \$100.</p>	<p>Not prescribed by statute or uniform court rules; generally not available.</p>	<p>Not available.</p>	<p>Summarily entered on proof of service.</p>	<p>Yes.</p>	<p>Plaintiff waives; available at request of defendant.</p>	<p>Normal collection apparatus to external court.</p>	<p>Available to both parties; Supreme Court; no bond required.</p>	<p>Court Administrator who serves as Clerk of Supreme Court.</p>
<p>VIRGINIA</p> <p>General District Court; every judicial district in state.</p>	<p>State statutory mandate.</p>	<p>Contract and tort claims; monetary &amp; equitable relief.</p>	<p>\$5000.</p>	<p>Any person or entity may sue.</p>	<p>Generally under \$5, although not prescribed by statute or uniform court rule.</p>	<p>Not prescribed by statute or uniform court rule; generally not available.<sup>66</sup></p>	<p>Not available.</p>	<p>Generally entered in peremptory manner.</p>	<p>Permitted.</p>	<p>Only defendant can remove a jury trial if greater than \$500.</p>	<p>Normal collection apparatus to external court.</p>	<p>Available to both parties; new trial (with judgment if greater than \$20); bond required.</p>	<p>State Supreme Court.</p>



<sup>1</sup> A small claims docket in all District Courts is established in the Judicial Article Implementation Act, Act. No. 1205, approved October 10, 1975, effective January 16, 1977. The Act implements an amendment to the Constitution of Alabama providing for a unified court structure.

<sup>2</sup> An Advisory Committee appointed by the Supreme Court is in the process of developing recommendations concerning rules of administration, practice, and procedure governing small claims.

<sup>3</sup> As of 1972, the costs to sue in the lower courts in Ketchikan and Kodiak, Alaska, were \$5.00 plus a service fee; and Saturday and/or evening sessions were not available in these courts.

<sup>4</sup> *Id.*

<sup>5</sup> By legislative mandate, the Supreme Court shall prescribe procedural rules and standard forms to assure simplicity and the expeditious handling of small claims. The Supreme Court will be promulgating comprehensive rules governing small claims procedure in the near future.

<sup>6</sup> The Supreme Court of Arizona has appointed an Advisory Committee on the Reorganization of the Lower Courts: its Report to the Supreme Court, and the consequent proposed legislation, proposes that the lower court structure be changed to a unified system so that the jurisdiction of the lower courts is coterminous with that of the court of general jurisdiction.

<sup>7</sup> As of 1972, the filing to hearing period in the Justice of Peace Court in Phoenix, Arizona, was several months.

<sup>8</sup> A Bill to create a small claims court was defeated in the last legislative session.

<sup>9</sup> A Small Claims Division of the Boone Circuit Court was established, by local court rule, on April 19, 1973. Some of the features of the Division are as follows: (1) Suits on accounts and suits on promissory notes may be filed in the Small Claims Division up to a limit of \$500; (2) Attorneys are prohibited in the Small Claims Division; (3) Only the real party in interest may sue in the Division—no assignees; (4) Filing fees at the discretion of the clerk, but such fees shall not be less than \$15; (5) Jury trials are unavailable in the Division; (6) Informal rules of pleading and practice govern in the Division; and (7) Both parties may appeal to the Supreme Court.

<sup>10</sup> As of 1972, filing costs in the Municipal Court of Jackson, Arkansas, were \$3.50; the filing to hearing period was 30 days; and Saturday and/or evening sessions were not provided.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> As of 1972, Saturday and/or evening sessions were not available in San Francisco and Los Angeles.

<sup>14</sup> As of 1972, the costs to sue in the county court in Denver, Colorado, were \$7.00; the filing to hearing time was 10-20 days.

<sup>15</sup> *Id.*

<sup>16</sup> The average filing to hearing period for small claims in the Hartford Court of Common Pleas, the busiest court in Connecticut, has been 10 weeks in the past year. Saturday and/or evening hearing sessions are not conducted.

<sup>17</sup> *Id.*

<sup>18</sup> The Justice Court in New Castle County, the most populated county in the state, has an average filing to hearing period of 4 to 8 weeks; Saturday and/or evening hearing sessions are not conducted.

<sup>19</sup> *Id.*

<sup>20</sup> The average filing to hearing period in the Small Claims jurisdiction of the Dade County Court, the busiest court in the state, is 28 to 35 days.

<sup>21</sup> Forty-five counties in Georgia, out of a total 159 counties, have established, by local rule, a small claims court; a recent bill in the Georgia legislature proposed that a small claims procedure be established in the probate courts of Georgia—was not passed.

<sup>22</sup> As of 1972, the average filing to hearing period in the Small Claims Division of the District Court in Honolulu was 15 days. Saturday and/or evening sessions were not available in that court.

<sup>23</sup> The combined filing and service fee in the Pro Se Court in Cook County ranges from \$9.50 for service by mail, and \$16.20 for service by sheriff; in the Small Claims Division in the municipal division in Cook County, the filing fee ranges from \$8.50 to \$12.50, and personal service is additional; and in the Small Claims Division of the Springfield Circuit Court, the filing fee ranges from \$8 to \$11, depending on the amount of the claim, in addition to sheriff's fees for personal service.

<sup>24</sup> Saturday and/or evening sessions are not available in the Pro Se Court and Small Claims Division in Cook County, and in the Small Claims Division of the Springfield Circuit Court.

<sup>25</sup> Small-claims are filed on a small claims docket in the county court in 63 Indiana counties; small claims are filed on a small claims docket of the Circuit Court in 24 counties; and small claims are filed in the small claims docket of the Superior Court in 4 counties.

<sup>26</sup> Effective January 1, 1976.

<sup>27</sup> Saturday and/or evening hearing sessions are not available in the District Court in Des Moines, the most populated city in Iowa, although some magistrates, who are empowered to hear small claims cases in the District Court, do conduct Saturday and evening sessions in different districts throughout the state.

<sup>28</sup> The average filing to hearing period in the small claims jurisdiction in the Sedgwick County court, which encompasses Wichita, is 10-21 days; Saturday and/or evening sessions are not available in that court.

<sup>29</sup> An outstanding Bill (House Bill No. 92) has been proposed in the General Assembly of the Commonwealth of Kentucky in the 1976 Regular Session. The Interim Joint Committee on Judiciary, as of January 6, 1976, recommended passage of the Bill. The general purpose of the Bill is as follows (corresponding to the categories in the state summaries):

1. A Small Claims Division of the Quarterly Court.
  2. Would be established by statutory mandate in every Quarterly Court.
  3. The Division would have jurisdiction over civil actions for the recovery of money and equitable power to disaffirm, award, or rescind a contract or agreement for the purchase of goods or services.
  4. The monetary jurisdictional limit of the court would be \$500.
  5. Any person or entity could sue in the Division, with the following restrictions:
    - a) the party must have been an original party to the transaction out of which the claim of action arose;
    - b) assignees may not file claims;
    - c) no party may file a claim who is in the business, primarily or secondarily, of lending money at an interest rate, and collection agencies and agents may not file claims.
    - d) The filing and service fee is \$2.00.
  6. The filing and service fee is \$2.00.
  7. A case is scheduled for no less than 20 days after the clerk gets a return on notice sent by certified or registered letter, nor more than 40 days after the filing of the claim.
  8. The court may by rule establish night sessions.
  9. The court may by rule establish voluntary conciliation procedures.
  10. A default judgment is entered summarily against the defendant when he fails to appear for a hearing and the plaintiff has a liquidated claim; the plaintiff must give proof of claim if the claim is unliquidated.
  11. A jury trial is waived by plaintiff, but the defendant can remove the case to the Quarterly Court and obtain a jury trial.
  12. The rules of practice and pleading are informal.
  13. Ordinary external court mechanisms are used to collect judgments.
  14. Both parties have the right of appeal to a trial de novo.
- The Bill has been described in detail because many of its essential features parallel the features of the small claims court established under the Model Consumer Justice Act. While the Bill is different from the Model Act in some important respects, it is nevertheless an excellent piece of legislation and should be monitored closely.

<sup>30</sup> By a 1975 Amendment to the Kentucky Constitution, the inferior courts in Kentucky, including the Quarterly Court and the Justice of the Peace Court, will be replaced, as of January 1, 1978, by a District Court System.

<sup>31</sup> The New Orleans City Court has jurisdiction over claims not in excess of \$25.00.

<sup>32</sup> Court officials in the District Court in Baltimore indicate that \$5.00 will be collected from small claims claimants, that Saturday and/or evening hearing sessions will not be available, and that default judgments will be entered summarily upon a defendant's non-appearance.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> In Detroit, small claims are heard in the Small Claims Division of the Court of Common Pleas, where attorneys are permitted, regular civil rules of practice and pleading apply, and only the defendant can remove a case to the regular docket.

<sup>36</sup> Saturday and/or evening hearing sessions are not available in the Small Claims Division of the Court of Common Pleas in Detroit.

<sup>37</sup> As of 1972, the filing fee in the Conciliation Courts in St. Paul and Minneapolis, the most populated cities in the state, was \$2.00; and Saturday and/or evening sessions were not available in either court.

<sup>38</sup> House Bill Nos. 1317 and 1098 of the second regular session of the 78th General Assembly of Missouri, now pending in the state legislature, proposes the establishment of a small claims docket in the magistrate court (Section 4.1 of Bill). The substitute contains desirable features in the proposed small claims court docket, including Saturday and evening hearing sessions, a limit on the number of claims which can be filed in a twelve month period, and a ban on suing assignees, and thus should be monitored closely.

<sup>39</sup> Claimants must pay a \$16.00 filing and service fee in the Magistrate Court of St. Louis county, the most populated county in Missouri; the average filing to hearing time period in the Magistrate Court is one month, and Saturday and/or evening sessions are not available.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> The state enabling act authorizing the establishment of small claims courts was effective on July 1, 1975, and to date (February 1, 1976) no district courts have established a small claims court.

<sup>43</sup> The average filing to hearing time period in the Small Claims Department of the municipal court in Omaha, the most populated city in Nebraska, is 20 days; Saturday and/or evening hearing sessions are not available in this Department.

<sup>44</sup> *Id.*

<sup>45</sup> As of 1972, the average filing to hearing period in the Small Claims Division of the District County Court in Newark, the most populated city in New Jersey, was 2 weeks; Saturday and/or evening sessions were not available in the Small Claims Division.

<sup>46</sup> One small claims court has been established in New Mexico. See Attached Summary.

<sup>47</sup> A small claims procedure has been established in the five boroughs in New York City, the Harlem Small Claims Court is uniquely located within the Harlem community as a neighborhood court, staffed by community residents who assist the parties in filing suit.

<sup>48</sup> In addition to corporations, assignees and insurers, associations and partnerships are prohibited from filing suit in the small claims jurisdiction of all City Civil Courts, including New York City, in New York.

<sup>49</sup> As of 1972, the average filing to hearing time in the small claims jurisdictions in the City Civil Court system in New York City was as short-termed as two weeks in Queens, to 3-7 weeks in Brooklyn; Manhattan averaged one month.

<sup>50</sup> Evening hearing sessions are held every evening, Monday through Thursday, in the small claims jurisdictions of the city civil court system in New York City.

<sup>51</sup> The costs to sue in small claims actions in the District Court in Raleigh, North Carolina, include a filing fee of \$8.00 and a service fee of \$2.00; Saturday and/or evening sessions are not available to hear small claims actions in the Raleigh District Court.

<sup>52</sup> *Id.*

<sup>53</sup> Saturday and/or evening hearing sessions are not available in the Small Claims Court in Bismarck, the capital city of North Dakota.

<sup>54</sup> As of 1972, the plaintiff was required to submit evidence to prove its case to the entry of a default judgement in the court in Cincinnati, Ohio.

<sup>55</sup> Saturday and/or evening sessions were not available in the courts in Eugene and Salem as of 1972.

<sup>56</sup> See attached summary sheet on the Small Claims Court in the Municipal Court of Philadelphia, the only small claims court in the state.

<sup>57</sup> As of 1972, Saturday and/or evening sessions were not available in the District Court in Providence, Rhode Island.

<sup>58</sup> As of 1972, the average filing to hearing period in the Magistrate Court in Sioux Falls, South Dakota, the most populated city in the state, was one week; cases are called every Friday at 2:30 p.m., and the session continues until all cases have been heard.

<sup>59</sup> *Id.*

<sup>60</sup> The average filing to hearing period in the General Sessions Court in Memphis, the most populated city in Tennessee, is 2 weeks; Saturday and/or evening hearing sessions are not available in that court.

<sup>61</sup> *Id.*

<sup>62</sup> The average filing to hearing time in Houston, the most populated city in Texas, is 6 weeks; Saturday and/or evening sessions are not available in the small claims court in Houston.

<sup>63</sup> *Id.*

<sup>64</sup> As of 1972, Saturday and/or evening hearing sessions were not available in courts in Salt Lake City, and default judgements were automatically entered upon the defendant's non-appearance.

<sup>65</sup> *Id.*

<sup>66</sup> The average filing to hearing period for claims subject to the small claims procedure in Washington County, the most populated county in Vermont, is 4-6 months.

<sup>67</sup> The average filing to hearing period in the General District Court in Richmond, the busiest civil court in Virginia, is two weeks.

<sup>68</sup> Saturday and/or evening hearing sessions are not available in the General District Courts in Richmond and Norfolk, the two largest cities in Virginia.

<sup>69</sup> As of 1972, the filing to hearing time in the lower court in Spokane, Washington, was 20 days, while claims were heard in Tacoma within a month of filing; and Saturday and/or evening sessions were not available in the lower courts in Seattle, Tacoma and Spokane.

<sup>70</sup> As of 1972, the filing to hearing time in the lower courts in Morgantown, West Virginia, was 20 days.

<sup>71</sup> As of 1972, Saturday and/or evening hearing sessions were not available in the county court in Milwaukee, Wisconsin.

# BOSTON COLLEGE

## INDUSTRIAL AND COMMERCIAL LAW REVIEW

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