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# Book Reviews: Small Claims Courts: A National Examination

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## BOOK REVIEW

SMALL CLAIMS COURTS: A NATIONAL EXAMINATION. By John C. Ruhnka and Steven Weller with John A. Martin. The National Center for State Courts, Williamsburg, Virginia. 1978. Pp. 219. Reviewed by Robert F. Sweeney.†

*Small Claims Courts: A National Examination* is a concise and current account of the efforts undertaken by courts of the various states to expedite and simplify the civil court process when relatively small sums of money are at issue. The authors, John C. Ruhnka and Steven Weller of the National Center for State Courts, with the assistance of John A. Martin, also of the National Center staff, have examined fifteen courts in fourteen different American jurisdictions in their effort to "present a picture of the functioning and impact of the most important approaches to handling of small claims within a great variety of different settings" (p. xi). In collecting their material they did not content themselves with a reading of laws, rules and caseload statistics, but visited each of the courts under examination, observed the trial of cases and conducted in-depth discussions of the process with judges, court administrators and clerical personnel.

In the course of their research the authors ascertained that only eight states have no provision by statute for the specialized informal handling of small claims.<sup>1</sup> In the District of Columbia and the forty-two states where there is some variation of a small claims court, the maximum jurisdictional limitation varies from \$150 in

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† Loyola College of Baltimore; J.D., 1957, University of Baltimore School of Law; Magistrate, Housing Court of Baltimore City 1959-61; Assistant Attorney General of Maryland 1961-64; Chief of the Criminal Division, Office of the Attorney General of Maryland 1964-66; Deputy Attorney General of Maryland 1966-71; Chief Judge, District Court of Maryland since 1971.

1. Maryland's small claims procedures exist solely under the authority of Md. D.R. 568 adopted by the Court of Appeals of Maryland effective July 1, 1976. That rule provides, *inter alia*, that a small claims action, defined as a civil action for money in which the amount claimed does not exceed \$500 exclusive of interest and costs, shall whenever possible be scheduled for trial within 30 days after filing and be tried at a separate session of the court provided especially for the trial of such claims. The heart of the procedure is Md. D.R. 568(d), which states, "The court shall decide a small claim action so as to do substantial justice between the parties, according to substantive law, and shall conduct the proceeding in an informal manner without being bound by technical rules of procedure or evidence, except those relating to privileged communications."

The 1975 General Assembly enacted two bills that would have created a small claims court by statute, but those bills, H.B. 743 and S.B. 214, were vetoed by the Governor.

Texas to \$3,000 in Indiana.<sup>2</sup> The most frequent maximum is \$500, but recent trends are upward to \$750 and \$1,000 as the courts attempt to keep pace with inflation.

In their study of the fifteen courts<sup>3</sup> the authors focused on ten topics, included among which are the five most frequently discussed by the administrative judges of the District Court of Maryland in their continuing review of this state's small claims operations. Those five are: (1) Is it desirable to limit access to small claims courts by prohibiting collection agencies from filing suit therein or imposing a limit on the number of cases that any plaintiff can institute? (2) Should either party in a small claims case be permitted to utilize the assistance of an attorney? (3) To what extent should the clerical staff of the court render assistance to litigants? (4) Is there a need for evening or Saturday sessions of small claims courts? (5) Is there a substantial problem in the collection of judgments for successful small claims litigants and are there steps that can be taken by the court to improve this aspect of the process?

Of the fifteen target courts, seven prohibit collection agencies from filing suit while eight have no such restriction. The authors conclude that permitting such firms to be plaintiffs is not incompatible with the proper utilization of the court by individuals and state that "[t]o the contrary, we believe important reasons exist for permitting collection agencies and businesses to use small claims courts" (p. 42). This conclusion is based primarily on the fact that if such firms were denied access to small claims court, they would institute their cases in the regular civil court, in which setting the consumer/defendant would be denied the benefit of the informal procedures of a small claims court in presenting his defense. It is this same reasoning that has led the judges of the District Court of Maryland to resist attempts in the Maryland General Assembly that would have "restricted" the small claims court to individual consumer actions.

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2. The monetary limitation on small claims actions in Maryland is \$500. At the Annual Educational Conference of District Court Judges in November 1979, a resolution was passed supporting an increase in that monetary limit to \$1,000. House Bill 749, introduced at the 1980 session, would have achieved that purpose, but the measure received an unfavorable report in the House Judiciary. It is anticipated that a similar measure will be introduced at the 1981 session.
  3. The 15 courts studied were: Bridgeport, Conn.; Cheyenne, Wyo.; Dallas, Tex.; Des Moines, Iowa; Eugene, Or.; Grand Rapids, Mich.; Harlem and Manhattan, N. Y.; Minneapolis, Minn.; Oklahoma City, Okla.; Omaha, Neb.; Sacramento, Cal.; Sioux Falls, S.D.; Spokane, Wash.; and Washington, D. C. Regrettably, the procedures in the small claims courts in Maryland were not among those chosen for study. In 1977 an effort was made by this reviewer to have Maryland's small claims procedures included in the study, but the work was then too far advanced to permit the inclusion of this state's small claims process.

In their study of the question of whether attorneys should be allowed to participate in small claims trials the authors reveal that of the fifteen target courts eight permit counsel in any case, two permit counsel only by consent of the presiding judge, two transfer the case to the regular civil docket if counsel appears for both parties, and only three have a flat prohibition against participation of attorneys.

The authors present statistical tables revealing the outcome of cases and the amount of awards when the various sides are represented or unrepresented by counsel. These statistics, like most statistics, may provide solace to those who argue either side of the question of attorney participation. Most telling to this reviewer, however, are the statistical tables that show that represented defendants prevail to a greater extent than unrepresented defendants. This statistic might be worthy of review by those consumer groups who have argued against permitting attorneys at trial, for on the basis of this study, at least, barring attorneys could have detrimental effects on the interests of consumer defendants. Admittedly, because most plaintiffs represent mercantile interests, they might be in a better financial position to secure the assistance of counsel, but if a defendant can benefit by the assistance of a lawyer and can afford a lawyer or obtain the services of an attorney gratis, it is difficult to justify denying him such assistance. It is the conclusion of the authors that attorneys should be permitted at trial — a position repeatedly taken by the judges of the District Court of Maryland.<sup>4</sup>

The authors also recommend that court-provided assistance should be available to litigants in all small claims courts. In this way, they state, even if attorneys are permitted at trial, the necessity for such representation would be substantially reduced, better enabling small claims courts to move toward the goal of inexpensive litigation without unfairly disadvantaging the litigants. It is heartening to note that the authors find that in the overwhelming percentages of the cases they studied, litigants asserted that the clerks in the small claims court had tried to be helpful.<sup>5</sup>

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4. In an interesting aside the authors comment on the practices in some courts of giving attorneys special consideration not provided to unrepresented litigants, such as giving priority in the call of the docket to represented litigants. The authors state that such a practice does not comport well with the American basic notion of equal treatment for all litigants — reasoning which has been followed in the administration of the District Court of Maryland.
  5. The authors, however, do not fully develop both sides of the argument for clerical assistance. Section 2-603(c) of Maryland's Courts and Judicial Proceedings Article directs that the clerks of the District Court, when requested to do so by a litigant, shall give procedural advice to a litigant in small claims cases. MD. CTS. & JUD. PROC. CODE ANN. 2-603(c)(1980). That same section stipulates that a clerk shall not be liable to any person with respect to

The authors' conclusions appear to be at variance with the data they supply in their discussion of evening sessions of small claims courts.<sup>6</sup> They note that only three of the fifteen courts studied use evening small claims sessions, but despite this lack of experience with night court, the authors recommend that such sessions should be provided. They discuss rarely, if at all, the inconvenience of an evening session to a litigant who is employed by night and totally ignore the factor that, especially in America's metropolitan centers, many courts are located in high crime areas where attendance at evening trials might constitute real physical danger to those compelled to attend.<sup>7</sup> The problem would not be lessened by any device that would have evening trials scheduled only when one of the litigants requested such a trial, for the opposing parties might find such scheduling most unwelcome. Even in an instance where both parties were willing to have the cause litigated in the evening, witnesses summonsed to give testimony in the case might be inconvenienced or otherwise disadvantaged.<sup>8</sup>

In their discussion of the difficulties encountered by successful litigants in collecting their judgments, the authors have touched upon a problem that appears to plague all the courts studied by them. The authors express the view that no more than 90% of contested judgments and 60% of default judgments can realistically be expected to be collected by utilizing existing collection remedies. They recommend that courts assist plaintiffs in collecting judgments by examining defendants for assets and arranging payment plans immediately after trial. This latter step, however, is not only time consuming, but in most courts would require a substantial augmentation of clerical staff.<sup>9</sup>

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such advice or assistance. Admittedly, it is frequently difficult to determine where procedural advice ends and legal advice begins, and the clerks of the court continue to be apprehensive about personal liability if the litigant concludes that the advice rendered was incorrect or detrimental to his cause.

6. Saturday sessions of court are briefly discussed, but the authors make no recommendation in that regard.
7. In Baltimore City the Civil Division of the District Court is housed in a building at Fayette and Gay Streets, almost in the heart of Baltimore's notorious "Block."
8. As Chief Judge of the District Court of Maryland, this reviewer has received approximately 4,000 communications from citizens in the nine-year history of this court. Only two of these communications have been requests for evening sessions and two have been requests for Saturday sessions. I believe that this is supportive of the thesis that our citizens are oriented to a nine to five, five-day-week lifestyle and are reluctant to submit to mandated appearances outside of that time frame.
9. In a Maryland small claims case, as in other civil cases, a successful plaintiff may utilize interrogatories or supplementary proceedings to examine the defendant in order that assets may be revealed. However, no plan exists in this state for arranging a schedule of payments to the court for transmittal to the plaintiff. This latter step has frequently been discussed by the administrative judges of the District Court of Maryland, but that body has been reluctant to seek the institution of such procedures absent assurances that the necessary additions to the clerical staff would be made.

I find it regrettable that in their discussion of the small claims process the authors deal rather cavalierly with the question of an appeal by trial *de novo*. In their brief discussion of that topic they appear to advocate the technique, but fail to point out that trial *de novo* not only demeans the efforts of the court below by proceeding on the assumption that no trial had ever occurred in the first instance, but, more importantly, the trial *de novo* process requires the second compulsory appearance of plaintiffs, defendants and witnesses before a court, with all the inconveniences attendant thereto, and the almost inevitable frustration and exasperation of those involved. It is this reviewer's opinion that all trials in the first instance should be carefully conducted, with full regard being given to the rights of all parties, and that there is no valid reason why appeals in small claims cases, like those involving more substantial sums of money, should not be conducted solely on the record of the trial below.

If there is a serious omission in the book, it is the absence of any treatment of the forms used in the various courts, an examination and comparison of which could be of material assistance to court administrators in the first instance and ultimately to the citizen litigant. This defect, however, does not detract from an excellent work, well presented and well documented — in the tradition of the United States' fledgling National Center for State Courts.

In summary, I believe that *Small Claims Courts: A National Examination* is a valuable tool for court administrators and for legislators interested in providing immediate access to the courts and speedy relief for aggrieved citizens. The work is not only an excellent primer for those few states which now have no small claims courts at all, but can also be of substantial assistance in other states, such as Maryland, where the small claims procedure is relatively new and there is a continuing interest in improving upon the quality of judicial service to our citizens.