



# The Florida Senate

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Committee on Judiciary

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## REVIEW OF THE SMALL CLAIMS PROCESS IN FLORIDA

### Issue Description

Florida does not have a separate system of “small claims courts.” Rather, small claims are captured under the jurisdiction of county courts. The Florida Small Claims Rules apply to civil actions in county court in which the demand or value of the property involved is \$5,000 or less. These rules are designed to foster a simple, efficient, and inexpensive remedy at law for litigants. In part due to its small claims jurisdiction, county court is sometimes referred to as “the people’s court.” Reflective of this character, litigants in small claims matters often proceed without an attorney. Nevertheless, pursuing or defending a small claim may be complex. This interim report identifies potential reforms to improve the small claims process for litigants, particularly those who proceed without an attorney.

### Background

#### Inception of Small Claims Courts in America

In an effort to address the complexity and costs associated with the existing legal framework at that time, states developed small claims courts in the early 1900s,<sup>1</sup> with the first originating in Kansas in 1912.<sup>2</sup> In addition to cost and efficiency concerns, the genesis of the small claims court can also be attributed to the theory that “a society ought to have accessible and effective mechanisms for asserting legal rights.”<sup>3</sup> The original small claims framework included procedures to curb costs by eliminating the necessity of attorneys, to enhance efficiency by simplifying the procedures associated with litigating legal claims, and to improve accessibility to courts.

The advent of the small claims court was not without criticism. Some legal scholars argued that the process was inherently disadvantageous to defendants, that the process proceeded too quickly, that courts were handling complex legal matters best suited for lengthy litigation, and that the process was inadequate for actual collection of judgments.<sup>4</sup> Notwithstanding this criticism, small claims courts continued to develop throughout the United States and were viewed as a welcome alternative to the complex and expensive general-jurisdiction courts.<sup>5</sup>

#### Small Claims Process Adopted in Florida

Like other jurisdictions, Florida has recognized the need for the efficient and inexpensive resolution of certain legal matters. In 1943, the Legislature first created small claims courts in populous counties with justices of the peace designated as judges of these courts.<sup>6</sup> Thereafter, in 1951, the Legislature created more than 25 small claims courts with amount-in-controversy limits varying from \$100 to \$300. County judges, justices of the peace, or

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<sup>1</sup>James C. Turner and Joyce A. Meyer, *Small Claims Reform: A Means of Expanding Access to the American Civil Justice System*, 5 U.D.C. L. REV. 177, 178 (2000).

<sup>2</sup>Bruce Zucker and Monica Her, *The People’s Court Examined: A Legal and Empirical Analysis of the Small Claims Court System*, 37 U.S.F. L. REV. 315, 317 (2003).

<sup>3</sup>Arthur Best et al., *Peace, Wealth, Happiness, and Small Claim Courts: A Case Study*, 21 FORDHAM URB. L.J. 343, 343 (1994).

<sup>4</sup>Turner, *supra* note 1, at 179.

<sup>5</sup>*Id.*

<sup>6</sup>*State ex rel. David Bialeck, Inc. v. Ferguson*, 58 So. 2d 145, 145 (Fla. 1952). In 1945, justices of the peace were vested with jurisdiction of cases at law where the demand was not more than \$100. *See* FLA. CONST. art. V, s. 22 (1945).

separate judges were given authority to preside over these courts.<sup>7</sup> In 1961, the Legislature created a small claims court in each justice of the peace court in every county having a population between 350,000 and 385,000.<sup>8</sup>

Justice of the peace offices were eventually abolished, and small claims cases were heard in county courts. In 1967, the Florida Supreme Court adopted procedural rules governing small claims actions titled “Summary Claims Procedure Rules,” which applied to actions with amounts in controversy no more than \$1,000.<sup>9</sup> These rules were designed to “implement the simple, speedy and inexpensive trial of actions at law in courts of limited jurisdiction.”<sup>10</sup> A revision of the Summary Claims Procedure Rules occurred in 1973, with the jurisdictional limit increasing to \$1,500 and the incorporation of certain Florida Rules of Civil Procedure.<sup>11</sup> After this revision, the jurisdictional limit for small claims cases continued to rise. Effective in 1985, the limit was raised to \$2,500, from \$1,500.<sup>12</sup> In 1996, the Florida Supreme Court approved the recommendation to raise the jurisdictional limit to the current amount of \$5,000.<sup>13</sup>

### Current Florida Small Claims Rules Framework

The initial concepts for small claims procedure established in the Florida Summary Claims Procedure Rules are evident in the current version of the Florida Small Claims Rules.<sup>14</sup> In 2000, the Florida Supreme Court adopted certain changes to the Small Claims Rules recommended by the Small Claims Rules Committee of the Florida Bar. In doing so, the court noted that its goal was to create:

a system that is open and helpful to those that appear in small claims court, many of whom appear pro se and are unfamiliar with legal proceedings; and a system that is efficient and not wasteful of court resources and people’s time.<sup>15</sup>

While the current small claims rules may sometimes pose practical problems for litigants, it is clear that they are fashioned in a manner to attempt to satisfy the goals articulated by the Florida Supreme Court.

### *Jurisdictional Limit and Pretrial Hearings*

The jurisdictional limit in small claims matters remains \$5,000, and litigants initiate an action by filing a concise statement of claim.<sup>16</sup> A pretrial hearing must be held within 50 days of the filing of the lawsuit.<sup>17</sup> The rules prescribe that certain matters must be considered during the pretrial conference, such as the simplification of issues, the necessity of amendments to pleadings, the possibility of admissions of fact and documents, the limitation of witnesses, the possibility of settlement, and other matters that the court may deem necessary.

### *Discovery*

Represented parties are subject to discovery, and unrepresented parties are only subject to discovery upon leave of court. Additionally, the rules include a reference to Florida Rule of Civil Procedure 1.380 to enable courts to issue and impose sanctions for failure to comply with discovery provisions.<sup>18</sup> A court may dismiss a claim for failure to prosecute when there is no case activity for six months.<sup>19</sup>

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<sup>7</sup> *In re Advisory Opinion to the Governor*, 58 So. 2d 319, 321 (Fla. 1952); see Chapter 26920, ss. 1-19, Laws of Fla. (1951).

<sup>8</sup> Chapter 61-648, ss. 1-2, Laws of Fla.

<sup>9</sup> *In re Summary Claims Procedure Rules*, 203 So. 2d 616 (Fla. 1967)

<sup>10</sup> Rule 7.010(a), SCPR (1967).

<sup>11</sup> *In re Rules of Summary Procedure*, 270 So. 2d 729 (Fla. 1972).

<sup>12</sup> *Florida Bar: In re Rules of Summary Procedure*, 461 So. 2d 1344 (Fla. 1984).

<sup>13</sup> *In re: Amendments to the Florida Small Claims Rules*, 682 So. 2d 1075 (Fla. 1996).

<sup>14</sup> In 1984, the Small Claims Rules Committee of the Florida Bar unanimously recommended that the Summary Claims Procedure Rules be changed to the Florida Small Claims Rules. This recommendation was adopted by the Florida Supreme Court by court order on January 10, 1985. *In Re: Amendment to Rules of Summary Procedure*, No. 65,086 (Fla. 1985).

<sup>15</sup> *In re Amendments to the Florida Small Claims Rules*, 785 So. 2d 401, 402 (Fla. 2000).

<sup>16</sup> Rules 7.010(b) and 7.050(a)(1), Fla. Sm. Cl. R.

<sup>17</sup> Rule 7.090(b), Fla. Sm. Cl. R.

<sup>18</sup> Rule 7.020(b), Fla. Sm. Cl. R.

<sup>19</sup> Rule 7.110(e), Fla. Sm. Cl. R.

**Mediation**

For the first time since the inception of the small claims process, mediation is now expressly referenced in the current version of the Florida Small Claims Rules. The current rule delineates that an attorney may appear on behalf of a party at mediation if the attorney has full authority to settle.<sup>20</sup> Similarly, a nonlawyer representative may appear for a party at mediation if the representative has the party’s written authority to appear and has full authority to settle without further consultation. This year, the Florida Supreme Court changed this mediation provision to convey that mediation may occur at the pretrial hearing.<sup>21</sup> The court also adopted a sanction provision providing that if whoever appears for a party at mediation does not have full settlement authority, the court may impose costs and attorneys fees incurred by the opposing party. These changes took effect October 1, 2008.

**Trial**

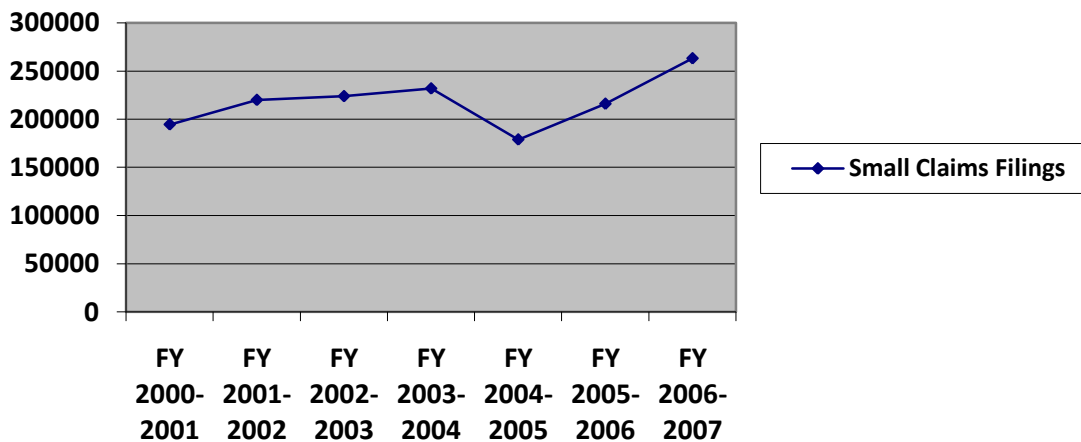
Trial must commence within 60 days of the pretrial conference.<sup>22</sup> The rules provide for 10 days’ notice of the time of trial to be provided to the parties, and allow parties to stipulate to a longer timeframe for trial. As in other courts, a plaintiff is entitled to a default judgment if the defendant does not appear at trial.<sup>23</sup> The court sets the trial date at the pretrial conference.<sup>24</sup> Under the current framework, evidentiary rules remain relaxed, and parties may introduce testimony of witnesses at trial telephonically upon court approval rather than in person.<sup>25</sup>

**Findings and/or Conclusions**

**Use of Small Claims Process**

Litigants in Florida continue to utilize the small claims process to seek legal redress for simple claims based on small dollar amounts. With the exception of fiscal year 2004-2005, the number of small claims filings in Florida county courts has steadily risen.<sup>26</sup>

**Figure 1: Small Claims Filing Trend in Florida**



During fiscal year 2006-2007, there were 263,220 small claims filings in county courts. These filings represented 13 percent of the total county civil filings for that year. Small claims comprised the largest category of filings following civil traffic infractions (73.3 percent). Figure 2 offers some insight into the disposition of these cases:

<sup>20</sup> Rule 7.090(f), Fla. Sm. Cl. R.  
<sup>21</sup> *In re Amendments To Florida Small Claims Rule 7.090*, 985 So. 2d 1033, 1034 (Fla. 2008).  
<sup>22</sup> Rule 7.090(d), Fla. Sm. Cl. R.  
<sup>23</sup> Rule 7.170(a), Fla. Sm. Cl. R.  
<sup>24</sup> Rule 7.140(a), Fla. Sm. Cl. R.  
<sup>25</sup> Rule 7.140(f), Fla. Sm. Cl. R.  
<sup>26</sup> Figure 1 was compiled from data reported by the Florida Office of the State Courts Administrator in the annual *Statistical Reference Guides* for Florida’s trial courts.

**Figure 2: Final Disposition of Small Claims Cases in Florida (FY 2006-2007)<sup>27</sup>**

Disposition Type	Small Claims Cases
Dismissed Before Hearing	45,251
Dismissed After Hearing	52,921
Disposed by Default	36,467
Disposed by Judge (no trial)	67,828
Disposed by Non-Jury Trial	3,187
Disposed by Jury Trial	82
Disposed by Other <sup>28</sup>	4,572
<b>Total</b>	<b>210,308</b>

As indicated in Figure 2, a small percentage of small claims cases actually proceed to trial. Most cases are dismissed during or after the pretrial hearing (often the result of parties reaching a settlement agreement in mediation), or are otherwise disposed of by the judge prior to trial. A comparison of the volume of cases filed in 2006-2007 with the volume of cases disposed of during this same timeframe suggests that the majority of small claims cases are completed within one year. Similarly, most county judges surveyed<sup>29</sup> indicated that the estimated average life of a small claims case is three to six months. With most cases reaching final disposition prior to the expiration of one year, it appears that the Florida small claims process is reaching its goal of providing an expeditious remedy for small claims.

### Assistance to Pro Se Litigants

With the number of filings increasing each year, courts and clerks are attempting to create local small claims practices that promote a user-friendly environment for litigants, especially those who have not retained counsel (pro se litigants). Although small claims procedures may vary greatly from county to county, most county courts and clerks' offices offer special assistance to pro se litigants to aid them in navigating the process.

### Pro Se Litigant Surveys

Senate professional staff randomly reviewed small claims files in four counties and surveyed pro se plaintiffs and defendants to gauge their experiences with the small claims process. The survey was designed to obtain anecdotal information and not statistically valid information regarding these experiences. Of the small sample of pro se litigants responding to the survey, it appears that pro se litigants are experiencing some difficulty navigating through the small claims process (e.g., filing paperwork, complying with rules and requirements, scheduling, and trial procedures). When pro se litigants were asked to rate the ease of navigating the small claims process (using a one-to-five scale, with 1 being "extremely difficult" and 5 being "extremely easy"), the average response was 2.75, suggesting that the process is somewhat difficult to navigate.

<sup>27</sup> Florida Office of the State Courts Administrator, *FY 2006-2007 Statistical Reference Guide*, 9-16 (2007).

<sup>28</sup> "Disposed by Other" represents cases that are consolidated into a primary case, transferred, have a change of venue, or are disposed upon estreature of a bond, etc.

<sup>29</sup> Senate professional staff of the Committee on Judiciary prepared questionnaires directed to county judges throughout the State of Florida, as well as to the clerk's office in each county. The questionnaires were designed to gather qualitative feedback regarding county judge's and clerk's practical experiences with the current small claims framework, and not to obtain scientifically valid feedback. Throughout this report, this survey process is referenced as the "professional staff survey." In addition to the professional staff surveys, to better understand the diversity of practice from county to county, professional staff visited three counties (Duval, Leon, and Washington) to review small claims files in the clerk's office, as well as to observe pretrial hearings, mediations, and small claims trials.

Despite any reported difficulty in the use of the process, approximately 63 percent of the small sample of pro se litigants responding to the survey reported that they would use the small claims process in Florida again. When asked if it is necessary to be represented by an attorney (using a one-to-five scale, with 1 being “essential to have attorney representation” and 5 being “not necessary at all to have attorney representation”), the average response was 3.55, indicating a belief that attorney representation in the small claims process was not necessary. This response may be some indication that pro se litigants are receiving adequate assistance from clerks and the court and do not believe that attorney representation is required for successful litigation of a small claims case.

### *Small Business Surveys*

Small businesses comprise a significant portion of litigants utilizing the small claims process in Florida. Small businesses often seek redress for collection matters and other commercial disputes of a simple nature. In order to capture the practical small claims experiences of small businesses, Senate professional staff also surveyed a limited sample of businesses regarding their experiences with the small claims process.<sup>30</sup> This survey also was designed to obtain anecdotal information and not statistically valid information regarding these experiences. When asked to rate their overall satisfaction with the small claims process based on their most recent experience, notwithstanding the outcome of their particular case (using a one-to-five scale, with 1 being “dissatisfied” and 5 being “satisfied”), the average response of the businesses responding was 2.83. With regard to difficulty in navigating the process, the majority of small business responded that the process was only moderately difficult, while 75 percent indicated that they would use the small claims process again.

### *Assistance by Clerk of Court*

In providing services to pro se litigants, clerks face challenges in balancing their duty to assist pro se litigants with the preparation of a statement of claim and other papers to be filed against refraining from providing legal advice to litigants. However, most clerks have taken a number of steps to improve the small claims experience for pro se litigants.

For example, in addition to providing small claims forms in physical form in the clerk’s office, many counties are making forms available online via the clerk’s website.<sup>31</sup> These forms range from the initial statement of claim, motions, and settlement papers, to post-judgment motions for a hearing in aid of execution. Some counties are enhancing this service by making the electronic forms interactive. With this service, litigants may access the form online, enter information regarding a claim directly into the form, file the form electronically, or print the form for manual filing. This interactive electronic service allows small claims litigants to prepare forms at their convenience without dependence on the clerk’s hours of operations.<sup>32</sup> In the professional staff survey, clerks cited the need for uniform small claims forms. Because certain forms may vary from county to county, it may be beneficial to encourage adoption of uniform small claims forms to be used throughout Florida.

In addition to offering electronic forms, clerks’ offices have included detailed information regarding the small claims process on the clerk’s website. Users may browse the clerk’s website for information and answers to questions related to the small claims process without being limited to the clerk’s hours of operations. At least half of the 49 county clerks responding to the survey indicated that the following information was available online:

- Information describing how to file a small claims case;
- Information describing how a small claims case progresses after suit is filed;

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<sup>30</sup> Most of the small business responding to the professional staff survey were not represented by attorneys. However, some did retain counsel for prosecution of their small claims case.

<sup>31</sup> Many small claims forms are included in the Florida Small Claims Rules. According to the professional staff survey, 19 of the 49 counties responding make these rules available to litigants in their office or online via the clerk’s website.

<sup>32</sup> One recurring complaint regarding the Florida small claims system is that evening or weekend hours are unavailable to small claims litigants, which may impede their participation in the process due to employment or other obligations.

- Information about where a claim should be filed (venue);
- Information explaining service of process;
- Information regarding filing suit against a corporation; and
- Information regarding collection of a judgment.

To broaden the information available to small claims pro se litigants, some clerks offer the following information in physical form or on their website: suggestions for decorum and conduct at trial, information regarding mediation, information regarding discovery, information describing what to expect at trial, information regarding subpoenas to witnesses, information regarding appeals, and a legal glossary. In order to enhance the services offered to pro se litigants, other counties may wish to expand the information offered to include these additional areas of small claims practice.

Some clerks have created “self-help” centers in the clerk’s office. Computers are available in these centers where litigants can access information regarding the small claims process, and in some instances, information regarding their particular case. Notebooks are also available containing detailed information regarding the process, as well as numerous small claims forms for the litigant to browse and copy. Some counties have clerks available in these centers to assist litigants with any questions regarding the small claims process.

A limited number of counties, in conjunction with county judges and clerks, have prepared informational videos that are available for viewing by small claims litigants.<sup>33</sup> These videos thoroughly explain the small claims process, contain statements from judges and clerk personnel regarding expectations and procedures, and may even provide vignettes from simulated hearings and trials designed to familiarize the pro se litigant with the process. These videos allow pro se litigants to view and digest this information at their own pace.

In response to the professional staff survey, clerks in four counties indicated that they offer clinics, workshops, or seminars to familiarize citizens with the small claims process. These clinics are open to the public, are free, and are often developed in conjunction with mediation representatives, legal aid programs, the local bar, as well as the judiciary. Although these programs vary among the four counties, they may include information sessions by the clerks, mediation representatives, and judges; role playing of common filing and evidentiary issues; and a question and answer session. In one county, some county judges require pro se small claims litigants to attend the seminar prior to participating in trial. These judges indicated that pro se litigants completing these seminars were much better prepared to present their case at trial. To the extent that funding and other resources are available, courts may find that the value of having knowledgeable and prepared pro se litigants at trial may outweigh costs associated with these programs.

## **Jurisdiction of Small Claims Courts**

### ***Amount-in-Controversy Limitation***

Florida Small Claims Rules are applicable to “all actions at law of a civil nature in the county courts in which the demand or value of property involved does not exceed \$5,000 exclusive of costs, interest, and attorney’s fees.”<sup>34</sup> In other states, jurisdictional limits range from \$1,500 in Kentucky to a nation-high \$25,000 in Tennessee.<sup>35</sup> As of 2003, the median national jurisdictional limit was \$4,500, while the most common limit was \$5,000.<sup>36</sup>

Throughout the United States, proponents of small claim enhancements are calling for an increase in the jurisdictional limits of small claims courts. Some argue that individuals may be precluded from participation in the judicial system because they cannot afford to hire an attorney to handle their dispute.<sup>37</sup> Many small disputes over common consumer goods are also excluded by low jurisdictional limitations.<sup>38</sup> Another argument resonating

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<sup>33</sup> Some counties provide electronic equipment to view the video in the clerk’s office or allow litigants to “check out” the video and return it after viewing. A few counties have provided the video for viewing on the clerk’s website.

<sup>34</sup> Rule 7.010(b), Fla. Sm. Cl. R.

<sup>35</sup> See KY REV. STAT. ANN. s. 24A.230; TENN. CODE ANN. s. 16-15-501.

<sup>36</sup> Zucker, *supra* note 2, at 347.

<sup>37</sup> Turner, *supra* note 1, at 185.

<sup>38</sup> *Id.* at 184.

with pro se litigants is that many attorneys are not willing to take cases with amounts in controversy less than \$15,000, which in turn forces a plaintiff with an amount in controversy greater than \$5,000 to pay a significant sum in attorneys' fees, or waive that portion of the claim which exceeds \$5,000 and file suit in a small claims forum.<sup>39</sup> Finally, inflation considerations also serve as a catalyst for movements to increase jurisdictional limits.

In contrast, one legal scholar examined California's small claims process in 2003 and concluded that it was unnecessary to raise California's \$5,000 limit. At the time, the average claim in California was \$1,616.<sup>40</sup> Additionally, the scholar reasoned that "given the abbreviated nature of a small claims court case in terms of procedural due process rights of the defendant . . . it seems that cases that exceed the \$5,000 limit should be directed to the regular civil track where defendants maintain their procedural due process rights."<sup>41</sup> Contrary to this reasoning, in 2005, the California legislature sided with those proposing an increase in jurisdictional limits and raised the amount in controversy threshold for small claims cases from \$5,000 to \$7,500.<sup>42</sup>

Other arguments for retaining low jurisdictional limits include recognition that limitations in discovery in most small claims forums would prove unfair in cases with higher amounts in controversy.<sup>43</sup> Finally, increases in the jurisdictional limits would likely result in an increase in the number of small claims filings, which could overburden courts. Figure 3 illustrates the increase in caseload from prior limit increases in Florida. Notably, five years after Florida raised the jurisdictional limit to \$5,000, the small claims caseload increased 89.5 percent.

**Figure 3: Comparing Historical Jurisdictional-Limit Increases and Caseload Increases in Florida<sup>44</sup>**

Increase Timeline	Fiscal year	Limit	Caseload	% Change
<b>Base Year</b>	1984	Increased to \$2500	163,171	
<b>One Year Later</b>	1985	\$2500	207,492	+ 27.2%
<b>Five Years Later</b>	1989	\$2500	192,386	+ 17.9%
<b>Base Year</b>	1996	Increased to \$5000	133,951	
<b>One Year Later</b>	1997	\$5000	176,146	+ 31.5%
<b>Five Years Later</b>	2001	\$5000	254,141	+ 89.5%

In the professional staff survey, Florida county court judges were asked if the current jurisdictional limitation of \$5,000 for small claims cases should be increased. Of those judges responding, 57 percent did not support a limit increase and 24 percent did not have an opinion on this issue. Of those judges responding in favor of an increase in the limit, the most common suggested jurisdictional limit was \$7,500.

The Legislature may wish to explore the jurisdictional limitation further in order to determine whether an increase in the limit would enhance the small claims process without overburdening county court judges who hear small claims cases.<sup>45</sup> Because the current jurisdictional amount-in-controversy limitation for small claims cases is prescribed by court rule and not statute, the Legislature could encourage the Florida Supreme Court to amend the rules to increase the limit if it concludes a jurisdictional increase would enhance the small claims process.

<sup>39</sup> James Chapman and Cathy Nguyen, *Raising California's Small Claims Jurisdictional Limit: A Qualitative and Quantitative Examination of San Francisco and Ventura County Civil Plaintiffs*, 4-5 (August 17, 2005), available at [http://www.halt.org/reform\\_projects/small\\_claims/national\\_advocacy/pdf/bay\\_area\\_sc\\_plaintiffs\\_study.pdf](http://www.halt.org/reform_projects/small_claims/national_advocacy/pdf/bay_area_sc_plaintiffs_study.pdf) (last visited September 24, 2008).

<sup>40</sup> Zucker, *supra* note 2, at 347.

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

<sup>42</sup> See California Senate Bill 422 (2005) and CAL CIV. PROC. s. 116.221.

<sup>43</sup> Chapman, *supra* note 39, at 6.

<sup>44</sup> Tom Gordon and Amy Dieterich, *The Sky Will not Fall: The Effect of Raising Jurisdictional Limits on Small Claims Court Caseloads*, A Research Study by HALT – An Organization of Americans for Legal Reform, vi (October 15, 2003).

<sup>45</sup> Because Florida does not have a distinct "small claims court," and because the jurisdictional limitation of small claims matters heard in county court is prescribed in Rule 7.010(b) of the Florida Small Claims Rules, only the Florida Supreme Court has the authority to augment the jurisdictional limitation established in the current rule. See FLA. CONST. art. V, s. 2(a).

### ***Equitable Jurisdiction***

In the majority of other jurisdictions, small claims courts are limited to awarding money damages and do not enjoy jurisdiction over equitable matters.<sup>46</sup> In other words, while a court may award monetary damages, it is precluded from awarding equitable relief such as an order requiring parties to do something or to refrain from doing something. Furthermore, without equitable jurisdiction, courts are precluded from awarding certain relief in contract disputes. As a result, many claims are not pursued in small claims court because the court is precluded from awarding remedies of an equitable nature. For instance, an individual may wish to pursue a nuisance claim against a neighbor which cannot be remedied by a monetary award. However, the individual would likely choose to forego filing a claim in small claims court when a small claims judge cannot quickly resolve the dispute by issuing an order requiring the neighbor to refrain from engaging in certain behavior.<sup>47</sup>

Similar to other states, small claims jurisdiction is limited to “matters of law” in Florida.<sup>48</sup> In 1996, the Fourth District Court of Appeal reiterated that “in small claims court a party may maintain only actions at law.”<sup>49</sup> When asked about the expansion of small claims jurisdiction to equitable matters, some judges expressed concern with this change, noting that adding an equitable component to small claims cases will likely cause cases to be more complex and require additional time for resolution. One judge noted that expanding jurisdiction to include equitable claims is not necessary because the mediation process provides litigants with a mechanism to explore equitable remedies that can be included in a settlement agreement. For example, a dispute over dissatisfaction with services may be settled with a provision including monetary payment in addition to an agreement that a business will provide certain services to the plaintiff in the future. In the event the Legislature were to conclude that expanding jurisdiction to include equitable powers would benefit the small claims process, it could encourage the Florida Supreme Court to amend Rule 7.010(b) to provide that the small claims rules are applicable to “all actions at law *or equity*. . . .”

### **Mediation**

Some legal commentators have noted that “[b]ecause many small claims involve disputes between neighbors, partners and others who know each other and who often must co-exist in the future, the exclusive reliance on a court-based, adversarial system can actually make matters worse in the long-run.”<sup>50</sup> Mediation is a viable alternative to completing the adversarial process. Typically, a trained mediator meets with both parties and helps the parties focus on the legal issues of the case to attempt to reach an amicable resolution. The use of mediation in small claims cases appears to have distinct advantages for both the courts and small claims litigants.

### ***Use of Mediation in Florida***

In some states, it is mandatory for small claims litigants to complete mediation prior to proceeding to trial. In Florida, there is no mandate by statute or rule that small claims litigants must participate in mediation. However, most counties utilize mediation, with 65 percent of those county judges responding to the professional staff survey indicating that mediation is mandatory in small claims cases they hear. Some judges reported that while mediation was not mandatory, mediators are available and that parties are encouraged to mediate small claims cases. In some jurisdictions, cases with pro se litigants are required to go to mediation, while cases with attorneys are not. In few counties, judges reported that mediation is never or seldom used in small claims cases.

### ***Structure and Success of Mediation***

In Florida small claims cases, mediation usually occurs at the pretrial hearing. Several counties utilize circuit-wide mediation programs that oversee volunteer mediators and coordinate mediation services at the pretrial hearing. Volunteer mediators must complete the Florida Supreme Court’s mediation training prior to providing

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<sup>46</sup> Turner, *supra* note 1, at 185.

<sup>47</sup> *Id.*

<sup>48</sup> Rule 7.010(b), Fla. Sm. Cl. R., provides that the “rules are applicable to *all actions at law* of a civil nature in the county courts. . . .” (emphasis added).

<sup>49</sup> *Tax Certificate Redemption’s Inc. v. Meitz*, 705 So. 2d 64, 65 (Fla. 4th DCA 1997).

<sup>50</sup> Turner, *supra* note 1, at 186.



mediation services in small claims cases.<sup>51</sup> During mediation, participants may agree to settlement terms including monetary payments, as well as equitable relief. Section 44.108, F.S., precludes courts from charging mediation fees in small claims cases.

Every judge interviewed who uses mediation in small claims cases praised the utility of this alternative-dispute-resolution service. Some judges reported that they were initially concerned that litigants settling cases in mediation would feel precluded from having their day in court. However, they also report that the ability of a party to take control of a case and settle it on his or her own terms outweighs this concern, and that pro se litigants are receiving the program remarkably well. Judges also reported that mediation is a valuable docket management tool, with numerous cases settling that would otherwise proceed to trial. In the professional staff survey, judges were asked to estimate how frequently small claims cases are settled at mediation (using a one-to-five scale, with 1 being “seldom” and 5 being “frequently”), and the average response was 4.3, which suggests that cases frequently settle during mediation. Some judges reported mediation settlement rates as high as 75 percent. Despite the overall enthusiasm for the use of mediation, some judges responded that while mediation works well in most small claims cases, in personal injury protection (PIP) cases, mediation usually does not result in settlement and may be a waste of court resources in those instances.

### Personal Injury Protection (PIP) Cases

Personal Injury Protection (PIP) cases are often filed in small claims courts in Florida. No-fault PIP benefits in automobile insurance policies include medical benefits consisting of a percentage of reasonable and necessary expenses incurred for certain medical treatment such as surgery, X-ray, dental, and rehabilitative services.<sup>52</sup> Litigation between health care providers and insurance companies often arises over the reasonableness and necessity of the insured’s medical treatment.

Because PIP cases typically involve generally low limits, these cases usually fall below the \$5,000 threshold and are filed in small claims court.<sup>53</sup> Many claims may be well under \$5,000 due to the typical PIP coverage limits of \$10,000. Final attorney fee awards, however, may well exceed \$10,000.<sup>54</sup> Plaintiffs may choose to file a PIP action as a small claim to capitalize upon the opportunity for a speedy resolution, and to enjoy “bare-bones” discovery rules.<sup>55</sup> Additionally, plaintiffs may choose small claims court to avoid application of the proposal for settlement rule<sup>56</sup> contained in the Florida Rules of Civil Procedure.<sup>57</sup>

Some county judges reported that once a PIP action is filed, one of the parties will usually invoke the Florida Rules of Civil Procedure. “Invoking the rules” means that the procedural tools available in the Florida Rules of Civil Procedure, including broad discovery, are now available in the small claims case. Interrogatories, requests for production of documents, and requests for admissions are served on the parties; experts are retained to testify regarding the “reasonableness” or “necessity” of the medical treatment; and numerous depositions are often held. Once the rules are invoked, additional hearings will likely be necessary to resolve discovery disputes and dispositive motions. According to some county judges, these cases may be litigated for two to four years. The complexity of PIP cases coupled with their length suggests that these cases may not neatly fit in the small claims

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<sup>51</sup> These volunteer mediators are not required to be attorneys or retired judges. A significant number of volunteer mediators are retired professionals from various backgrounds.

<sup>52</sup> 31A FLA. JUR 2D INSURANCE s. 2850 *Medical Expenses* (2007).

<sup>53</sup> David Gagnon, *Get Me Out of Here! How to Level the Playing Field in Small Claims PIP Actions One Proposal for Settlement at a Time*, 24 NO. 3 TRIAL ADVOC. Q. 13, 13 (2005). PIP coverage usually pays 80 percent of the typical coverage limit of \$10,000, with the majority of PIP claims falling below the \$5,000 jurisdictional threshold.

<sup>54</sup> Section 627.736(4)(h), F.S., affords successful plaintiffs in PIP cases the right to recover attorney fees.

<sup>55</sup> Gagnon, *supra* note 53, at 13.

<sup>56</sup> Under Rule 1.442, Fla. R. Civ. P., and s. 768.79, F.S., a party offering a proposal to settle a civil action is entitled to an award of costs against the opposing party in the event the opposing party obtains a judgment less favorable than the offer by a specified percentage, provided the offer was made in good faith.

<sup>57</sup> See s. 768.79, F.S., and Rule 1.442, Fla. R. Civ. P. Although some assert that proposals for settlement may not be used in small claims actions, recent case law suggests that they may be used in small claims cases. See *Bristol West Ins. Co. v. Care Therapy & Diagnostics, Inc.*, 15 Fla. L. Weekly Supp. 883a (Fla. 13th Jud. Cir. 2008); *U.S. Sec. Ins. Co. v. Cahuasqui*, 760 So. 2d 1101 (Fla. 3d DCA 2000).

arena. Invariably, a PIP case will involve attorneys representing both the health care provider and the insurance company. In *Treasure Coast Injury and Wellness Centre, P.L. v. Progressive Express Ins. Co.*, a judge considered an award of attorney fees in the context of PIP suit filed in small claims court, and expressed that attorney representation may diminish the suitability of PIP cases in the small claims arena.<sup>58</sup> Other states, such as Colorado, have evaluated the utility of attorney participation in small claims cases and have chosen to preclude attorney participation in those instances.<sup>59</sup> Eighty-five percent of county judges responding to the professional staff survey, however, believe that attorneys should not be precluded from the small claims process in Florida.

Many county judges responded that PIP cases should be removed from the small claims process altogether. Some judges asserted that PIP cases are a poor fit with the small claims procedural rules, while others commented that while there is a relatively low amount in controversy, an award of attorney fees may exceed thousands of dollars, and will require multiple hearings, possibly including a hearing to determine the amount of the fees awarded if a settlement is not reached.

Because PIP cases proceed essentially like any other county civil case once the rules are invoked, and considering the procedural complexities presented in PIP cases, it may be advantageous to remove these cases from the small claims process and require PIP actions to be filed in county civil or circuit court.<sup>60</sup> Although jurisdiction of the small claims courts is contained in the small claims rules, it does not appear that the Legislature would be precluded from statutorily carving out PIP actions from the small claims process. Article V, section 6 of the Florida Constitution provides that the “county courts shall exercise the jurisdiction prescribed by general law.” By statute, county court jurisdiction includes “all actions at law in which the matter in controversy does not exceed the sum of \$15,000.”<sup>61</sup> The Legislature could include language in the current PIP statute providing that PIP cases filed in county civil court are not subject to the small claims rules. Another alternative would be to carve out PIP cases from the small claims process in the general county court jurisdiction statute.

## Judgment Collection

One of the chief complaints from small claims litigants throughout the United States is that they are unable to collect their judgments.<sup>62</sup> Many litigants report that the collection process is often “confusing, difficult, and disconcerting.”<sup>63</sup> In Florida, this trend is no different. Pro se litigants were asked in the professional staff survey to rate their experience with collecting their judgment from the opposing party (using a one-to-five scale, with 1 being “extremely difficult,” and 5 being “extremely easy”). The average response was 2.26, which indicates that most of those litigants responding experienced difficulty in collecting their small claims judgment. Based on survey responses and litigant interviews, it appears that some pro se litigants were often under the false impression that they would automatically receive money upon winning their suit, while others reported that the collection process was cumbersome and confusing.

### *Efforts to Aid in Judgment Collection*

The clerks’ offices and the courts in Florida recognize that pro se litigants are experiencing difficulty with collecting judgments, and they have adopted measures to attempt to reduce confusion in the collection process. For example, many clerks provide handouts to litigants upon entry of a judgment explaining the collection process in detail. Sample language may communicate to the litigant that:

You as the Plaintiff/Judgment Creditor have received a copy of your judgment as entered by the court. Possession of the judgment, however, does not mean that the Defendant/Judgment Debtor

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<sup>58</sup> *Treasure Coast Injury and Wellness Centre, P.L. v. Progressive Express Ins. Co.*, 11 Fla. L. Weekly Supp. 938b (Fla. 19th Cir. 2004).

<sup>59</sup> Best, *supra* note 3, at 354.

<sup>60</sup> While removing PIP cases from the small claims process may improve caseloads in certain larger counties, counties in which there is only one judge will not likely enjoy this same reduction. Because these judges hear county civil cases, the PIP case would remain on their docket, regardless of whether it was a small claims case or a county civil case.

<sup>61</sup> Section 34.01(1)(c), F.S.

<sup>62</sup> Best, *supra* note 3, at 365.

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

will automatically pay off the amount due under the judgment. While you and the other party may have agreed on settlement of the debt, enforcement of the judgment is your responsibility. While Florida law prohibits the Clerk's Office from offering advice about how to enforce your judgment, this office can explain the procedures for recovering under the judgment.<sup>64</sup>

The handouts also include information to assist in recording the judgment as a lien against real and personal property. Other counties provide limited information regarding garnishment procedures, but advise that it may be best to contact an attorney if the person is interested in pursuing this collection remedy. Judges also aid in judgment collection by attempting to curb the expectations of pro se litigants who believe that they will automatically receive payment once the court enters the judgment order. Upon entry of a judgment, judges may also explain that the plaintiff may be entitled to a hearing in aid of execution of the judgment.

### ***Fact Information Sheet***

The Fact Information Sheet is a valuable judgment collection tool that pro se litigants may be unaware is available. Rule 7.221(a), Florida Small Claims Rules, provides that a judge may include a paragraph in the final judgment order requiring the losing party to complete a Fact Information Sheet, which details information regarding the financial status and assets of the party, *upon the request of the prevailing party or attorney*. The court retains jurisdiction to compel the defendant to complete the Fact Information Sheet. If the judgment creditor is not represented by an attorney, he or she may request a hearing in aid of execution after 30 days from the entry of the judgment to inquire of the defendant under oath as to earnings, financial status, and any assets available.<sup>65</sup>

In the professional staff survey, 54 percent of the county judges responding indicated that, upon entry of a judgment, they require defendants to complete a Fact Information Sheet without a formal request by a plaintiff. Some judges commented that, while they do not *automatically* require defendants to complete the form, they do advise pro se litigants that this collection tool is available upon their request. Once an order is entered requiring completion of the Fact Information Sheet, a litigant may request a contempt order in the event the judgment debtor fails to provide the completed form. To simplify an initial step of the collection process, it may be beneficial to alter the rule to require automatic entry of an order providing that a losing party must complete the Fact Information Sheet and provide it to the opposing party within 45 days of the judgment if it is not satisfied.

Some judges have expressed concern over automatically requiring judgment debtors to hand over this private information to judgment creditors due to the sensitive nature of the required financial information. Recently, the Florida Bar Committee on Small Claims Rules considered a change to Rule 7.221 requiring judgment orders to automatically include the requirement for a judgment debtor to complete a Fact Information Sheet. In its analysis, among other considerations, the committee commented that judgment creditors should first seek payment of the judgment prior to receipt of the judgment debtor's financial information. Additionally, the committee noted that increasing the number of Fact Information Sheets increases the possibility that the forms will be improperly filed with the courts, which could result in violation of privacy and identity theft. Finally, the committee expressed concern with the costs the courts and clerks will incur to generate these additional forms. As a result, the committee recommended that Rule 7.221 not be amended to require submission of a Fact Information Sheet in every judgment.<sup>66</sup> However, the committee did conclude that it should consider preparing recommended forms to aid pro se litigants in use of the Fact Information Sheet.

### ***Reopen Fees***

In addition to procedural barriers a pro se litigant may face in the small claims process, monetary barriers also exist in the current judgment collection framework. In the event a pro se litigant seeks a contempt order premised upon a litigant's failure to complete the Fact Information Sheet, the pro se litigant will likely be required to pay a

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<sup>64</sup> This sample language is contained in a handout provided to small claims litigants upon receipt of a judgment by the Leon County Clerk's Office and is similar to information provided to small claims litigants in other counties.

<sup>65</sup> Rule 7.221(b), Fla. Sm. Cl. R.

<sup>66</sup> Memorandum to Small Claims Rule Committee from Judge Robert W. Lee, Lynn Drysdale, Esq., and Wendell Finner, Esq., September 12, 2008 (on file with Committee on Judiciary).

reopen fee in the amount of \$25 or \$50.<sup>67</sup> Concerns related to reopen fees emanate from a litigant's belief that he or she is paying unnecessary, additional expenses. For example, a business owner may file suit against a defendant for unpaid services in small claims court. After completing the process and receiving a judgment in his favor, the businessman waits the prescribed 45 days for the person to pay him or fill out the Fact Information Sheet. Upon the defendant's failure to do either, the businessman decides to file a motion in the original case to require the defendant to comply with the order. Under Florida law, the businessman must pay an additional reopen fee to file the motion, and must also incur costs to have the defendant served with the pleadings.

Some clerks have also expressed dissatisfaction with use of the reopen fee. Clerks are often on the receiving end of a litigant's dissatisfaction with being advised that a reopen fee is necessary for further attempts in a case to collect a judgment. Additionally, some clerks have reported that reopen fees hinder the workload of clerks by requiring them to verify whether reopen fees are required, or in determining whether a case is still pending or if another reopening document has been filed. One clerk's office suggested explaining to litigants in writing that if they reach a settlement or receive a judgment, the case is closed, and that any subsequent activity, including collection efforts, will require payment of a reopening fee. This prior notice may help to reduce a litigant's hostility in learning that another filing fee is required in a case that the litigant perceives as "pending."

The Legislature may also wish to consider eliminating or altering application of the reopen fee in small claims cases. The policy challenge for the Legislature is balancing the costs to the system associated with reopening a legal matter against the effect on small claims litigants. One policy option available to remedy the concern is to raise the original filing fees and eliminate the reopen fee altogether. Another option may be to exclude, by statute, certain additional types of cases (such as the current garnishment exclusion) from the reopen fee. The Legislature could carve out certain collection activity from the reopen fee. However, any revisions to the reopen fee may have a fiscal impact on the state court system.

## Options and/or Recommendations

This review illustrates a number of potential ways to enhance the small claims process in Florida. Among the options available to the Legislature, the Supreme Court, and the clerks are:

- Providing interactive small claims forms online, providing instructional videos explaining the small claims process to current and potential litigants, and establishing seminars and workshops designed to explain the process to current and potential litigants;
- Adopting uniform small claims forms;
- Exploring the feasibility of courts and clerks providing some small claims services on evenings and weekends;
- Increasing the small claims jurisdictional limit to \$7,500 or \$10,000 from the current limit of \$5,000;
- Amending Small Claims Rule 7.010(b) to expand small claims jurisdiction to include equitable matters;
- Making mediation available to small claims litigants in every county;
- Excluding personal injury protection (PIP) cases from small claims jurisdiction;
- Amending Small Claims Rule 7.221(a) to require courts to include in the judgment order that the judgment debtor must complete a Fact Information Sheet within 45 days if a judgment is not satisfied within that timeframe; and
- Eliminating reopen fees altogether and raising initial filing fees, or providing exclusions from the payment of reopen fees for certain case activity, depending upon the fiscal impact.

As addressed in the "Findings" section of this report, each option presents issues that the Legislature, the Supreme Court, and the clerks may wish to consider in their evaluation.

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<sup>67</sup> See s. 28.241(5), F.S., which provides that "[f]iling fees for the institution or *reopening* of any civil action, suit, or proceeding in county court shall be charged and collected as provided in s. 34.041" (emphasis added).