

# THE SMALL CLAIMS COURT EXPERIMENTAL PROJECT

## A REPORT TO THE LEGISLATURE

### ON THE COURT ASSISTANCE EXPERIMENT



60914

STATE OF CALIFORNIA  
DEPARTMENT OF  
**Consumer  
Affairs**



DIVISION OF ADMINISTRATION  
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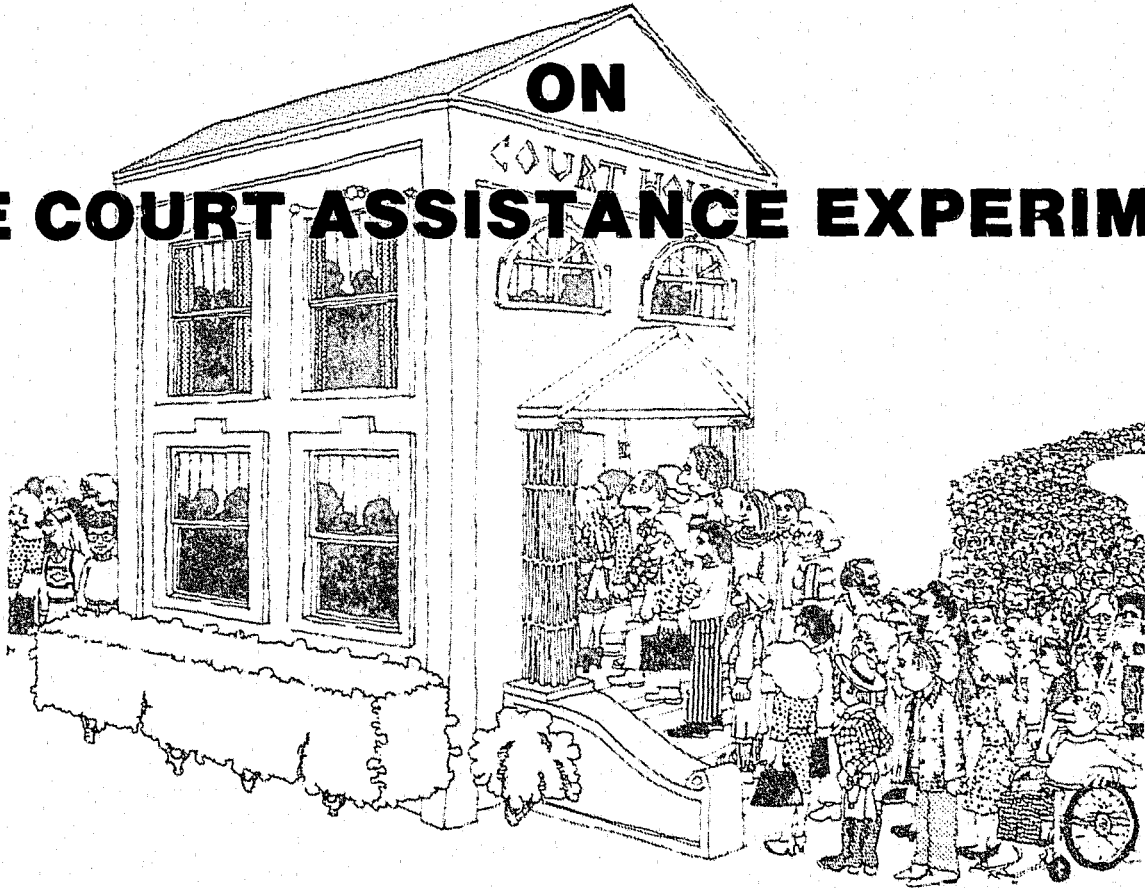
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**ON**

**THE COURT ASSISTANCE EXPERIMENT**



EDMUND G. BROWN JR., *Governor*

ALICE LYTTLE, *Secretary*  
State & Consumer Services Agency

RICHARD B. SPOHN, *Director*  
Consumer Affairs

ROGER DICKINSON, *Project Coordinator*

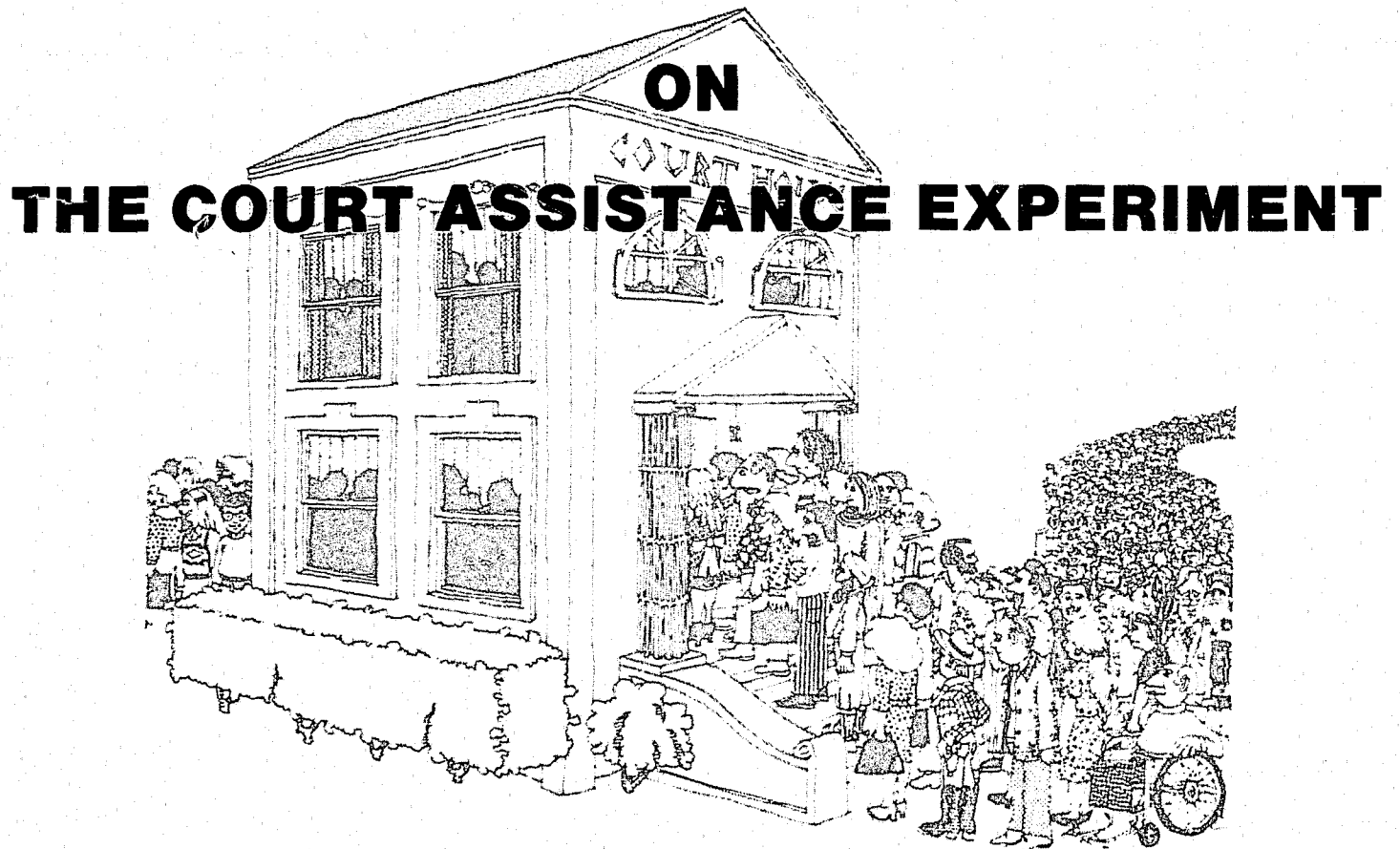


DIVISION OF CONSUMER SERVICES  
1020 N Street  
Sacramento, CA 95814

August 1979

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## A REPORT TO THE LEGISLATURE



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ROGER DICKINSON  
Project Coordinator



DIVISION OF CONSUMER SERVICES

1020 N Street  
Sacramento, CA 95814

August 1979



DEPARTMENT OF

1020 N STREET, SACRAMENTO, CALIFORNIA 95814

(916) 445-4465



Honorable James R. Mills  
President Pro Tempore  
California State Senate  
State Capitol, Room 5100  
Sacramento, California 95814

August 1979

Honorable Leo T. McCarthy  
Speaker of The Assembly  
California State Assembly  
State Capitol, Room 3164  
Sacramento, California 95814

Dear Mr. President Pro Tempore and  
Mr. Speaker:

Small Claims Court represents the primary judicial forum available in California to resolve consumer and other minor civil disputes. Its design as a speedy, inexpensive, and informal process symbolizes our commitment to make justice accessible to all. The more than 420,000 small claims filed last year around the state, with an aggregate amount in excess of \$150 million, demonstrate the significant role small claims court occupies in our justice system.

Yet, over the past several years, there has been increasing concern about whether small claims court delivers full justice at a bearable cost to the people it was created to serve. Often, small claims court has seemed inaccessible or intimidating to individuals who wish to pursue or defend claims. Too frequently, the problems of those involved in minor disputes have been dismissed as unimportant.

The Small Claims Court Experimental Project, created by Chapter 1287 of the Statutes of 1976, was specifically adopted to address the maladies attributed to small claims court by testing reforms designed to improve the forum. Through experimentation with such programs as small claims legal advisors, evening and Saturday court sessions, law clerks, litigant manuals, and mediation, the project was aimed at increasing accessibility to small claims court and reducing the number of defaults. As part of the experiment, a vast amount of data which provides the best

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picture ever regarding the operation of small claims court in California was collected and is presented in this report.

The Advisory Committee created under the project and the Department present for your consideration twelve recommendations which, if implemented, we believe would serve to materially increase accessibility to small claims court while improving the quality of justice. I would like to emphasize three of the recommendations.

First, the recommendation that all municipal courts with three or more judges be required to conduct one evening or Saturday session each month should be viewed as a minimal standard. The data gathered during the experiment conclusively document the desirability of evening and Saturday court sessions, and that the utility of such sessions increases as a greater number of sessions is offered. We also believe that it may be feasible for many municipal courts with less than three judges and justice courts to conduct evening small claims sessions once a month.

Second, providing information about the small claims process to litigants and the general public must be considered as an essential component of improving the small claims process. The value of litigant manuals was thoroughly demonstrated over the course of the experiment. We believe such manuals offer the best means of inexpensively and effectively informing litigants about the process and their rights. Because it is critical that defendants especially receive detailed yet comprehensible information, requiring delivery of the manuals as an element of service of process should be considered.

Third, we strongly endorse the recommendation that public education efforts by state and local groups be conducted to inform the public of the availability of small claims court. While it does not affect the operation of the forum directly, fulfillment of this recommendation may represent the most significant measure in making small claims court "the people's court."

The Small Claims Court Experimental Project embodies a unique arrangement which has brought the executive and judicial branches together for the purpose of improving a fundamental feature of our system of justice. Throughout the project, the staff of the Judicial Council under Chief Justice Rose Elizabeth Bird has shared the responsibility with us and made a significant contribution through the dedicated and enthusiastic work of Steve Birdleough, Joe Doyle, and Bern Jacobson.

Honorable James R. Mills  
Honorable Leo T. McCarthy

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By their diligence and creativity, the members of the statutory Advisory Committee have played a central role in the conduct of the project. They have actively participated throughout in planning, implementation, and evaluation of the experiment. We have profited from their involvement and are pleased to have them join with the Department in presenting this report.

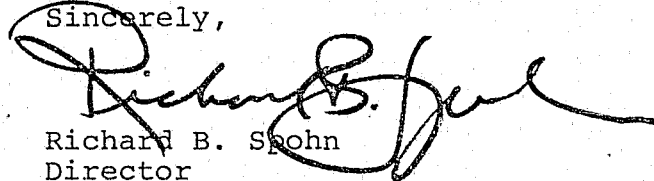
We have also been especially impressed with the interest of those who work in the courts in improving small claims court and their willingness to join with us in this effort. They accepted the burden of carrying out the experimental programs and procedures on a day-to-day basis and recording the results; without them there would have been no experiment.

Data derived from a survey of San Francisco and Fresno litigants have been used throughout this report to contribute to our understanding of how litigants perceive small claims court. We are grateful to Advisory Committee member David Ba'ewell for arranging for the funds contributed by Montgomery Ward to conduct the survey and the faithful assistance of Professor Howard Schutz of the University of California at Davis in administering it.

As a pioneering effort in assessing proposed changes in court services, the experiment has served a valuable purpose by permitting pertinent evidence to be obtained which can provide the basis for enlightened public policy.

It is our pleasure to present this report, which we hope will serve as a guide for future improvements in the "people's court."

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard B. Spohn", with a large, stylized flourish extending from the end of the name.

Richard B. Spohn  
Director

Statutory

SMALL CLAIMS COURT EXPERIMENTAL PROJECT  
ADVISORY COMMITTEE

2004 Adele Place  
San Jose, California 95125

August 1979

(408) 264 4259

The California Legislature  
State Capitol  
Sacramento, California 95814

Attention:

Honorable James R. Mills  
President Pro Tempore  
The Senate

Honorable Leo T. McCarthy  
Speaker  
The Assembly

Gentlemen:

Transmitted herewith are the Recommendations and Report of the Department of Consumer Affairs and the Advisory Committee of this project which are presented to you pursuant to section 122.2 of the Code of Civil Procedure.

The Advisory Committee acknowledges its debt to Roger Dickinson, Esq., Staff Counsel, Department of Consumer Affairs, for his excellent performance as the Coordinator of the Project, as Staff Assistant to the Committee, and as the principal author of the Report.

The Committee also acknowledges with special appreciation members of the staff of the Administrative Office of The Courts, George J. Barbour, Joe Doyle and Dana Dennis who compiled the statistics which serve as the primary source of figures in the Report; Stephen C. Birdlebough, Esq., Staff Attorney; and Bern M. Jacobson; presiding judges and court clerks in each of the participating judicial districts; scores of citizen volunteers who worked with the project and numerous members of the staff of the Department of Consumer Affairs who were also involved.

California Legislature  
Honorable James R. Mills  
Honorable Leo T. McCarthy

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This unique two-year examination of six small claims courts around the state indicates that generally small claims courts in California are performing satisfactorily. Yet, certain characteristics of their operations deserve continuing close scrutiny by the Judiciary, the Legislature and the general public.

In common with other parts of the judicial branch of government, small claims courts have a fragile, delicately balanced structure which should not be casually altered. The recommendations with this report, if adopted, would preserve the best features of small claims courts and improve their services to the public. Small claims courts are an important part of the system of justice in this state and merit special attention.

Experience in the project demonstrates the importance of a recommendation in this report to make legal advisers available to assist natural persons to prepare their small claims cases without charge. The Advisory Committee and the Department of Consumer Affairs are sensitive to the fiscal problems currently faced by state and local governments. They are aware that this recommendation and others could increase the cost to taxpayers of improving small claims court services. Moreover, if the reputations of small claims courts for fairness are enhanced as the result of implementation of these recommendations, the use of these courts may grow substantially and require more judicial and other court personnel.

Of particular note is the fact that plaintiffs who filed twelve or more small claims cases in a particular court during the 17-month period, called "heavy users" in the report, accounted for over 32% of the cases filed and won over 95% of their cases. The aggregate amount of judgments obtained by heavy users in these six small claims courts in this same period exceeded four million dollars.

The very high percentage of judgments obtained by heavy users against natural person defendants does not necessarily indicate unfairness to the defendants but it does make it difficult for some people who are not well acquainted with the nature of small claims litigation to perceive small claims courts as unfair to individual defendants who are sued by business or government entities.

Accordingly, there is a recommendation that heavy users be required to pay a surcharge, the proceeds of which would be used to finance the added cost of implementing the recommendations of this report. Heavy users then would pay an amount which would more nearly reflect a fair share of the cost of the court operations which in general are so financially beneficial to them. The proposed surcharge, of course, would not be large enough to discourage heavy users from continuing to use small claims courts nor could the surcharge be passed on to opposing parties as court costs.

All three branches of government are involved in this project as it was designed and mandated by the Legislature (Code of Civil Procedure section 118 et seq.).

The six municipal courts agreed to collect and forward detailed case information to the Judicial Council and three of the courts consented to establish the innovative procedures specified in the statute.

The Judicial Council adopted special court rules to implement the project and the Administrative Office of the Courts organized and computerized the case information. This became the basis of the comprehensive analysis which is the source of statistics quoted throughout the report and in the foregoing paragraphs.

The Department of Consumer Affairs coordinated the activities of groups and individuals who participated in the project, published special information manuals for litigants in the participating courts, conducted public information and education programs relating to the project, provided staff assistance to the Advisory Committee, evaluated the data that has been collected and in cooperation with the Advisory Committee coauthored this report to the Legislature.

The report and recommendations to the Legislature, the accompanying report and analysis by the Administrative Office of the Courts, special rules of the Judicial Council, various supplemental materials in the Appendix to the report are products which are the result of a high degree of cooperation among representatives of the three branches of government, the State Bar and of the public. There is no precedent for such an extensive examination of court cases by nonjudicial units as has occurred in this project. It is noteworthy that all participants have worked together harmoniously in the public interest.

California Legislature  
Honorable James R. Mills  
Honorable Leo T. McCarthy

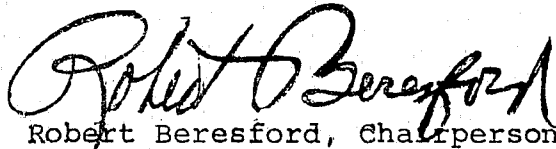
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August 1979

For this achievement, the Committee thanks the following persons for their invaluable guidance and support in carrying out this project: Richard B. Spohn, Esq., Director of The Department of Consumer Affairs; Ralph J. Gampell, Esq., Administrative Director of The Courts; The Honorable Rose Elizabeth Bird, Chief Justice of California and Chairperson of the Judicial Council.

For The Advisory Committee,

Respectfully submitted,



Robert Beresford, Chairperson

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ADVISORY COMMITTEE  
(Published as a separate document)

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---

1 Appointed January, 1978

2 Retired January, 1979

3 Resigned December, 1977

4 Appointed To Fresno Superior Court May, 1979

## INTRODUCTION AND SUMMARY

Small claims court is intended to provide a fair, fast, and inexpensive procedure to adjudicate claims which are relatively small but often of great importance to the persons involved. Lawyers are not allowed to represent litigants in the proceedings, but may assist them before or after they appear in court. Hearings are usually informal and the judges use investigative techniques to elicit evidence.

Assembly Bill 3606 (Chapter 1287, Statutes 1976)<sup>1</sup> initially created the Small Claims Court Experimental Project for the purpose of testing programs and procedures designed to increase accessibility to small claims court for individuals and reduce the number of cases in which defendants do not appear. Jointly administered by the Department of Consumer Affairs and the California Judicial Council, a court and litigant assistance experiment<sup>2</sup> was conducted between mid-1977 and mid-1979 in cooperation with six municipal courts around the state. A fifteen member Advisory Committee established by the legislation monitored the experiment and participated in the preparation of this report.

The experimental programs and procedures tested were implemented in the Sacramento, San Diego, and San Francisco Municipal Courts for a one-year period beginning in April, 1978. Included among the innovations were: evening and Saturday court sessions, bilingual court staff and interpreters, evening hours for the clerk's office, modified

change of venue standards, and a preference that the convenience of individuals should prevail over the convenience of businesses or government agencies whenever feasible.

In addition, three special programs were instituted. In Sacramento, the small claims judges were provided with assistance from law clerks who were available to conduct legal research and factual investigation. Litigants in San Francisco received legal advice outside the courtroom from two attorneys employed by the county. In San Diego, a postfiling mediation program was conducted involving cases where both parties were willing to attempt to reach a settlement.

The Department of Consumer Affairs, in cooperation with the Judicial Council, produced and distributed litigant manuals which explained the small claims process in the experimental court districts. The public was informed of the availability of the special programs and procedures through news, public affairs programs, and radio and television public service announcements.

Extensive data was collected on the operation of the small claims process in the experimental courts and in three "recordkeeping" or control courts, the Fresno, Oakland-Piedmont, and West Orange County Municipal Courts. In addition, over 400 litigants involved in cases in San Francisco and Fresno responded to a mail survey concerning their experiences and perceptions of small claims court. Two public hearings were conducted by the Advisory Committee to obtain further testimony on the experiment and issues affecting small claims court generally.

Evaluation of the available data and testimony show that, in the six courts over the course of the experiment, individuals filed about 40% of the claims while non-natural entities filed 60% of the claims. Plaintiffs who filed twelve or more claims accounted for 22% to 47% of total filings. The most common claim brought involved a consumer credit transaction while suits involving consumer goods or services were rare. Plaintiffs won 87% to 91% of cases which came to trial. Individuals comprised the vast majority of defendants, and defaults occurred in 44% to 60% of cases in which there was a hearing. While most litigants surveyed believed a fair trial is possible in small claims court, a significant percentage reported having difficulty understanding the process and their legal rights.

Among the experimental programs and procedures, small claims legal advisors, the litigant manual, and law clerks to assist judges were deemed particularly useful by the courts and popular with the public. Evening and Saturday court sessions received substantial use by litigants, especially individuals, the intended beneficiaries of the program.

Nonetheless, in general, the experimental programs and procedures did not appear to affect the number of small claims cases filed nor the composition of plaintiffs. No reduction in overall default rate was identifiable; however, evening and Saturday court sessions did enjoy a default rate 30% to 50% lower than the default rate for regular trial sessions when calculated as a percentage of trials scheduled.

Various methods of funding expanded small claims litigant and court services were considered. In the absence of sufficient general funds, it was concluded that a surcharge collected from plaintiffs who make repeated use of small claims court would generate sufficient revenue to satisfy the costs of

local programs recommended by this report to be required by statute. Such a surcharge can be structured in an equitable, feasible, and constitutionally sound manner.

### SUMMARY OF RECOMMENDATIONS

(1) All counties should be required by statute to provide small claims legal advisors in conjunction with the operation of the small claims divisions of municipal courts. The advisors should assist litigants with their cases, but not appear in court as advocates nor communicate with judges concerning individual cases.

(2) All municipal courts with three or more judges should be required by statute to conduct at least one evening or Saturday small claims trial session per month.

(3) The Department of Consumer Affairs or other appropriate state agency, in cooperation with the Judicial Council, should be required by statute to produce and distribute small claims litigant manuals on a statewide basis at no charge to litigants and the public. The manual should be brief yet thorough, written in nontechnical language, and prepared in English and Spanish.

(4) Municipal or justice courts which serve a particular non-English speaking population of 10% or greater should be required by statute to provide bilingual clerk's services in the small claims division and interpreters at trial for a reasonable fee. The small claims division of all municipal and justice courts should be required to maintain a list of interpreters for all languages spoken by two percent or more of the population served by the court. Failure to meet the above requirements should constitute adequate grounds to set aside a default judgment or grant a new trial to any non-English speaking litigant.

(5) The use of law clerks to assist judges in small claims cases with legal research or factual investigation should be authorized by statute.

(6) The Judicial Council should revise the existing "Claim of Plaintiff and Order" form to include information regarding: (1) how to obtain a litigant manual; (2) how to request a change in the time or place of trial; (3) how to obtain the assistance of a small claims legal advisor (where applicable); and (4) in Spanish, how to obtain a litigant manual, and the potential consequences of failing to appear for trial.

(7) The small claims clerk's office of municipal and justice courts should be authorized by statute to remain open during evening hours.

(8) Courts should be authorized by statute to sponsor or co-sponsor informal dispute resolution programs such as mediation, conciliation, or arbitration for small claims cases.

(9) In the absence of sufficient state general funds plaintiffs who make frequent use of small claims court should be assessed a statutory surcharge fee in order to provide revenue to cover the cost of programs and procedures recommended in this report.

(10) Existing law should be amended to include a statement of legislative intent which recognizes the significance of small claims court. The declaration should include that it is the intent of the Legislature that it shall be the policy of rules promulgated by the Judicial Council for small claims practice and procedure to provide that the convenience of natural persons shall, to the extent possible, prevail over the convenience of other parties.

(11) Public education efforts by state and local legal, consumer, business, and community groups should be conducted to inform the public about the availability of small claims court.

(12) The current statutory Advisory Committee or its successor should be authorized to undertake additional study of small claims practice and procedure, with particular attention given to procedure for the collection of judgments, for the purpose of proposing improvements.

CHAPTER I. THE SMALL CLAIMS COURT EXPERIMENTAL PROJECT:  
BACKGROUND AND OVERVIEW

A. The Setting

The roots of present day small claims court can be derived from the early English "small debt courts" established in 1605 and the Danish and Norwegian conciliation courts founded about 1795. Created to provide a special court for the informal, quick, and inexpensive resolution of disputes by average citizens, the concepts behind these forums crossed the Atlantic with those who traveled to the United States from Europe, and in the early 1900's similar tribunals were established in various cities and states. The Cleveland Conciliation Court, begun in 1912, signified the first well-known American effort to accommodate disputes over small sums of money in an informal fashion, while the Chicago Small Claims Branch offered the prime early example in the United States of the English model where informality was emphasized but the adversary foundation retained. California joined the wave of other states embracing small claims court when the Legislature initially adopted appropriate legislation in 1921. Two years later, the state Supreme Court affirmed its constitutionality in Leuschen v. Small Claims Court.<sup>3</sup> During the period commentators hailed the creation of such informal tribunals:

The organization in so many of our cities of small claims courts has proved almost universally a successful experiment. One cannot fail to be optimistic who sees the municipal court of our greatest city functioning today

and compares it with the operation of that court a few years ago. . . . By adopting a procedure so informal that there is no need of professional assistance (and in some of these courts the parties are not permitted to be represented by counsel), by reducing fees and costs to a nominal amount, it has been found possible to administer substantial justice in small causes cheaply and with expedition.<sup>4</sup>

However, as the years passed, doubt began to surface as to whether small claims court was fulfilling its intended purpose as the "people's court." A study of the Oakland-Piedmont small claims court,<sup>5</sup> conducted in 1964, revealed that institutional and governmental plaintiffs were responsible for filing 70% of the actions brought in the court. Individuals comprised only 30% of the plaintiffs, but 80% of the defendants. The study further showed that over half the claims were "group claims," filed simultaneously with other claims by the same plaintiff. Court records disclosed that plaintiffs won judgments in 90% of the cases in which there was a disposition, and only 40% of the cases that went to judgment were contested. Thus, the small claims court was characterized as more closely resembling a collection agency rather than a forum where individual disputants could meet and resolve their controversies.

Other commentators criticized small claims court for being unknown to most individuals, held at inconvenient times, and conducted at inconvenient locations.<sup>6</sup> The experience of trying to use the court was characterized as frightening, and incomprehensible.<sup>7</sup> As one writer put it,

Thus, despite the original intention to establish a simple, inexpensive procedure that would 'operate for the rich and poor alike,' the small claims court has not lived up to its promise.<sup>8</sup>

A recent study conducted by the National Center for State Courts both contradicted and confirmed the above comments.<sup>9</sup> While concluding that, in general, small claims court provides a speedy and inexpensive means to resolve minor disputes, the study also

pointed out that accessibility and equality among litigants represent areas which deserve additional attention.

#### B. AB 3606: Design and Objectives

Against the backdrop of uncertainty regarding the effectiveness of small claims court, legislative efforts were initiated to improve small claims practice and procedure. In 1976, growing out of research performed by the Committee on Legal Services of the California State Bar and others,<sup>10</sup> the Western Center on Law and Poverty sponsored legislation introduced by Assemblyman Willie Brown intended to test reforms suggested over the years. At the same time, the legislation was designed to accumulate valuable empirical data on the operation of small claims court. The Legislative intent language contained in the bill plainly set forth the purpose of the Small Claims Court Experimental Project:

- (a) [To] establish procedure and programs . . . designed to stimulate use of the courts by, and reduce the number of defaults by, untrained individual litigants unfamiliar with the judicial system who might have previously considered small claims court an inconvenient or unsatisfactory forum for the resolution of disputes. . . .<sup>11</sup>

The legislation created a two-year project, jointly administered by the Judicial Council and the Department of Consumer Affairs, to be conducted in cooperation with selected "experimental" and "recordkeeping" courts around the state. An Advisory Committee of 15 members composed of representatives of consumers, business, the Legislature, the Attorney General, the State Bar, and the Judiciary was also established to assist in carrying out the project and preparing the evaluation of the experimental programs and procedures.

The experiment<sup>12</sup> was conducted in four "phases."

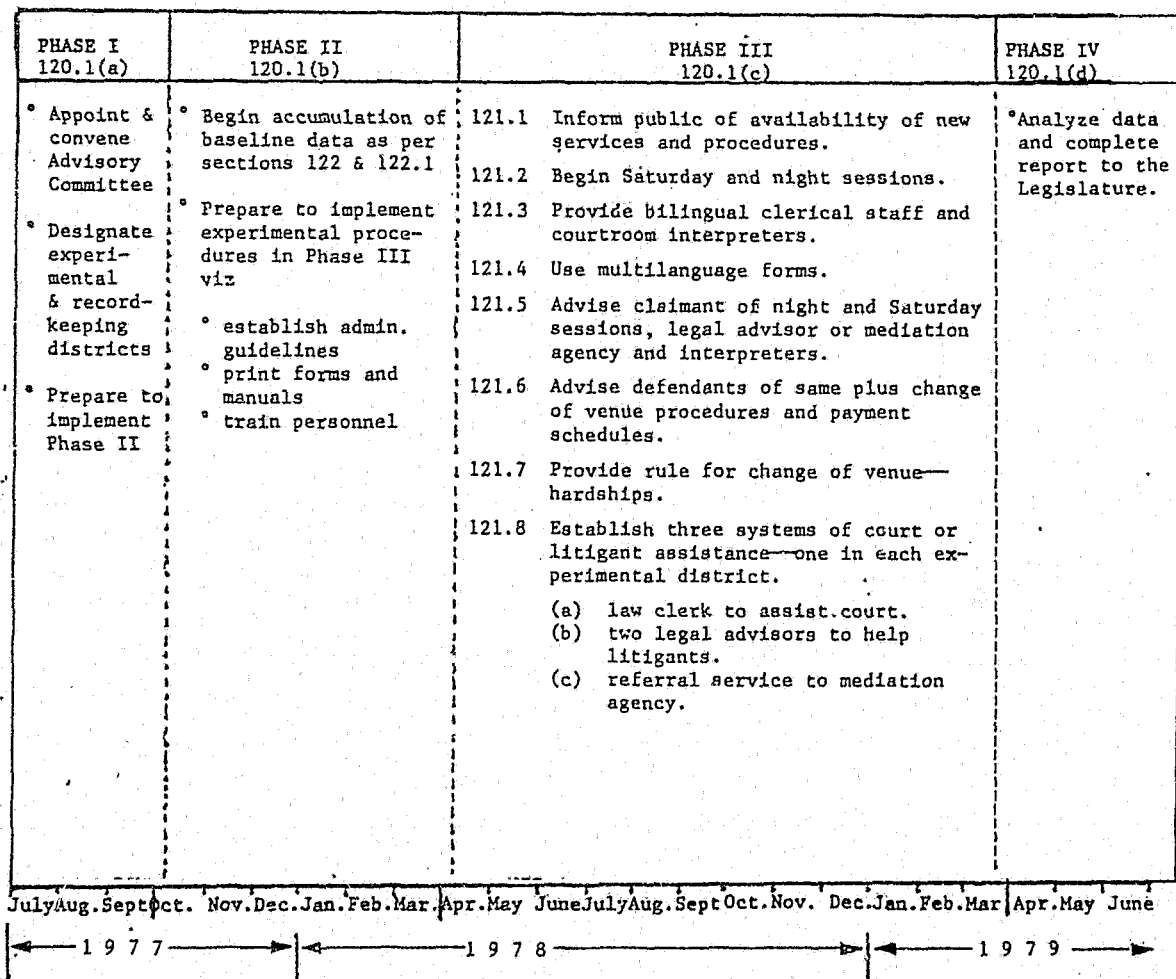
- (1) July 1, 1977 to September 30, 1977 -- Courts were selected to participate in the experiment; the record-keeping system to be used for data collection was designed; and development of the experimental programs and procedures was initiated.

(2) October 1, 1977 to March 31, 1978 -- The participating courts collected data regarding the normal operation of the small claims process while planning for implementation of the experimental programs and procedures continued.

(3) April 1, 1978 to March 31, 1979 -- The Experimental programs and procedures mandated by the legislation were in effect in the experimental courts, while data collection continued in both the experimental and recordkeeping districts.

(4) April 1, 1979 to June 30, 1979 -- The Advisory Committee and the Department of Consumer Affairs prepared this report which evaluates the experimental programs and procedures and makes recommendations for future action.

FIGURE 1.1 DIAGRAM OF SMALL CLAIMS COURT EXPERIMENTAL PROJECT ASSEMBLY BILL NO. 3606  
CHAPTER 1287 (1976)



Source: Judicial Council Report to the Advisory Committee

The Judicial Council, with the advice of the Department of Consumer Affairs and the concurrence of the courts involved, designated the Sacramento, San Diego, and San Francisco Municipal Courts as the "experimental" courts which were to implement the programs and procedures outlined under the terms of the legislation. The Fresno, Oakland-Piedmont, and West Orange County Municipal Courts were selected as "recordkeeping" courts to serve as control districts for statistical comparison. Three criteria governed the selection of experimental districts: (1) the areas served by the courts were to be primarily urban, (2) the courts considered were to have a small claims caseload of 600 to 1200 cases per month, and (3) the population of the area served by the court was to be at least 10 percent Spanish-surnamed persons.

The Judicial Council action was based on the recommendation of the Advisory Committee following its review of the applicable characteristics of all municipal court districts throughout the state to determine which courts were eligible. Due to the difficulty of finding courts which fit the statutory requirements and were willing to participate in the experiment, the Committee decided to meet the requirements of the legislation to the maximum extent possible, but to tolerate slight departures were unavoidable. The characteristics of the courts chosen were as follows:

<u>Courts</u>	<u>Caseload(per Month)*</u>	<u>Spanish-Surname**</u>
Fresno	600	23%
Oakland-Piedmont	1030	10%
Sacramento	1040	13%
San Diego	1230	13%
San Francisco	1020	14%
West Orange County	780	11%

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\*Calendar 1976

\*\*Based on 1971 U.S. Census Figures

### C. Experimental Programs

The legislation called for testing a variety of innovative programs and procedures. All three experimental districts implemented several common programs as well as one program unique to the district.

Among the programs and procedures instituted in each of the three experimental courts were the following;

- (1) evening and Saturday court sessions were conducted at least once per month;
- (2) the clerk's office remained open one night a week until at least 7:00 p.m.;
- (3) a detailed manual on small claims procedure was furnished to litigants;
- (4) special nontechnical forms were adopted to fully advise the parties of their rights and to allow defendants to make pertinent venue and trial requests of the court;<sup>13</sup>
- (5) a venue change procedure which permitted changes of trial location to ameliorate substantial hardship on parties or witnesses was established;
- (6) a preference that the convenience of individuals (natural persons) should prevail to the extent possible over the convenience of corporations, business, or government agencies (non-natural entities) was established;
- (7) translated forms and documents for non-English speaking litigants were made available; and
- (8) bilingual clerks and courtroom interpreters were provided

AB 3606 also specified three special programs, with a different one to be implemented in each of the three experimental courts:

- (1) a law clerk program to provide assistance to the court (Sacramento);
- (2) two small claims advisors who would be attorneys and assist litigants, but not appear in court (San Francisco);
- (3) a postfiling mediation program (San Diego).

FIGURE 1.2 DESCRIPTION OF STUDY GROUPS

Experimental	E <sub>1</sub>	Law Clerk Sacramento	<ul style="list-style-type: none"> <li>• Saturday and night sessions.</li> <li>• Bilingual clerical staff and courtroom interpreters.</li> </ul>
	E <sub>2</sub>	Two legal advisors San Francisco	<ul style="list-style-type: none"> <li>• Multilanguage forms.</li> <li>• Advise claimants of night and Saturday sessions, interpreters and experimental court specific special service.</li> </ul>
	E <sub>3</sub>	Referral service to mediation service San Diego	<ul style="list-style-type: none"> <li>• Advise defendants of same plus change of venue procedures and payment schedules.</li> <li>• Provide change of venue for hardships.</li> </ul>
	C <sub>k</sub> control	Collect same data as for E <sub>1</sub> , E <sub>2</sub> and E <sub>3</sub> Fresno, Oakland-Piedmont and West Orange County	

Source: Judicial Council Report

The Department of Consumer Affairs prepared and distributed a simple, nontechnical manual on small claims practice and procedure in English and Spanish at no cost to litigants and the general public. In addition, the Department, in cooperation with the Judicial Council, endeavored to inform the public in the experimental districts of the availability of the special programs and procedures through public service announcements and by other means.

#### D. Data Collection

AB 3606 specified a variety of information to be collected on each case filed during the recordkeeping and experimental period, including such items as: number and types of small claims actions filed; characteristics of corporations, other businesses, government agencies and individuals who file small

claims actions; frequency of different types of dispositions; language use; and amount of judicial time required. The Advisory Committee recommended adding items covering the frequency of appeals and satisfactions of judgments, claims of defendant, and installment judgments. The complete results are contained in the Judicial Council Report to the Advisory Committee which is Appendix G of this report.

In order to obtain the required data, a one page "case report" form (see Appendix E) was initiated on every small claims action filed between October 15, 1977 and March 31, 1979 in the six participating courts, yielding data on more than 90,000 cases. Appropriate items on the form were completed as the case moved through the process. When 30 days had elapsed from the original or last revised trial date, the form was forwarded to the Administrative Office of the Courts.

In addition, under the auspices of the Department of Consumer Affairs, a survey of 200 plaintiffs and 200 defendants each in Fresno and San Francisco was conducted from a random sample of 200 cases filed between April and August, 1978 in which there had been a disposition after trial.<sup>14</sup> Corporations, other businesses, and governmental entities as well as individuals were included in the sample.

Table 1.3 displays a breakdown of the response rate while Table 1.4 characterizes the respondents by type of litigant. The margin of error for such a sample is approximately  $\pm 5\%$ .<sup>15</sup> The survey was designed to elicit information that was not available from the case reports such as litigant attitudes, feelings, and preferences.

Two public hearings, one in Los Angeles and one in San Francisco, were conducted by the Advisory Committee in an effort to collect additional information regarding the conduct of the

experimental programs and procedures specifically as well as small claims practice and procedure in general. Private citizens as well as representatives of business, labor, community groups, consumer groups, government agencies, and the courts testified at the hearings. Applicable points which reflect a consensus of public thought have been included in this report where appropriate.<sup>16</sup>

TABLE 1.3 RESPONSE RATES FOR LITIGANT SURVEY

<u>Litigant</u>	<u>Responses</u>	<u>Percent Returned</u>
Fresno Plaintiff	158	81%
San Francisco Plaintiff	130	72%
Plaintiff	288	76%
Fresno Defendant	65	41%
San Francisco Defendant	58	39%
Defendant	123	40%
Fresno	223	63%
San Francisco	188	57%
Total	411	60%

Source: Department of Consumer Affairs Litigant Survey

TABLE 1.4 CAPACITY IN WHICH PLAINTIFF SUED OR DEFENDANT WAS SUED FOR LITIGANTS SURVEYED

<u>Litigant</u>	<u>Natural Person</u>	<u>Non-Natural Entity</u>	<u>No.</u>
Fresno Plaintiff	49%	51%	158
San Francisco Plaintiff	62%	38%	130
Fresno Defendant	63%	38%	64
San Francisco Defendant	72%	28%	58

Source: DCA Litigant Survey

## CHAPTER II. SMALL CLAIMS COURT: A PROFILE

From July, 1977 through June, 1978, over 450,000 small claims actions were filed in California municipal and justice courts. By comparison, during the same period, about 375,000 formal civil suits were filed in the state's municipal and justice courts. Thus, there were 75,000 more small claims cases filed where the limit on recovery of damages was \$750 than formal municipal or justice court civil suits in which damages could have ranged up to \$5,000. Clearly, small claims court represents a significant component of our judicial system, not only in terms of creating expectations of speedy and affordable justice, but also as the primary forum for the resolution of vast numbers of disputes.

The wealth of data collected over the course of the court assistance experiment affords an unprecedented opportunity to view the operation of small claims court in California. In order to provide a picture of how the forum operates, the data compiled have been organized in order to answer the following questions: (A) who filed small claims actions, (B) who was sued in small claims court, (C) what types of claims were filed, (D) how much money did plaintiffs claim, (E) how were cases disposed, (F) how much money was awarded in judgments, and (G) how did litigants view the process.

#### A. Who Filed Small Claims Actions?

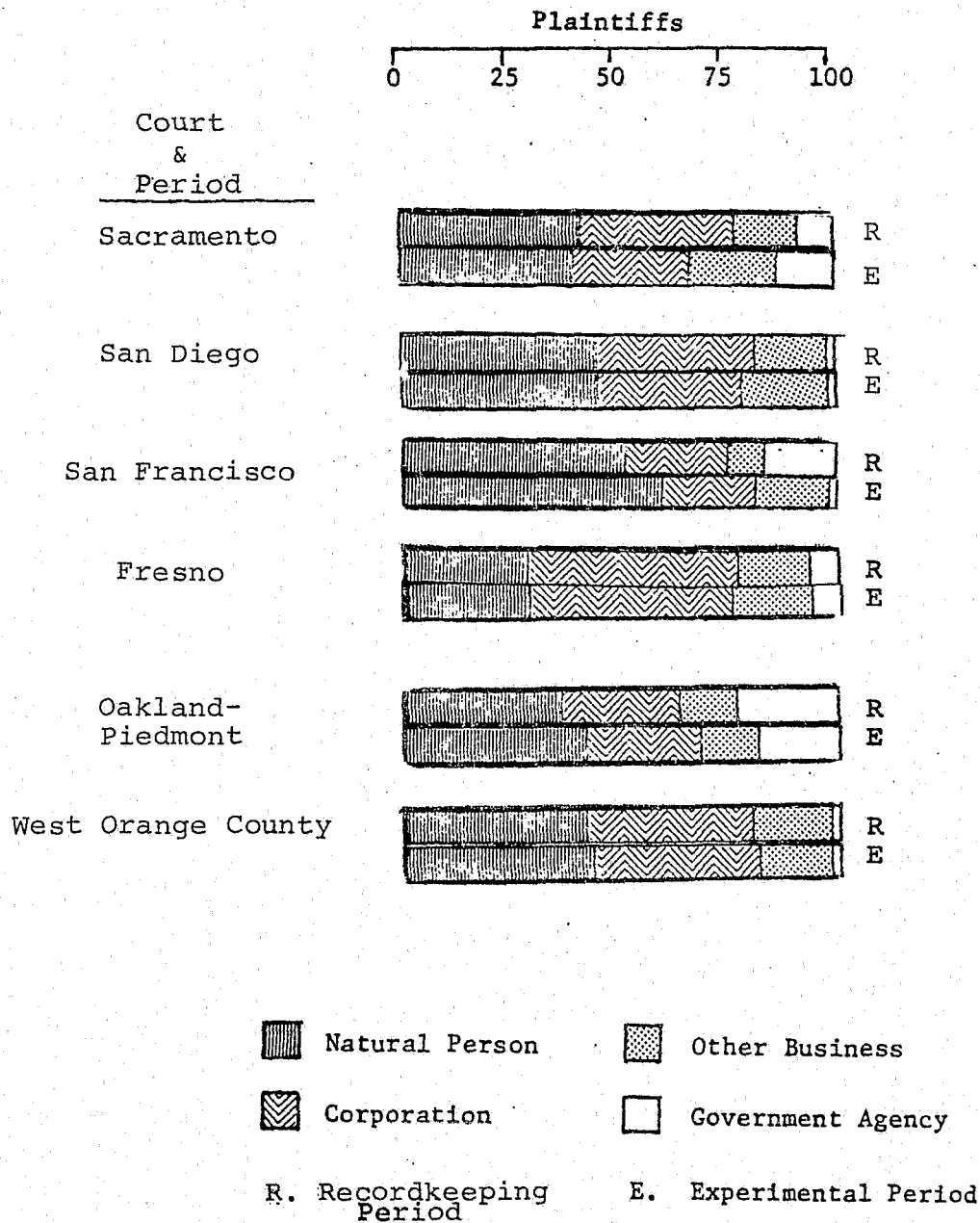
Figure 2.1 graphically displays the distribution of plaintiffs in the six courts participating in the experiment during both the recordkeeping phase and the experimental phase. Generally, individuals, denoted as "natural persons," filed about 40% of the claims, and only San Francisco registered a natural person plaintiff figure above 50%. There was no appreciable change in the percentage of natural person plaintiffs from the recordkeeping phase to the experimental phase except in San Francisco where the increase was probably attributable to a decrease in government agency filings, rather than an absolute increase in filings by individuals.

Corporations, other businesses, and government agencies, denoted as "non-natural entities," generally file about 60% of the claims. The exact percentage for each category of non-natural plaintiffs varied fairly widely from court to court, however. In two courts, Oakland-Piedmont and Sacramento, government agencies made continuous and heavy use of the court while in other courts, such as San Diego and West Orange County, government agencies filed virtually no claims. Corporations tended to make up a large percentage of the filers throughout all six courts, with nearly 50% of the claims filed in Fresno resulting from corporate filings.

Another important aspect of who filed small claims cases concerns how many cases involved plaintiffs who filed repeatedly. Data from the experiment, shown in Table 2.2, reveal that from 37% to 61% of the claims filed were part of a group of claims filed at the same time by a plaintiff.

Table 2.3 confirms the extent to which relatively few plaintiffs dominated the six courts studied. As an example, nearly half the cases in the Oakland-Piedmont court over the

FIGURE 2.1 PERCENT DISTRIBUTION OF PLAINTIFFS BY TYPE



Source: Judicial Council Report

TABLE 2.2 PERCENTAGE OF COMPLAINTS THAT WERE GROUP CLAIMS

Courts and Period	Percentage of Group Claims
Sacramento Recordkeeping Experimental	48% 51%
San Diego Recordkeeping Experimental	48% 48%
San Francisco Recordkeeping Experimental	45% 37%
Fresno Recordkeeping Experimental	61% 60%
Oakland-Piedmont Recordkeeping Experimental	59% 55%
West Orange Co. Recordkeeping Experimental	45% 45%

Source:Judicial Council Report

TABLE 2.3 NUMBER OF CASES IN WHICH PLAINTIFFS FILED 12 OR MORE COMPLAINTS

C O U R T	CASES IN WHICH PLAINTIFF FILED 12 OR MORE COMPLAINTS *				
	Number Of Cases	Percent of Total Cases	Number of Different Plaintiff.	Number of Filings Per Plaintiff	Completeness of Reporting**
Sacramento	7461	37 %	85	88	84%
San Diego	3871	23 %	64	60	71%
San Francisco	4515	27 %	58	78	84%
Fresno	3951	37 %	66	60	85%
Oakland-Piedmont	7046	47 %	48	147	85%
West Orange Co.	2690	22 %	71	38	86%

\*Data presented from case reports filed between November, 1977 and March, 1979.

\*\*Case reports analyzed in indicated percentage of all cases filed between November, 1977 and March, 1979.

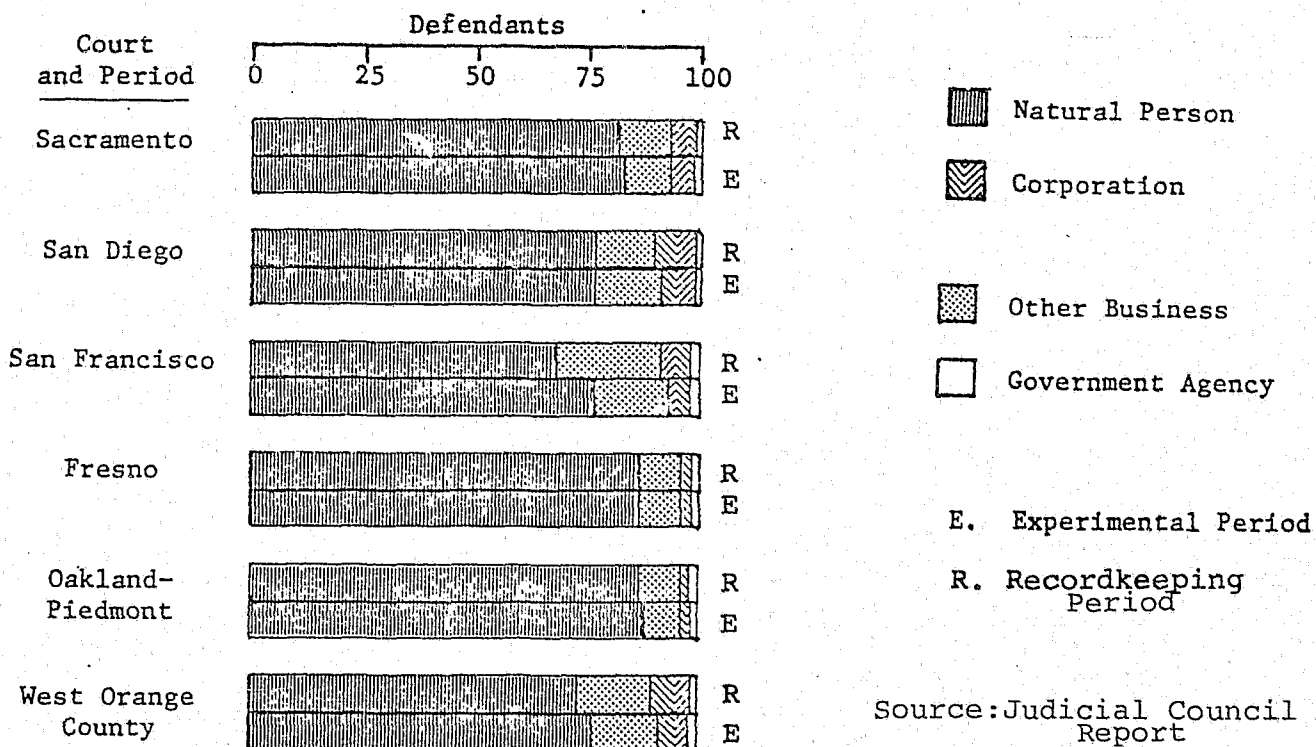
Source:Judicial Council Report

17 months when data was collected were brought by "heavy users," defined as plaintiffs who filed 12 or more cases; these 48 different plaintiffs averaged 147 claims each. As an example, Alameda County alone filed nearly 2,500 claims. While the other court did not experience as high a level of filings by heavy users, even in West Orange County nearly one quarter of the cases were filed by such plaintiffs. Of the cases in which data were gathered, heavy users filed 32% of all actions.

#### B. Who Was Sued in Small Claims Court?

As noted by past studies of small claims court, individuals comprise the vast majority of defendants.<sup>17</sup> The distribution of defendants for the six participating courts is shown in Figure 2.4. Natural persons comprised more than 75% of the defendants in every court except in San Francisco during the recordkeeping phase. Interestingly, the highest percentages of natural person defendants are found in the two courts with the smallest percentages of natural person plaintiffs, Fresno and Oakland-Piedmont.

FIGURE 2.4 PERCENT DISTRIBUTION OF DEFENDANT BY TYPE



Suits by natural persons against non-natural entities occurred only infrequently; no more than 17% of the cases in any of the courts involved such a match. When individuals brought claims, they normally sued other individuals. Such a pairing occurred in 21% to 41% of the cases filed during the experiment.

### C. What Types of Claims Were Filed?

Throughout the six courts, the most frequent type of claim filed involved consumer credit transactions. As Table 2.5 shows, consumer credit claims accounted for 29% to 56% of all claims brought in the six courts. Suits on consumer loan transactions added another two to fifteen percent of trial claims filed. Normally, corporations brought such claims against individuals.

Landlord-tenant and personal injury/property damage actions were brought in 22% to 40% of total cases. For the most part, such claims involved natural persons as both plaintiffs and defendants. No breakdown is available which distinguishes the percentage of actions brought by tenants from those brought by landlords. However, it is interesting to note that the San Diego court, which court officials state has few eviction actions filed by landlords, experienced an 11% to 12% rate for landlord-tenant filings while in the San Francisco court, where eviction actions are frequently brought, 18% to 22% of total cases involved landlord-tenant matters.

Cases involving consumer goods or services, in which the plaintiff is normally a natural person, accounted for six to twenty percent of the claims filed. Generally, the figure for such filings ran under ten percent of all claims filed which suggests that although small claims court is touted as a forum in which consumers can protect their rights, relatively few people apparently attempt to do so.

TABLE 2.5 PERCENT DISTRIBUTION OF COMPLAINTS  
BY TYPE,<sup>1</sup>  
FOR EACH COURT AND STUDY PERIOD

Court & Period	TOTAL*	Landlord- Tenant	C O N S U M E R				Personal Injury or Prop Damage	Other
			Goods	Services	Credits	Loan		
Sacramento Recordkeeping Experimental	100	18	3	5	48	7	14	6
		16	4	5	45	7	12	10
San Diego Recordkeeping Experimental	100	11	6	10	43	10	16	4
	100	12	4	8	48	9	17	3
San Francisco Recordkeeping Experimental	100	18	2	6	29	5	17	22
	100	22	3	7	35	8	18	7
Fresno Recordkeeping Experimental	100	12	7	13	35	15	14	4
	100	8	2	4	54	13	14	5
Oakland-Piedmont Recordkeeping Experimental	100	19	2	5	54	2	12	6
	100	15	3	5	56	3	13	6
West Orange Co. Recordkeeping Experimental	100	11	4	6	47	10	13	9
	100	11	3	7	44	13	13	8

\*Components may not add to total  
due to rounding.

1 type of Complaint,

Landlord/Tenant or Tenant/  
Landlord - Any dispute over  
real property, including  
possession, rent due, re-  
fund of deposit. Property  
damage not included.

Consumer Goods - Complaints by  
purchaser of consumer goods,  
breach of warranties, etc.  
Consumer is plaintiff.

Consumer Service - Complaints  
by purchaser of services of  
auto repair, hairdressing, per-  
formance services. Consumer is  
plaintiff.

Consumer Credit - Complaints  
by suppliers of personal goods  
or services, open book accounts,  
installment sales contract, etc.,  
for failure to pay.

Consumer Loans - Com-  
plaints for money due  
on loans, unsecured or  
secured by chattels or  
other securities (does  
not include loans se-  
cured by real property).

Personal Injury/Prop-  
erty Damage - Complaint  
for any personal injury  
or property damage (in-  
cluding auto).

Other - If complaint  
does not fall under any  
of the other categories.

#### D. How Much Money Did Plaintiffs Claim?

The median size claim filed in the six courts over the course of the experiment ranged between \$230 in Fresno during the recordkeeping phase to \$330 in San Francisco during the experimental period. As Table 2.6 shows, the median claim amount increased over the course of the experiment in all of the courts except Sacramento. Also displayed are the percentage of claims filed at the \$750 ceiling for small claims actions which show that better than one in ten claimants filed at the limit. Although there were undoubtedly plaintiffs who filed for the maximum because they could not determine their alleged damages with certainty, it seems probable that most of the claims resulted from filers who chose to reduce the size of their claim to get into small claims court.

TABLE 2.6 MEDIAN CLAIM AND PERCENTAGE OF CLAIMS AT \$750  
BY COURT AND PERIOD

Court & Period	Median Claim*	Percentage of Claims At \$750
Sacramento		
Recordkeeping	260	11%
Experimental	250	11%
San Diego		
Recordkeeping	250	12%
Experimental	270	13%
San Francisco		
Recordkeeping	270	12%
Experimental	330	14%
Fresno		
Recordkeeping	230	9%
Experimental	250	10%
Oakland-Piedmont		
Recordkeeping	240	10%
Experimental	280	12%
West Orange Co.		
Recordkeeping	280	13%
Experimental	300	15%

\*Expressed as the nearest \$10 above actual median.

Median - is that value which divides the number of cases into two equal halves. Half of the cases had claims above the median and half below it.

Source: Judicial Council Report

BY COURT AND STUDY PERIOD

[illegible]

R-Recordkeeping Period    E-Experimental Period

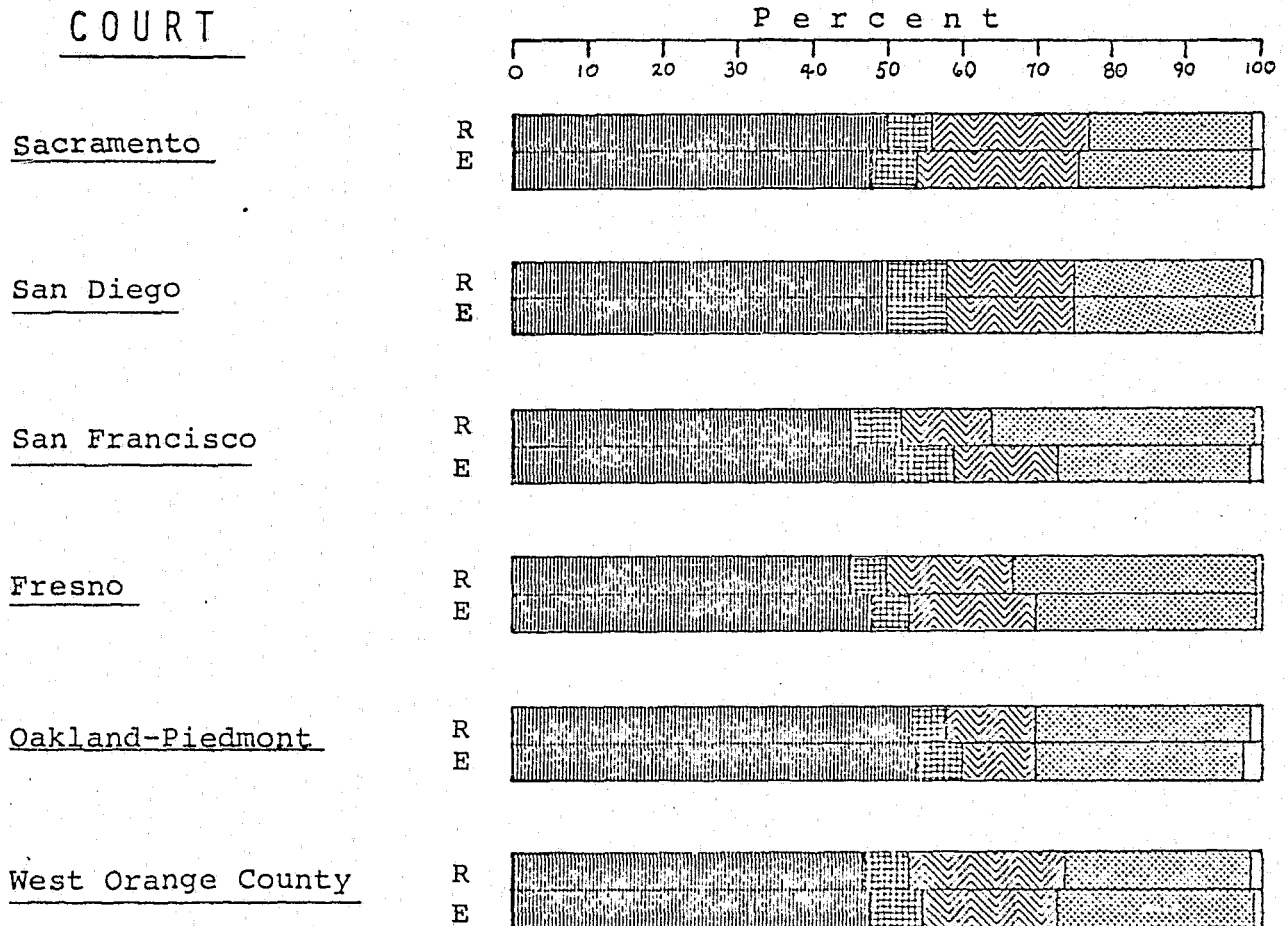
As Table 2.7 indicates, the average amount claimed in consumer credit cases, which non-natural plaintiffs predominantly filed, was lower generally than for other categories of cases. The table also shows that the highest amounts claimed came in consumer goods, consumer loans, and personal injury/property damage cases. In two of these three categories, individuals were plaintiffs most frequently. The results may well mean that claims at the maximum came mostly from individuals, and that non-natural entities brought suit before alleged debts exceeded a few hundred dollars.

#### E. How Were Cases Disposed?

Figure 2.8 shows a distribution of dispositions by type and court. Plaintiffs received judgments in 45% to 55% of all cases filed while defendants prevailed in five to eight percent of the cases. Twenty-two to thirty-six percent of the cases went "off calendar" meaning that no further action beyond filing occurred. These cases did not come to trial<sup>18</sup> nor was the court notified that they had been settled; it seems likely the bulk represent cases in which the plaintiff could not achieve service of process or was unable to pursue the action for some other reason.

Plaintiffs won 87% to 91% of cases which came to trial, as shown in Table 2.9. Survey responses by San Francisco and Fresno litigants, presented in Table 2.10, indicate that non-natural plaintiffs did somewhat better than natural person plaintiffs, but that natural person plaintiffs still prevailed in nearly 90% of their cases. Even assuming that plaintiffs who won were more likely to respond to the survey than plaintiffs who lost, the figures still demonstrate the high probability of success at trial for those who file small claims actions.

FIGURE 2.8 PERCENT DISTRIBUTION OF DISPOSITIONS  
BY TYPE AND BY COURT



R = Recordkeeping Period

E = Experimental Period

- Judgment for Plaintiff
- Judgment for Defendant
- Dismissed

- Off Calendar
- All Other

Source:Judicial Council Report

TABLE 2.9 PERCENTAGE OF JUDGMENTS AFTER TRIAL  
FOR PLAINTIFFS

PERIOD	Sacramento	San Diego	San Francisco	Fresno	Oakland-Piedmont	West Orange Co.
Recordkeeping	89	86	87	90	91	89
Experimental	88	89	88	91	89	87

Source:Judicial Council Report

TABLE 2.10 PERCENTAGE OF PLAINTIFFS SURVEYED  
WHO WON

Court	Natural Person			Non-Natural Entity		
	Yes	No	No.	Yes	No	No.
Fresno	89%	10%	72	97%	3%	75
San Francisco	90%	10%	79	98%	2%	45

Source: DCA Litigant Survey

F. How Much Money Was Awarded In Judgments?

Average amounts of judgments entered against natural persons in all types of cases fell between \$286 and \$354. Generally corporations, other businesses, and individuals received median judgments between \$200 and \$300 against individual defendants; the median judgment received by government agencies against individual defendants was between \$100 and \$200.

Median judgments reported for corporations and individuals ran somewhat higher overall than judgments obtained by non-corporate plaintiffs and government agencies. Corporations fared best generally, as shown in Table 2.11, while government agencies received the lowest median judgments. While the median did not shift from the record-keeping phase to the experimental phase for most categories of plaintiffs, corporations proved the exception, increasing their median judgment figures in three of the six courts.

TABLE 2.11 INTERVAL CONTAINING MEDIAN JUDGMENT FOR CASES WITH  
NATURAL PERSON DEFENDANTS & VARIOUS TYPES OF PLAINTIFFS,  
BY COURT & STUDY PERIOD

		TYPES OF PLAINTIFFS											
COURT	Period	Corporation			Other Business			Government Agency			Natural Persons		
		100	200	300	100	200	300	50	100	200	100	200	300
		<200	<300	<400	<200	<300	<400	<100	<200	<300	<200	<300	<400
Sacramento	R		○		○			○				○	
	E		○			○		○				○	
San Diego	R		○		○				○		○		
	E		○		○				○		○		
San Francisco	R		○			○				○		○	
	E			○		○				○		○	
Fresno	R		○		○				○			○	
	E		○		○				○			○	
Oakland-Piedmont	R		○			○			○			○	
	E			○		○				○		○	
West Orange County	R		○		○							○	
	E			○	○							○	

R = Recordkeeping Period E = Experimental Period

Source:Judicial Council Report

#### G. How Did Litigants View The Process?

A significant portion of San Francisco and Fresno litigants surveyed, particularly defendants, encountered some difficulty in pursuing or defending their small claims case and came away unsatisfied with their experience. Nonetheless, most respondents felt they understood the process and believed that one could receive a fair trial in small claims court.

Table 2.12 reveals the extent to which plaintiffs who responded reported specific problems with the small claims process and their claims. Among natural person plaintiffs, although filling out the

forms and finding the court did not cause many troubles, serving process on the defendant proved difficult for more than a third of the respondents. In addition, a sizable percentage of natural person plaintiffs in Fresno noted problems learning their legal rights and the proof necessary for their cases. The results from the latter two questions when compared with the responses of San Francisco natural person plaintiffs suggests the small claims legal advisor program, discussed in Chapter IV, may have had some impact on these areas.

TABLE 2.12 PLAINTIFFS' PROBLEMS IN HANDLING THEIR CASES

Question Asked	Litigant	Natural Person			Non-Natural Entity		
		Yes	No	No.	Yes	No	No.
"Difficulties Learning Your Legal Rights"	Fresno	25%	75%	72	5%	95%	75
	San Francisco	14%	86%	78	13%	87%	47
"Difficulties Finding Court Location"	Fresno	9%	92%	71	3%	97%	76
	San Francisco	6%	94%	79	2%	98%	46
"Difficulties Filling Out Forms in Court"	Fresno	6%	94%	70	--	100%	76
	San Francisco	10%	90%	80	6%	94%	47
"Difficulties Serving Your Claim"	Fresno	38%	62%	74	22%	78%	77
	San Francisco	35%	65%	80	38%	62%	47
"Difficulties Learning Proof Necessary"	Fresno	24%	76%	70	3%	97%	75
	San Francisco	14%	86%	77	6%	94%	47

Source:DCA Litigant Survey

Defendants encountered significant difficulties with a number of items, as shown in Table 2.13. In both San Francisco and Fresno, nearly a fourth of the individual defendants experienced difficulty understanding the claim form they were served. A substantial percentage of natural person defendants also noted difficulty in learning their legal rights and the proof necessary to defend their cases; over 40% of Fresno individual defendants reported problems learning their legal rights.

TABLE 2.13 DEFENDANTS' PROBLEMS IN HANDLING THEIR CASES

Question Asked	Litigant	Natural Person			Non-Natural Entity		
		Yes	No	No.	Yes	No	No.
"Difficulties Understanding Claim"	Fresno	24%	74%	42	8%	92%	12
	San Francisco	24%	76%	37	15%	85%	13
"Difficulties Learning Your Legal Rights"	Fresno	41%	57%	44	--	100%	12
	San Francisco	26%	74%	38	21%	79%	14
"Difficulties Finding Court Location"	Fresno	21%	76%	38	--	100%	11
	San Francisco	13%	87%	31	15%	85%	13
"Difficulties Learning Proof Necessary"	Fresno	39%	61%	44	25%	75%	12
	San Francisco	31%	69%	35	36%	64%	14

Source:DCA Litigant Survey

Plaintiffs and defendants revealed different perceptions of the helpfulness of court personnel as well. While most plaintiffs in both San Francisco and Fresno felt court employees were interested in helping them, natural person defendants reported a much less favorable impression. The comparison is presented in Table 2.14. The results suggest that a potentially important source of information may have been perceived by defendants as unresponsive.

TABLE 2.14 PERCENTAGE OF LITIGANTS WHO FOUND COURT EMPLOYEES HELPFUL

Litigant	Natural Person			Non-Natural Entity		
	Yes	No	No.	Yes	No	No.
Fresno Plaintiff	78%	18%	73	92%	5%	75
San Francisco Plaintiff	79%	17%	77	81%	17%	47
Fresno Defendant	55%	40%	47	82%	18%	11
San Francisco Defendant	64%	33%	33	50%	44%	16

Source:DCA Litigant Survey

Even after trial, a sizable number of natural person defendants remained unsure of the process and their legal rights while plaintiffs generally were confident they understood both. As Table 2.15 shows, over 40% of the Fresno individual defendants felt they could not explain the process, and nearly half of both San Francisco and Fresno natural person defendants did not understand their legal rights.

TABLE 2.15 PERCENTAGE OF LITIGANTS WHO UNDERSTOOD PROCESS  
AND  
RIGHTS AFTER TRIAL

QUESTION	LITIGANT	Natural Person				Non-Natural Entity			
		Yes	No	Not Sure	No.	Yes	No	Not Sure	No.
"Can You Now Explain Small Claims Process"	Fresno Plaintiff	76%	7%	18%	74	95%	--	5%	79
	San Francisco Plaintiff	88%	6%	6%	80	86%	4%	10%	49
	Fresno Defendant	58%	42%	--	46	100%	--	--	12
	San Francisco Defendant	78%	22%	--	37	69%	31%	--	16
"Do You Now Understand Your Legal Rights"	Fresno Plaintiff	60%	23%	16%	73	95%	--	5%	79
	San Francisco Plaintiff	78%	7%	15%	81	83%	4%	13%	48
	Fresno Defendant	52%	29%	19%	48	83%	8%	8%	12
	San Francisco Defendant	51%	18%	31%	39	67%	--	33%	15

Source: DCA Litigant Survey

Given the percentage of litigants who experienced problems with their cases and found court personnel uninterested in helping, it would be plausible to expect defendants to doubt whether a fair trial is possible in small claims court. However, as Table 2.16 reveals, most litigants in all categories believed one could receive a fair trial in small claims court.

**TABLE 2.16 LITIGANTS WHO BELIEVE THAT A FAIR TRIAL  
IS POSSIBLE IN SMALL CLAIMS COURT**

Litigant	Natural Person				Non-Natural Entity			
	Yes	No	Not Sure	No.	Yes	No	Not Sure	No.
Fresno Plaintiff	80%	15%	5%	76	94%	3%	4%	80
San Francisco Plaintiff	82%	12%	7%	77	89%	4%	6%	47
Fresno Defendant	52%	40%	8%	50	67%	33%	--	12
San Francisco Defendant	79%	15%	6%	34	80%	20%	--	15

Source:DCA Litigant Survey

Nonetheless, many respondents were not satisfied with their small claims experience. Not surprisingly, defendants were far less satisfied with the process than plaintiffs, as Table 2.17 shows, but even as many as 35% of natural person plaintiffs were dissatisfied with their experience. These results suggest that satisfaction is not simply a function of whether or not one prevailed, but also of the manner in which the system operates.<sup>19</sup>

**TABLE 2.17 LITIGANT SATISFACTION WITH SMALL CLAIMS  
COURT EXPERIENCE**

Litigant	Natural Person			Non-Natural Entity		
	Yes	No	No.	Yes	No	No.
Fresno Plaintiff	66%	34%	73	90%	10%	79
San Francisco Plaintiff	63%	37%	71	78%	22%	46
Fresno Defendant	35%	65%	48	50%	50%	12
San Francisco Defendant	50%	50%	34	47%	53%	15

Source:DCA Litigant Survey

Some of the areas of dissatisfaction revealed by the litigants survey were also raised during the Advisory Committee's public hearings. Among the issues discussed were the need to make use of the court more convenient and to provide assistance to litigants. In addition, matters beyond the scope of this study, such as service of process requirements, properly naming parties to be sued, appeal procedure, and procedures for collection of judgments were repeated frequently as stumbling blocks to successfully handling a small claims case.

### Findings

(1) Generally, during the experiment, natural persons filed about 40% of the claims and non-natural entities about 60% of the claims.

(2) Group claims, that is, claims filed simultaneously by the same plaintiff, comprised 37% to 61% of the claims filed during the experiment.

(3) Between November, 1977 and March, 1979, in the courts participating in the experiment, "heavy users," that is, plaintiffs who filed 12 or more claims, accounted for between 22% and 47% of the filings on which data were collected. Heavy users filed 32% of all cases analyzed during the experiment.

(4) The vast majority of defendants were natural persons. Generally, cases involved non-natural entities as plaintiffs and natural persons as defendants. When natural persons were plaintiffs, they most frequently sued other individuals.

(5) The most common claim involved a consumer credit transaction. Landlord-tenant and personal injury/property damage cases were the basis of 22% to 40% of claims filed; suits which involved consumer goods or services were infrequent.

(6) The median claim ranged from \$230 in Fresno during the recordkeeping period to \$330 in San Francisco during the experimental period. Between 10% and 15% of claims filed sought the jurisdictional maximum of \$750.

(7) Among different categories of claims, the average claim amount was largest in cases involving consumer goods, consumer loans, and personal injury/property damage; the average claim amount was lowest in consumer credit cases.

(8) Of all claims filed, plaintiffs obtained judgments in 45% to 55% of the cases, defendants prevailed in five to eight percent, 11% to 23% were dismissed or transferred, and 22% to 36% of the cases went "off calendar."

(9) Plaintiffs won 86% to 91% of cases in which there was a hearing. Non-natural person plaintiffs who responded to the litigant survey were successful slightly more frequently than natural person plaintiffs.

(10) The median judgment generally fell between \$200 and \$300. Corporations usually received the largest median judgments and government agencies the smallest.

(11) A significant number of natural person plaintiffs and defendants surveyed had difficulty understanding the small claims process and their legal rights. Natural person defendants encountered more difficulties than natural person plaintiffs.

(12) While most plaintiffs surveyed believed court employees were interested in helping them, a sizable number of natural person defendants did not.

(13) Most litigants agreed that one could receive a fair trial in small claims court. However, while most non-natural

entity plaintiffs and defendants were satisfied with their small claims court experience, most natural person defendants and a significant percentage of natural person plaintiffs were not satisfied with their experience.

### Recommendations

(1) Additional study by the currently existing Small Claims Court Experimental Project Advisory Committee or its successor should be authorized regarding such matters as service of process, the barring of assignees from small claims court, naming proper parties to be sued, appeal procedure, and the procedure for the collection of judgments for the purpose of proposing improvements in small claims practice and procedure. In particular, the procedures for the collection of judgments should be examined with the objective of making them easier to understand, simpler to use, and more effective, while protecting legitimate needs and interests of debtors.

(2) Chapter 5-A of the Code of Civil Procedure which specifies small claims practice and procedure should be amended to include a statement of legislative intent which recognizes the significance of small claims court. The section should include that it is the intent of the Legislature that it shall be the policy of the rules promulgated by the Judicial Council for small claims court that the convenience of natural persons shall, to the extent possible, prevail over the convenience of other parties.

### CHAPTER III. PUBLIC EDUCATION AND LITIGANT INFORMATION

Informing the public about the small claims process and the existence of the special programs and procedures occupied a significant role in the conduct of the experiment for two reasons. First, to combat confusion and uncertainty about the process itself, the statute called for the development and distribution of litigant manuals. Second, in order to ensure as fair a test as possible of the special programs and procedures, it was deemed essential that the public be aware of their availability. Thus, the statute called for the use of public service announcements and other efforts through the media to achieve this goal.

#### A. Small Claims Manuals

Code of Civil Procedure section 120.3 provided that the Department of Consumer Affairs prepare and distribute manuals which explained small claims practice and procedure to litigants and the general public in the experimental districts. The manuals were to include coverage of how to fill out necessary forms, how to pursue or defend a claim, how to appeal, how to collect on a judgment, and how to protect property exempt from execution of a judgment. No charge to the public was to be made for the manuals.

A 16 page, 6"x 9" booklet entitled How To Use Small Claims Court was developed (see Appendix D). Its contents were arranged so that they followed the small claims process sequentially from filing through collection. Included were a table of contents for easy reference and a glossary which defined many commonly used legal terms in nontechnical language. In order to make the booklet as easy to understand as possible, three versions were produced. Although identical regarding the fundamental components of small claims practice and procedure, each version included the specific address and phone number of the particular court to which it applied and covered only the special programs being conducted in that district. Thus, the San Francisco booklet included a special chapter about the small claims advisors while the San Diego version explained mediation. A Spanish version of the booklet, combining the special chapters, was also printed.

Thirty-seven thousand copies of each English version and 10,000 copies of the Spanish version of the booklet were printed. Because relatively small printing runs were required due to the decision to use different versions of the booklet, the overall average cost was about 11¢ per booklet.

Over 100,000 booklets were distributed during the year the experimental programs and procedures were in effect. Under the rules adopted by the Judicial Council for the experiment, plaintiffs were to be offered a copy of the booklet at the time of their initial contact with the court clerk and defendants were to receive a copy in conjunction with service of process. On the basis of the number of filings during the experimental period in the San Diego, San Francisco, and Sacramento courts, it is estimated that 60,000 to 75,000 booklets were distributed in this manner. For the most part, the rule served the purpose of getting the booklet to litigants. Survey results from San Francisco show that 89% of the plaintiffs and 65% of the defendants reported receiving the manual.

In addition, the Department of Consumer Affairs distributed the booklet to community organizations, consumer groups, local governmental entities, and legal aid offices. The electronic and print media whose service areas included the experimental districts were provided copies and encouraged to publicize their availability. Vocational and professional regulatory boards and bureaus of the Department and other state agencies were stocked, and direct requests from the public were accommodated. Legislators whose districts included the areas served by the experimental courts were also offered copies to distribute. Some 25,000 to 40,000 booklets were dispensed through such means.

Table 3.1 shows how San Francisco litigants who responded to the survey evaluated the manual. An overwhelming majority, 89%, found it helpful, and a substantial 56% reported they would not have known how to handle their case without it.

TABLE 3.1 EVALUATION OF SMALL CLAIMS COURT MANUAL  
BY  
SAN FRANCISCO LITIGANTS SURVEYED

Question	Litigant	Natural Person			Non-Natural Entity		
		Yes	No	No.	Yes	No	No.
"Did you find the booklet helpful?"	Plaintiff	90%	10%	73	89%	11%	45
	Defendant	83%	17%	23	90%	10%	10
"Would you have known how to handle your case without booklet?"	Plaintiff	54%	45%	76	65%	35%	46
	Defendant	38%	58%	24	67%	33%	12

Source:DCA Litigant Survey

TABLE 3.2 DESIRABILITY OF SMALL CLAIMS COURT  
BOOKLET

Court & Litigant	Natural Person				Non-Natural Entity				T O T A L			
	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	89%	--	11%	75	80%	8%	13%	79	84%	4%	12%	154
San Francisco Plaintiff	89%	7%	4%	73	79%	12%	9%	43	85%	9%	6%	116
Fresno Defendant	80%	4%	16%	51	83%	8%	8%	12	81%	5%	14%	63
San Francisco Defendant	95%	3%	3%	37	93%	--	7%	14	94%	2%	4%	51

Source:DCA Litigant Survey

Participants in the public hearings also highlighted the need for materials which explain the small claims process. Results from the survey of San Francisco and Fresno litigants, displayed in Table 3.2, confirm the testimony by revealing that overall 85% viewed a booklet as a desirable component of an ideal small claims court.

#### B. Public Information Activities

Under Code of Civil Procedure section 121.1, the Department of Consumer Affairs, in cooperation with the Judicial Council, was given the task of informing the public in the experimental districts of the establishment and availability of the new programs and procedures through the use of public service announcements (PSA's) and other means of disseminating information.

Three primary methods were adopted in an attempt to reach the public with information about the project. They included news coverage; radio, television, and public transit PSA's; and radio and television public affairs programming.

To inaugurate the experimental phase of the project, press conferences were held in Sacramento, San Diego, and San Francisco. As a result, there was excellent initial coverage by local newspaper, television, and radio media in the three areas. In addition, during the experimental period, local print and electronic journalists did feature pieces on the project.

Secondly, public service time and space made available at no charge was utilized to publicize the experiment. Since television provides the most effective means of reaching the greatest number of people at a single time, and since each of the experimental districts enjoys independent status as its own television market, television PSA's were appropriate and

suitable. Commercial quality PSA's of 30 seconds in length were produced in English and Spanish, and each announcement, done in animation, was specially designed for the particular area in which it appeared.

The PSA's were supplied to approximately 16 television stations whose service areas covered the experimental districts. A survey of the stations showed that of the six which responded, all felt the choice of subject matter was good or excellent. Three of the stations used the Spanish PSA's. Although precise information on the times of day when the PSA's were aired was not obtainable, responses submitted indicated they received play at all hours. The cost of production was \$12,600.

In addition, four radio PSA's for each district, three in English and one in Spanish, covering various components of the experimental programs, were recorded and distributed to radio stations whose service areas covered the experimental districts. Stations which did not wish to have recorded PSA's were provided with appropriate scripts which could be delivered by on-the-air personalities. In addition, PSA's were recorded on-site at various radio stations on occasion. During the course of the experimental period, over 40 stations received PSA's. The cost of producing radio PSA's was minimal, with only small expenditures necessary for studio time, duplicating tapes, and distribution.

Twenty stations responded to a survey by the Department, with 15 stations rating the choice of small claims court as the subject matter for PSA's as good or excellent. However, the survey revealed only two stations which aired the Spanish versions of the announcements.

Public service announcements featuring the television characters were also prepared for display inside the public transit buses of each experimental district. First displayed in mid-December, 1978, in some cases, the announcements continued to be posted through the end of the experimental period in March, 1979. Preparation of a total of 600 cards with 200 for each district cost about \$1000. Although the space itself was made available free of charge as a public service, the transit companies charged one dollar to one dollars fifty cents to install the cards. The total cost for the announcements, therefore, ran to about \$1800.

All three forms of PSA's identified the fundamental principles of small claims court such as the jurisdictional ceiling of \$750 and the prohibition on legal representation and highlighted experimental programs. Each PSA ended with the notice that a free booklet about small claims court was available from the local court at the indicated location.

The third method used to inform those living in the experimental districts was radio and television public affairs programming. Over the course of the experimental phase, more than 25 appearances on radio and television public affairs programming were made to discuss various aspects of the project. Such programs, which ranged from five minutes to two hours in length usually provided for an interview or call-in format. These arrangements presented excellent opportunities to discuss a variety of aspects of small claims practice and procedure and the experimental programs and procedures in depth; however, the programs were often aired at times when the public was least likely to be tuned in.

Table 3.3 displays the means by which the San Francisco and Fresno survey respondents reported finding out about small claims court. Not surprisingly, the greatest number

of plaintiffs, 51%, discovered small claims court through their acquaintances, friends, or work. However, an indication that the public information program carried out during the experiment may have had some effect is reflected in the fact that a larger number of San Francisco respondents than Fresno respondents heard about small claims court through news or public service programming. Although it is possible that such litigants would have discovered the forum by some other means, the results suggest that public information programs can be effectively employed to make the availability of small claims court known.

TABLE 3.3 SOURCE OF INFORMATION DIRECTING PLAINTIFFS  
TO  
SMALL CLAIMS COURT

Court	News Programs & PSA's *	Newspapers & Magazine	Consumer Organ- izations	Small Claims Booklet	Friends or Work	No.
Fresno	16%	15%	17%	5%	57%	151
San Francisco	11%	20%	3%	23%	43%	115

\* Radio & TV public service announcements.

Source: DCA Litigant Survey

### Findings

(1) A significant need exists to make available to litigants a manual which explains the small claims process. Such manuals can be produced economically at the state level.

(2) Public education efforts may serve to increase public awareness of the availability and utility of small claims court. A variety of economical methods may be utilized to reach the public.

## Recommendations

(1) Existing law should be amended to require the Department of Consumer Affairs or other appropriate state agency, in cooperation with the Judicial Council, to produce and distribute small claims litigant manuals. The manual should be brief yet thorough and written in simple, nontechnical language. It should be prepared in English and Spanish and distributed statewide to litigants and the general public without charge.

(2) Significant public education efforts through such means as public service announcements and public affairs programming to inform the public about the availability of small claims court to resolve minor disputes should be conducted by state and local legal, consumer, business, and community groups. The activities should be designed to inform the public regarding how their legitimate rights may be protected and disputes resolved.

#### CHAPTER IV. GENERAL EXPERIMENTAL PROGRAMS AND PROCEDURES

As outlined in Chapter I, such programs and procedures as evening and Saturday court sessions, a modified change of venue standard, simplified court forms, and increased non-English language services were instituted in all three experimental courts. These programs and procedures were implemented either according to statutory mandate or pursuant to independent recommendations of the Advisory Committee.

##### A. Evening and Saturday Court Sessions

Commentators over the years have consistently suggested that a major problem faced by individuals is attending court during daytime working hours when small claims trials are usually conducted.<sup>20</sup> Plaintiffs may often feel that they cannot afford to miss work simply to seek a resolution to an irritating dispute while defendants may as confront an even more serious dilemma. In order to defend their cases in court, which they are likely to lose, defendants must take time off work, thereby sacrificing wages and potentially incurring the employer's disapproval. Yet, protecting their wages and employment by going to work rather than court virtually assures that a legally binding default judgment will be entered against them.

In an effort to alleviate these problems, and reduce the default rate, the experimental courts were required under section 121.2 to conduct initially both evening and Saturday court sessions at least once a month. In Sacramento, evening sessions were offered once a week and Saturday sessions once a month; in San Francisco, evening and Saturday sessions were each held approximately twice per month; and in San Diego, one evening and one Saturday session were conducted each month. In all three courts, litigants were ordered to appear at 6 p.m. for evening trials, and in Sacramento and San Diego, Saturday sessions commenced at 9 a.m. while Saturday sessions in San Francisco began at 1:15 p.m.

In addition to these special sessions conducted in the experimental courts during the experimental phase, the San Francisco court held Saturday sessions during the recordkeeping period as well; the Oakland-Piedmont court, a control court, offered evening small claims sessions throughout the recordkeeping and experimental phases; and the West Orange County court, also a control court, instituted evening sessions once per week in February, 1979.

Evening and Saturday court sessions proved highly popular with the vast majority of requests entered in cases involving natural persons. Table 4.1 displays the number of requests for special sessions recorded during the experiment as well as the projected total number of requests for the entire experimental phase.<sup>21</sup> Breaking down requests on the basis of average number per session, Table 4.2 shows that the average number of estimated requests ranged from 18 per Saturday session in San Diego to 62 per Saturday session in Sacramento. Expressed as a percentage of all cases involving natural persons, requests for special sessions were entered in 16% of the cases in Sacramento, 4% of the cases in San Diego, and 9% of the cases in San Francisco. Generally, the data demonstrate that where special sessions were offered more frequently, such as in Sacramento, a greater number of requests resulted and a

**TABLE 4.1 REQUESTS\* FOR EVENING & SATURDAY COURT  
SESSIONS BY LITIGANT TYPE**

Type of Litigant Plaintiff/Defendant	RECORDKEEPING PERIOD											
	Sacramento		San Diego		San Francisco		Fresno		Oakland-Piedmont		West Orange County	
	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT
TOTAL	11	3	2	--	33	189	1	1	284	1	3	--
Corporation												
Corporation	1								3			
Other Business												
Govt. Agency	1	1			2	1	1	1	27		2	
Natural Person												
Other Business												
Corporation												
Other Business					1	2			4			
Govt. Agency												
Natural Person	1					2			8			
Government Agency												
Corporation												
Other Business												
Govt. Agency			1						1			
Natural Person												
Natural Person												
Corporation	1				2	7			22			
Other Business	4	2			7	25			48		1	
Govt. Agency									2			
Natural Person	3		1		21	152			169			

Type of Litigant Plaintiff/Defendant	EXPERIMENTAL PERIOD											
	Sacramento		San Diego		San Francisco		Fresno		Oakland-Piedmont		West Orange County	
	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT
TOTAL (Projected Total) <sup>1</sup>	1592 (2015)	587 (743)	245 (383)	139 (217)	324 (426)	482 (634)	--	--	709 (909)	2	60	2
Corporation												
Corporation	7	3			1	1					1	
Other Business	9	1	6	3		1			2		1	1
Govt. Agency									1			
Natural Person	78	14	24	15	4	17			43		4	
Other Business												
Corporation	9	6		2		3					1	
Other Business	45	14	18	2	2	9			17		3	1
Govt. Agency												
Natural Person	192	57	16	21	22	14			62		6	
Government Agency												
Corporation												
Other Business												
Govt. Agency												
Natural Person	3	2				1						
Natural Person												
Corporation	143	64	32	9	24	31			38		9	
Other Business	223	112	34	12	56	71			90	2	9	
Govt. Agency	11	2		1		7			4			
Natural Person	872	312	115	74	215	327			452		26	

\*When both plaintiff & defendant made the same request, only one is counted and reported here.

<sup>1</sup>Figures in parantheses represent projected total number of requests which would have been recorded during experimental period if case reports for 100% of cases had been analyzed.

Source:Judicial Council Report

significant percentage of natural persons, the intended beneficiaries of the program, sought to take advantage of them.

TABLE 4.2 AVERAGE OF REQUESTS PER SESSION  
DURING EXPERIMENTAL PERIOD\*

Court	Evening	Saturday
Sacramento	39	62
San Diego	32	18
San Francisco	24	24

\*Based on number of requests projected during experimental period on basis of completeness of reporting divided by number of special sessions conducted.

Source:Judicial Council Report

Litigant request trends in San Francisco for Saturday sessions and in Oakland-Piedmont for evening sessions over the course of the entire experiment suggest that as the community became more aware over time of the availability of the special sessions, their use grew. Even though data collection during the experimental phase covered a time period less than twice as long as the recordkeeping phase, the number of actual requests recorded for special sessions increased two-and-a-half times from the recordkeeping phase to the experimental phase.<sup>22</sup>

The survey results from San Francisco and Fresno litigants confirm the hypothesis that evening and Saturday trial sessions were viewed as a desirable element of small claims court. As Tables 4.3 and 4.4 indicate, natural persons especially endorsed such special sessions while even non-natural litigants were generally favorably disposed toward them. Natural person defendants found evening sessions particularly appealing while natural person plaintiffs also give a high rating to both evening and Saturday sessions.

TABLE 4.3 DESIRABILITY OF TRIALS HELD IN EVENING

	Natural Person				Non-Natural Entity				T O T A L			
	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	55%	27%	19%	75	28%	61%	11%	79	41%	44%	15%	154
San Francisco Plaintiff	70%	13%	17%	76	39%	41%	21%	44	58%	23%	18%	120
Fresno Defendant	57%	16%	28%	51	42%	50%	8%	12	54%	22%	24%	63
San Francisco Defendant	75%	3%	22%	36	43%	29%	29%	14	66%	10%	24%	50

Source:DCA Litigant Survey

TABLE 4.4 DESIRABILITY OF TRIALS HELD ON SATURDAY

	Natural Person				Non-Natural Entity				T O T A L			
	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	52%	32%	16%	73	14%	70%	17%	79	32%	51%	16%	152
San Francisco Plaintiff	73%	16%	11%	74	47%	36%	18%	45	63%	24%	13%	119
Fresno Defendant	31%	31%	37%	51	33%	58%	8%	12	32%	37%	32%	63
San Francisco Defendant	66%	9%	26%	35	50%	29%	21%	14	61%	14%	25%	49

Source:DCA Litigant Survey

Where an evening or Saturday trial request was entered a reasonably high probability existed that the trial took place during a special session. Table 4.5 shows that about 60% to 75% of requests resulted in a special session trial. Since it was likely that a request for a special session resulted in an evening or Saturday trial and since natural persons entered requests in a sizable percentage of cases, it would be reasonable to expect that a sizable percentage of trials involving natural persons during the experimental period occurred during such sessions. The data support this hypothesis, as Table 4.6 reveals, showing that throughout the three experimental courts, one of every ten trials involving a natural person took place during an evening or Saturday session. The table also shows that in cases where the plaintiff was a natural person one out of every six trials during the experimental period occurred at a special session.

TABLE 4.5 PERCENTAGE OF REQUESTS FOR SPECIAL  
SESSIONS  
RESULTING IN EVENING OR SATURDAY TRIALS

Court	Evening	Saturday	Combined
Sacramento	60%	59%	60%
San Diego	64%	77%	69%
San Francisco	63%	69%	66%
Average For All 3 Courts	61%	65%	62%

Source:Judicial Council Report

TABLE 4.6 PERCENTAGE OF TRIALS WHICH OCCURRED  
AT NIGHT OR ON SATURDAY IN CASES INVOLVING NATURAL PERSONS

Court	Natural Person Plaintiff			Natural Person Either Plaintiff or Defendant		
	Special Session Trials	Total Trials	Percent Held At Special Session	Special Session Trials	Total Trials	Percent Held At Special Session
Sacramento	1057	3427	31%	1253	7148	18%
San Diego	186	3011	6%	231	5974	4%
San Francisco	465	3558	13%	511	5969	9%
Average For All Three Courts	1569	3332	17%	665	6364	10%

Source:Judicial Council Report

Evening and Saturday sessions also exhibited a significantly lower default rate. Table 4.7 compares the default rate in cases heard on evenings and Saturdays with those heard at regular weekday sessions during normal working hours. While 14% to 20% of the cases scheduled for hearing during the special sessions were decided by default, 28% to 32% of the cases set for the regular calendar resulted in default judgments. As a result, the default rate for special sessions was 30% to 50% below the default rate for regular weekday trials.

Two arguments have been advanced which seek to mitigate the significance of the lower default rate. First, as Table 4.8 displays, a higher percentage of cases heard at special sessions involve disputes between natural persons. It is argued that such cases are less likely to be decided by default and that with large corporate filers largely not involved in evening and Saturday trials, the default rate would therefore, be expected to decrease. However, the

TABLE 4.7 DEFAULTS AGAINST NATURAL PERSON DEFENDANT BY  
TIME OF TRIAL AND TYPE OF PLAINTIFF  
EXPERIMENTAL PERIOD

Type of Plaintiff	SACRAMENTO TRIALS SCHEDULED				DEFAULTS				DEFAULT RATES %			
	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.
All Types. TOTAL	11457	1101	424	9932	3438	225	83	3130	30	20	20	32
Corporation	3367	79	30	3258	1295	26	6	1263	38	33	20	39
Other Business	2248	188	74	1986	667	45	15	607	30	24	20	31
Govt. Agency	1742	8	9	1725	544	1	3	540	31	13	33	31
Natural Persons	4100	826	311	2963	932	153	59	720	23	19	19	24

Type of Plaintiff	SAN DIEGO TRIALS SCHEDULED				DEFAULTS				DEFAULT RATES %			
	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.
All Types. TOTAL	8392	139	119	8134	2303	23	21	2259	27	17	18	28
Corporation	3443	21	14	3408	1264	7	3	1254	37	33	21	37
Other Business	1625	16	19	1590	411	1	7	403	25	6	37	25
Govt. Agency	115	1	1	113	48	1	---	47	42	100	---	42
Natural Persons	3209	101	85	3023	580	14	11	555	18	14	13	18

Type of Plaintiff	SAN FRANCISCO TRIALS SCHEDULED				DEFAULTS				DEFAULT RATES %			
	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.	TOTAL	Eve.	Sat.	Reg.
All Types. TOTAL	7638	231	346	7061	2296	43	50	2203	30	19	14	31
Corporation	2198	8	17	2173	1004	4	6	994	46	50	35	46
Other Business	1177	20	16	1141	365	4	3	358	31	20	19	31
Govt. Agency	133	---	1	132	48	---	---	48	36	---	---	36
Natural Persons	4130	203	312	3615	879	35	41	803	21	17	13	22

Source:Judicial Council Report

data indicate that the default rate was generally lower not only where natural persons were plaintiffs, but also in cases where non-natural entities had brought suit. Thus, it appears that evening and Saturday trials increase the probability that the defendant will appear irrespective of the type of plaintiff involved.

TABLE 4.8 NUMBER & PERCENTAGE OF TRIALS  
SCHEDULED WITH NATURAL  
PERSON VERSUS NATURAL PERSON

COURT	TYPE OF SESSIONS					
	REGULAR SESSION			SPECIAL SESSION		
	Trials Scheduled Both Parties Natural Persons	Total Trials Scheduled	Per- cent	Trials Scheduled Both Parties Natural Persons	Total Trials Scheduled	Per- cent
Sacramento	1,90	5843	31	725	1305	56
San Diego	1859	5730	32	132	244	54
San Francisco	2127	5445	39	345	524	66

Source:Judicial Council Report

Second it has been hypothesized that the lower default rate may have resulted from the fact that defendants chose the time of trial, thereby ensuring a lower default rate since the group was "self-selected." However, analysis of the data, displayed in Table 4.9, shows that it was over five times as likely that a case with a natural person plaintiff involved an evening or Saturday trial request as a case with a natural person defendant. The results suggest that the vast majority of special session requests were entered by natural person plaintiffs. Therefore, it does not appear that only cases in which defendants preferred evening or Saturday sessions were held during special sessions. Nonetheless, the default rate for cases involving all types of plaintiffs was generally lower for the evening and Saturday sessions

than for regular sessions. It seems more likely that because the special sessions were more convenient, a greater percentage of defendants attended court.

Evening and Saturday sessions also appear to be beneficial to those litigants who wished to have witnesses appear. Even though witnesses can be subpoenaed to appear in court, most litigants may have been either unaware of this right or unwilling to invoke such authority since the witness may well have been a reluctant friend or acquaintance. Evening and Saturday sessions permitted the witness to attend voluntarily without requiring any major sacrifice. Thus, even though no formal data were collected, the consensus of opinion among court personnel was that many more witnesses as well as family members and friends attended the special sessions than normally attended regular small claims sessions.

TABLE 4.9 PERCENTAGE OF CASES IN WHICH SPECIAL SESSIONS WERE REQUESTED BY  
LITIGANT AND COURT

Court	PLAINTIFF NON-NATURAL ENTITY AND DEFENDANT		PLAINTIFF NATURAL PERSON AND DEFENDANT	
	Non-Natural Entity	Natural Person	Non-Natural Entity	Natural Person
Sacramento	8.1%	4.5%	38.6%	28.8%
San Diego	2.9%	1.5%	6.6%	5.8%
San Francisco	1.9%	1.8%	8.4%	13.2%
Average For All 3 Courts	4.5%	3.0%	16.8%	16.7%

Source:Judicial Council Report

The introduction of evening and Saturday sessions did entail some additional expense to the courts. The major items of expense in operating such sessions were the operating costs of running the court facility, the costs of providing clerk and bailiff services, and the costs of providing judicial services.

Because night traffic court programs existed in the three experimental courts prior to the start of the experimental period, court facilities were already open at least one evening per week. Since both traffic matters and small claims could be heard on the same night, little additional overhead to operate the facilities was incurred. Conducting Saturday sessions required opening the court facility solely for the purpose of holding small claims trials; thus, the cost was somewhat higher. In addition to maintenance, heating, lighting, and other related costs created by specially opening a facility, conducting small claims in the evening or on Saturdays necessitated compensating bailiffs and courtroom clerks for overtime. It is estimated that, due to the cost of all of the items listed above, the added expense of conducting special sessions during the experiment ranged from \$100 to \$300 per session. Since the number of cases set per session generally fell between 14 and 40, the additional cost per case varied roughly from about \$5 to \$10 per case.<sup>23</sup>

Although it was not necessary to employ them during the experiment, a variety of methods exist which could serve to reduce the costs of conducting extra sessions. For example, a courtroom scheduled for evening small claims trials might not begin operating until late morning or early afternoon the same day. Or a small claims calendar call might be set for 5 p.m. so that litigants and witnesses would be required to take only minimal time off work, yet the court staff would still be able to leave by about 7 p.m.

Added judicial time does not represent a direct cost since judges receive a salary established by law. However, indirect costs and the effect on court management must be considered since judges conducting evening or Saturday sessions would be entitled to compensatory time off. Neither judge nor litigant benefits when a judge who has already worked a full day must listen to small claims cases at night. Therefore, it is

desirable to have judges who are scheduled to hear evening small claims come in no earlier than mid-morning the same day. The impact of such a practice on conducting other court business might be mitigated by such means as limited and judicious use of judges pro tem or commissioners in non-small claims matters to maintain full operation of the affected courtroom. In addition, the impact might be diminished by assigning to hear evening or Saturday small claims cases judges who must, in any event, be available at least by phone 24 hours a day to authorize bail releases and issue search warrants.

#### B. Judicial Council Rules

Under Code of Civil Procedure section 120.2, the Judicial Council was given authority to provide by rule for experimental procedures--rules which could modify existing law if necessary (see Appendix C). This section discusses the most important changes in procedure which were implemented in all three experimental courts.

##### (1) Natural Person Preference

Code of Civil Procedure section 120.2 declared that, to the extent possible, the policy of the rules should be that the convenience of natural persons, that is, individuals, prevail over the convenience of other litigants, for example, corporations, other businesses, or government agencies. The primary application of this principle came in setting trial dates and times of day for trial. Thus, in cases where the parties disagreed on the choice of trial date or time of day for their trial, if one party was an individual and the other party was a non-natural entity, such as a government agency or corporation, the individual was entitled to a preference.

The preference was also to be applied whenever procedural conflicts, such as discretionary venue determinations or the order in which cases were heard, arose between individuals and non-natural entities. If unnecessary inconvenience to the natural person could result, then the matter deserved evaluation in terms of the preference as well as in terms of legal principles or administrative convenience.

The only evidence available suggests that application of the natural person preference may have had some impact. Under the terms of the preference, in a case between an individual and a non-natural entity, if the individual requested a special session trial, then the case should have been set for an evening or Saturday session. Assuming that in cases between such parties where special session requests were entered, they were made by the individual and that the non-natural entity preferred a regular daytime trial, it would be reasonable to expect a high percentage of special session requests to have been honored. Table 4.10 shows that special session settings occurred in at least 60% of the requested instances in all three courts. Because logistical constraints, such as previously filled calendars, may have kept some requests from being fulfilled, the evidence indicates that the preference was at least partially effective in achieving its intended purpose.

TABLE 4.10 PERCENTAGE OF SPECIAL SESSION REQUESTS IN CASES INVOLVING A NON-NATURAL PLAINTIFF VERSUS A NATURAL PERSON DEFENDANT WHICH RESULTED IN A SPECIAL SESSION TRIAL

Court	Number of Requests Non-Natural Plaintiff v. Natural Person Defendant	Number of Trials Scheduled Non-Natural Plaintiff v. Natural Person Defendant	Per- Cent
Sacramento	901	528	59%
San Diego	164	99	60%
San Francisco	247	166	67%

Source:Judicial Council Report

## (2) Venue

The general rules governing determination of venue, that is, the proper court for trial, for civil actions are found in Code of Civil Procedure section 395. Code of Civil Procedure section 116.6 provides that venue shall be the same for small claims actions as for other civil actions filed in justice or municipal court. Code of Civil Procedure section 121 declared that, for purposes of the experiment, venue would be "the same as in other small claims court districts."

Although no alterations were to be effected in the standards for determination of venue, section 121.7 called upon the Judicial Council to provide specifically by rule for change of venue for reasons of substantial hardship upon either parties or witnesses. The purpose of the rule was to modify the traditional standard for a change of venue which requires a showing that the case was filed in an improper court. To ensure that litigants were aware of the different standard, the Judicial Council adopted special forms for the experimental courts which notified defendants that they could request to have their trial moved to a different location if appearing at the place set for trial would create a hardship.

The impact of this rule and of the special forms was measured by recording the number of requests for changes of venue throughout the experiment. The results are shown in Table 4.11. Few requests for venue changes were recorded in any of the courts during the recordkeeping period. The introduction of the special notice brought a sizable increase in the number of applications for change of venue in the experimental courts while the control courts continued to experience almost no requests. Requests were made for a broad range of reasons, but the majority indicated hardship or inconvenience in appearing where the case was filed as the basis.

TABLE 4.11 CHANGE OF VENUE REQUESTS

Court	Recordkeeping Period	Experimental Period
Sacramento	-0-	48
San Diego	1	16
San Francisco	4	53
Fresno	1	-0-
Oakland-Piedmont	6	-0-
West Orange County	2	1

Source:Judicial Council Report

Although requests in the experimental courts were entered only in a small percentage of cases overall, the figures nonetheless indicate that venue rights may often go unasserted because the defendant is unaware of the opportunity to request a change of venue. Thus, while no evidence was developed to show that current venue provisions are inadequate, it appears that the protection intended under such restrictions may frequently be illusory. As a result, litigants should routinely be provided information on how to request a change of venue, and judges hearing small claims cases should exercise vigilance, particularly in default cases, to ensure that venue requirements are satisfied.

### (3) Forms

Code of Civil Procedure section 121.4 required forms, notices, and documents used in the experimental courts to be clear, concise, and in nontechnical language. To meet the mandate, the Advisory Committee redrafted the "Claim of Plaintiff and Order" and "Claim of Defendant" forms in order to simplify them and increase clarity (see Appendix C).<sup>24</sup>

In addition, to assure that defendants in the experimental districts would enjoy the full benefit of the special programs and procedures designed to increase accessibility and reduce defaults, a special pre-addressed form (self-mailer) was prepared which defendants could complete and return to the court. A duplicate of the form was provided for the defendant to fill out and retain as a personal record.

The self-mailer advised the defendant how to proceed with the case and provided the opportunity to request a different date or time of trial or a change of venue. The defendant could also request that an interpreter be provided at the trial. The San Diego form permitted the defendant to request or refuse mediation, while the San Francisco form included a box to be checked if the defendant wished to be contacted by the small claims advisor. The San Francisco and Sacramento forms also permitted defendants who chose not to contest the action to ask that a judgment against them be entered which would be satisfied by installment payments.

The three experimental courts reported a return of about 20 to 30 of the self-mailers per week, with the greatest number of requests generally involving changes of the date or of trial. The data show that the number of filings recorded by the experimental courts during the experimental period ranged from 13,209 in San Francisco to 17,469 in Sacramento (see Table 6.1, p.95). If the estimated number of self-mailers returned is calculated as a percentage of filings, the results show that they were returned in about 6% to 12% of all cases filed.

A more accurate measure of the incidence of use of the self-mailer can be obtained by reducing the number of filings by the number of cases which went "off calendar" during the experimental period. This reduction is appropriate because it is highly probable that cases which went

"off calendar" did so as a result of a failure to notify the defendant of the action, in which event the defendant had no opportunity to return the self-mailer to the court. When the "off calendar" rate of 22% to 26% (see Figure 2.8 p.20) is applied to the courts' filings, the number of cases is reduced to between 9,907 in San Francisco and 13,276 in Sacramento. Then, if the estimated return rate of 20 to 30 self-mailers per week is calculated as a percentage of the remaining cases, the results show that self-mailers were returned in about 8% to 16% of the cases. Providing support for these calculations, responses of San Francisco defendants, displayed in Table 4.12 show that 29% returned the self-mailer.

TABLE 4.12 PERCENTAGE OF SAN FRANCISCO  
DEFENDANTS WHO  
RETURNED THE SELF-MAILER

Category	Natural Person	Non-Natural Entity	No.
YES	39	--	9
NO	61	100	22

Source:DCA Litigant Report

Despite the perception of some clerks the processing self-mailers required a significant additional amount of time, it appears doubtful that 20 to 30 returns per week imposed any substantial burden. Such a conclusion seems confirmed by a review of clerical time spent per case during the experiment (see Appendix A, subdivision (1)) which shows no identifiable increase.

The self-mailer represented the first systematic effort in California to inform defendants by official court forms that they could exercise certain options with respect to the handling of their small claims cases, and the estimated return rate suggests that a substantial number of defendants may

need some pretrial attention. While providing an opportunity to change the time or place of trial theoretically may permit abuse through deliberate efforts to delay, it would be unfair to restrict the use of legitimate procedural safeguards, such as continuances, exclusively to those wise or experienced enough to independently petition the court.

Even so, the value of the self-mailer approach must be weighed against the approximate \$1200 cost of printing such forms. In recognition of the fact that such costs are substantial and that only about one in twenty self-mailers distributed is returned, a more cost-effective approach to achieve the same result may be to revise current court forms to include pertinent additional information which the defendant might not otherwise receive.

#### C. Evening Hours For The Clerk's Office

Although not mandated by the statute, the Advisory Committee recommended that the rules adopted by the Judicial Council include a requirement that the small claims clerk's office remain open at least one evening each week until 7 p.m. The same considerations which made evening trial sessions important in attempting to increase accessibility to small claims court also supported providing the public with the opportunity to obtain information and file claims after normal working hours.

As a result, one evening each week, the San Francisco and Sacramento courts kept their regular clerk's offices open in the downtown court buildings. In San Diego, the court dispensed small claims information at its traffic court facility located in a suburban area of the city, but did not accept filings due to logistical problems. Efforts were made to publicize the evening hours for the clerk's office in all three cities.

TABLE 4.13 DESIRABILITY OF CLERK'S OFFICE OPEN EVENINGS

Courts & Litigant	NATURAL PERSON				NON-NATURAL ENTITY				T O T A L			
	Desirable	Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	60%	21%	19%	75	29%	47%	24%	79	44%	34%	21%	154
San Francisco Plaintiff	83%	11%	7%	75	56%	20%	24%	45	73%	14%	13%	120
Fresno Defendant	65%	10%	26%	51	33%	33%	33%	12	59%	14%	27%	63
San Francisco Defendant	57%	14%	29%	35	50%	21%	29%	14	55%	16%	29%	49

Source:DCA Litigant Survey

No official record was kept of the number of people who took advantage of the late hours to obtain information or file a case, but the estimates of the courts were that, on occasion, up to ten people per night were served. For purposes of comparison, it is estimated that about 100 to 180 people received help each day during regular working hours. This amount of traffic was generated with only a minimal amount of publicity, suggesting that if such hours became a regular feature, an even higher volume of people could be expected as knowledge of the extra hours becomes more widespread.

In addition to serving people who wished to obtain information and file cases, the experimental courts discovered that the litigants scheduled for evening trials occasionally needed assistance with ancillary matters connected with their cases. The Sacramento court, in particular, found this need so pronounced that it began opening the clerk's office in conjunction with Saturday trial sessions as well.

The cost of providing additional clerk's services during the experiment was not substantial. In most instances, remaining open one evening a week until 7 p.m. required compensating one deputy clerk and, perhaps, one deputy marshal or sheriff for two to two-and-a-half hours of overtime work each. Some expense in keeping the court facility open was also incurred.

Due to their physical layout or location, some courts would face significant overhead and security costs in providing evening hours for the clerk's office. Nonetheless, for courts which can accommodate such concerns, the combined benefit of serving people who cannot get to the clerk's office during the day plus helping litigants who have evening trials makes holding evening hours a desirable element of the efforts to make the "people's court" as accessible as reasonably possible.

**CONTINUED**

**1 OF 3**

#### D. Non-English Language Services

How can people effectively exercise fundamental legal rights or defend claims made against them in our courts if they do not understand or speak English? This question has been posed by a number of commentators who have suggested that those who do not speak English are among the most likely to suffer the consequences of unethical or illegal activities or practices and the least likely to protest.<sup>25</sup> In an attempt to open the small claims process to non-English speaking persons, Article 4 of the statute required interpreters; bilingual clerical staff; and forms and documents in English, Spanish, and when feasible, in other languages spoken in the experimental districts by a significant proportion of the population.

Under the rules for the experiment adopted by the Judicial Council, litigants were advised that bilingual clerical help and translated court forms were available for any foreign language spoken by five percent or more of the residents of the district, and that an interpreter would be provided at no charge upon request or the court's motion. In all three experimental courts, clerical staff who spoke Spanish was available, and in San Francisco, Chinese-speaking staff was provided as well. In addition, the basic forms for small claims actions were translated into Spanish for all three courts and into Cantonese for San Francisco. Interpreters were provided for any language requested.

Table 4.14 displays the number of natural person plaintiffs in each court who were identified as non-English speaking during the experiment and the percentage of all natural person plaintiffs the totals represent. Only in San Francisco, which offered special non-English language services, and West Orange County, which did not, did the percentage of non-English speaking plaintiffs reach one percent or more during the experimental period.

TABLE 4.14 NATURAL PERSON PLAINTIFFS BY LANGUAGE USE  
AND PERIOD

Language	SACRAMENTO		SAN DIEGO		SAN FRANCISCO	
	Record-keeping	Experiment	Record-keeping	Experiment	Record-keeping	Experiment
Spanish	2	13	5	15	11	36
Cantonese	1				10	36
Other Chinese					4	7
All Other	1	2		3	5	8
Total	4	15	5	18	30	87
(Percentage of all plaintiffs)	(.16%)	(.27%)	(.19%)	(.38%)	(.91%)	(1.5%)

Language	FRESNO		OAKLAND-PIEDMONT		WEST ORANGE CO.	
	Record-keeping	Experiment	Record-keeping	Experiment	Record-keeping	Experiment
Spanish	3	12	11	19	7	24
Cantonese			1	1		
Other Chinese			1			
All Other		1		2	1	7
Total	3	13	13	22	8	31
(Percentage of all plaintiffs)	(.32%)	(.62%)	(.65%)	(.55%)	(.50%)	(.95%)

Source:Judicial Council Report

Requests for interpreters were registered in a relatively small percentage of cases. The number of total requests as well as the number of requests per month are shown in Table 4.15. All the courts except Oakland-Piedmont recorded absolute increases in requests during the experimental period, and the San Francisco court experienced a sizable jump. The Sacramento and San Diego courts, which reported no requests during the recordkeeping phase, were asked to provide interpreters during the experimental period.<sup>26</sup>

While the experimental courts did not maintain a specific count of the number of occasions when bilingual clerical staff was required, generally demand for non-English language

assistance at the counter was reported as relatively moderate. The courts found that bilingual staff provided assistance to non-English speaking persons up to about five hours per week.

TABLE 4.15 REQUESTS FOR INTERPRETERS  
BY COURT AND PERIOD

Court	Recordkeeping Period				Experimental Period			
	Spanish	Other	Total	Requests Per Month	Spanish	Other	Total	Requests Per Month
<u>Experimental</u>								
Sacramento					5	2	7	.7
San Diego					14	5	19	2.5
San Francisco	3	6	9	1.8	44	64	108	11.8
<u>Control</u>								
Fresno		1	1	.2	6	4	10	1.0
Oakland-Piedmont	15	6	21	4.2	10	4	14	1.5
West Orange County	5		5	1	15	8	23	2.4

Source:Judicial Council Report

The statute also called for forms and other court papers to be made available in Spanish and, when feasible, in other languages. As a result, the forms were translated into Spanish and, for San Francisco, into Cantonese. A notice in Spanish was placed in the margin of all English-language forms advising the reader that a Spanish translation of the forms could be obtained by calling the phone number listed in the notice. In San Francisco, this notice was printed in Cantonese as well. The expense of translating the forms was just over two hundred dollars. Reproduction costs were insignificant since the translated forms were not printed; rather, as requests were received, copies were made from the master forms available at each court.

Two significant obstacles arose with respect to the translated forms. First, ensuring that the proper terminology

of the foreign language was employed to communicate the appropriate legal meaning presented one difficulty in translating the forms. Additionally, providing translations of such items as the plaintiff's description of the claim and other items which could not be preprinted on the forms created a potential problem.

Despite the notice of the availability of translated forms, the courts reported that few requests for them were received. Although some community groups expressed interest in obtaining copies as an aid in counseling those with a limited understanding of English, no evidence of a particular identifiable desire for translated forms was apparent.

The figures and reports appear to indicate little demand for non-English language services in connection with small claims matters. However, making non-English language services available represents only the first step. Beyond establishing such programs, it is essential to communicate their existence to non-English speaking communities. Efforts to publicize the services were made, and it is interesting to note that the experimental courts all recorded absolute increases in interpreter requests during the segment of the experimental period for which data is available.<sup>27</sup> This result suggests that a test period of greater length may be necessary before any definitive conclusion on the value of language assistance programs can be reached.

Bilingual clerical staff in the experimental courts received an additional five percent in compensation above the salary level set for their general classification in San Francisco, an extra \$70 per month in San Diego, and no additional compensation in Sacramento.<sup>28</sup> Thus, the added cost for a bilingual clerk ran up to about \$850 for the experimental period. Interpreters called on to provide services during the experimental period received about \$35 per half-day.<sup>29</sup> Thus, the actual cost of interpreters

for the experimental period ranged from about \$300 for Sacramento to \$4200 for San Francisco.

Several methods of reducing the cost of providing interpreters might be employed. For example, a court which handles a substantial number of litigants who speak the same foreign language may be able to provide interpreter services economically by scheduling non-English speaking litigants for trials on the same day where possible or by using staff interpreters throughout the court. In addition, since non-English speaking defendants in criminal matters are constitutionally entitled to an interpreter,<sup>32</sup> many courts have interpreters who regularly appear in connection with various criminal proceedings. It would not appear difficult to make such interpreters available for small claims matters as well. Finally, a reasonable fee might be levied for interpreters in cases involving non-indigent litigants to help defray the cost.

In order to provide bilingual clerical staff assistance, most courts throughout the state would only require one clerk who speaks Spanish as well as English; few courts would need more than two clerks who speak languages other than English. With respect to indigents, a duty to provide an interpreter at no charge in small claims matters already exists pursuant to Gardiana v. Small Claims Court,<sup>30</sup> and Jara v. Municipal Court.<sup>31</sup>

Notwithstanding any final conclusions regarding the general level of need for language assistance services, it is important to recognize that the informal nature of the small claims process requires individuals to traverse the system largely on their own. Understanding the legal and institutional process, even that of small claims court, is difficult enough for those unfamiliar with it; trying to cope with the process while not understanding the language may well render substantive and procedural rights and remedies meaningless.

## Findings

(1) A substantial number of requests for evening and Saturday sessions was recorded in the experimental courts during the experimental phase. The vast majority of requests were made by natural person plaintiffs. Both natural person plaintiffs and defendants viewed evening and Saturday trials as a highly desirable element of small claims court.

(2) The default rate for evening and Saturday trials in the experimental courts was 30% to 50% lower than the default rate for regular weekday trials. The default rate was lower not only in cases where natural persons were plaintiffs, but also generally in cases where non-natural entities were plaintiffs.

(3) Among the three experimental courts, 60% to 75% of special session requests resulted in an evening or Saturday trial. In cases with a natural person plaintiff, one of every six trials in the experimental courts during the experimental phase was set for an evening or Saturday session.

(4) Conducting evening or Saturday trials added between five dollars and ten dollars to the cost of processing such a case. Methods of reducing this cost may be utilized when special sessions are implemented on a permanent basis.

(5) With respect to determining the time of day for trial, preference for the convenience of natural persons over non-natural entities increased the opportunity for natural persons to pursue or defend claims effectively.

(6) Although requests for change of venue were relatively infrequent, the extent to which venue questions were raised was related to the amount of information defendants possessed regarding venue and the opportunity to assert the issue in a timely fashion.

(7) Court forms should be simplified and made easy to understand. The extent of use of self-mailers indicates that providing information to defendants regarding changing the time, date, or place of trial, or obtaining legal assistance extended a significant benefit while imposing a minimal burden on the court.

(8) Up to ten percent of the people served per day by the clerk's offices of the experimental courts received help after 5 p.m.

(9) There was little apparent demand for translated court forms.

(10) Demand for non-English language services generally increased in both experimental and control courts during the experiment, but reached a significant level only in San Francisco. It is most likely that either no substantial demand for such services exists or that efforts to inform non-English language communities of their availability did not succeed in the relatively brief experimental period.

(11) Providing bilingual clerical assistance in the experimental courts cost up to approximately \$850 per clerk per year. The cost of providing interpreters was no more than \$35 per half-day. Courts which serve a significant number of litigants who speak a particular foreign language may be able to provide non-English language services on an economical basis.

## Recommendations

(1) Existing law should be amended to require that at least one evening or Saturday small claims court session be conducted per month in municipal courts with three or more judges.

(2) Existing law should be amended to authorize the clerk's office of the small claims division of municipal and justice courts to remain open one or more evenings a week until at least 7 p.m. to accept filings, dispense information, and handle administrative matters connected with pending cases.

(3) The Judicial Council should adopt or approve a standardized application form on which plaintiffs can provide information prerequisite to filing an action. The council should also revise the approved "Claim of Plaintiff and Order" form to include, in addition to other items already required, notice of the following:

- (a) how to receive explanatory materials about small claims court;
- (b) how to request a change in the time or place of trial;
- (c) how to obtain the assistance of a small claims legal advisor (where applicable); and
- (d) in Spanish, how to obtain an interpreter, how to obtain bilingual clerical help (where applicable), how to obtain explanatory materials about small claims court, and the potential consequences of failing to appear for trial.

(4) Existing law should be amended to require:

- (a) municipal or justice courts which serve a particular non-English speaking population of 10% or more to provide bilingual clerk's services in the small claims division. Notices of the availability of such services should be required to be posted in prominent locations in the clerk's office, and court forms should also carry a notice in the appropriate language;
- (b) municipal or justice courts which serve a particular non-English speaking population of 10% or more to provide interpreters for small claims litigants who need them for a reasonable fee, but without charge to indigents; and
- (c) all small claims divisions to maintain a list of interpreters at least for those languages spoken by 2% or more of the population served by the court.

Failure to meet the above requirements should constitute just cause to set aside a default judgment or grant a new trial.

## CHAPTER V. SPECIAL EXPERIMENTAL PROGRAMS

In addition to the innovative programs and procedures conducted in all three of the experimental courts, a special program unique to the district was implemented in each of the three courts. Specified by Code of Civil Procedure section 121.8, each program focused on different stages of the small claims process and came into play from a different standpoint. Their overall objective, however, was consistent: to improve the quality of the proceedings so that a fair and appropriate outcome could be achieved.

### A. Small Claims Advisors

As one of the special programs designed to provide help to litigants, the statute called for two small claims legal advisors "who shall be members of the State Bar who will operate independently of the courts to directly assist litigants, but who may not appear in court to act as advocates for any part."<sup>33</sup> The program, conducted in the San Francisco court, operated under additional guidelines adopted as part of the Judicial Council rules governing the experiment. These guidelines included the requirement that each plaintiff be informed orally of the availability of the advisor before filing any document and that each defendant be provided the same information in writing. In addition

to not appearing in court as advocates, the advisors were not to communicate with judges about particular cases before them nor prepare documents for trial concerning a contested case. They were permitted to prepare stipulated judgments where both parties agreed to the disposition. Each advisor was to counsel only one party to a dispute; if the opposing party sought assistance also, he or she was to be referred to the other advisor. The use of volunteers, working under the direct supervision of the advisors, was also authorized.

The advisors were available on a walk-in basis between 9 a.m. and 3:30 p.m. four days a week as well as one evening a week until 7 p.m. Those seeking assistance could also leave a telephone message with the court, and an advisor would contact them. Records maintained by the advisors show that they counseled over 6,000 plaintiffs and defendants during the experimental period. It is estimated that they also counseled another 1,000 to 1,500 people who could not be definitely classified as parties. On the average, then, the advisors talked to over 25 new people per day. Table 5.1 displays the advisors' figures with respect to those who sought counseling, where counseling occurred, how often counseling was received, and the stage of the process at which counseling was given.

TABLE 5.1 ADVISORS' RECORDS

Classification of Parties Assisted		How Many Times Counseled			Where Counseled		Stage of Proceeding at Which Party Assisted				
Plaintiff		Defendant	One	Two	Three or More	Office	Phone	Prefiling	Pretrial	Post-Judgment	Stipulated Judgment
No.	4946	1127	6002	197	163	4133	1357	3744	402	977	53
Per-cent	81%	19%	94%	3%	3%	75%	25%	72%	8%	19%	1%

Source: Records Maintained by San Francisco Small Claims Legal Advisors.

Of those classified as parties, 81% who talked to the advisors were plaintiffs, and 75% sought assistance in person. Although the advisors report they did not record every subsequent visit after the first counseling session, their records show that at least six percent of those assisted sought help on more than one occasion. The majority of people, however, appear to have received assistance just once.

The advisors were available to assist people at any stage of the small claims process from before filing through appeal or collection. According to the advisor's records, 72% sought help before filing; however, this result is not surprising since the clerk encouraged potential plaintiffs to seek assistance before officially commencing their cases. Nineteen percent of those assisted posed post-judgment questions. Responses from San Francisco litigants surveyed, displayed in Table 5.2, confirm the advisors' figures that most people who consulted them did so only once and normally before filing or after judgment.

TABLE 5.2 CONTACTS WITH ADVISORS  
OF  
SAN FRANCISCO LITIGANTS SURVEYED

Litigant	Number of Times Counseled				Stage of Proceeding at Which Party Assisted			
	Once	2-5 Times	6 Or More	No.	Prefiling	Pretrial	Post- Judgment	No.
Plaintiffs	63%	37%	--	32	59%	32%	9%	34
Defendants	86%	14%	--	7	13%	88%	--	8

\*Parties receiving assistance more than once are recorded at each stage where assisted.

Source:DCA Litigant Survey

Table 5.3 compares a breakdown of cases by types of complaint from the data collected on all cases filed in San Francisco during the experimental period with a similar breakdown derived from the advisors' records. The comparison reveals a fairly close match with respect to "landlord-tenant" and "property damage/personal injury" actions, but a substantial disparity within the "consumer credit" and "other" classifications.

TABLE 5.3 TYPES OF COMPLAINTS RECORDED IN  
SAN FRANCISCO BY FILINGS  
AND SMALL CLAIMS ADVISORS

Source	Landlord/ Tenant	CONSUMER				Per.Inj./ PropDamg.	Other	No.
		Goods	Service	Credit	Loan			
Filings. During Experi- mental Period	22%	3%	7%	35%	8%	18%	7%	10,049
Advisors' Records	19%	7%	13%	4%	4%	23%	30%	5,390

Source:Judicial Council Report, Records Maintained  
by Legal Advisors.

These results suggest that the advisors primarily counseled natural persons who intended to become plaintiffs in cases involving interpersonal disputes. Since most of those counseled were plaintiffs, and only eight percent of the cases involved consumer credit or loan transactions where non-natural entities would most likely be the plaintiffs, it is reasonable to assume that most of the plaintiffs counseled were natural persons. In addition, the figures show that most counseling occurred at the pre-filing stage. Finally, counseling was most frequently sought concerning interpersonal disputes such as landlord-tenant or personal injury/property damage cases.

The survey of San Francisco litigants lends additional weight to such a conclusion. Table 5.4 shows the percentages of plaintiffs and defendants who were aware of the availability of the advisors. Although the numbers are too small to permit

generalization with certainty, it is notable that only 26% of all defendants who responded reported knowing of the advisors' existence. Thus, it is not surprising that only about 18% of the people seen by the advisors were defendants.<sup>34</sup> The substantially lower awareness figure for defendants is also significant because it suggests that both the self-mailer and the litigant manual served on defendants failed to communicate the existence of the advisors. Table 5.4, which also shows the percentage of plaintiffs and defendants who saw the advisors, reveals that about 40% of those who were aware of their availability chose to consult the advisors, and that natural persons were much more likely to consult the advisors than representatives of non-natural entities. This result reinforces the conclusion that natural persons comprise the population which most needs assistance in small claims matters.

TABLE 5.4 AWARENESS AND USE OF ADVISORS  
BY SAN FRANCISCO RESPONDENTS

QUESTION	Litigant	NATURAL PERSON			NON-NATURAL ENTITY			COMBINED TOTAL		
		Yes	No	No.	Yes	No	No.	Yes	No	No.
"At the time of your case, did you know that a Small Claims Legal Advisor was available to advise you about your case free of charge?"	Plaintiff	65%	35%	78	74%	26%	47	69%	31%	125
	Defendant	20%	80%	40	40%	60%	15	26%	74%	55
"Did you talk to the advisors?"	Plaintiff	50%	50%	52	17%	83%	35	37%	63%	87
	Defendant	75%	25%	8	33%	67%	6	57%	43%	14

Source:DCA Litigant Survey

Table 5.5 displays the extent to which litigants surveyed found the advisors helpful. Seventy-eight percent of those who actually received counseling felt the advisor helped them with their case. Confirming the appeal to litigants of the advisors concept, Table 5.6 shows the results of a question asked of both

San Francisco and Fresno litigants regarding the desirability of having advice provided through the court. Eighty percent reported that such a service would be desirable in an ideal small claims court, with 86% of individuals who responded favoring the idea. Notably, even a substantial percentage of non-natural entity respondents endorsed the concept.

TABLE 5.5 PERCEPTION OF SAN FRANCISCO SURVEY  
RESPONDENTS REGARDING ADVISOR HELPFULNESS

Question	Litigant	NATURAL PERSON				NON-NATURAL ENTITY			TOTAL			
		Yes	No	Not Sure	No.	Yes	No	No.	Yes	No	Not Sure	No.
"Do you believe advisor helped with your case?"	Plaintiff	83%	4%	3%	24	83%	17%	6	83%	7%	10%	30
	Defendant	60%	20%	20%	5	50%	50%	2	57%	43%	--	7

Source:DCA Litigant Survey

Not only does an advisor program appear to be useful and desirable from the standpoint of those who go through the small claims process, but it also yields benefits for the court and community as well. For example, clerks often receive requests for information which go beyond basic procedural considerations. Such questions must be handled delicately since the clerk is not permitted to dispense legal advice,<sup>35</sup> yet the questioner may have no other source to which he or she can turn for help.<sup>36</sup> An advisor program relieves the clerks of this burden while ensuring that on matters of procedure or substantive legal rights and obligations, the litigant will receive professional advice. Judges of the San Francisco court also expressed satisfaction with the program, reporting that litigants who had seen the advisors generally appeared better prepared for court and more able to present their cases effectively. Moreover, community agencies such as legal aid offices which traditionally do not have the staff or time to counsel people who sue or are sued in small claims court were able to refer people to the small claims advisors. Witnesses from such agencies at the public

TABLE 5.6 DESIRABILITY OF HAVING PEOPLE AVAILABLE THROUGH  
THE COURT TO ADVISE LITIGANTS

COURT & LITIGANT	NATURAL PERSON				NON-NATURAL ENTITY				T O T A L			
	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	90%	4%	7%	76	64%	16%	20%	80	76%	10%	14%	156
San Francisco Plaintiff	84%	5%	11%	74	79%	9%	13%	47	82%	7%	12%	121
Fresno Defendant	84%	2%	14%	51	67%	17%	17%	12	81%	5%	14%	63
San Francisco Defendant	87%	11%	3%	37	79%	7%	14%	14	84%	10%	6%	51

Source: DCA Litigant Survey

hearings noted that the availability of the advisors served as an extremely valuable means of providing legal assistance to many who might otherwise have gone without help.

The cost of providing small claims advisors under the terms of the statute consisted primarily of the salaries of about \$20,000 each for the two advisors. Since the advisors were housed in existing court space, no significant additional overhead was incurred. Although the necessity of providing certain work materials and telephone lines would engender some expense, such items would not likely impose any substantial cost in an ongoing program.

The level of use of the advisors' services in San Francisco and the responses of those litigants surveyed demonstrate the desirability of an advisor program. In order to ensure competent advice and ready accessibility, it appears optimal to have adequately trained attorneys working on a full-time basis as advisors. Since many of the small claims procedural rules are unique and substantive actions uncommon in more formal forums, it requires some time, even for an attorney, to develop the expertise necessary to give sound advice. For these reasons, part-time attorneys and law students are less desirable as advisors. Of course, it may not be feasible for courts with limited facilities or relatively low small claims caseloads to hire two full-time attorneys as advisors. Therefore, it is recognized that carefully selected law students may be used satisfactorily on a part-time basis as long as there is an attorney who bears an ongoing responsibility for the program and supervises the student advisors. Because providing legal advice is one of the most important functions of advisors it is not desirable to use paralegals as advisors.

The most advantageous time for counseling plaintiffs is at the pre-filing stage of the proceedings. Therefore, locating advisors as close as possible to the small claims counter

increases convenience and accessibility for the public. However, advisors should have a work place which protects confidentiality. If not available on a full-time basis, advisors should be present as much as possible at times most convenient for the public. Special efforts, including a prominent notice on court forms, may be necessary to inform defendants of the availability of advisors, and, in order to provide assistance to those who cannot visit the advisors in person, phone contact should be possible.

If advisors are employees of the court, some fear the public may lack confidence in their ability to act independently. In order to alleviate this concern, advisors might instead be members of the staffs of county legal offices such as the county counsel or district attorney. Such an arrangement would not only remove the concern expressed above but would also permit the operation of an advisor program on a county-wide basis.

#### B. Law Clerk

Although the amount of money in controversy in small claims cases may be relatively little, that does not mean that such matters are simple factually or elementary legally. Indeed, few judges would claim to be experts regarding the standards of practice or behavior which apply to dry cleaning, auto repair, contracting, or many of the other trades or professions about which information may be required to determine the appropriate outcome of a case. Moreover, judges, who possess the unique power in small claims actions to investigate the controversy outside the presence of the parties, rarely have adequate time to visit the intersection, view the cabinetwork, or check the apartment which may be at the heart of the dispute. Thus, even though litigants are told to bring repair bills, leases, pictures, or whatever evidence is relevant to their case to court, factual questions arise which cannot be satisfactorily resolved without further inquiry.

From a legal standpoint, many cases may be repetitive and fall into three or four well-known areas of law. But with the explosion of recent state and federal legislation affecting rights and responsibilities in landlord-tenant, credit, lending, warranty, and other consumer matters, few judges can assimilate all the changes and apply the law properly without the assistance of counsel for the parties. In addition, small claims cases can generate novel or difficult questions of general tort or contract law which require research and careful analysis.

In order to examine the hypothesis that legal and investigative assistance for judges would improve the quality of justice in small claims cases, a law clerk program was included in the experiment. The Sacramento Municipal Court, which conducted the program, hired several law students who provided such legal and factual research assistance. The law clerks were not always available at the time small claims cases were heard, but, even if they had been, since Sacramento used a master calendar system during the experimental period with up to nine judges hearing small claims on any particular weekday morning, the clerks could not have covered all the courtrooms. So, instead of establishing a system in which the clerks attended court on a regular basis to hear cases presented, the judges decided to refer cases about which they had some question to the clerks for further investigation. Normally, the referral was accomplished by a written request to the clerk from the judge regarding a particular case.

Upon completion of the necessary research, the clerk would either report orally or in writing to the judge who then evaluated the research, applied it to the case, and entered the proper judgment. As part of their research, clerks contacted witnesses, experts, and regulatory agencies; however, they did not contact parties prior to trial. Only a few days normally elapsed between the time of the request and the clerk's report to the judge, thus ensuring that a decision would not be delayed for an extended period. Judges also asked the clerks to perform research on broader topics which arise frequently in small claims cases.

The law clerks were asked to investigate 267 cases over the course of the experimental period or about 22 cases per month. When viewed in light of the average number of contested cases of 335 per month that the court handled over the same period,<sup>37</sup> it shows that requests were made in about 7% of the cases.

An average of 3.4 hours were spent on each case, with the amount of time spent ranging from one-quarter hour to sixteen hours. The clerks reported that about 75% of their time was spent on factual investigation and about 25% on legal research, although legal research requests accounted for 30% to 40% of the judges' referrals.

No apparent significant change in judicial court time resulted due to the law clerk program. The average time spent in court on trials increased from 15.7 minutes per proceeding during the recordkeeping phase to 16.2 minutes per proceeding during the experimental period. Thus, such a program should not be viewed as likely to reduce in-court time, but rather as a means of improving the quality of justice.

Indeed, the judges of the court found the program extremely valuable. Although some initial reluctance existed toward putting the questions or issues to be researched in writing because of the time required, eventually many of the judges recognized the advantage of having additional useful information which permitted decisions to be rendered with considerably greater consistency and certainty. By the close of the experimental period, the judges were convinced that the availability of law clerks had produced a substantial positive affect on decision-making in small claims cases.

The law clerks worked 912 hours or about half-time on small claims matters, and, the cost of the program was about \$5000 or 30¢ per filing. On this basis, the equivalent of a full-time person could be provided for \$10,000 to \$12,000 per year. Through the use of existing facilities and supplies, no significant additional associated costs were incurred.

In high volume urban courts where many small claims cases cannot receive the attention they deserve because of the pressure of the docket, the law clerk concept provides an economical means of improving the quality of justice. While offering worthwhile experience and training, such a program's cost can be minimized by establishing arrangements with local law schools through which students who clerk would be awarded credit instead of monetary compensation.

### C. Mediation

In recent years, it has been suggested that many minor disputes susceptible to resolution through discussion between the parties, compromise, and mutual agreement have either gone unresolved, have been resolved unsatisfactorily, or have eventually entered the criminal justice system because the adjudicatory model employed by the courts cannot handle such disputes effectively. For example, cases derived from ongoing neighborhood or family disputes frequently arise in small claims court. Some contend that in such cases attention needs to be given to the entire history of incidents which underlies the particular dispute, as well as to developing standards for future conduct. The adjudicatory system, it is argued, is designed to focus on a single event or transaction, and does not provide the type of setting capable of producing a comprehensive solution.<sup>38</sup> Even in the informal atmosphere of small claims court, judges normally have neither the time nor the inclination to guide the parties to a negotiated solution. Rather, they generally feel that once a case comes before them, they are compelled to reach a decision based on the law.<sup>39</sup>

In order to create the opportunity to resolve disputes through non-adjudicatory means within the framework of the small claims system, Code of Civil Procedure section 121.8(c) mandated a "small claims court post-filing referral service to a court-designated mediation agency." In addition to

providing a suitable forum connected to the court for the resolution of matters not well suited to traditional court disposition, it was intended that mediation would provide an alternative for those who felt intimidated or fearful at the thought of appearing before a judge.

The mediation program was implemented in the San Diego Municipal Court. The San Diego County Bar Association agreed to act as the court-designated mediation agency and to provide attorneys on a volunteer basis to act as mediators. Since the statute specified that referral was to occur only after the filing of a claim, the program was structured to allow either plaintiffs or defendants to propose trying mediation instead of proceeding directly to trial. The term "settlement conference" was adopted for use in the forms, literature, and public education effort in order to communicate the nature of the program more clearly.

At the time a claim was filed, the plaintiff was asked whether he or she would be willing to attempt to resolve the dispute through a settlement conference. The plaintiff could respond in three different ways. With an affirmative response, the case was set for mediation, and the defendant ordered to appear at the time and place set unless the court was promptly informed that mediation was unacceptable. Second, the plaintiff could indicate a willingness to mediate if the defendant affirmatively asked for a settlement conference. In such an instance, the case was set for trial, and no settlement conference was held unless the defendant so requested. Finally, the plaintiff could indicate an unwillingness to mediate, which resulted in the matter simply being set for trial. Even in this instance, however, if the defendant asked for mediation, the court would attempt to arrange it.

Although the original intent was to conduct settlement conferences quickly enough so that they could not be used for delay, in practice, they were normally held four to six weeks after filing,

roughly equivalent to the length of time necessary to get to trial. This amount of time was necessary to allow for service of process and a response from the defendant. In addition, under the structure of the program, if either or both parties failed to appear for the settlement conference, the case was simply reset for trial at a later date; no action regarding the substance of the case was taken by the mediator. Thus, a party could fail to appear at the settlement conference without suffering any adverse consequences.

Initially, conferences were scheduled for one morning, one afternoon, and one evening per month. Sessions held during the day were conducted in the main court building downtown while evening conferences were held at the traffic court facility located in a suburban section of San Diego. In both locations, the sessions were conducted in relatively small attorney conference rooms with the parties and witnesses, if any, and a single mediator present.

As Table 5.7 shows, during May through July, 44 to 53 cases were set for mediation each month. However, due to failures of parties to make appearances, the court cancelled the monthly afternoon session in July and then the morning session in August. After July, when sessions were held only once per month, the number of cases set for mediation remained reasonably constant at the general level the court felt could be accommodated in an evening.

Overall, the 304 cases initially set for mediation represent less than two percent of all cases filed in San Diego during the experimental period. The number of requests by litigants for mediation was not a data item specified for collection; as a consequence, no measure of the level of demand for mediation by litigants is available.

TABLE 5.7 SETTINGS FOR MEDIATION IN SAN DIEGO

Month & Year	Set for Mediation	Dismissed Prior to Mediation	Reset Prior to Mediation
April 1978	7	1	2
May "	53	8	4
June "	50	7	7
*July "	44	5	6
**August "	18	3	1
September "	22	6	2
October "	20	2	1
November "	20	4	2
December "	19	1	5
January 1979	17	2	1
February "	18	1	5
March "	16	--	3
TOTAL	304	40	39

Monthly Schedule of hearings:

1 Wednesday - 9:00 am  
1 Thursday - 1:00 pm  
1 Thursday - 6:00 pm

\*Thursday afternoon settings discontinued

\*\*Wednesday morning settings discontinued

Source: San Diego Municipal Court

A review of court records, reported in Table 5.8, show that, of the cases compiled, both parties appeared for only 38% of the settlement conferences. Of those conferences in which both parties did appear, 37% achieved a settlement. Overall, cases disposed of by mediation, shown in Table 5.9, made up less than one percent of all dispositions.

Lack of use of mediation in San Diego may be attributable to several factors. The structure of the program itself, with limited attention given to parties at the point of initial contact,

lengthy intervals between filing and holding the settlement conference, and the absence of any requirement compelling appearance at the conference, undoubtedly served to minimize its attractiveness, especially to plaintiffs. Given these drawbacks, it is unlikely that many of the non-natural entities which filed 56% of the claims during the experimental period (see Figure 2.1, p.12) were very interested in trying mediation. Moreover, it is doubtful that plaintiffs with consumer credit or loan claims, which represented 57% of the claims filed during the experimental period (see Table 2.5, p.16), believed that mediation was a desirable method to collect what, in their view, were simply unpaid bills of a definite amount.

TABLE 5.8 SAMPLING OF CASES MEDIATED & SETTLED

PERIOD	Month Of Filing	Number Of Cases Sampled	Number Of Cases In Which Both Parties Appeared	Number Of Cases Settled By Mediation
1978	April	33	10	4
"	May	26	8	1
"	June	29	8	3
"	July	13	4	1
"	August	19	7	3
"	September	10	6	1
"	October	14	8	3
"	November	15	5	2
"	December	11	7	6
1979	January	6	--	--
"	February	3	1	1
No.		179	68	25

Source: San Diego Municipal Court

TABLE 5.9 PERCENT DISTRIBUTION OF TYPE OF DISPOSITION BY TYPE OF LITIGANT  
SAN DIEGO - EXPERIMENTAL PERIOD

TYPES OF LITIGANTS Plaintiff Defendant	All Types	TYPE OF DISPOSITION											
		J U D G M E N T				D I S M I S S A L					Settled - Mediated	Trans- ferred	Off Calendar
		Trials		Defaults		No Juris- diction	Defective Service	Non- Appearance	Pln's. Request	Other			
		Pln	Def	Pln	Def								
TOTAL - ALL TYPES	100*	22	6	26	2	<1	<1	1	16	1	<1	1	26
<u>Corporation v.</u>													
Corporation	1	<1	<1	<1	<1				<1	<1		<1	<1
Other Business	3	<1	<1	1	<1	<1		<1	1	<1		<1	1
Govt. Agency	<1	<1											
Natural Person	32	3	<1	12	<1		<1	<1	6	<1	<1	<1	9
<u>Other Business v.</u>													
Corporation	1	<1	<1	<1		<1			<1			<1	<1
Other Business	3	<1	<1	1	<1	<1		<1	1	<1		<1	1
Govt. Agency	<1			<1									<1
Natural Person	15	2	<1	4	<1		<1	<1	3	<1	<1	<1	5
<u>Govt. Agency v.</u>													
Corporation	<1	<1	<1	<1		<1			<1				
Other Business	<1		<1										
Govt. Agency	<1	<1	<1	<1	<1				<1				<1
Natural Person	1	<1	<1										
<u>Natural Person v.</u>													
Corporation	6	2	1	1	<1	<1	<1	<1	1	<1		<1	1
Other Business	8	3	1	1	<1	<1	<1	<1	1	<1	<1	<1	1
Govt. Agency	<1	<1	<1	<1	<1				<1				<1
Natural Person	30	10	2	5	1	<1	<1	<1	3	<1	<1	<1	7

\*n=10872

Source:Judicial Council Report

Second, it has been suggested that by the time small claims plaintiffs, particularly individuals, reach the stage of filing, they have no desire to attempt to negotiate a settlement; rather they seek vindication. The survey results, though limited to San Francisco and Fresno respondents, do not seem to support this theory very strongly, however, as Table 5.10 reveals. Over 40% of all plaintiffs reported they thought the opportunity to privately and informally discuss settlement of a case would be a desirable feature of an ideal small claims court.

Third, the clerks and written materials may not have been successful in communicating the concept of mediation. As pointed out during the Advisory Committee's public hearings, the initial contact with the complainant is critical in encouraging efforts at voluntary dispute resolution. The primary means for plaintiffs to find out about mediation was through the clerk's explanation of its availability and nature. However, little incentive existed for the clerks to spend time explaining the concept since their perception was that to do so only delayed providing service to other filers and resulted potentially in subsequent additional paperwork. However, Figure 5.11 indicates no apparent increase in clerical time required per case during the experiment.

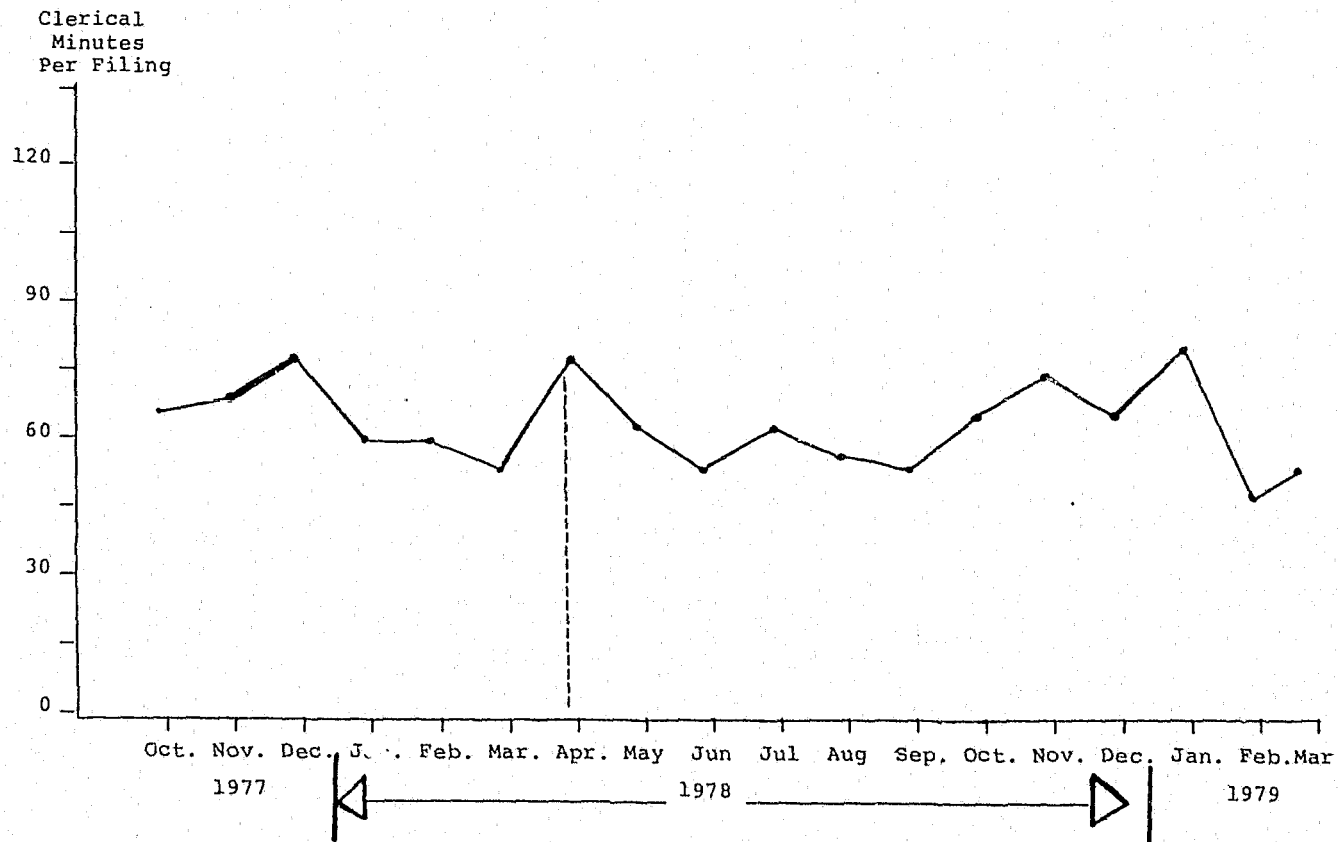
The results of the program suggest that mediation offered at the post-claim filing stage should not be viewed as an alternative to adjudication for most cases. However, as the experience of other programs around the country demonstrates, mediation and similar dispute resolution techniques can be applied successfully in a variety of formats. For example, as detailed in the public hearings, programs may operate successfully at the post-filing stage for small claims as in the neighborhood Small Claims Court Project of the San Jose Municipal Court, immediately prior to the scheduled small claims trial as tested in Los Angeles during part of 1977 and 1978, in community-based settings, or through local governmental agencies such as consumer protection offices.<sup>40</sup>

TABLE 5.10 DESIRABILITY OF TRIAL HELD IN INFORMAL SURROUNDINGS

Category	NATURAL PERSON				NON-NATURAL ENTITY				TOTAL			
	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.	Desirable	Not Desirable	No Opinion	No.
Fresno Plaintiff	52%	28%	20%	75	26%	43%	31%	80	39%	36%	26%	155
San Francisco Plaintiff	47%	35%	18%	74	51%	38%	11%	45	49%	36%	15%	119
Fresno Defendant	63%	14%	24%	51	50%	33%	17%	12	60%	18%	22%	63
San Francisco Defendant	76%	8%	16%	37	24%	50%	25%	14	73%	12%	16%	51

Source:DCA Litigant Survey

TABLE 5.11 CLERICAL MINUTES PER FILING BY  
MONTH FOR SAN DIEGO



Source:Judicial Council Report

A mediation program is more likely to succeed if it has a skillful intake operation through which cases amenable to mediation can be quickly recognized and the disputants educated as to the process. Experience also indicates that mediation works best when the disputants are brought together as quickly as possible after the claim comes to the attention of the dispute resolving agency. If a court chooses to require service of process as the means of notice for a settlement conference agreed upon by the parties, then attendance at the conference should be pursuant to an order of the court, and the mediator should be empowered to collect sufficient evidence upon which a recommendation for entry of dismissal or judgment can be made to the small claims judge should either or both parties fail to appear for the scheduled session. Such a provision would encourage attendance at the conference and help to ensure that the time and expense of parties and staff will not be uselessly expended. Subsequently, a non-appearing party could apply to the court to refile the case or vacate an adverse judgment for good cause.

The operating costs for the San Diego mediation program were minimal because the attorneys who acted as mediators volunteered their time. The use of existing facilities already open to the public for other purposes also kept overhead to a minimum. Some expense was incurred as a result of having an extra clerk and bailiff on duty for the evening sessions, with such personnel paid overtime for two to three hours. The total cost of an evening mediation session, therefore, ran to no more than one hundred dollars.

## Findings

### A. Small Claims Advisors

- (1) The availability of small claims legal advisors was perceived as highly desirable by small claims litigants.

Their services were heavily used, and litigants who received assistance believed it was helpful.

(2) The primary beneficiaries of the services afforded by small claims advisors were natural persons and plaintiffs.

(3) In order to maximize the value of advisors, substantial efforts must be made to inform litigants, especially defendants, and the public of their availability.

(4) The services of advisors were most needed before filing a claim. Therefore, to the extent feasible, advisors should be located in the same building and near the clerk's office in order to maximize their availability to litigants and the public.

(5) The presence of small claims advisors relieved the clerks to some extent from having to give advice about legal and procedural matters.

(6) Litigants who had been counseled by an advisor were better prepared for court and able to present their cases more effectively, thereby serving to improve the quality of justice.

(7) Because substantive legal advice as well as procedural information is sought by litigants, it is desirable to have advisors who are members of the State Bar.

(8) Advisor programs can be adjusted to meet the needs of courts with differing caseloads through the use of full-or part-time attorneys or law students. However, when law students are utilized, a member of the State Bar should be employed as a supervisor.

(9) The expense of conducting an advisor program depends primarily upon whether attorneys or law students are utilized

and whether advisors are available on a full- or part-time basis. For a program with two full-time attorneys as advisors, the annual cost may range from \$30,000 to \$40,000.

#### B. Law Clerk

(10) The law clerk program provided the judges with the resources to undertake legal research and factual investigation which would not otherwise have occurred. As a result, the level of relevant information available to the judges in reaching decisions was increased, thereby enhancing the quality of justice.

(11) The law clerks received requests to provide legal research or factual investigation in about seven percent of contested cases during the experimental period.

(12) Although a substantial percentage of requests concerned legal questions, the majority of requests the law clerks received involved factual investigation.

(13) There was no apparent reduction in in-court judicial time realized as a result of a law clerk program.

(14) Using the equivalent of one full-time law student as a law clerk, the cost of a paid law clerk program is currently about \$10,000 to \$12,000 per year. The cost may be reduced by setting up suitable clinical programs with interested law schools.

#### C. Mediation

(15) Less than two percent of all cases filed in San Diego during the experimental phase were set for mediation; of those set for mediation, 26% were dismissed or reset for trial prior to mediation. Both parties appeared for mediation

in about 38% of the cases set, and settlements were reached in about 37% of the cases in which both parties appeared.

(16) Non-natural plaintiffs surveyed generally did not view court-associated mediation as a useful means of minor dispute resolution. Under such circumstances, since the predominant number of small claims filed involve non-natural entities as plaintiffs, it is unlikely that mediation will be considered a desirable means of resolving a substantial percentage of cases. However, a significant percentage of defendants surveyed did view court-associated mediation as a desirable alternative dispute resolution mechanism.

(17) An effective intake procedure which promptly identifies cases suitable for mediation and informs prospective parties about the process is essential in a program which requires all parties to agree voluntarily to participate.

(18) In order to minimize wasted time and expense, it is desirable to compel disputants who have chosen to participate in a mediation program to appear at any mediation session arranged for the purpose of attempting to effect a voluntary settlement.

(19) The principal cost of a court-associated mediation program which uses volunteer mediators is comprised of overhead for operation of a facility and salaries for court personnel.

#### Recommendations

(1) Existing law should be amended to require all counties to provide small claims legal advisors in conjunction with the operation of small claims divisions of municipal courts. Whenever feasible, they should be located physically in the same building near the location where small claims are filed.

The advisors should be members of the State Bar, or law students under the supervision of a member of the State Bar. Advisors should not appear in court as advocates for any party nor communicate with the judge about individual cases. If advisors are not available on a full-time basis, then their services should be offered at times determined to be most convenient for the public. Notices should be posted in prominent locations near the small claims counter to inform the public of the availability of the advisors and included on forms served on defendants.

(2) Existing law should be amended to authorize use of law clerks to conduct legal research and factual investigation in small claims cases. Law clerks should be expressly authorized to consult parties, witnesses, or other appropriate persons or agencies outside court before or after trial in order to provide relevant information which will contribute to the resolution of disputes. The law clerks may be either attorneys or law students, and their use should be specifically encouraged in large volume, urban courts.

(3) Existing law should be amended to authorize courts to sponsor or co-sponsor informal dispute resolution programs such as mediation, arbitration, and conciliation for small claims cases. Programs may be conducted in an informal setting outside the court under the auspices of the court itself or in conjunction with an appropriate community or local governmental agency. Authority should be granted, to permit mediators to make recommendations to the court for the disposition of cases in which one or both parties fail to appear for mediation, and judges should be permitted to discuss cases with mediators whenever necessary or appropriate.

## CHAPTER VI. INCREASING ACCESS AND REDUCING DEFAULTS

Lionized as the "people's court" by its boosters, small claims court has been characterized by some critics in recent years as tantamount to a judicial collection agency. Although intended to provide a suitable forum primarily for the resolution of minor disputes encountered by average people, small claims court has been attacked as convenient and useful only for institutional and governmental creditors. The fundamental objectives of the Small Claims Court Experimental Project were to determine the validity of such criticism and to test various methods to increase public accessibility and reduce defaults by individuals.

### A. The Experiment's Impact on Access

The legislative intent language found in Code of Civil Procedure section 118 provides, in part, that the project was designed to stimulate use of small claims court by untrained individuals who have been previously unaware of the forum or who have found it inconvenient or unsatisfactory to use. In order to measure whether the intent of the project was met by the programs and procedures mandated, this section evaluates the data available in light of the following considerations: (1) overall filing levels, (2) natural person plaintiff usage, (3) non-English speaking plaintiff usage, and (4) perceptions of litigants.

### (1) Overall Filing Levels

Table 6.1 shows the level of filings per month from November, 1977 through March, 1979 in the six courts involved in the experiment, while Figure 6.2 graphically displays filings in the six courts over the 18-month period from October, 1977 through March, 1979. Comparing monthly filing averages, the figures show that all but the San Francisco and Oakland-Piedmont courts experienced increases in filings per month over the 17-month period. The percentages of change are shown in Table 6.3. A comparison of filings from corresponding months from the recordkeeping and experimental periods, as shown in Table 6.4, reveals that three of the six courts, San Francisco, Oakland-Piedmont, and San Diego, registered decreases while two of the recordkeeping courts, Fresno and West Orange County, recorded the largest increases. Thus, no correlation between general filing levels and the implementation of the experimental programs and procedures is identifiable. However, as discussed in Chapter II above, most filings come from non-natural entities. Their behavior was not expected to alter materially due to the experimental programs, so the lack of definitive change in general filing levels is not surprising.

### (2) Natural Person Plaintiff Usage

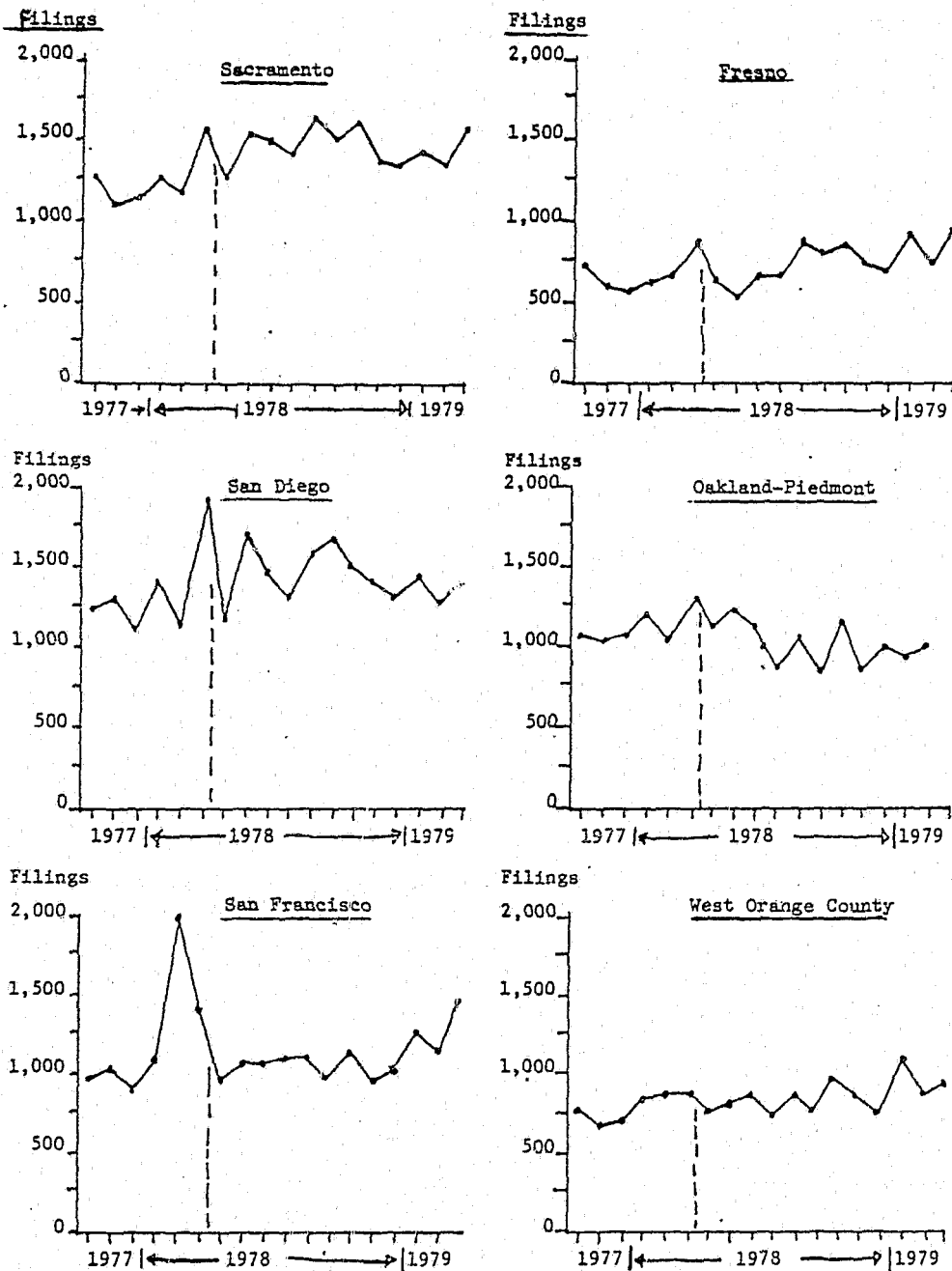
With regard to the average number of natural person plaintiffs filing claims per month, the data reveal that five of the six courts experienced an increase in the number of natural person plaintiffs from the recordkeeping to the experimental period while only San Francisco registered a decrease. However, as a percentage of all cases filed, the percentage of natural person plaintiffs increased only in San Francisco among the experimental courts and in Fresno and Oakland-Piedmont among the recordkeeping courts. The figures are displayed in Figure 6.5. The increase in San Francisco and Oakland-Piedmont are probably attributable to a decrease in the number of claims filed by governmental

TABLE 6.1 CASES FILED DURING SMALL CLAIMS COURT ASSISTANCE  
EXPERIMENT

Period & Month	All Courts	EXPERIMENTAL			CONTROL		
		Sacramento	San Diego	San Francisco	Fresno	Oakland-Piedmont	West Orange
<u>Recordkeeping</u>	32423	6242	6835	6426	3367	5624	3940
November - 1977	5754	1095	1310	1031	614	1022	682
December	5432	1134	1086	891	567	1061	693
January - 1978	6512	1265	1387	1095	646	1185	834
February	6862	1169	1127	1997	670	1047	852
March	7974	1579	1925	1412	870	1309	879
<u>Experimental</u>	79384	17469	17122	13209	9100	12211	10273
April - 1978	5899	1259	1169	960	617	1126	768
May	6863	1529	1686	1077	543	1229	799
June	6661	1486	1454	1078	654	1122	867
July	6115	1412	1299	1111	674	870	749
August	7106	1638	1593	1088	857	1069	861
September	6546	1487	1675	956	808	846	774
October	7235	1612	1489	1134	868	1168	964
November	6155	1366	1361	948	742	875	863
December	6030	1332	1289	1004	693	984	728
January - 1979	7126	1443	1436	1264	943	947	1093
February	6308	1343	1258	1118	736	988	865
March	7340	1562	1413	1471	965	987	942
17 Month Filings Totals	111818	23711	23957	19635	12467	17835	14213

Source: Judicial Council Report

FIGURE 6.2 SMALL CLAIMS FILINGS BY COURT & MONTH



Source:Judicial Council Report

TABLE 6.3 ABSOLUTE & PERCENTAGE CHANGE IN  
CASES FILED PER MONTH

<u>Court</u>	FILINGS PER MONTH			Percent Change
	Recordkeeping Period	Experimental Period	Net Change	
Sacramento	1248	1456	+208	+17
San Diego	1367	1427	+ 60	+ 4
San Francisco	1285	1100	-185	-14
Fresno	673	758	+ 85	+13
Oakland-Piedmont	1125	1018	-107	-10
West Orange County	788	856	+ 68	+ 9

Source:Judicial Council Report

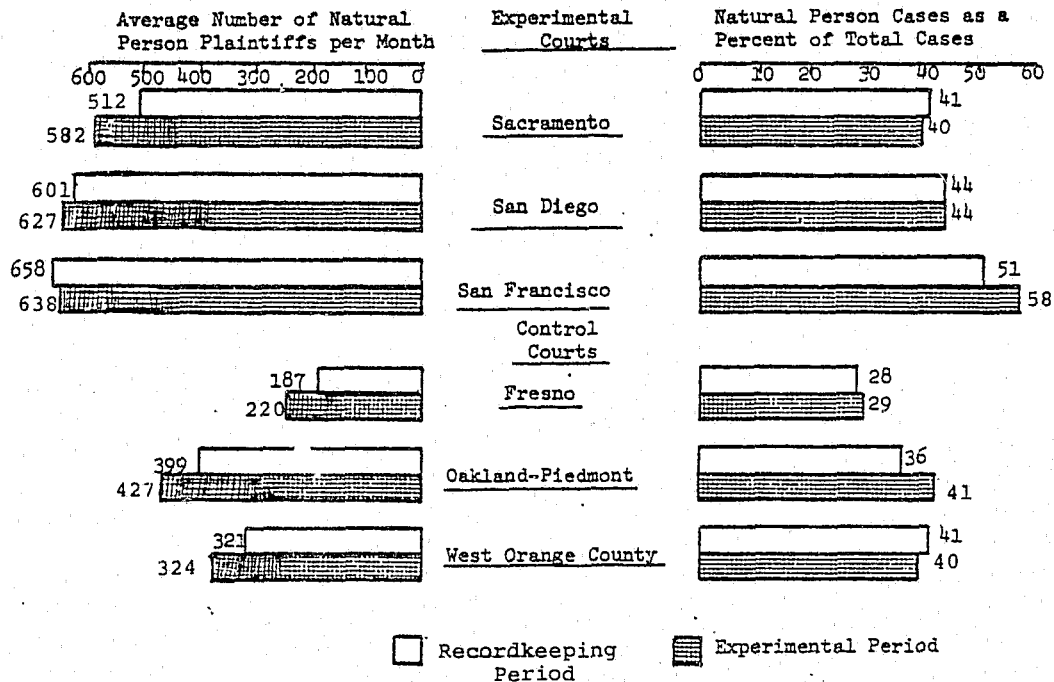
TABLE 6.4 ABSOLUTE & PERCENTAGE CHANGE  
IN FILING FOR CORRESPONDING  
MONTHS DURING EXPERIMENT

<u>Court</u>	TOTAL FILINGS			Percent Change
	Nov. 77 - March 78	Nov. 78 - March 79	Net Change	
Sacramento	6242	7046	+804	+12%
San Diego	6835	6757	- 78	- 1%
San Francisco	6426	5805	-621	-10%
Fresno	3367	4097	+730	+22%
Oakland-Piedmont	5624	4781	-843	-15%
West Orange County	3940	4491	+551	+14%

Source:Judicial Council Report

agencies while the change in Fresno is negligible. Thus it appears that no significant change in the number or percentage of individuals filing small claims actions took place during the experiment.

FIGURE 6.5 NUMBER & PERCENT OF NATURAL PERSON PLAINTIFFS



Source:Judicial Council Report

Responses from litigants surveyed in San Francisco and Fresno indicate why no dramatic change occurred. As Table 6.6 shows, over 40% of the natural person plaintiffs responding had been in small claims court before. This result suggests that familiarity with the court may be as important a factor as any other in deciding to pursue a claim. Therefore, it would be reasonable to expect that a substantial amount of time and an extensive public education effort would be required before any significant change in the level of use by natural person plaintiffs would occur.

TABLE 6.6 PERCENTAGE OF PLAINTIFFS SURVEYED WHO  
HAD PREVIOUSLY APPEARED IN  
SMALL CLAIMS COURT

Court	NATURAL PERSON			NON-NATURAL ENTITY		
	Yes	No	No.	Yes	No	No.
Fresno	41%	59%	78	81%	19%	79
San Francisco -	42%	58%	77	77%	23%	47

Source: DCA Litigant Survey

### (3) Non-English Speaking Plaintiff Usage

Opening small claims court to use by non-English speaking people through providing bilingual clerks, translated court forms, a Spanish-language litigant manual, and interpreters at no charge, represented one important aspect of the experiment. In order to detect any change in the level of their use of small claims court, the number of non-English speaking plaintiffs who filed claims was recorded. (See Table 4.14, p.60) None of the six courts was approached by many non-English speaking plaintiffs. Only in San Francisco did the percentage of non-English speaking plaintiffs exceed 1.5%, despite the fact that the counties in which all six courts are located have at least a 10% Spanish-surname population.

In addition, no evidence appears to suggest that offering non-English language services affected the percentage of non-English speaking plaintiffs. Except for the Oakland-Piedmont court, all of the participating courts experienced an increase in the percentage of non-English speaking plaintiffs from the recordkeeping to the experimental period. However, the size of increases was not a function of whether non-English language services were offered; consequently,

no particular effect of the expanded language services is identifiable.

#### (4) Litigant Perceptions

Accessibility must be viewed not only by objective measures of behavior, but by examining litigant attitudes, perceptions, and experiences as well. An important guidepost for judging accessibility is the degree of difficulty experienced in understanding the process. Table 6.7 compares the responses of San Francisco and Fresno survey respondents with respect to the difficulty they encountered in learning their legal rights and how to prepare their cases. In both instances, San Francisco natural person plaintiffs found it easier to overcome these two significant hurdles. Respondents were also asked whether they understood the process and their legal rights after their cases were over. The

TABLE 6.7 PERCENTAGE OF PLAINTIFFS SURVEYED WHO EXPERIENCED DIFFICULTIES LEARNING THEIR LEGAL RIGHTS & HOW TO PREPARE THEIR CASE

Question	Court & Litigant	Natural Person			Non-Natural Entity		
		Yes	No	No.	Yes	No	No.
Difficulty "Learning Legal Rights"	Fresno	25%	75%	72	5%	95%	75
	San Francisco	14%	86%	78	13%	87%	47
Difficulty With "How to Prepare Case"	Fresno	24%	76%	70	3%	97%	75
	San Francisco	14%	86%	77	6%	94%	47

Source:DCA Litigant Survey

results in Table 6.8 again show that a greater percentage of San Francisco natural person plaintiffs answered affirmatively. One possible explanation for these differences is that the advisor program and the litigant manual, available in San Francisco but not Fresno, increased the public's understanding of the small claims process. If true, this result would represent an important step toward increasing accessibility.

TABLE 6.8 PLAINTIFFS' UNDERSTANDING OF SMALL CLAIMS  
PROCESS AND  
LEGAL RIGHTS AFTER TRIAL

QUESTION	COURT & LITIGANT	NATURAL PERSON				NON-NATURAL ENTITY			
		Yes	No	Not Sure	No.	Yes	No	Not Sure	No.
"Can you now explain the small claims Process?"	Fresno	76%	7%	18%	74	95%	--	5%	79
	San Francisco	88%	6%	6%	80	86%	4%	10%	49
"Do you now understand your legal rights?"	Fresno	60%	23%	16%	73	95%	--	5%	79
	San Francisco	78%	7%	15%	81	83%	4%	13%	48

Source:DCA Litigant Survey

While the data collected on filing level and usage by natural person and non-English speaking plaintiffs suggest that the experimental programs and procedures had no identifiable impact, the period of testing may have been too limited to reveal changes in behavior which might eventually occur. Therefore, it is impossible to conclude that the experimental programs and procedures might not serve their intended purpose of increasing accessibility given a longer period of testing.

## B. The Experiment's Impact on Defaults

A default is defined as the failure of a defendant to appear at trial. Normally under such circumstances, assuming all procedural prerequisites have been satisfied and the plaintiff presents sufficient evidence, a judgment will be entered in the plaintiff's favor. Statewide figures show that about 53% of small claims cases disposed of after a hearing during fiscal year 1977-78 went by default.<sup>41</sup> Since a majority of cases are filed by non-natural entities and an overwhelming percentage of defendants are natural persons, the high default rate contributes to the image some have of small claims court as a judicial collection agency. One of the primary purposes of the court assistance experiment, as embodied in the legislative intent language of Code of Civil Procedure section 118, was to seek to reduce the default rate by individuals.

At least two practical reasons can be cited for attempting to reduce the number of defaults. First, a non-appearing defendant may, without realizing it, have a legal defense to the claim brought by the plaintiff. The judge usually cannot identify the defense without the testimony of the defendant; thus, if the defendant does not appear at trial, the defense goes unasserted and unrecognized. Second, even if the defendant is found to be liable for the plaintiff's claim, the judge in small claims matters has the authority to order that a judgment be satisfied through a schedule of payments.<sup>42</sup> A defendant who would suffer a hardship by being required to satisfy a judgment in one lump sum can normally obtain a reasonable installment payment schedule by appearing in court and requesting such relief. Of course, in the defendant's absence, the judge rarely has any evidence on which to impose an installment judgment.

Did any decrease in default rate occur as a result of the experimental programs and procedures? The answer is analyzed in terms of the following: (1) changes in overall default rate, (2) comparison of default rates in cases with corporate and natural person plaintiffs, and (3) perceptions of defendants.

(1) Overall Default Rate

Table 6.9 displays the default rate in the participating courts as a percentage of cases disposed of after a hearing. The courts ranged from a default rate of 44% during the recordkeeping phase in San Francisco to 60% in Oakland-Piedmont during the entire experiment. A comparison of the experimental courts with the recordkeeping courts shows that while the default rate increased slightly in the experimental courts, it remained almost constant in the recordkeeping courts. Although the degree of change is too small to be significant, the figures do reveal that no apparent reduction in default rate overall occurred in the experimental courts as a result of the experimental programs and procedures.

TABLE 6.9 DEFAULT RATE AS PERCENTAGE OF  
DISPOSITIONS AFTER COURT HEARING

Court	Recordkeeping Period	Experimental Period
<u>EXPERIMENTAL</u>		
Sacramento	55%	56%
San Diego	49%	50%
San Francisco	44%	48%
<u>CONTROL</u>		
Fresno	60%	60%
Oakland-Piedmont	60%	57%
West Orange Co.	51%	51%

Source: Judicial Council Report

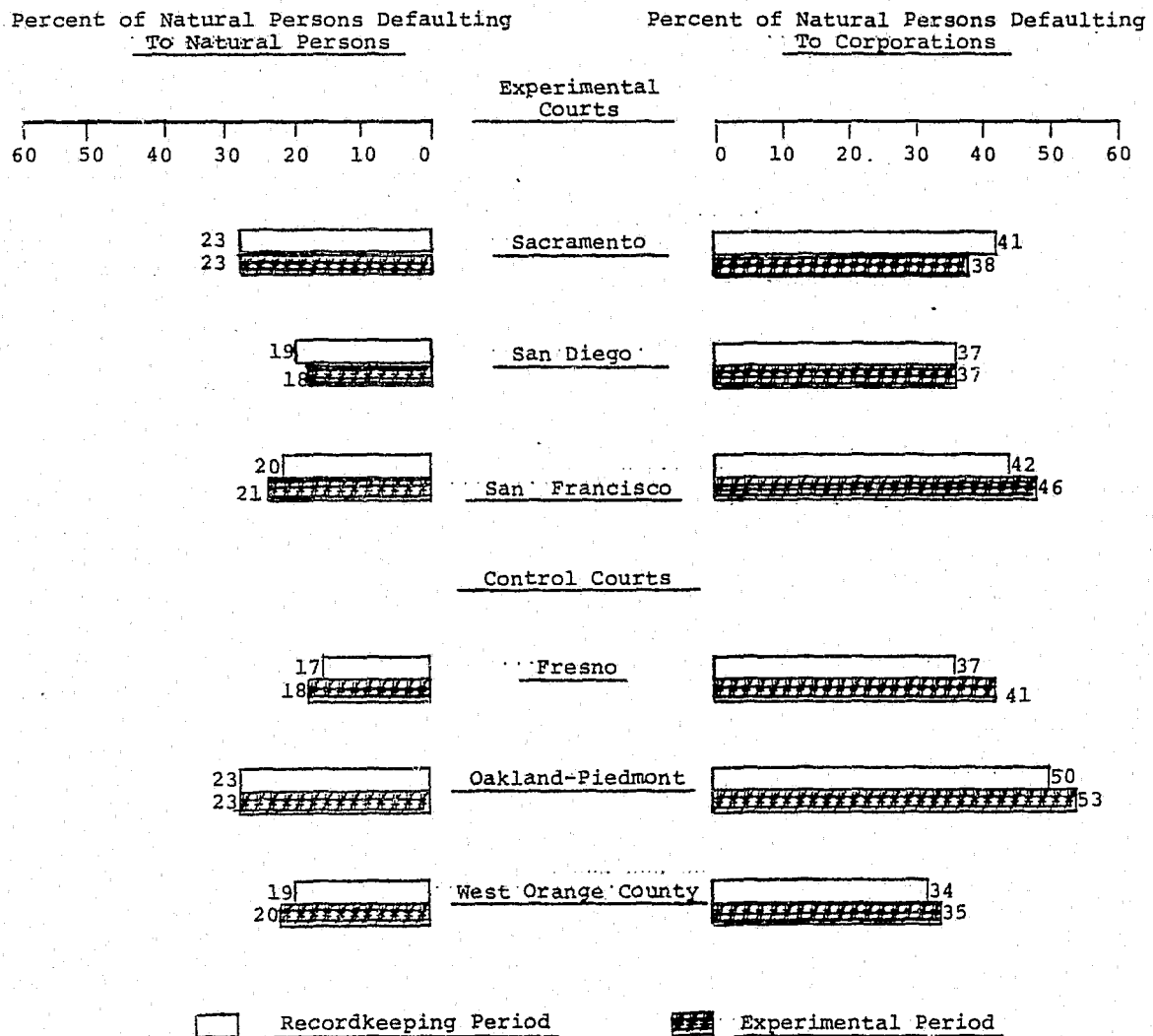
It is important to note that, however, as discussed in Chapter IV, the default rate in the experimental courts when calculated as a percentage of trials scheduled, is 30% to 50% lower for evening and Saturday sessions than for regular weekday court sessions. The impact of this substantially lower default rate for special sessions is not reflected in the overall default rate because only three to thirteen percent of the trials in the experimental courts during the experimental phase were scheduled for evening and Saturday sessions.

More extensive offerings of evening and Saturday sessions would likely reduce the overall default rate. As discussed in Chapter IV, even though most special session requests were made by plaintiffs, defendants still appeared in a higher percentage of such cases than cases set for regular trial times. In addition, the responses of natural person defendants indicate that a large percentage of them believed evening and Saturday trials to be desirable (see Tables 4.3, 4.4, p.43). These facts suggest that if natural person defendants were effectively informed of the availability of special sessions, their existence would have a positive effect on reducing the overall default.

## (2) Default Rates In Cases With Corporate And Natural Person Plaintiffs

A comparison of the relative default rates of natural person defendants to natural person plaintiffs and to corporate plaintiffs is displayed in Figure 6.10. In general, the default rate of individuals to other individuals ran about 20% while the default rate in cases with corporate plaintiffs registered between 35% and 53%.<sup>43</sup> The figure further reveals that individuals default to corporations more than twice as often generally as they do to other individuals. If the figures from the experimental courts are compared to those from the control courts, the results show that, with respect to defaults to corporations by

FIGURE 6.10 PERCENT OF NATURAL PERSON DEFENDANTS DEFAULTING  
TO  
CORPORATE PLAINTIFFS & TO NATURAL PERSON PLAINTIFFS



Source: Judicial Council Report

natural person plaintiffs, the rate increased in all three control courts from the recordkeeping phase to the experimental phase while only one experimental court showed a similar rise. The degree of change is generally too small to be considered particularly significant; nonetheless, it is notable that the default rate for natural person defendants to natural person plaintiffs

remained virtually unchanged. In any event, the data suggest that no major impact on natural person default rates to corporate plaintiffs was realized. As suggested below, however, such a result over the short term at least is hardly surprising.

### (3) Litigant Perceptions

The responses of San Francisco and Fresno defendants surveyed reveal some of the difficulties defendants encounter in defending claims against them. As discussed in Chapter II, a sizable percentage of defendants reported difficulties understanding the claim against them, learning their legal rights, finding the court, and learning what evidence or witnesses they need to prove their cases. The responses also show that a sizable percentage of defendants did not believe court employees were interested in helping them. Given the fact that these responses predominantly came from defendants who appeared in court or settled their cases, as shown in Table 6.11, it requires little extrapolation to surmise that defaulting defendants may experience even greater difficulties with the items mentioned above. Table 6.12 which compares defaulting

TABLE 6.11 HOW CASES OF DEFENDANTS SURVEYED  
WERE FINALLY HANDLED

ACTION	FRESNO DEFENDANT			SAN FRANCISCO DEFENDANT		
	Natural Person	Non-Natural Entity	No.	Natural Person	Non-Natural Entity	No.
Settled Out Of Court	11%	--	6	10%	--	4
Did Not Appear At Trial	19%	8%	11	19%	6%	9
Appeared At Trial and Judge Decided	70%	83%	47	71%	88%	44
Other	--	8%	1	--	6%	1

Source:DCA Litigant Survey

and non-defaulting defendants, appears to bear this conclusion out, although the numbers are too small to permit generalizing with certainty. Thus, while making it more convenient to go to court may have some beneficial impact on the default rate, the threshold problems perceived by defendants appear so serious that a long term decrease may depend more on the extent to which defendants are knowledgeable about how to defend themselves and whether they perceive any value to appearing in court.

TABLE 6.12 COMPARISON OF DIFFICULTIES EXPERIENCED  
BY  
DEFENDANTS BY METHOD OF DISPOSITION

Difficulty	Court	METHOD OF DISPOSITION					
		CONTESTED TRIAL			DEFAULT		
		Yes	No	No.	Yes	No	No.
Understanding The Claim	Fresno	21%	79%	34	38%	62%	8
	San Francisco	23%	77%	31	33%	67%	6
Learning Legal Rights	Fresno	39%	61%	36	50%	50%	8
	San Francisco	25%	75%	32	33%	67%	6
Finding The Court	Fresno	19%	81%	32	33%	67%	6
	San Francisco	14%	86%	28	--	100%	3
Learning What Evidence or Witnesses Were Necessary	Fresno	39%	61%	36	38%	62%	8
	San Francisco	32%	68%	31	25%	75%	4

Source:DCA Litigant Survey

### Findings

(1) Two of three experimental courts and two of three control courts experienced an increase in the average number of claims filed per month from the recordkeeping phase to the experimental phase. However, the results reveal no distinguishable pattern with regard to filing

levels that appears directly attributable to the experimental programs and procedures.

(2) The average number of natural person plaintiffs per month increased slightly in five of the participating courts but decreased in one of the experimental courts. No distinguishable pattern of change in the percentage of natural person plaintiffs was identifiable.

(3) Non-English speaking plaintiffs comprised a very small percentage of all plaintiffs filing cases in the participating courts, and the experimental programs did not appear to stimulate use of the court by such persons.

(4) Natural person plaintiffs in San Francisco reported less difficulty in learning their legal rights and the proof necessary to present their cases than did Fresno natural person plaintiffs. This difference may be attributable to the experimental programs and procedures implemented in San Francisco.

(5) The participating courts generally experienced a default rate greater than 50% when calculated as a percentage of cases heard in court. The experimental programs and procedures did not have any apparent impact on the overall default rate.

(6) The default rate for evening and Saturday court sessions measured as a percentage of all trials scheduled was 30% to 50% lower than the rate for regular weekday sessions in the experimental courts during the experimental phase.

(7) The default rate of individual defendants measured as a percentage of all cases filed was nearly twice as

great when the plaintiff was a corporation as when the plaintiff was an individual.

(8) A substantial percentage of defendants have difficulty understanding the nature of the proceedings against them and preparing a defense. Therefore, while making it more convenient to appear in court can contribute to lowering the default rate, the apparent lack of knowledge of the process and their rights operates as a substantial barrier to any significant decrease in cases involving natural person defendants.

## CHAPTER VII. FINANCING LITIGANT ASSISTANCE PROGRAMS

Throughout this report recommendations have been made that experimental programs which have proven successful be required on a statewide basis subject to certain restrictions. Because state law provides that when the state mandates a new program, the means to cover the cost of the program must also be supplied,<sup>44</sup> it is necessary that this report evaluate not only the programmatic impact of the efforts undertaken during the court assistance experiment, but also the availability of resources to support the implementation of recommended changes.

A variety of approaches might be utilized to fund programs newly mandated as a result of the recommendations of this report. Among the methods available are: (1) general fund appropriations, (2) a general small claims filing fee increase, and (3) a surcharge for heavy users of small claims court. While each method is reviewed independently in this chapter, it would, of course, be possible to apply the methods in combination to achieve the desired result.

An appropriation from the state general fund contributed to by all taxpayers on the basis of income would provide the simplest and most straightforward method of financing the recommended programs. The use of general fund taxes for small claims court is justifiable because no other judicial or non-judicial dispute resolution mechanism serves a broader spectrum

of the public in expeditiously adjudicating claims. Since the intent of the programs recommended is to increase the effectiveness of the forum as a means of minor dispute resolution, the public will enjoy the benefit of an increased opportunity to obtain justice. In this manner, the improvements should serve to reduce the public and private costs of current dispute resolution and of disputes which are not satisfactorily resolved.

A second method of financing recommended programs would be to increase the current small claims filing fee of two dollars.<sup>45</sup> Presently, about 450,000 small claims actions are filed per year in California. If the fee, last increased in 1967, were raised to four dollars per filing, nearly \$900,000 in additional revenue would be generated on a statewide basis.<sup>46</sup>

Such an amount, however, would not be sufficient to fund the total statewide costs of the recommended litigant assistance programs. For example, in San Francisco, the small claims legal advisor program required about \$40,000 for one year for two full-time attorneys. Based on the 13,209 filings recorded during the experimental period, a two dollar boost in the filing fee would yield only slightly more than one-half of the funds needed to implement such a program. In addition, increasing the filing fee may generally have an adverse impact on maintaining maximum accessibility to small claims court. Although a filing fee may be necessary to deter totally frivolous cases, the cost of prosecuting a case--including service fees, witness fees, collection fees, and lost wages--can easily become excessive, especially in cases which involve only a small amount of damages.

Third, the recommended programs could be funded by revenue raised from a surcharge imposed on plaintiffs who make repeated use of small claims court. Such plaintiffs, who may file from dozens to thousands of small claims cases a year, (see Table 2.3, p.13) derive a particularly significant benefit from

the availability of small claims court. The court offers a process for the resolution of disputes and collection of claims that is far less expensive than any other judicial or non-judicial mechanism. Without small claims court, a heavy user would be forced to hire an attorney to appear in Municipal Court where all fees and expenses are not necessarily recoverable as costs, absorb the loss from those claims too small to make pursuit of them economically feasible, or sell its claims to a collection agency at a fraction of their full value. Therefore, it does not seem unreasonable to require those who derive such a substantial benefit from the availability of small claims court to pay a higher fee than those who use the court only infrequently. Further, an equitable means of funding important litigant assistance programs would be created without significantly reducing the attractiveness of small claims court to heavy users.

A surcharge fee system could take any of several forms. For example, a sliding scale, based on the number of claims filed by a plaintiff in a particular court in the preceding 12 months might be adopted, differentiating among users on a graduated basis, from one-time filers to those who file hundreds of claims. A second possibility would be to impose a flat surcharge for all claims filed by a particular plaintiff beyond a specified number. The data collected during the experiment indicate that either of these heavy user surcharge systems would be capable of generating sufficient additional revenue to finance the reforms recommended, at rates which would be both reasonable and equitable.

To illustrate the level of funds that might be derived from a system in which a flat surcharge would be levied on every claim filed by a plaintiff in excess of 12 filed during a 12-month period, Table 7.1 shows the amount of money which would have been generated by such a system, in each of the six courts studied during the experiment, at levels of surcharge ranging from eight to fifteen dollars.<sup>47</sup> It is

apparent that without exceeding the general municipal court civil filing fee of about \$20, so as to tempt heavy users to choose that forum as an alternative, a sufficient amount of revenue could be realized to fund the innovations recommended in this report.

During the public hearings, some doubt was expressed regarding the constitutionality of a surcharge fee system as violating the guarantee of equal protection of the law.<sup>48</sup> However, it would appear that the proposal could withstand an attack on such grounds. The special treatment afforded heavy users of small claims court would presumably be measured according to a "minimum scrutiny test" under which the classification would be upheld if it is rationally related to any legitimate, permissible governmental interest.<sup>49</sup> Clearly, attempts to improve the quality of justice in small claims court constitutes a permissible governmental objective. In addition, as detailed above, drawing a distinction between plaintiffs who frequently file claims and those who file claims only occasionally should not be considered either arbitrary or capricious. Thus, with respect to plaintiffs, a surcharge system would appear constitutionally defensible.

However, if a successful plaintiff could recover the surcharge from the defendant, much more serious constitutional objections might be raised based upon the law's arbitrary discrimination among defendants in terms of the court costs for which they might be liable. In order to treat all defendants equally and thereby avoid this possible constitutional infirmity, the surcharge should not be recoverable cost.

As Table 7.2 demonstrates, such a policy would not place an unreasonable burden on heavy user plaintiffs. When the additional surcharge costs are measured as percentage of the amounts awarded in small claims judgments to heavy users in the six courts which participated in the experiment, the

TABLE 7.1 REVENUE GENERATED BY FLAT SURCHARGE ON NON-GOVERNMENTAL  
HEAVY USERS ON AN ANNUAL BASIS, AT VARIOUS RATES OF SUR-  
CHARGE

Court	Number Cases Over 12	\$8	\$10	\$12	\$15
Sacramento	3232	\$25,856	\$32,320	\$38,784	\$48,480
San Diego	2901	\$23,208	\$29,010	\$34,812	\$43,515
San Francisco	2124	\$16,992	\$21,250	\$25,448	\$31,860
Fresno	2219	\$17,752	\$22,190	\$26,628	\$33,285
Oakland-Piedmont	2823	\$22,584	\$28,230	\$33,876	\$42,345
West Orange Co.	1297	\$10,376	\$12,970	\$15,564	\$19,455

Source:Judicial Council Report

TABLE 7.2 TOTAL SURCHARGE ON AVERAGE NON-GOVERNMENTAL HEAVY USER  
AS PERCENTAGE OF TOTAL JUDGMENTS OBTAINED

Court	Avg.# Cases Filed	-12 Cases	Total Surcharge When \$12 \$15	Total Judgments	Surcharge As Percent Judgments \$12 \$15
Sacramento	60	48	\$576 \$720	\$ 9,265	6.2% 7.8%
San Diego	58	46	\$552 \$690	\$ 8,318	6.6% 8.3%
San Francisco	59	47	\$564 \$705	\$11,853	4.8% 6.0%
Fresno	56	44	\$528 \$660	\$ 8,053	6.6% 8.2%
Oakland-Piedmont	87	75	\$900 \$1125	\$18,824	4.8% 6.0%
West Orange	37	25	\$300 \$375	\$ 5,359	5.6% 7.0%
Average For All Six Courts	59.5	47.5	\$570 \$712.50	\$10,279	5.6% 6.9%

Source:Judicial Council Report

typical heavy user would absorb, at worst, less than eight percent of the amount of its judgments as a surcharge. Such a burden would appear to be minor while representing a fair and reasonable means to provide such services as legal advisors, evening or Saturday sessions, and other programs recommended in this report.

In order to minimize the administrative costs of implementing a heavy user surcharge, a declaration to be executed under penalty of perjury could be attached to the plaintiff's claim form. By means of the declaration, the plaintiff would simply inform the clerk how many claims had been filed in the court during the applicable time period so that the clerk could collect the appropriate fee.<sup>50</sup>

Current fiscal conditions have made competition for general funds so acute that to suggest dependence upon such funds risks the chance that worthwhile programs will suffer. While a modest increase in the two dollar filing fee could be justified, at least two significant drawbacks apply to any such increase. First, accessibility to small claims court for the occasional litigant would be reduced as threshold costs increase, and second, any reasonable increase would not be sufficient to cover the costs of the programs recommended in this report. Given the pattern of use of small claims court and the need for the programs discussed, a heavy user surcharge would appear to be the most equitable and feasible solution.

### Findings

(1) At least three methods of full or partial funding of programs recommended by this report exist. Those methods are: (a) a general fund appropriation, (b) an increase in small claims filing fee, and (c) a "heavy user" surcharge fee system.

(2) A general fund appropriation to support the improvement of small claims court, especially for individuals, would provide a substantial benefit to all citizens of the state.

(3) A general filing fee increase of modest amount would not be likely to generate sufficient revenue in all locales to fund the recommended programs. An increase beyond a modest amount would serve as an undesirable disincentive to the use of the court by individuals.

(4) A "heavy user" surcharge fee system would be a reasonable and equitable means of generating sufficient revenue to cover the cost of the local programs recommended by this report.

#### Recommendation

(1) In the absence of a sufficient general fund appropriation, a "heavy user" fee surcharge system should be adopted by statute with the revenue generated allocated to cover the costs of local programs and procedures recommended by this report.

## FOOTNOTES

1. The legislation is reproduced in Appendix B.
2. The project was expanded by legislation in 1978 to include an experiment to examine the impact of increasing the maximum allowable claim in small claims court to \$1500. At that time, the original experimental programs and procedures which are the subject of this report were denoted as the "court assistance experiment." See Statutes 1978, Chapter 723, Section 8, amending Cal. Code Civ. Pro. section 118(a) (West Supp.1979).
3. 191 Cal. 133, 215 P. 391 (1923).
4. Scott, Small Causes and Poor Litigants, 9 A.B.A. Journal 457 (1923).
5. Comment, The California Small Claims Court, 52 Calif. L. Rev. 876 (1964).
6. Comment, Small Claims Court and The Poor, 42 So. Cal. L. Rev. 493 (1969).
7. Note, The Persecution and Intimidation of The Low-Income Litigant as Performed by The Small Claims Court in California, 21 Stan. L. Rev. 1657 (1969).
8. Note, The Persecution and Intimidation of The Low-Income Litigant as Performed by The Small Claims Court in California, supra n. 7, at 1668.
9. Ruhnka and Weller, Small Claims Court, A National Examination (1978).
10. Report of the Subcommittee on Innovative Thinking of The California State Bar Committee on Legal Service (1975).
11. Statutes 1976, Chapter 1287, as amended Cal. Code Civ. Pro. section 118(a) (West Supp. 1979).
12. See n. 2 supra.
13. In conjunction with procedural changes, service of process time requirements were lengthened and appropriate sanctions were authorized for willful misrepresentations leading to hardship on any other person.
14. The questionnaire used to sample San Francisco litigants is included as Appendix F. The Fresno questionnaires were identical to the San Francisco versions except that

they omitted the questions which specifically pertained to the experimental programs and procedures. In order to avoid questioning the same party more than once, when a filer who had been previously selected was subsequently encountered, the next succeeding case with a different party was used.

15. Although in some instances, the sample is too small to permit specific generalization with certainty; nonetheless, the results in many cases do present clear trends which can contribute to assessing the experimental programs and procedures. The sampling error for various sample sizes at the .05 level of confidence assuming a 50/50 percentage is:

No.	±
10	31%
25	20%
50	14%
100	10%
150	8%
200	7%
300	6%

16. The complete transcripts will be made available as a separate document.
17. Comment, The California Small Claims Court, supra n. 5.
18. As used throughout this report, "trial" includes all cases which received a hearing and were decided either after being contested or by default.
19. Weller, Martin, and Ruhnka, Litigant Satisfaction With Small Claims Court: Does Familiarity Breed Contempt?, 3 State Court Journal 3 (1979).
20. National Institute of Consumer Justice Report on Small Claims Court (1972).
21. The following percentages of cases filed during the experimental period were tabulated: Sacramento--79% San Diego--64%, San Francisco--76%, Fresno--80%, Oakland-Piedmont--78%, West Orange County--81%. In order to estimate the total number of evening and Saturday sessions during the experimental period, the actual number of requests was adjusted on the basis of the completeness of reporting.

22. When the projected total number of evening and Saturday session requests is compared to requests recorded during the recordkeeping phase, the increase grows to over three times as many requests during the experimental period even though it was only slightly more than twice as long.
23. The additional cost per case for an evening or Saturday trial may vary greatly for other courts depending upon such factors as how many cases are scheduled, whether the court facility is open for other reasons as well, and the number of personnel used to conduct such sessions. However, the \$5 to \$10 per case estimate probably represents a fairly realistic figure for an urban court which schedules relatively few cases and does not have the court facility open at the same time for any other purpose.
24. The statute also mandated that forms be translated into Spanish and other languages, where feasible. The discussion of translated forms is included under non-English language services on p.59 infra.
25. See A Report to The Judicial Council on The Language Needs of Non-English Speaking Persons in Relation to The State's Justice System (1976) for a consideration of how the judicial system can respond to the problem.
26. Court personnel in the experimental districts point out that the number of requests recorded may not reflect the actual number of times an interpreter was used. On occasion, a non-English speaking litigant may not have requested an interpreter, but the judge determined at trial that one was needed.
27. See n. 21 supra regarding percentages of cases analyzed.
28. Compensation for bilingual clerks was determined according to each county's standards.
29. The rate was consistent with former Cal. Govt. Code sections 68090, 68091, repealed by Statutes 1976, Chapter 1264.
30. 59 Cal. App. 3d 412, 130 Cal. Rptr. 675 (1976).
31. 21 Cal. 3d 181, 145 Cal. Rptr. 847 (1978).
32. Cal. Const. Art. I, Section 14.

33. Cal. Code Civ. Pro. section 121.8(b) (West Supp. 1979).
34. Significantly, it may require a special trip to the courthouse for the defendant to visit the advisor since many defendants normally only go to court on the day of their trial. This fact suggests that if advisors are to fulfill their role of promoting equality of preparation for trial, special efforts may be necessary to encourage defendants to seek counseling.
35. See generally Cal. Bus. & Prof. Code section 6125 (West 1974).
36. The affect of the availability of advisors on clerical time is unclear. Appendix A, subdivision (1) presents a figure which displays clerical time per case over the course of the experiment.
37. The average number of contested cases was calculated by the following method: 17,469 claims were filed in Sacramento during the experimental period, and 23% of all dispositions came following a contested hearing; 23% of 17,469 claims equals about 4018 claims decided by contested trial; 4018 contested trials divided by 12 months equals 335 contested trials per month.
38. See Ford Foundation; New Approaches to Conflict Resolution, (1978).
39. Ruhnka and Weller, n.9 supra at 23.
40. See e.g. Beresford and Cooper, A Neighborhood Court For Neighborhood Suits, 61 Judicature 185 (1977); A.B.A. Report on the National Conference on Minor Disputes Resolution (1977). The use of attorneys to mediate small claims cases immediately prior to the time of trial, as used in Los Angeles in 1977, was discussed at the Advisory Committee's public hearings; it was reported that about one-third of the cases were settled before trial.
41. Judicial Council of California, Annual Report (1979).
42. Cal. Code Civ. Pro. section 117(a) (West Supp. 1979).
43. Default rate in this instance is calculated as a percentage of all cases filed.
44. Cal. Rev. & Tax Code section 2231 (West 19 Supp. 1979).
45. Cal. Code Civ. Pro. section 117.14 (West Supp. 1979).

46. Governmental agencies are required to pay filing fees only for cases in which they prevail and collect the judgment. Cal. Govt. Code section 6103 (West Supp. 1979). Therefore, since government agencies do not win and collect in all cases they file, the total additional revenue would fall somewhat short of doubling as a result of a two dollar increase in the filing fee.
47. It is suggested that the surcharge system operate by considering the number of claims filed during the preceding 12 months on a continuous basis rather than beginning again at zero each year. Using such a system would simplify administration and generate a larger amount of revenue after the first year.
48. U.S. Const. amend. XIV; Cal. Const. art. I, section 7.
49. Ortwein v. Schwab, 410 U.S. 656 (1973); Dandridge v. Williams, 397 U.S. 471 (1970); Morey v. Doud, 354 U.S. 457 (1957).
50. Some court personnel believe such a system would create severe administrative difficulties. They contend that substantial paperwork would be required to keep track of different filers and that filers could not be depended upon to remember how many cases they had previously filed.

However, the use of the declaration form should create a self-enforcing system since it is doubtful that heavy users will jeopardize their cases in order to save a few dollars on the filing fee. An additional check on such efforts would be provided by the fact that the clerks of most courts are well acquainted with frequent users, so any attempted shortchanging would likely be easily recognized.

MINORITY REPORT  
THE HONORABLE ARMOND M. JEWELL  
JUDGE OF THE LOS ANGELES MUNICIPAL COURT

This minority report is keyed to the summary of recommendations which accompanies the majority report.

- (1) Any small claims legal advisors should definitely not be any part of the court system, i.e., they should not be employees of the court clerk's office or marshal's office. Unless such advisors are independent of the court, the adjudications by the court would be compromised.
- (2) No night or Saturday small claims sessions should be mandated. Such sessions should only be authorized. And such authorization should be contingent only on the condition that the County fully pay for all extra costs required by such sessions, and upon the condition that additional bench officers would be available for the particular court to the extent of augmentation of bench officer time occasioned by such night or Saturday sessions.<sup>1</sup>
- (3) Participation by the Judicial Council in the small claims litigant manuals should be entirely contingent upon an allocation to the Judicial Council of all expenses occasioned by the Judicial

Council's participation in the production and distribution of the small claims litigant manuals.

- (4) The interpreter list and interpreters should only be mandated upon the condition that all of the costs of maintaining the list of interpreters and providing the interpreters is fully paid for by additional funding for that purpose to the courts.

The particular court should be designated, rather than indicated by percentage levels of the judicial district's population of minorities. It may be very difficult, for instance, in our 24 Los Angeles Judicial Districts to determine which minority constitutes 10% or 2% of the population of the district.

Failure to maintain the interpreter list or to provide the interpreters should not in any way invalidate any judgment of the small claims court, default or otherwise, nor provide any basis for a new trial.

- (5) The use of law clerks to assist judges in small claims cases with legal research or factual investigation should be authorized only upon the contingency that if such law clerks are used, all of the money necessary therefor would be additionally budgeted. and reimbursed to the courts.

Code of Civil Procedure section 117(a) which provides for informal investigation should be clarified to specifically provide that the judge's right of informal investigation

can be exercised by the judge, in places and with people outside the courtroom, through clerks, bailiffs and law clerks.

- (7) If the small claims clerk's office is authorized by statute to remain open during evening hours, such authorization should be only upon the contingency that all of the additional costs expended and required therefor are budgeted and reimbursed to the courts whenever such small claims clerk's office remains open past the regular court hours.
- (8) Any informal dispute resolution program with which the courts have any connection should be inside the court system. The solution of any problems the courts may have does not properly lie in farming out or dismembering parts of the court system to any outside agency. Failure to restrict dispute resolution programs to inside the courthouse deprives litigants of equal protection of the law in dispute resolution, and permits the courts to become more elitist by farming out matters which some people consider "small" or "unimportant." This is not compatible with the concept of an egalitarian society.
- (9) Definitely, there should be no surcharge fee on any parties who use the small claims court. There is some question of its constitutionality, but more than that, such excess fees will be passed on one way or the other to debtors. Such

excess fees may cause plaintiffs to file on the formal side of the court, thus increasing the burden on the court and also burdening the debtors with charges for attorneys' fees.

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<sup>1</sup>The present policies of the Legislature and the Governor's Office are not to provide any more bench officers no matter how great the need. As a consequence some courts (e.g., the Los Angeles Superior Court) cannot in my opinion serve the public in a constitutional manner. As long as such policies continue I am against any small claims night or weekend sessions or anything else that increases the need for more bench officers or bench officer time.

## APPENDIX A

### RESPONSES TO SPECIFIC STATUTORY INQUIRIES

Code of Civil Procedure section 122.2 posed several specific questions which are to be discussed in the report on the court assistance experiment. The questions and specific answers are contained in this appendix. References are provided to the text to indicate where further discussion of each item may be found.

Data for the recordkeeping period covers five months from November, 1977 through March, 1978, while data for the experimental period was compiled over 12 months from April, 1978 through March, 1979. The data for the experimental period were derived from the following percentages of all cases filed in each of the six participating courts.

<u>Court</u>	<u>Completeness of Reporting</u>
Sacramento	79%
San Diego	64%
San Francisco	76%
Fresno	80%
Oakland-Piedmont	78%
West Orange County	81%

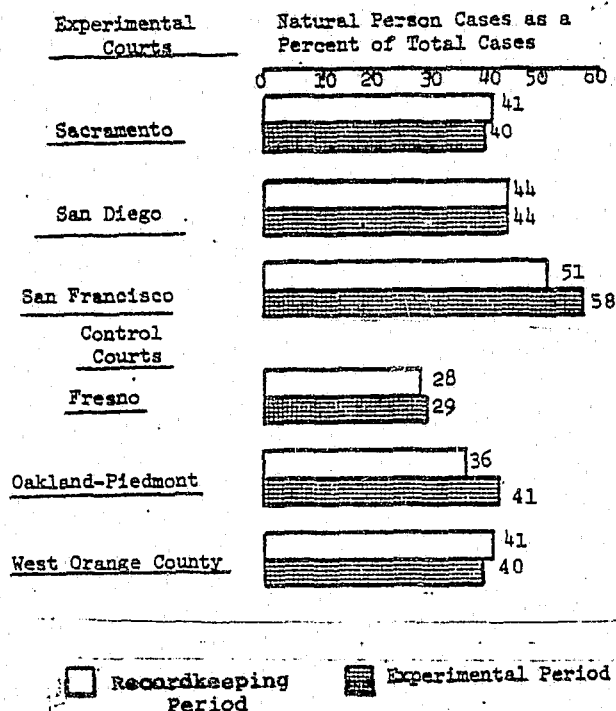
Very little evidence is available to answer some of the statutory questions because collection of the requested information was not feasible. Where such is the case, an explanatory note is included.

The following are the questions contained in section 122.2 and their answers.

(a) "CHANGE IN RELATIVE PROPORTION OF NATURAL PERSON PLAINTIFFS TO CORPORATE, GOVERNMENTAL, AND OTHER BUSINESS, PLAINTIFFS AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

Change in use of the courts by natural person plaintiffs is discussed in Chapter VI at p.94.

PERCENTAGE OF NATURAL PERSON PLAINTIFF



Source: Judicial Council Report.

(b) "CHANGE IN ABSOLUTE NUMBER OF CLAIMS FILED AFTER INITIATION OF EXPERIMENTAL PROGRAMS BY NATURAL PERSON PLAINTIFFS; AND BY CORPORATE, GOVERNMENTAL AND BUSINESS PLAINTIFFS."

Change in use of the courts by natural person plaintiffs is discussed in Chapter VI at p.94.

CLAIMS FILED PER MONTH

<u>Court</u>	<u>Natural Person</u>			<u>Non-Natural Entity</u>		
	<u>Record-keeping Period</u>	<u>Experi-mental Period</u>	<u>Change</u>	<u>Record-keeping Period</u>	<u>Experi-mental Period</u>	<u>Change</u>
Sacramento	512	582	+70	737	873	+136
San Diego	601	627	+26	766	799	+ 33
San Francisco	658	638	-20	630	462	-168
Fresno	187	220	+33	485	538	+ 53
Oakland-Piedmont	399	427	+28	720	600	-120
West Orange Co.	321	334	+13	465	514	+ 49

Source: Judicial Council Report.

(c) "CHANGE IN RELATIVE PROPORTION OF SPANISH-SPEAKING PLAINTIFFS TO ENGLISH-SPEAKING PLAINTIFFS AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

Non-English speaking plaintiffs are discussed in chapter VI at p.102.

CHANGE IN PROPORTION OF SPANISH-SPEAKING PLAINTIFFS

<u>Court</u>	<u>Number of Spanish-Speaking Plaintiffs</u>		<u>Proportion of English-Speaking Plaintiffs to Spanish-Speaking Plaintiffs</u>	
	<u>Record-keeping Period</u>	<u>Experimental Period</u>	<u>Record-keeping Period</u>	<u>Experimental Period</u>
Sacramento	2	13	$\frac{1264}{1}$	$\frac{423}{1}$
San Diego	5	15	$\frac{537}{1}$	$\frac{315}{1}$
San Francisco	11	36	$\frac{296}{1}$	$\frac{157}{1}$
Fresno	3	12	$\frac{309}{1}$	$\frac{174}{1}$
Oakland-Piedmont	11	19	$\frac{180}{1}$	$\frac{207}{1}$
West Orange Co.	7	24	$\frac{228}{1}$	$\frac{134}{1}$

Source: Judicial Council Report

(d) "CHANGE IN NUMBER OF DEFAULTS ENTERED AGAINST ENGLISH-SPEAKING NATURAL PERSON DEFENDANTS IN THE SMALL CLAIMS COURT AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

Change in the default rate is discussed in Chapter VI at p. 102.

NUMBER OF DEFAULTS PER MONTH BY  
ENGLISH-SPEAKING DEFENDANTS\*

<u>Court</u>	<u>Recordkeeping</u>	<u>Experimental</u>	<u>Change Per Month</u>
Sacramento	4	5	+1
San Diego	6	7	+1
San Francisco	9	9	--
Fresno	4	6	+2
Oakland-Piedmont	9	9	--
West Orange Co.	4	1	-3

\*Language use by defendants who default is extremely difficult to detect since most such defendants never have contact with court personnel. During the experiment, language use was identifiable in less than five percent of default cases.

Source: Judicial Council Report.

(e) "CHANGE IN NUMBER OF DEFAULTS ENTERED AGAINST SPANISH-SPEAKING NATURAL PERSON DEFENDANTS IN THE SMALL CLAIMS COURT AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

NUMBER OF DEFAULTS BY SPANISH-SPEAKING  
DEFENDANTS\*

<u>Court</u>	<u>Recordkeeping</u>	<u>Experimental</u>	<u>Change Per Month</u>
Sacramento	0	0	--
San Diego	0	0	--
San Francisco	0	1	+1
Fresno	0	0	--
Oakland-Piedmont	0	0	--
West Orange Co.	0	1	+1

\*Language use by defendants who default is extremely difficult to detect since most such defendants never have contact with court personnel. During the experiment, language use was identifiable in less than five percent of default cases.

Source: Judicial Council Report.

(f) "CHANGE IN AMOUNT OF JUDGMENTS AWARDED AGAINST NATURAL PERSON DEFENDANTS AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

Types of dispositions and amount of judgment are discussed in Chapter II at p. 19.

CHANGE IN JUDGMENTS AGAINST NATURAL PERSON  
DEFENDANTS BY PERCENTAGE AND AVERAGE

<u>Court</u>	<u>Percentage Of Judgments</u>		<u>Change</u>	<u>Average Amount of Judgment Against Natural Person</u>		
	<u>Record- keeping Period</u>	<u>Experi- mental Period</u>		<u>Record- keeping Period</u>	<u>Experi- mental Period</u>	<u>Change</u>
Sacramento	51	47	-4	\$ 303.	\$ 300.	\$ - 3.
San Diego	50	48	-2	286.	289.	+ 3.
San Francisco	50	52	+2	333.	354.	+21.
Fresno	45	50	+5	300.	308.	+ 8.
Oakland- Piedmont	55	62	+7	292.	300.	+ 8.
West Orange County	48	47	-1	322.	338.	+16

Source: Judicial Council Report.

(g) "NUMBER OF NATURAL PERSON LITIGANTS REQUESTING NIGHT AND NUMBER REQUESTING SATURDAY SESSIONS.

(h) "TOTAL NUMBER OF LITIGANTS REQUESTING NIGHT AND TOTAL NUMBER REQUESTING SATURDAY SESSIONS.

Evening and Saturday sessions are discussed in Chapter IV at p.39.

(See next page for Table)

**REQUESTS\* FOR EVENING & SATURDAY COURT  
SESSIONS BY LITIGANT TYPE**

Type of Litigant Plaintiff/Defendant	RECORDKEEPING PERIOD											
	Sacramento		San Diego		San Francisco		Fresno		Oakland-Piedmont		West Orange County	
	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT
TOTAL	11	3	2	--	33	189	1	1	284	1	3	--
Corporation												
Corporation									3			
Other Business	1											
Govt. Agency	1	1			2	1	1	1	27		2	
Natural Person												
Other Business												
Corporation					1	2			4			
Other Business												
Govt. Agency												
Natural Person	1					2			8			
Government Agency												
Corporation												
Other Business												
Govt. Agency												
Natural Person			1						1			
Natural Person												
Corporation	1				2	7			22			
Other Business	4				7	25			48		1	
Govt. Agency									2			
Natural Person	3		1		21	152			169			

Type of Litigant Plaintiff/Defendant	EXPERIMENTAL PERIOD											
	Sacramento		San Diego		San Francisco		Fresno		Oakland-Piedmont		West Orange County	
	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT	EVE	SAT
TOTAL (Projected Total) <sup>1</sup>	1592 (2015)	587 (743)	245 (383)	139 (217)	324 (426)	482 (634)	--	--	709 (909)	2	60	2
Corporation												
Corporation	7	3			1	1					1	
Other Business	9	1	6	3		1			2		1	1
Govt. Agency									1			
Natural Person	78	14	24	15	4	17			43		4	
Other Business												
Corporation	9	6		2		3					1	
Other Business	45	14	18	2	2	9			17		3	1
Govt. Agency												
Natural Person	192	57	16	21	22	14			62		6	
Government Agency												
Corporation												
Other Business												
Govt. Agency												
Natural Person	3	2				1						
Natural Person												
Corporation	143	64	32	9	24	31			38		9	
Other Business	223	112	34	12	56	71			90	2	9	
Govt. Agency	11	2		1		7			4			
Natural Person	872	312	115	74	215	327			452		26	

\*When both plaintiff & defendant made the same request, only one is counted and reported here.

<sup>1</sup>Figures in parantheses represent projected total number of requests which would have been recorded during experimental period if case reports for 100% of cases had been analyzed.

Source:Judicial Council Report

(i) "NUMBER OF LITIGANTS REQUESTING INTERPRETERS AND WHICH LANGUAGES WERE REQUESTED.

Use of interpreters is discussed in Chapter IV at p.59.

#### INTERPRETER REQUESTS

<u>Court</u>	<u>Recordkeeping Period</u>			<u>Requests Per Month</u>	<u>Experimental Period</u>			<u>Requests Per Month</u>
	<u>Spanish</u>	<u>Other</u>	<u>Total</u>		<u>Spanish</u>	<u>Other</u>	<u>Total</u>	
<u>Experimental</u>								
Sacramento					5	2	7	.7
San Diego					14	5	19	2.5
San Francisco	3	6	9	1.8	44	64	108	11.8
<u>Control</u>								
Fresno		1	1	.2	6	4	10	1.0
Oakland-Piedmont	15	6	21	4.2	10	4	14	1.5
West Orange County	5		5	1	15	8	23	2.4

Source: Judicial Council Report. Detailed information on language for which interpreters requested can be found on p.59-63 of the report.

(j) "NUMBER OF LITIGANTS REQUESTING CHANGES OF VENUE."

Change of venue requests are dissussed in Chapter IV at p.52.

#### CHANGE OF VENUE REQUESTS

<u>Court</u>	<u>Recordkeeping Period</u>	<u>Experimental Period</u>
Sacramento	-0-	48
San Diego	1	16
San Francisco	4	53
Fresno	1	-0-
Oakland-Piedmont	6	-0-
West Orange County	2	1

Source:Judicial Council Report

(k) "CHANGE IN COURT TIME SPENT PER PROCEEDING AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

CHANGE IN COURT TIME PER PROCEEDING  
(AVERAGE FOR ALL CASES)

<u>Court</u>	<u>Recordkeeping Period</u>	<u>Experimental Period</u>	<u>Change</u>
Sacramento	5.1 Minutes	4.9 Minutes	- .2 Min.
San Diego	6.3 "	6.0 "	- .3 Min.
San Francisco	3.5 "	4.1 "	+ .6 Min.
Fresno	4.5 "	4.9 "	+ .4 Min.
Oakland-Piedmont	2.7 "	3.1 "	+ .4 Min.
West Orange Co.	4.4 "	3.5 "	- .9 Min.

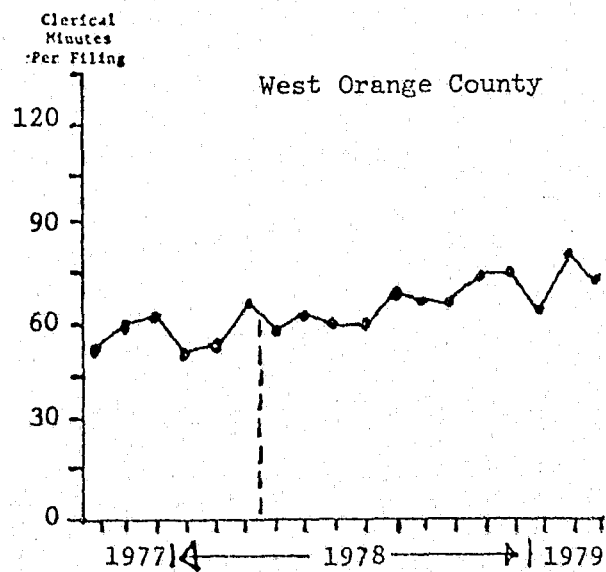
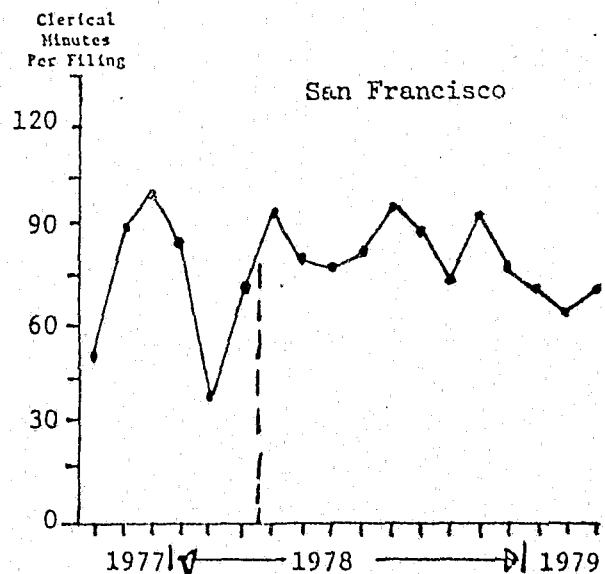
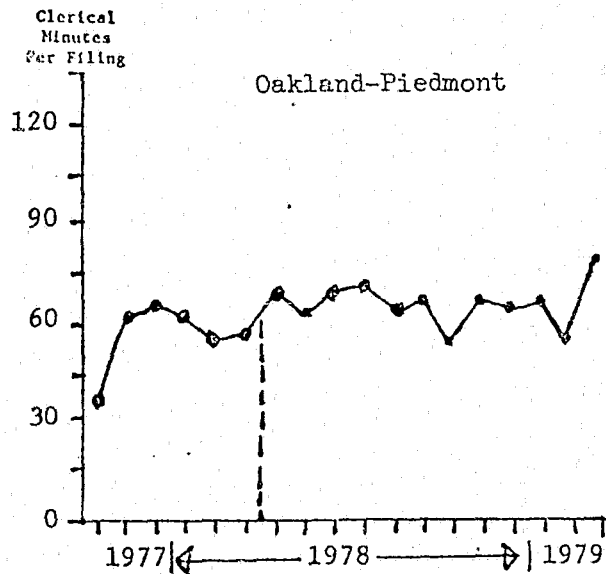
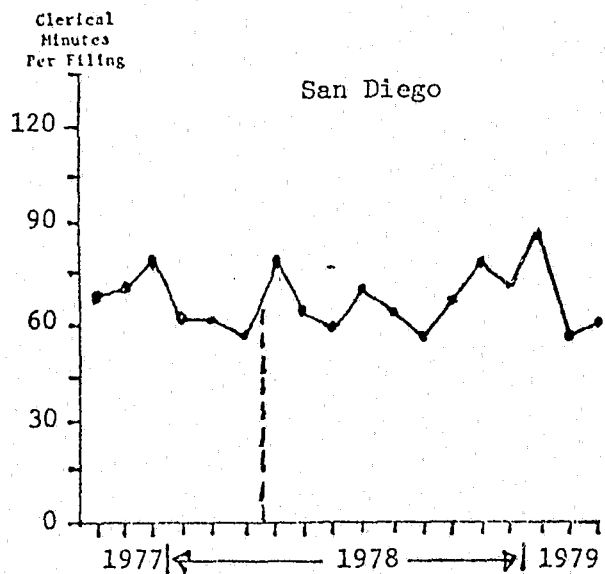
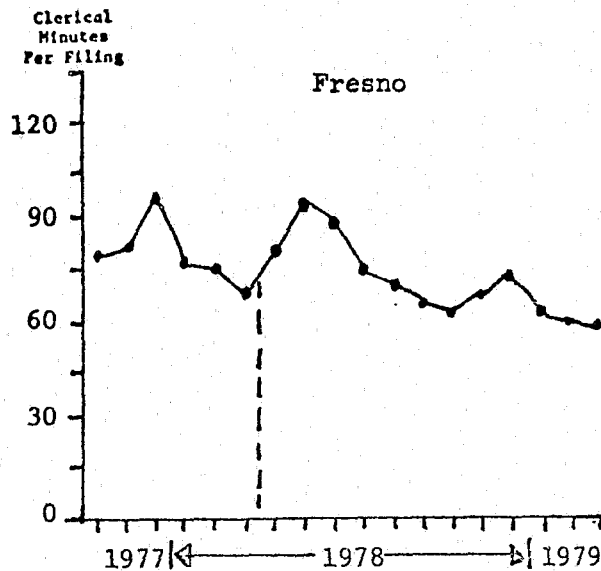
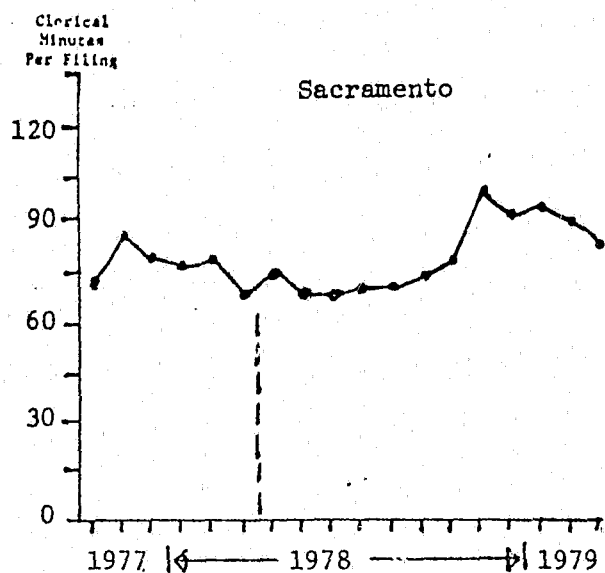
Source: Judicial Council Report.

(1) "CHANGE IN COURT EXPENSES PER PROCEEDING AFTER INITIATION OF EXPERIMENTAL PROGRAMS."

The cost of the experimental programs and procedures are discussed in conjunction with their description and evaluation.

<u>Program</u>	<u>Additional Cost</u>
1. Evening and Saturday sessions	~ \$5 to \$10 per case scheduled for such a session
2. Small claims Legal Advisors	~ \$3 per filing
3. Law Clerk	~ 30¢ per filing
4. Mediation	~ \$7.50 per case set for mediation (using volunteer mediators)

# CLERICAL MINUTES PER FILING BY COURT AND MONTH



Source:Judicial Council Report

APPENDIX B  
CHAPTER 1287, STATUTES 1976

**Assembly Bill No. 3606**

**CHAPTER 1287**

An act to add and repeal Chapter 5-B (commencing with Section 118) to Title 1 of Part 1 of the Code of Civil Procedure, relating to courts.

[Approved by Governor September 27, 1976. Filed with  
Secretary of State September 28, 1976.]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 3606, Brown. Small claims courts.

Existing statutes of general application establish and regulate the small claims court.

This bill would establish experimental projects which would revise the small claims court procedure in the affected areas. The stated purpose of the bill is to stimulate the use of the small claims court by individual litigants.

The major provisions of the bill are as follows:

- (a) The establishment of night and Saturday sessions.
- (b) The revision by Judicial Council rule of forms used in the small claims court.
- (c) Provision for change of venue for substantial hardship upon either parties or witnesses.
- (d) The establishment of the positions of a law clerk, two small claims legal advisers and the prescribing of their duties.
- (e) The requirement of the employment of bilingual clerical staff and courtroom interpreters.
- (f) A requirement for a system of recording statistics relating to claims in the small claims court.

(g) The formulation and distribution by the Department of Consumer Affairs of a specified manual on small claims court rules and procedures.

In addition, the Department of Consumer Affairs and an advisory committee, established by the bill, would be required to evaluate the pilot programs and report to the Legislature.

The provisions of the bill establishing the experimental project would become operative July 1, 1977, and would be repealed on June 30, 1979.

This bill would provide no reimbursement to local governmental entities pursuant to specified reasons.

*The people of the State of California do enact as follows:*

**SECTION 1.** Chapter 5-B (commencing with Section 118) is added to Title 1 of Part 1 of the Code of Civil Procedure, to read:

## CHAPTER 5-B. SMALL CLAIMS COURT EXPERIMENTAL PROJECT

## Article 1. Legislative Intent

118. It is the intent of the Legislature in enacting this chapter to:

- (a) Establish procedures and programs in the small claims courts of specified districts designed to stimulate use of those courts by, and reduce the number of defaults by; untrained individual litigants unfamiliar with the judicial system who might have previously considered small claims courts an inconvenient or unsatisfactory forum for the resolution of disputes; and
- (b) Establish systems for data collection and evaluation and provide the Legislature with a report of the effectiveness of these programs and procedures with recommendations for future action.

## Article 2. Advisory Committee

119. Prior to January 31, 1977, there shall be established an advisory committee which shall consist of all of the following:

- (a) The Attorney General or his representative;
- (b) Two consumer representatives from consumer groups or agencies to be appointed by the Secretary of the Agriculture and Services Agency;
- (c) One representative appointed by the Speaker of the Assembly and one representative appointed by the President pro Tempore of the Senate;
- (d) Two representatives to be appointed by the Board of Governors of the State Bar;
- (e) Two representatives of the business community to be appointed by the Secretary of the Business and Transportation Agency.
- (f) Six judges of the municipal court who have extensive experience presiding in small claims court, to be appointed by the Judicial Council.

119.1. The advisory committee shall first convene within 15 days of its establishment. It shall, among other business, elect its chairperson at that time.

119.2. Staff assistance to the advisory committee shall be provided by the Department of Consumer Affairs as needed.

119.3. The members of the advisory committee shall serve without compensation but shall be reimbursed for expenses actually and necessarily incurred by them in the performance of their duties.

119.4. The advisory committee shall assist the Department of Consumer Affairs in compiling and evaluating data, and preparing a report to the Legislature of the effectiveness of the programs and procedures in the project districts together with recommendations for future action.

## Article 3. Administration of Experimental Project Districts

120. The small claims divisions of three municipal court districts in three different counties shall, prior to January 31, 1977, be designated as experimental districts by the Judicial Council, with the advice of the Department of Consumer Affairs and the concurrence of the municipal court which would be involved in the project. The districts selected shall be:

- (a) Primarily urban;
- (b) Have a current small claims court caseload of 600 to 1,200 cases per month; and
- (c) Have a population of not less than 10 percent Spanish-surnamed persons.

Judicial districts which appear to satisfy these qualifications include: in Alameda County, the Oakland-Piedmont Judicial District; in Fresno County, the Fresno Judicial District; in Los Angeles County, the South Bay Judicial District; in Sacramento County, the Sacramento Judicial District; in San Bernardino County, the San Bernardino Judicial District; in San Francisco City and County, the San Francisco Judicial District; in Santa Clara County, the San Jose-Milpitas Judicial District; and in Ventura County, the Ventura Judicial District.

120.1. This chapter shall be implemented in four phases. The first phase shall commence July 1, 1977. The last phase shall terminate June 30, 1979.

The four phases shall be:

(a) From July 1, 1977, to September 30, 1977. During this time the advisory committee shall be appointed and shall convene, and the experimental and other recordkeeping districts shall be designated. Although neither the procedures in experimental districts as set forth in Article 4 (commencing with Section 121) of this chapter nor the recordkeeping and evaluation procedures as set forth in Article 5 (commencing with Section 122) of this chapter shall be in effect during this time, preliminary preparations for the implementation of the procedures in Article 4 (commencing with Section 121) shall be made and preparation for the full implementation of recordkeeping procedures in Article 5 (commencing with Section 122) on October 1, 1977, shall be made during this time.

(b) From October 1, 1977, to March 31, 1978. During this time data shall be accumulated as provided in Sections 122 and 122.1. The procedures in experimental districts as set forth in Article 4 (commencing with Section 121) will not be in effect, but preparation for their full implementation beginning April 1, 1978, shall be made. This preparation shall include the establishing of administrative guidelines, the printing of all forms and manuals, and the training of personnel.

(c) From April 1, 1978, to March 31, 1979. During this time all programs and procedures mandated in this chapter shall be in effect.

The procedures in experimental districts set forth in Article 4 (commencing with Section 121), and the recordkeeping set forth in Article 5 (commencing with Section 122) shall terminate after March 31, 1979.

(d) From April 1, 1979 to June 30, 1979. During this time the advisory committee and the Department of Consumer Affairs shall complete their report to the Legislature.

120.2. Notwithstanding any other provision of law, the Judicial Council shall provide by rule for procedures in the experimental districts which change or modify existing law. To the extent the existing law contained in Chapter 5A (commencing with Section 116) is not modified or changed by rule, it shall apply in the experimental districts. It shall be the policy of the rules promulgated by the Judicial Council that the convenience of natural persons shall, to the extent possible, prevail over the convenience of other litigants.

120.3. The Department of Consumer Affairs shall formulate and distribute to all small claims courts within the project districts a manual on small claims court rules and procedures, explaining how to fill out the necessary forms, how to pursue or defend against a claim, how to appeal a judgment, how to execute after judgment, and how to protect property that is exempt from execution. The manuals shall be distributed at no cost to litigants in small claims actions and to the general public.

#### Article 4. Procedures in Experimental Project Districts

121. Jurisdiction and venue shall be the same as in other small claims court districts.

121.1. Commencing with the date of implementation of the third phase of this chapter, as set forth in Section 120.1, the Department of Consumer Affairs, in cooperation with the Judicial Council, shall, through public service announcements donated by the media and other dissemination of information, seek to inform the public in the project districts of the establishment and availability of the new programs and procedures mandated in this article.

121.2. The small claims court in the experimental districts shall make available to litigants night and Saturday sessions. The frequency of such sessions shall be specified in the rules promulgated by the Judicial Council and shall initially be a minimum frequency of one night and one Saturday session each month, but such frequency may be reduced if the litigant demand does not justify such use.

121.3. The Judicial Council shall provide by rule for the utilization of bilingual clerical staff and courtroom interpreters. Interpreters shall be provided and may be provided on an on-call basis.

121.4. Small claims actions in the experimental districts shall be commenced, heard, and determined pursuant to rules and forms

adopted by the Judicial Council. All forms, notices, and documents to be used by, or served on, litigants shall be made available in English, Spanish, and when feasible, other languages spoken in the experimental districts by a significant proportion of the population of the district. The forms, notices, documents, and manuals shall be composed in clear and concise language utilizing nontechnical language which persons without legal training can readily understand.

121.5. The Judicial Council shall by rule require the clerk or deputy clerk to inform the claimant of all of the following:

(a) The availability of night and Saturday sessions.

(b) The role and availability of the legal adviser or appropriate mediation agency, where applicable.

(c) The availability of interpreters.

121.6. The Judicial Council shall by rule require the clerk or deputy clerk to advise defendants of all of the following:

(a) The availability of night and Saturday sessions.

(b) The role and availability of the legal adviser or appropriate mediation agency, where applicable.

(c) The availability of interpreters.

(d) The availability of venue change procedures.

(e) The authority of the court to allow payment schedules for judgments where applicable.

121.7. The Judicial Council shall provide by rule for change of venue for substantial hardship upon either parties or witnesses.

121.8. The Judicial Council shall provide by rule for the establishment of three different systems of litigant or court assistance, one in each experimental district. The systems shall involve the following concepts:

(a) A law clerk to provide assistance to the court.

(b) Two small claims legal advisers who shall be members of the State Bar who will operate independently of the courts to directly assist litigants, but who may not appear in court to act as advocates for any party.

(c) A small claims court postfiling referral service to a court-designated mediation agency.

#### Article 5. Data Collection and Evaluation

122. In addition to the regular docket or register of actions entries mandated for small claims courts, the entries in project districts shall include the time of day of the trial as stated in the order (whether regular, night, or Saturday) and the date of the revised order, if there be one, and the date and time of trial as stated in the revised order.

122.1. In addition to the recordkeeping set forth in Section 122, recordkeeping systems shall be established in representative districts selected by the Judicial Council with the advice of the Department of Consumer Affairs and the concurrence of the selected municipal

**CONTINUED**

**2 OF 3**

court and in the project districts to provide retrieval of information pertaining to:

(a) Total number of complaints filed in small claims court;  
 (b) Total number of complaints filed by corporations, other business, governmental agencies, and natural persons respectively as plaintiffs, against each type of defendant similarly classified;

(c) For each of the combinations enumerated in (b)

(1) The amount claimed in increments of one hundred dollars (\$100); and the type of complaint, including, but not limited to, the following:

(a) Landlord-tenant;

(b) Consumer goods;

(c) Consumer services;

(d) Consumer credit;

(e) Consumer loans

(2) Disposition of the case, whether by:

(A) Judgment after trial for plaintiff;

(B) Judgment after trial for defendant;

(C) Settlement and terms thereof;

(D) Judgment for plaintiff after default;

(E) Judgment for defendant after default;

(F) Dismissal of the case, whether because of

(i) Lack of jurisdiction;

(ii) Defective service;

(iii) Nonappearance of plaintiff;

(iv) Other (specify).

(3) The amount of the judgment, in increments of one hundred dollars (\$100).

(d) For each case filed, name of persons appearing for the parties;

(e) For any plaintiff filing 12 or more cases in small claims court during the effective period of this section, number of cases filed by that party, type of judgment (whether after trial, by default, or settlement) and total value of the judgments awarded to that party;

(f) Number of cases filed by and number of defaults in cases filed by corporate plaintiffs, other business plaintiffs, governmental agency plaintiffs, and individual plaintiffs respectively against in-county natural person defendants and out-of-county natural person defendants, respectively.

(g) For each case filed, whether the case was filed as part of a group claim (i.e., plaintiff filed more than one complaint at the same time);

(h) Number of Spanish-surnamed natural persons named as plaintiffs and number named as defendants in small claims courts;

122.2. At the end of two years, the Department of Consumer Affairs and the advisory committee shall provide the Legislature a report. This report shall evaluate experimental programs in reference to the purposes set forth in Section 118 and shall propose further action. The report shall include discussions of the following:

(a) Change in relative proportion of natural person plaintiffs to corporate, governmental, and other business plaintiffs after initiation of experimental programs;

(b) Change in absolute number of claims filed after initiation of experimental programs by natural person plaintiffs; and by corporate, governmental and business plaintiffs;

(c) Change in relative proportion of Spanish-speaking plaintiffs to English-speaking plaintiffs after initiation of experimental programs;

(d) Change in number of defaults entered against English-speaking natural person defendants in the small claims court after initiation of experimental programs;

(e) Change in number of defaults entered against Spanish-speaking natural person defendants in the small claims court after initiation of experimental programs;

(f) Change in amount of judgments awarded against natural person defendants after initiation of experimental programs;

(g) Number of natural person litigants requesting night and number requesting Saturday sessions;

(h) Total number of litigants requesting night and total number requesting Saturday sessions;

(i) Number of litigants requesting interpreters and which languages were requested;

(j) Number of litigants requesting changes of venue.

(k) Change in court time spent per proceeding after initiation of experimental programs;

(l) Change in court expenses per proceeding after initiation of experimental programs.

SEC. 2. This act shall become operative on July 1, 1977, and shall continue in force until June 30, 1979, at which time it shall be repealed.

There are no state-mandated local costs within the meaning of Section 2231 of the Revenue and Taxation Code imposed on local governmental entities in 1976-1977 by this act. However, there are state-mandated local costs in this act in 1977-1978 and subsequent years that require reimbursement under Section 2231 of the Revenue and Taxation Code which can be handled in the regular budget process.

APPENDIX C  
JUDICIAL COUNCIL EXPERIMENTAL RULES AND FORMS

**SMALL CLAIMS RULES FOR DESIGNATED RECORDKEEPING  
AND EXPERIMENTAL COURTS**

Adopted by the Judicial Council of the State  
of California, Effective April 1, 1978

**CHAPTER 1. RULES APPLICABLE TO ALL DESIGNATED RECORDKEEPING AND EXPERIMENTAL COURTS (FRESNO, WEST ORANGE, OAKLAND-PIEDMONT, SAN FRANCISCO, SACRAMENTO, SAN DIEGO)**

**Rule 1901. Authority and effect**

These rules are adopted pursuant to chapter 5-B of Title 1 of Part 1 (commencing with section 118) of the Code of Civil Procedure and pursuant to the authority granted to the Judicial Council by the Constitution, article VI, section 6, to adopt rules for court administration, practice and procedure. They are applicable only to the courts designated by the Judicial Council as small claims experimental or recordkeeping courts in accordance with chapter 5-B.

**Rule 1902. Purpose of small claims experiment**

The small claims court experiment and these rules are intended to:

(a) Establish procedures and programs in the small claims courts of specified districts designed to stimulate use of those courts by, and reduce the number of defaults by, untrained individual litigants unfamiliar with the judicial system who might have previously considered small claims courts an inconvenient or unsatisfactory forum for the resolution of disputes; and

Name of Court	Maximum Additional Positions
Sacramento	2
San Diego	2
San Francisco	2
Fresno	1
Oakland-Piedmont	1
West Orange	1

(b) Establish systems for data collection and evaluation and provide the Legislature with a report of the effectiveness of these programs and procedures with recommendations for future action.

(c) Provide a means whereby the convenience of natural parties shall to the extent possible prevail over the convenience of other litigants.

**Rule 1905. Applicability of general rules**

Except as otherwise provided in these rules, all provisions of law applicable to small claims actions generally apply to actions in the designated courts.

**Rule 1907. Records**

From October 15, 1977, until March 31, 1979, each designated recordkeeping and experimental court shall complete and send to the Judicial Council a case report for each small claims filing. All case reports initiated and not complete as of March 31, 1979, shall be sent to the Judicial Council prior to April 10, 1979. Such reports shall be on forms provided by the Judicial Council.

**Rule 1908. Clerical staff**

To meet the increased workloads involved in performing the duties required by these rules and chapter 5-B, each court may employ necessary additional clerical assistance in accordance with the schedule set forth below.

Position Description	Monthly Salary (or county salary number)
Deputy Clerk II	(Range 343)
Deputy Clerk I	(Range 33.00 + 5%)
Deputy Clerk	\$ 675 - \$ 807
Typist Clerk II	(Range 279)
Deputy Clerk I	(Range 149)
Deputy Clerk I	(Range 30)

**CHAPTER 2. RULES APPLICABLE TO ALL DESIGNATED EXPERIMENTAL COURTS (SAN FRANCISCO, SACRAMENTO, SAN DIEGO)**

**Rule 1909. Applicability of small claims rules in designated experimental courts**

The rules in this chapter apply to every small claims action filed and heard between April 1, 1978, and March 31, 1979, in the San Francisco, Sacramento, and San Diego Municipal Courts.

**Rule 1910. Instructions and service of parties**

(a) At the time of initial contact with the court, the plaintiff shall be offered a copy of the small claims manual under Code of Civil Procedure section 120.3.

(b) In conjunction with service of the claim, the defendant shall be given a self-mailer and instructions in the form adopted by rule 1927, together with the small claims manual under Code of Civil Procedure section 120.3.

(c) The claim shall be served at least 15 days prior to the date set for the hearing, except that in unlawful detainer cases the claim shall be served at least 10 days prior to the hearing date. If a claim is served late, but prior to the time of the hearing, the defendant may request another hearing date, may proceed with the hearing as initially scheduled, or may exercise any right to a continuance under the Code of Civil Procedure section 116.4.

**Rule 1911. Time and place of trial**

(a) If the claim does not show the defendant to reside within the jurisdiction, the clerk shall call the matter to the attention of the small claims judge for a venue determination. If at any time in the proceedings it appears that venue is improper, the judge may dismiss or transfer the case to the proper court as the interests of justice may require.

(b) The time and place of trial in small claims cases shall be set so as to minimize any hardship on the parties and witnesses. In scheduling the time and place of trial, the convenience of natural persons shall to the extent possible prevail over the convenience of other litigants.

(c) Small claims trial sessions may be scheduled at various times of day, and the court shall schedule trial sessions on Saturdays and commencing after the hour of 6:00 p.m. on weekdays. During the period April 1 to October 1, 1978, at least one night and one Saturday session shall be scheduled each month. Thereafter sessions shall be scheduled as needed.

(d) The defendant may apply to have the matter heard at a time or place other than that originally fixed by the court if the time or place initially set works a hardship. Such application may consist of a self-mailer as set forth in rule 1927. The application should be mailed (postmarked) or delivered to the clerk within 5 days after service of an ordinary action and within 4 days after service of an unlawful detainer action.

**Rule 1912. Trial setting**

The court may, to the extent required by the experiment, schedule the hearing date not more than 30 days beyond the limits set forth by section 116.4 of the Code of Civil Procedure.

**Rule 1913. Sanctions for misrepresentation by party**

If any wilful misrepresentation by a party, including a misrepresentation affecting venue, causes the trial to be conducted at a time or place which imposes a hardship on any other person, the trial court may award reasonable expenses incurred to the opposing party, dismiss the action, or grant such other relief against the party engaging in the misrepresentation as will reasonably compensate for the hardship imposed.

#### **Rule 1915. Non-English speaking litigants and witnesses**

(a) Clerks who are competent to transact business in Spanish, and in any foreign language spoken by 5 percent or more of the residents of the district shall be available at the counter where small claims cases are filed. A placard in the relevant foreign language shall notify the public which languages are spoken.

(b) The services of an interpreter shall be provided at no charge to the parties to interpret the entire proceedings when requested by any litigant, or upon the court's motion. Foreign language litigants shall be advised of available interpretive services.

#### **Rule 1917. Translation of forms and documents**

(a) Each small claims form utilized by litigants shall be furnished by the court upon request in Spanish and any other language spoken by at least 5 percent of the residents of the district.

(b) Litigants shall be notified in writing and by placards that translations of forms and documents are available. In any case where a party requests a translated copy of a form or document, the case file shall be noted accordingly.

(c) Any material discrepancy between the original English and translated copy of a document prepared by the court shall be grounds for appropriate relief, but the English version shall control.

(d) Written translations of evidentiary documents such as leases or contracts may be provided to the extent required by the case. The fee for such translations shall be in accordance with Government Code section 26806(d), but the court shall waive the fee for a litigant who is indigent.

#### **Rule 1919. Duties of court clerk**

(a) A division of the clerk's office shall remain open until at least 7:00 p.m. one day each week. During such hours, the clerk shall provide small claims forms and information to the public, and if located in the building where weekday small claims matters are normally heard, the clerk shall receive small claims filings.

(b) The clerk shall make every effort to determine if a claimant or defendant has a linguistic problem, and shall advise such litigants of the availability of interpreters.

(c) Except when the agent of a litigant is registered with the court and that agent is the only person appearing on behalf of that litigant at the time of hearing, the clerk shall note in the case file the name of each person who appears on behalf of a party.

(d) If any party uses the services of an interpreter, or if during the proceedings any party gives testimony in a language other than English, these circumstances shall be noted in the case file.

### **CHAPTER 3. RULES AND FORMS APPLICABLE TO INDIVIDUAL DESIGNATED EXPERIMENTAL COURTS**

#### **Rule 1921. Legal advisor assistance (San Francisco)**

(a) In the San Francisco Municipal Court in each action filed between April 1, 1978, and March 1, 1979, each plaintiff shall be informed orally before he files any documents, and each defendant shall be informed in writing, that a small claims advisor is available to assist litigants in pursuing or defending small claims matters. A multilingual placard shall be displayed informing the public of the small claims advisor service.

(b) Small claims advisors shall be members of the State Bar employed by the county and shall function independently of the court. Small claims advisors shall not communicate directly with any judge or prepare any document for trial concerning a contested case, but may prepare stipulated judgments where both parties have agreed to a disposition of the matter.

(c) No litigant shall receive the assistance of a small claims advisor under this rule in more than 10 actions during any 12-month period. The advisors shall keep records to effect such limitation.

(d) No small claims advisor shall advise more than one party in any proceeding. In case of a conflict, the person shall be referred to another advisor.

(e) Volunteers may be utilized to assist the small claims advisors under the direct supervision of the advisors.

(f) The advisor shall notify the court when the services of an interpreter are required, and the court shall take appropriate action under rule 1915(b).

#### **Rule 1923. Mediation (San Diego)**

(a) In the San Diego Municipal Court, in each action filed between April 1, 1978, and March 1, 1979, each litigant shall be advised that a mediation agency has been designated by the court to provide a settlement conference to assist litigants in the resolution of small claims matters and that all parties are encouraged to take advantage of this service at no extra cost. The mediation agency may utilize paid or volunteer mediators.

(b) If the settlement conference results in an agreement between the parties, the mediator shall file with the court a written memorandum on a form prepared by the court, and appropriate orders shall be entered.

(c) The agreement of a party to mediate should not normally accelerate or delay the date of trial of the matter, in case mediation fails to reach a result satisfactory to the parties.

(d) In the event of trial following a mediation effort, no party shall present evidence of an offer of compromise or settlement made during mediation. The court may obtain information from the mediator concerning matters other than compromise or settlement.

(e) Whenever any litigant requires the services of an interpreter, the clerk shall advise the supervising small claims judge and mediation agency, or the agency shall advise the court, and the court shall take appropriate action under rule 1915(b).

#### **Rule 1925. Law clerk (Sacramento)**

In the Sacramento Municipal Court, a small claims law clerk or clerks shall be employed by the court on a full-time or part-time basis to assist in investigation and research concerning small claims matters. The law clerk may interview witnesses prior to or after a hearing and report the statements of witnesses to the court.

#### **Rule 1927. Forms**

The following small claims forms shall be used in all small claims actions filed between April 1, 1978, and March 1, 1979, in each of the experimental courts:

- (a) Sacramento Municipal Court
  - (1) Claim of Plaintiff and Order
  - (2) Instructions to Defendant and Self-Mailer
  - (3) Claim of Plaintiff and Order (Unlawful Detainer)
  - (4) Instructions to Defendant and Self-Mailer (Unlawful Detainer)
- (b) San Diego Municipal Court
  - (1) Claim of Plaintiff and Order
  - (2) Instructions to Defendant and Self-Mailer (A)
  - (3) Instructions to Defendant and Self-Mailer (B)
  - (4) Claim of Plaintiff and Order (Unlawful Detainer)
  - (5) Instructions to Defendant and Self-Mailer (A) (Unlawful Detainer)
  - (6) Instructions to Defendant and Self-Mailer (B) (Unlawful Detainer)
- (c) San Francisco Municipal Court
  - (1) Claim of Plaintiff and Order
  - (2) Instructions to Defendant and Self-Mailer
  - (3) Claim of Plaintiff and Order (Unlawful Detainer)
  - (4) Instructions to Defendant and Self-Mailer (Unlawful Detainer)
- (d) Claim of Defendant

MUNICIPAL COURT, SMALL CLAIMS DIVISION, SACRAMENTO MUNICIPAL COURT DISTRICT  
SACRAMENTO COUNTY, CALIFORNIA

Room 104, Courthouse, 720 9th Street, Sacramento, Ca. 95814 NO. SC. \_\_\_\_\_

Telephone: (916) 440-5713

PLAINTIFF (Name and address): \_\_\_\_\_

DEFENDANT (Name and address of each): \_\_\_\_\_

CLAIM OF PLAINTIFF  
AND ORDER  
(UNLAWFUL DETAINER)

CLAIM OF PLAINTIFF

1. Defendant is a tenant of plaintiff in the residential property at (Address): \_\_\_\_\_
2. The rental is at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ and is payable on the \_\_\_\_\_ day of \_\_\_\_\_, which tenancy is not greater than month to month.
3. Defendant owes plaintiff the following sums not including court costs:
  - a. ☐ \$ \_\_\_\_\_ for rent, due as of (Date): \_\_\_\_\_ plus: \$ \_\_\_\_\_ per day thereafter.
  - b. ☐ \$ \_\_\_\_\_ for (Specify): \_\_\_\_\_
4. The notice to quit and proof of service have been filed with the court and the time specified in the notice has expired. Plaintiff has demanded payment of rent and possession of the premises. Defendant has not paid the rent demanded and is in possession of the premises without plaintiff's consent.
5. I understand that
  - a. Although I may talk to a lawyer, I cannot be represented by a lawyer at a small claims trial;
  - b. I must appear at the time and place for trial and bring witnesses and evidence (Such as books, papers, receipts, and exhibits) to prove my claim;
  - c. I have no right of appeal from a judgment on my claim.

I declare (Certify) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on

(Date): \_\_\_\_\_, at (Place): \_\_\_\_\_, California

\_\_\_\_\_  
Signature of declarant

ORDER SETTING TRIAL

This matter is set for trial in Department \_\_\_\_\_ in the above entitled court at the date and time last shown below:

DATE

TIME

.....  
.....  
.....  
.....  
.....



PAUL M. NORBRYHN, CLERK

By \_\_\_\_\_  
DEPUTY CLERK

Dated and filed on \_\_\_\_\_

IF YOU DO NOT APPEAR, THE COURT MAY ORDER YOUR EVICTION FROM THE PROPERTY AND AWARD PLAINTIFF THE AMOUNT FOUND TO BE DUE UPON PLAINTIFF'S CLAIM AND ALSO COSTS OF THE ACTION INCLUDING COST OF SERVICE OF THIS ORDER WHICH COULD RESULT IN GARNISHMENT OF YOUR WAGES AND TAKING OF YOUR MONEY OR PROPERTY

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required.

CLAIM OF PLAINTIFF  
AND ORDER  
(UNLAWFUL DETAINER)

CCP 1162 1164 1166 1171

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en español, llame al numero (916) 000-0000.

NOTICE: You have been sued.  
see information for  
defendant on reverse side.

NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION  
IN SACRAMENTO SMALL CLAIMS COURT

Read this form, keep it for your records, If you complete any of the items below, sign and return the completed self mailer to the court right away. If necessary, get a friend to help you.

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en español llame al numero (916) 000-0000

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed for trial (See the ORDER SETTING TRIAL). You may talk with a lawyer before the hearing, but neither you nor the other party may have a lawyer represent you in small claims court. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses you may need.
2. If you wish to dispute the claim, but it would be very hard for you to appear at the time fixed by the court or in the City of Sacramento, check the proper box below and explain.

☐ The date and time now set for trial present a great hardship. Reasons: \_\_\_\_\_

\_\_\_\_\_  
(Continue on Reverse)

Indicate in order your preference as to time for trial:

( ) Weekday at 8:00 a.m.

( ) Saturday at 9:00 a.m.

( ) Wednesday at 6:00 p.m.

☐ A trial in Sacramento would be a great hardship. I request that the place of trial be changed to \_\_\_\_\_ for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
(Continue on Reverse)

IF YOU DO NOT HEAR FROM THE COURT, THE TRIAL WILL BE HELD AT THE TIME AND PLACE ORIGINALLY SET,

3. You may make an out-of-court settlement with the plaintiff before the date set for trial. When the settlement is complete, ask the plaintiff to file a dismissal with the clerk of the court (plaintiff has this form of dismissal).
4. IF YOU DO NOT APPEAR or make an out-of-court settlement, a judgment of eviction may be entered against you together with the amount due on plaintiff's claim plus costs. This could result in EVICTION, GARNISHMENT OF YOUR WAGES and TAKING OF YOUR MONEY OR PROPERTY.
5. If you are not at least 18 years of age, bring your parent or guardian with you.
6. ☐ I need an interpreter at trial (indicate the language you speak): \_\_\_\_\_

I hereby declare under penalty of perjury that the information which I have stated herein is true and correct, and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, California.  
(place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )  
(notify the court if you change your)  
(address prior to final judgment. )

SAC(ZDO)

NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION  
IN SACRAMENTO SMALL CLAIMS COURT

This form is a self mailer to be returned to the court immediately if any of the check-boxes below apply to you. Complete this self mailer just as you did the form on the backside of the claim. If necessary, get a friend to help you.

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed for trial (See the ORDER SETTING TRIAL). You may talk with a lawyer before the hearing, but neither you nor the other party may have a lawyer represent you in small claims court. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses you may need.
2. If you wish to dispute the claim, but it would be very hard for you to appear at the time fixed by the court or in the City of Sacramento, check the proper box below and explain.

☐ The date and time now set for trial present a great hardship. Reasons: \_\_\_\_\_

\_\_\_\_\_  
(Continue on Reverse)

Indicate in order your preference as to time for trial:

( ) Weekday at 8:00 a.m.

( ) Saturday at 9:00 a.m.

( ) Wednesday at 6:00 p.m.

☐ A trial in Sacramento would be a great hardship. I request that the place of trial be changed to \_\_\_\_\_ for the following reasons: \_\_\_\_\_

\_\_\_\_\_  
(Continue on Reverse)

IF YOU DO NOT HEAR FROM THE COURT, THE TRIAL WILL BE HELD AT THE TIME AND PLACE ORIGINALLY SET.

3. You may make an out-of-court settlement with the plaintiff before the date set for trial. When the settlement is complete, ask the plaintiff to file a dismissal with the clerk of the court (plaintiff has this form of dismissal).
4. IF YOU DO NOT APPEAR or make an out-of-court settlement, a judgment of eviction may be entered against you together with the amount due on plaintiff's claim plus costs. This could result in EVICTION, GARNISHMENT OF YOUR WAGES and TAKING OF YOUR MONEY OR PROPERTY.
5. If you are not at least 18 years of age, bring your parent or guardian with you.
6. ☐ I need an interpreter at trial (indicate the language you speak): \_\_\_\_\_

I hereby declare under penalty of perjury that the information which I have stated herein is true and correct, and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, California.  
(place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )

(notify the court if you change your)

(address prior to final judgment. )

AVISO Usado ha sido demandado.  
Para obtener una copia de esta forma en  
español llame al numero (916) 800-0000

SAC(ZM)

(Additional information may be included on this side)

(Name)

(No. Street)

(City, State, Zip)

AFFIX  
FIRST CLASS  
POSTAGE  
HERE

Small Claims Division  
Municipal Court  
Room 104  
720 - 9th Street  
Sacramento, CA 95814

MUNICIPAL COURT, SMALL CLAIMS DIVISION, SAN DIEGO JUDICIAL DISTRICT

220 West Broadway, San Diego, California  
(714) 236-2521

PLAINTIFF (Name and address):

NO. S.C.: \_\_\_\_\_

CLAIM OF PLAINTIFF  
AND ORDER  
(UNLAWFUL DETAINER)

DEFENDANT (Name and address of each):

CLAIM OF PLAINTIFF

1. Defendant is a tenant of plaintiff in the residential property at (Address): \_\_\_\_\_
2. The rental is at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ and is payable on the \_\_\_\_\_ day of \_\_\_\_\_, which tenancy is not greater than month to month.
3. Defendant owes plaintiff the following sums not including court costs:
  - a. ☐ \$ \_\_\_\_\_ for rent, due as of (Date); \_\_\_\_\_ plus; \$ \_\_\_\_\_ per day thereafter.
  - b. ☐ \$ \_\_\_\_\_ for (Specify): \_\_\_\_\_
4. The notice to quit and proof of service have been filed with the court and the time specified in the notice has expired. Plaintiff has demanded payment of rent and possession of the premises. Defendant has not paid the rent demanded and is in possession of the premises without plaintiff's consent.
5.
  - a. ☐ I request a settlement conference.
  - b. ☐ I am willing to engage in a settlement conference at defendant's request.
  - c. ☐ I do not wish a settlement conference.
6. I understand that:
  - a. Although I may talk to an attorney, I cannot be represented by an attorney at a settlement conference or trial in the Small Claims Division;
  - b. I must appear at the time and place for settlement conference or trial and have with me witnesses, papers, evidence and other items needed to prove my claim;
  - c. I have no right of appeal from a judgment on my claim.

I declare (certify) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date); \_\_\_\_\_, at (Place): \_\_\_\_\_, California.

Signature of Declarant \_\_\_\_\_

ORDER

TO THE DEFENDANT: YOU ARE DIRECTED TO APPEAR FOR TRIAL AT THE DATE, TIME AND PLACE LAST SET FORTH BELOW:

☐ WEEKDAYS

San Diego County Courthouse  
Room 2013 (Presiding Dept)  
220 West Broadway  
San Diego, Ca. 92101

☐ EVENINGS & SATURDAYS

Traffic Court Facility  
8950 Clairemont Mesa Blvd.  
San Diego, Ca. 92123

DATE \_\_\_\_\_ TIME \_\_\_\_\_

IF YOU DO NOT APPEAR THE COURT MAY ORDER YOUR EVICTION FROM THE PROPERTY AND AWARD PLAINTIFF THE AMOUNT FOUND TO BE DUE UPON PLAINTIFF'S CLAIM AND ALSO COSTS OF THE ACTION INCLUDING COST OF SERVICE OF THIS ORDER, WHICH COULD RESULT IN GARNISHMENT OF YOUR WAGES AND TAKING OF YOUR MONEY OR PROPERTY.

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit; otherwise an affidavit is required.

CLAIM OF PLAINTIFF  
AND ORDER  
(UNLAWFUL DETAINER)

CCP 116.2, 116.4, 116.6, 117.1

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en español, llame al teléfono número (714) 236-2534

NOTICE: YOU HAVE BEEN SUED!  
SEE DEFENDANT'S INFORMATIONAL  
NOTICE ATTACHED.

**NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION  
IN SAN DIEGO SMALL CLAIMS COURT**

This form is for you to keep.

Complete it exactly as you do the self mailer.

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed for trial (See the ORDER SETTING TRIAL on the claim). You may talk with a lawyer before the hearing, but neither you nor the other party may have a lawyer represent you in small claims court. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses you may need.

☐ Check this box if you wish to discuss a settlement of this dispute at an informal conference.

2. If you wish to dispute the claim, but it would be very hard for you to appear at the time fixed by the court or in the City of San Diego, check the proper box below and explain.

☐ The date or time set would be a great hardship.

Reasons: \_\_\_\_\_ (Continue on reverse)

Indicate in order your preference as to time.

( ) Weekday

( ) Saturday morning

( ) Thursday evening

☐ A trial in the City of San Diego would be a great hardship. I request that the place of trial be changed to the City of \_\_\_\_\_ for the following reasons: \_\_\_\_\_

\_\_\_\_\_ (Continue on reverse)

**IF YOU DO NOT HEAR FROM THE COURT, THIS MATTER WILL BE HEARD AT THE TIME AND PLACE ORIGINALLY SET.**

3. You may make an out-of-court settlement with the plaintiff before the date set for trial. When the settlement is complete, ask the plaintiff to file a dismissal with the clerk of the court (plaintiff has this form of dismissal).
4. **IF YOU DO NOT APPEAR** or make an out-of-court settlement, a judgment of eviction may be entered against you together with the amount due on plaintiff's claim plus costs. This could result in **EVICTION, GARNISHMENT OF YOUR WAGES and TAKING OF YOUR MONEY OR PROPERTY.**
5. If you are not at least 18 years of age, bring your parent or guardian with you.
6. ☐ I need an interpreter at trial (indicate the language you speak): \_\_\_\_\_

I hereby declare under penalty of perjury that the information which I have stated herein is true and correct, and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, California.  
(place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )  
(notify the court if you change your)  
(address prior to final judgment. )

SD(ECA)

AVISO: Usted ha sido demandado.  
 Para obtener una copia de este forma en  
 español, llame al teléfono número (714) 236-2534

**NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION**

**IN SAN DIEGO SMALL CLAIMS COURT**

This form is a self mailer to be sent to the court by return mail if any of the check-boxes below apply to you. Complete this self mailer and keep your copy.

If necessary, get a friend to help you.

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed for trial (See the ORDER SETTING TRIAL on the claim). You may talk with a lawyer before the hearing, but neither you nor the other party may have a lawyer represent you in small claims court. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses you may need.

☐ Check this box if you wish to discuss a settlement of this dispute at an informal conference.

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Reasons: \_\_\_\_\_

(Continue on reverse)

Indicate in order your preference as to time.

( ) Weekday

( ) Saturday morning

( ) Thursday evening

☐ A trial in the City of San Diego would be a great hardship. I request that the place of trial be changed to the City of \_\_\_\_\_ for the following reasons: \_\_\_\_\_

(Continue on reverse)

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I hereby declare under penalty of perjury that the information which I have stated herein is true and correct, and that this declaration is executed on \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_, California.  
(place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )  
(notify the court if you change your )  
(address prior to final judgment. )

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en  
español, llame al teléfono número (714) 236-2534

PLAINTIFF (Name and address): \_\_\_\_\_

DEFENDANT (Name and address of each) \_\_\_\_\_

CLAIM OF PLAINTIFF  
AND ORDER  
(UNLAWFUL DETAINER)

## CLAIM OF PLAINTIFF

1. Defendant is a tenant of plaintiff in the residential property at (Address): \_\_\_\_\_
2. The rental is at the rate of \$ \_\_\_\_\_ per \_\_\_\_\_ and is payable on the \_\_\_\_\_ day of \_\_\_\_\_, which tenancy is not greater than month to month.
3. Defendant owes plaintiff the following sums not including court costs:
  - a. ☐ \$ \_\_\_\_\_ for rent, due as of (Date): \_\_\_\_\_ plus: \$ \_\_\_\_\_ per day thereafter.
  - b. ☐ \$ \_\_\_\_\_ for (Specify): \_\_\_\_\_
4. The notice to quit and proof of service have been filed with the court and the time specified in the notice has expired. Plaintiff has demanded payment of rent and possession of the premises. Defendant has not paid the rent demanded and is in possession of the premises without plaintiff's consent.
5. I understand that
  - a. I may talk to a small claims advisor without charge or to an attorney of my choice. I cannot be represented by an attorney at a small claims trial;
  - b. I must appear at the time and place for trial and have with me witnesses, papers, and other items needed to prove my claim;
  - c. I have no right of appeal from a judgment on my claim.

I declare (Certify) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): . . . . ., at (Place): . . . . . California.

\_\_\_\_\_  
Signature of declarant

## ORDER SETTING TRIAL

This matter is set for trial in the above entitled court at the date, time and place last shown below:

DATE

TIME

.....  
 .....  
 .....  
 .....

WEEKDAYS & EVENINGS

Department 1  
 Room 310, City Hall  
 San Francisco, Calif. 94102

SATURDAYS ONLY

Room 446, Hastings School of Law  
 Hyde & McAllister Streets  
 Civic Center  
 San Francisco, Calif. 94102



Dated: . . . . . Judge/Clerk. By. . . . .

IF YOU DO NOT APPEAR THE COURT MAY ORDER YOUR EVICTION FROM THE PROPERTY AND AWARD PLAINTIFF THE AMOUNT FOUND TO BE DUE UPON PLAINTIFF'S CLAIM AND ALSO COSTS OF THE ACTION INCLUDING COST OF SERVICE OF THIS ORDER, WHICH COULD RESULT IN GARNISHMENT OF YOUR WAGES AND TAKING OF YOUR MONEY OR PROPERTY.

This declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required.

SF Draft 2-2-78

CLAIM (UNLAWFUL DETAINER)  
AND ORDER

CCP 116.2, 116.4, 116.6, 117.1

NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION  
IN SAN FRANCISCO SMALL CLAIMS COURT

Read this form, keep it for your records. If you complete any of the items below, sign and return the completed self mailer to the court right away. If necessary, get a friend to help you.

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed for trial (See the ORDER SETTING TRIAL on the reverse). If you need help with your case, you may talk with a Small Claims Advisor without charge or you may talk with a lawyer of your choice before the hearing. Neither you nor the other party may have a lawyer represent you in a small claims case. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses you may need.

☐ Check this box if you want help from the Small Claims Advisor, or call (415)558-5170 between the hours of 9:00 a.m. and 3:00 p.m.

2. If you wish to dispute the claim, but it would be very hard for you to appear at the time fixed by the court or in the City of San Francisco, check the proper box below and explain.

☐ The date and time now set for trial present a great hardship. Reasons: \_\_\_\_\_

\_\_\_\_\_(Continue on Reverse of Self Mailer)

Indicate in order your preference as to time for trial:

( ) Weekday at 9:15 a.m. ( ) Saturday at 1:15 p.m. ( ) Monday at 9:00 a.m. ( ) Friday at 2:00 p.m.

☐ A trial in San Francisco would be a great hardship. I request that the place of trial be changed to the City of \_\_\_\_\_ for the following reasons: \_\_\_\_\_

\_\_\_\_\_(Continue on Reverse of Self Mailer)

IF YOU DO NOT HEAR FROM THE COURT, THE TRIAL WILL BE HELD AT THE TIME AND PLACE ORIGINALLY SET.

3. You may make an out-of-court settlement with the plaintiff before the date set for trial. When the settlement is complete, ask the plaintiff to file a dismissal with the clerk of the court (plaintiff has this form of dismissal).
4. IF YOU DO NOT APPEAR or make an out-of-court settlement, a judgment of eviction may be entered against you together with the amount due on plaintiff's claim plus costs. This could result in EVICTION, GARNISHMENT OF YOUR WAGES and TAKING OF YOUR MONEY OR PROPERTY.
5. If you are not at least 18 years of age, bring your parent or guardian with you.
6. ☐ I need an interpreter at trial (indicate the language you speak): \_\_\_\_\_.

I hereby declare under penalty of perjury that the information which I have stated herein is true and correct, and that this declaration is executed on \_\_\_\_\_ at

(date)

\_\_\_\_\_, California.  
(place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )  
(notify the court if you change your)  
(address prior to final judgment. )

SF(ED) Draft 2-2-78

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en  
español llame al numero (415) 000-0000

NOTICE TO DEFENDANT: YOU HAVE BEEN SUED FOR EVICTION  
IN SAN FRANCISCO SMALL CLAIMS COURT

This form is a self mailer to be returned to the court immediately if any of the check-boxes below  
apply to you. Complete this self mailer just as you did the form on the  
backside of the claim. If necessary, get a friend to help you.

1. Read the claim of plaintiff. If you don't agree tell your side to the court at the time fixed  
for trial (See the ORDER SETTING TRIAL on the reverse). If you need help with your case, you may  
talk with a Small Claims Advisor without charge or you may talk with a lawyer of your choice  
before the hearing. Neither you nor the other party may have a lawyer represent you in a small  
claims case. Bring all WITNESSES, PAPERS, and other items needed to establish your defense to  
trial. At your request, the clerk will give you subpoenas to require attendance of any witnesses  
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☐ Check this box if you want help from the Small Claims Advisor, or call (415)558-5170  
between the hours of 9:00 a.m. and 3:00 p.m.

2. If you wish to dispute the claim, but it would be very hard for you to appear at the time fixed  
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\_\_\_\_\_  
(Continue on Reverse of Self Mailer)

Indicate in order your preference as to time for trial:

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5. If you are not at least 18 years of age, bring your parent or guardian with you.
6. ☐ I need an interpreter at trial (indicate the language you speak): \_\_\_\_\_.

I hereby declare under penalty of perjury that the information which I have stated herein is  
true and correct, and that this declaration is executed on \_\_\_\_\_ at  
\_\_\_\_\_, California.  
(date) (place)

Signature \_\_\_\_\_

Mailing Address \_\_\_\_\_

Telephone: (Days) \_\_\_\_\_ (Evenings) \_\_\_\_\_

(To protect your rights, be sure to )  
(notify the court if you change your)  
(address prior to final judgment. )

SF (EM)

AVISO: Usted ha sido demandado.  
Para obtener una copia de esta forma en  
español llame al numero (415) 000-0000

COURT, SMALL CLAIMS DIVISION  
JUDICIAL DISTRICT

(Address and Telephone Number of Court)

COUNTY, CALIFORNIA

PLAINTIFF (Name and address):

NO S.C.  
DEFENDANT (Name and address of each):

CLAIM OF DEFENDANT

Hearing Date \_\_\_\_\_

1. Plaintiff owes defendant (Name): \_\_\_\_\_  
in the sum of: \$ \_\_\_\_\_ not including court cost, for: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Defendant has demanded that plaintiff pay this sum and it has not been paid.

3. I understand that

- a. Although I may consult an attorney, I cannot be represented by an attorney at the trial in small claims division;
- b. I have no right of appeal from a judgment on my claim.
- c. By filing this claim, I waive any claim to an amount greater than \$750.

I declare (Certify) under penalty of perjury that the foregoing is true and correct and that this declaration is executed on (Date): \_\_\_\_\_, at (Place): \_\_\_\_\_, California.

PLEASE TAKE NOTICE.

\_\_\_\_\_  
Signature of declarant

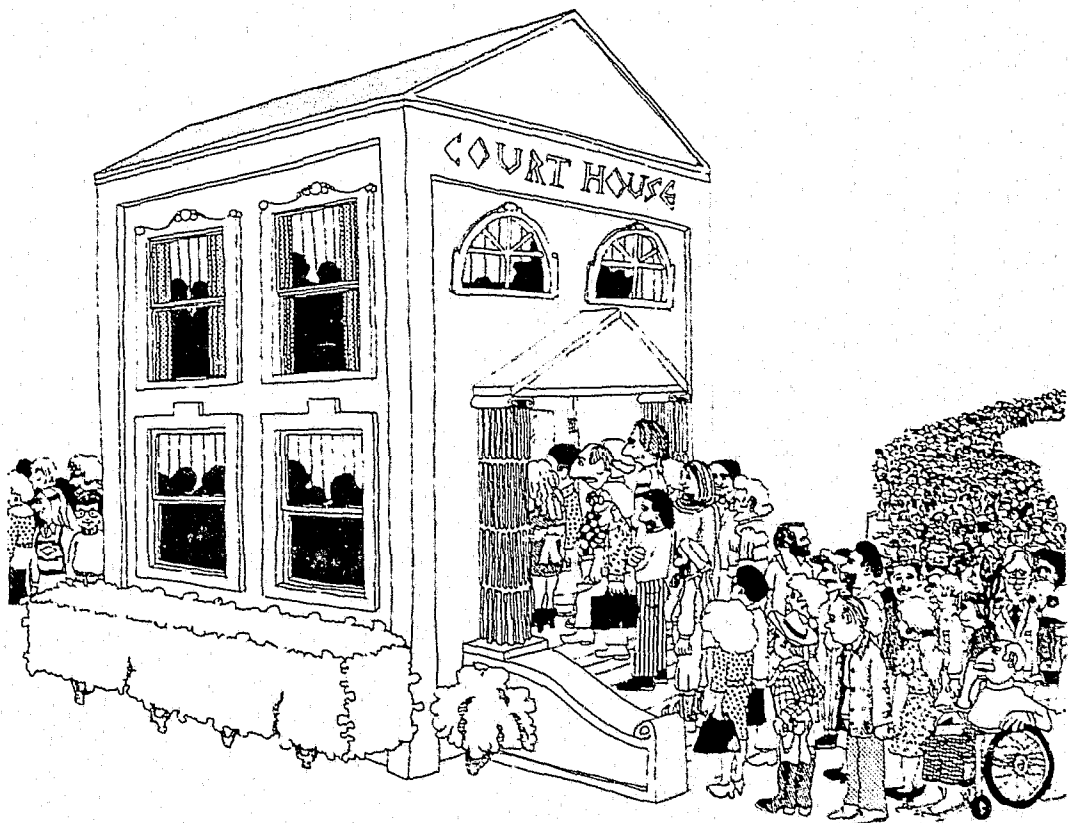
1. Anyone 18 years of age or more who is not a party to the action may serve the Claim of Defendant.

2. The plaintiff must be served with a copy of the claim of defendant at least 5 days before the trial date unless plaintiff has served defendant 10 days or less before the trial date in which case the claim of defendant shall be served at least 1 day before the trial.

The declaration under penalty of perjury must be signed in California, or in a state that authorizes use of a declaration in place of an affidavit, otherwise an affidavit is required.

APPENDIX D:  
SMALL CLAIMS COURT LITIGANT MANUAL

# How To Use Small Claims Court



STATE OF CALIFORNIA  
DEPARTMENT OF  
**Consumer  
Affairs**

## THE SMALL CLAIMS COURT: A SIMPLIFIED CHECKLIST

1. Determine the full, legal name and address of the person(s) or business you are suing. This will help you decide where you must file your claim.
2. Visit the clerk of the small claims court, and fill out the form given to you. You must pay a fee of \$2.
3. Arrange for the order to be served on the defendant (but not by yourself). The clerk will mail it for a \$2 fee, or you may authorize someone to serve it.
4. While waiting for the trial, prepare your case. Gather all important documents and plan your testimony—be brief and to-the-point. Contact all potential witnesses, and arrange for them to come with you to the trial—or obtain a subpoena from the clerk for any witness who will not come voluntarily. If you need an interpreter, find out if one is available at small claims court. Otherwise, bring your own.
5. Arrive early for your hearing and go to the room where your case will be heard. When you get to the room, check the calendar to see if your case is listed.
6. Give your testimony, presenting only the facts. Be brief. Submit all papers and documents you think will help your case.
7. If you win, ask the defendant courteously for the money awarded you in the judgment.
8. If you have difficulties in collecting your money, ask the clerk to assist you.
9. As plaintiff, you are not allowed to appeal if you lose (unless you must pay as the result of a Claim of Defendant).



STATE OF CALIFORNIA

EDMUND G. BROWN JR.  
*Governor*

LEONARD M. GRIMES JR.  
*Secretary, Agriculture & Services*

RICHARD B. SPOHN  
*Director, Consumer Affairs*

Published 1978

**Municipal Court, Small Claims Division**  
Sacramento County Municipal Court District  
Courthouse, Room 104  
720—9th Street  
Sacramento, CA 95814  
Telephone (916) 440-5713

### SPECIAL NOTICE

This booklet applies only to small claims cases filed and heard in the *Sacramento* Judicial District during the period between April 1, 1978 and March 31, 1979.

(Para obtener una copia de este folleto en español llame al teléfono número (916) 440-5713, or visite el Oficial de la Corte en Small Claims Division, Courthouse, 720—9th Street, Sacramento.)

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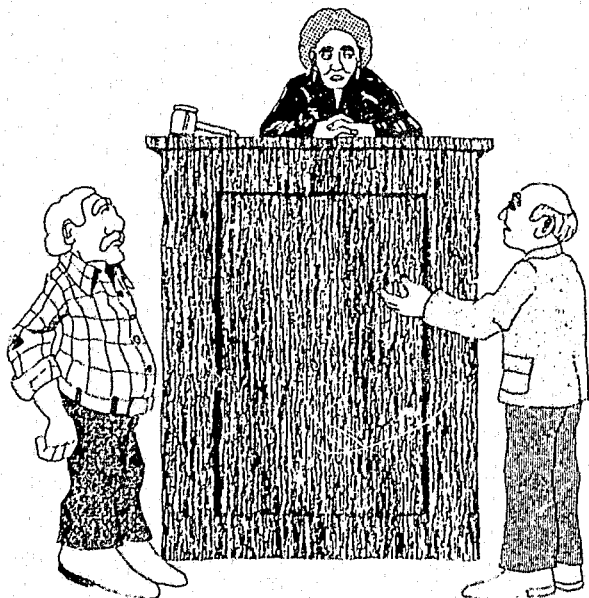
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## I. INTRODUCTION

### What Is Small Claims Court?

*Small claims court* is an informal court where you can sue anyone who owes you money. It's easy, speedy, and inexpensive. No one may be represented by a lawyer in this court. The *plaintiff* is the person who sues. The *defendant* is the person who is sued. The maximum amount you can sue for is \$750. You must be 18 or older to sue in this court; normally, a minor may sue only through a guardian.

When the *suit* is heard by the *judge*, each person will simply and informally explain his or her side of the matter. After the *hearing*, the judge will decide the case. The plaintiff may not *appeal* if he or she loses, but the defendant may do so.



Since you live or do business in a district where a special experiment is taking place, you may ask to have your case heard on a *week night* or *Saturday*. Also, the court clerk's office will be open at least one night each week so you can get information on how to start your suit. For those who do *not* speak English, *translated court forms*, *bilingual court clerks*, and *courtroom interpreters* are available upon request.

This special experiment is being carried out in San Francisco, San Diego, and Sacramento. Its purpose is to improve small claims court through new programs which make the court easier to use. After the experiment is completed in March 1979, a report will be made to the Legislature, and the Legislature will then decide whether to adopt any of the experimental programs and procedures statewide.

### How Do I Use This Booklet?

If you are the *plaintiff*, you should first read Chapter II, "**What If I Am The Plaintiff?**" This chapter tells you how to file a small claims case and notify the defendant.

If you are the *defendant*, you should first read Chapter III, "**What If I Am The Defendant?**" It tells you what to do when you are sued. It also tells you how to fill out the forms you received when you were notified of the suit against you.

"**What Both Plaintiff And Defendant Should Know**", Chapter IV, covers how to prepare your case and what happens when the case is heard. *It is very important to read this chapter before you have your hearing.*

"**After The Hearing**", Chapter V, tells how the plaintiff can *collect a judgment* for money damages. It also covers the defendant's right to *appeal* a judgment and how to legally *protect property* from being seized to pay off a judgment.

If a term you don't understand is used in this booklet, check the "**Definitions**" on page 15 to find out its meaning. You will find definitions there for many of the words which appear in italics in the booklet.

### Before You Sue

You may be able to settle your dispute without suing. For example, if you have a claim against a business, you may be able to resolve it with the help of local consumer groups, the District Attorney's Office, Better Business Bureau, or the California State Department of Consumer Affairs. Check the white pages of your telephone book for the number for these offices. If you have a claim for unpaid wages, the Labor Commissioner may be able to help you solve it. The telephone number is listed under "California, State of" in the white pages of the telephone book.

If you cannot resolve your claim through these means, you may be able to sue in small claims court. This booklet is designed to guide you through the steps involved in pursuing or defending your case.

## II. WHAT IF I AM THE PLAINTIFF?

### Why Do I Sue?

If someone has injured you, damaged your property, refused to pay a personal or business debt, given you defective service, sold you defective goods, owes you back rent, or harmed you in some other way, you may sue for money damages up to \$750.

### Why Small Claims Court?

There are three reasons why you may want to sue in small claims court:

- 1) *It is speedy*—cases are decided within a few weeks after filing.
- 2) *It is simple and informal*—you do not need a lawyer. Although you may consult a lawyer before your hearing, a lawyer may not represent you or anyone else in court.
- 3) *It is inexpensive*—it may cost as little as \$4 to bring a claim in small claims court.

### What Else Should I Consider?

You may sue for money damages *only*, unless you are a landlord who rents residential property on a month-to-month basis. In that case, you may also sue to evict a tenant who won't pay rent. However, it may take at least a month to get a small claims eviction order allowing you to retake possession of the property.

*The maximum you can sue for is \$750.* If your claim is for a greater amount, you must either sue in a formal court or *reduce* your claim to \$750. You may not divide your claim and file two suits to obtain all of it.

If the judge decides in your favor, you may be allowed to recover the costs of your suit. If you lose on your claim, you may *not appeal* the decision. You may *only* appeal if the defendant files a *Claim of Defendant* against you, and the judge decides you owe the defendant money.

Don't be afraid to file your claim, even if it has been many months since the incident in dispute. However, if the claim is over a personal injury, it must be filed within a year. If your complaint is against a government agency, you normally must file a claim with the agency itself within 100 days of the event before you can sue in court. The time for filing other claims is less strict. If there is a question, the judge will decide whether the suit was filed correctly and in time.

### Who Can Sue?

Any mentally competent person 18 years of age or older may use the court. Also, an *emancipated* minor may sue. However, most persons under 18, as well as those who are mentally incompetent, must file a claim through a *guardian ad litem* appointed by the court. The guardian can be a parent, a relative, or an adult friend. The *small claims court clerk* can provide the proper form for appointment of a guardian.

You don't have to be a citizen of the United States to file a claim.

A business or corporation must be represented by a non-lawyer director, officer, or regular employee familiar with the disputed matter. A lawyer who is a partner, officer, or director may appear on behalf of a business or corporation only under very limited circumstances.

In order to sue for damage to your automobile, you must be the registered owner.

As a general rule, a collection agency or *an assignee* (one who has the right to collect a debt originally owed to another person), may not sue in small claims court.

### Whom Can I Sue?

Any person (including a minor in most cases), business, or government agency can be sued in small claims court. When you file your claim, you will need the full and exact name and address of those you are suing. If you aren't sure who is at fault, you should sue all those who may be responsible.

If your case involves an automobile accident, you should name both the driver and the registered owner of the car as defendants. You may obtain the name of the registered owner by applying at any office of the Department of Motor Vehicles for a registration history. The telephone number and location of the office nearest you will be listed in the white pages of the telephone book under "California, State of". You must know the other vehicle's license number, and a fee of \$2 will be charged. You may request that this fee be added to the judgment if you win.

### What If I Want To Sue A Business Or Corporation?

To sue a *business* which is *not* a corporation, you should name *both* the business itself and the person or persons who own the business as defendants.

If you wish to sue a *corporation*, you must name the corporation as defendant and also provide the name of an authorized *agent* or officer of the corporation so that the corporation can be properly notified.

In either case, you must use the legally correct name of the business or corporation. Such information may be available from the city license bureau, the county clerk's office, the Better Business Bureau, or the Corporate Status Unit, Secretary of State, 111 Capitol Mall, Sacramento, CA 95814, telephone (916) 445-2900.

### Where Do I File Suit?

Normally, you must file your suit in the area (called *judicial district*) where the defendant lives or where the business involved is located. You may also sue where the damage or accident occurred, where the disputed contract was signed, or where the contract was to be carried out. If the case involves a *retail installment account or sales contract* or a *motor vehicle finance sale*, you may file suit where you presently live, where you lived when you entered into the contract, where you signed the contract, or where the goods or vehicle are permanently kept.

If you have a question about where you should file your claim, the small claims court clerk will be able to help you. See the first page of this booklet for the location of the court near you.

## How Do I File My Suit?

Visit the small claims clerk in the court where you wish to file your case. For your convenience, the clerk's office is open at least one evening a week until 7:00 p.m. You may also request the necessary forms by mail, but be sure to enclose a self-addressed, stamped, legal-size envelope if you do so.

Before you may file your claim, you must request, orally or in writing, that the defendant pay the amount owed. You also need the following information:

- 1) the name and address of the person, business, or government agency you are suing,
- 2) how much money you are owed,
- 3) the reason you are owed money, and
- 4) the date and place the disputed event took place.

After the form is completed, return it to the clerk either by mail or in person with a filing fee of \$2. You will be asked to give your preferences regarding a time for your hearing—evening, weekday, or Saturday. The clerk will try to give you a convenient time. Also, the clerk will know your preferences if, for some reason, the time or date must be changed. Tell the clerk at this time if you will need an interpreter when your claim is heard.

If you win your case, you may request recovery of your costs for: 1) filing, 2) notifying the defendant, and 3) witness fees. Normally, lost wages, travel expenses, or other expenses cannot be recovered as costs.

## How Is The Defendant Notified?

The clerk will prepare the *Claim of Plaintiff and Order* which tells the defendants they are being sued and must appear in court if they wish to defend themselves against your claim. This paper must be given to, or "served on," the defendants. Although *you cannot serve the paper yourself*, it can be done in four ways. 1) **Certified mail**—you may ask the clerk to send it by certified mail. This method of service costs \$2 for each defendant. The fee is collected by the clerk when you file your claim. 2) **Service by a law officer**—you may have it served by a *law officer* for a fee of \$8.50 for each defendant. The clerk will direct you to the proper office. 3) **Personal service**—any person 18 or older who is not a *party* in your case may serve the order by giving it to the defendant personally. The person who serves the paper—the *process server*—must sign a special form (*proof of service*) showing when service was made, and return it to the court clerk as soon as possible. This service may be done by a *registered process server* for a fee. They are listed in the yellow pages of the telephone book under process serving. 4) **Substituted service**—This type of service is complex and technical; it should be attempted only by a law officer or registered process server. The paper may be served by leaving a copy at the defendant's office with the person in charge or at the defendant's residence with a person who is competent and at least 18 years old. The person who receives the paper must be told about its contents. Another copy must be mailed, first-class, postage prepaid, to the defendant at the address where the paper was left.

## How Much Notice Must The Defendant Receive?

All defendants except those in eviction cases must be served at least 15 days before the hearing.

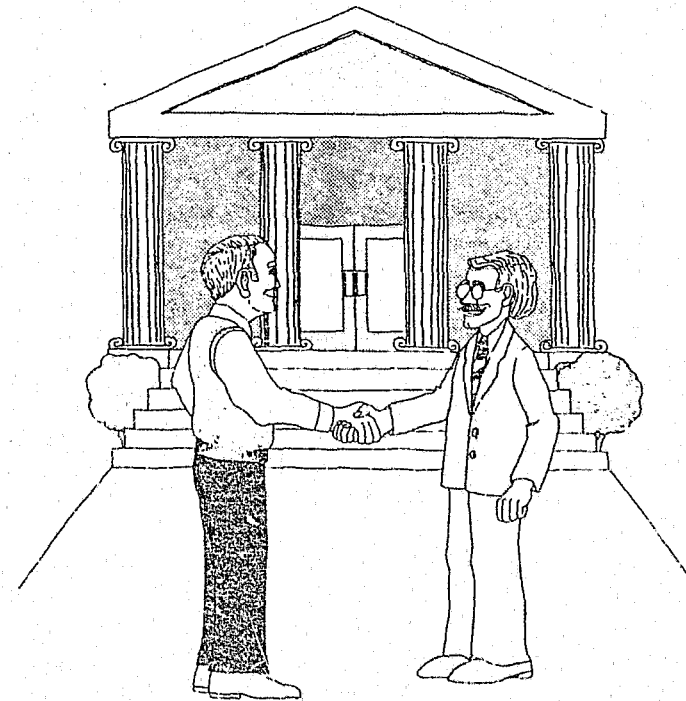
In *eviction* cases, the defendants must be served at least 10 days before the hearing.

## What About Witnesses?

If you believe someone could be a witness for your case but will not come to court voluntarily, ask the court clerk to *issue a subpoena*. If you need documents or other papers, the clerk can issue a subpoena for those as well. A subpoena must be served on the witness personally by any person including a law officer or you. *Proof of service* must be filed with the clerk. Witnesses have the right to demand a fee of \$12 a day and 20¢ a mile, one way, for travel expenses which you will have to pay. If you win your case, this expense will be added to the amount of your judgment as part of your court costs.

## Should I Try To Settle Out-Of-Court?

Once the defendant receives the notice that you are suing, he or she may be willing to settle the case out-of-court instead of having a hearing. If you reach a complete *out-of-court* settlement with the defendant, go back to the clerk and arrange a *dismissal* of your case. If the settlement involves the payment of monthly installments, you may have the hearing postponed until all the payments are made and then have the case dismissed. If the defendant has filed a *Claim of Defendant* against you, make sure that is also dismissed.



### III. WHAT IF I AM THE DEFENDANT?

#### What Should I Do If I Am Sued?

If you receive an order to appear at a small claims hearing, you probably know the nature of the claim being made against you. If not, find out immediately from the person suing you. You may either settle the case *out-of-court* or have a hearing to dispute the plaintiff's claim.

IF YOU FAIL TO APPEAR IN COURT AT THE PROPER TIME AND DATE, YOU MAY LOSE THE CASE BY DEFAULT. A JUDGMENT CAN BE ENTERED AGAINST YOU, AND YOUR MONEY OR PROPERTY CAN BE SEIZED.

If, after reading this booklet, you still have a question about what you should do, contact the *small claims clerk*. The clerk is located at the address listed on the first page of this booklet.

#### By When Must I Get Notice Of The Suit?

You should be served with the *Claim of Plaintiff and Order* at least 15 days before the hearing. If you are served less than 15 days before the hearing, you may do one of the following:

1) appear at the time and place set for hearing and agree to have the case heard at that time.

2) postpone the hearing if you were notified 6 to 14 days before the hearing. Fill out the self-mailer you received explaining that you were notified late and indicating the time you would prefer a hearing. Return the self-mailer to the court within 5 days.

3) choose not to appear if you receive notice 5 days or less before the hearing. In this case, the court will postpone the hearing for at least 10 days and notify you of the new date.

In an *eviction* case, you have the options listed above if you receive notice 10 days or less before the hearing, but you must return the self-mailer to the court within 4 days if you use option (2) above.

#### What About The Forms I Received?

Carefully read the forms you received from the court and fill them out according to the instructions. Keep the copy on the reverse side of the *Claim of Plaintiff and Order* for your records. RETURN THE SELF-MAILER TO THE COURT WITHIN 5 DAYS (4 DAYS IN AN EVICTION CASE) IF ANY OF THE ITEMS IT CONTAINS APPLY TO YOU.

1) If the hearing time or date presents a serious problem for you, check the proper box, tell the reason why in the space provided, and indicate in order your preference for a time: weekday, evening, or Saturday. The court will try to set a time for hearing which is convenient for all involved.

2) If it would be a serious problem for you to have the hearing in the court specified, check the proper box. Then, in the space provided, write the court location where you want the case heard and the reason why the case should be moved. The court will notify you if the case is transferred.

3) If you need an interpreter at the hearing, check the proper box and indicate the language you speak in the space provided. An interpreter will be

provided by the court at no charge to those who speak Spanish. The court has a list of interpreters who speak other languages. There may be some charge for their help.

After you complete the form, fold it in thirds, seal it, put a stamp on it, and mail it. If you request a change in the time or place, the court will inform you by postcard, letter, or telephone whether your request has been granted and the date, time, and place of your hearing.

#### Should I Settle Out-Of-Court?

If the plaintiff's claim is justified, you can save money and inconvenience by settling the claim out-of-court. If a settlement is reached, make sure the plaintiff has the suit *dismissed*. You can check with the clerk to confirm that the proper form has been filed.

#### What If I Dispute The Claim?

If you believe that all or part of the plaintiff's claim is unjustified, you should appear at the hearing to tell your side. (Watch for extras, such as excessive "interest," "carrying charges," "collection fees," and "late charges," which the plaintiff might not legally collect.) If there are witnesses who will help your case, but who may not come to court voluntarily, contact the court clerk in order to have *subpoenas* issued. (Read the section under *What About Witnesses?*, p. 7.)

#### What If I Owe The Money But Can't Pay It All At Once?

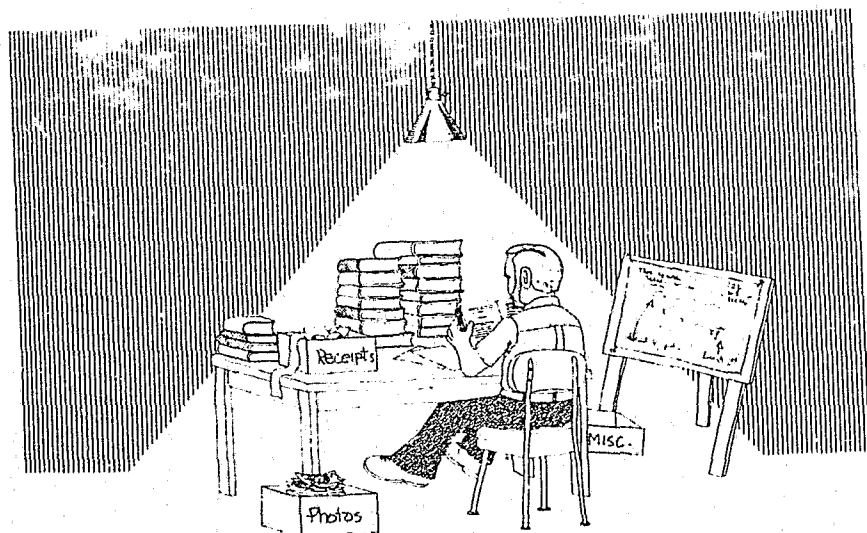
If you do not dispute the plaintiff's claim *in any way* and admit that you owe the money claimed by the plaintiff, but cannot afford to pay it all at once, see Item 3 on the form on the reverse side of the *Claim of Plaintiff and Order*. Check the box, and fill in the requested information. If this box is checked, the court will *enter a judgment against you* and may order you to pay the plaintiff in monthly installments. The court will notify you of the terms of the judgment.

If, before the hearing date, you decide you wish to dispute the plaintiff's claim, you may do so by appearing at the time and place set on the notice you received.

#### What If The Plaintiff Owes Me Money?

If you believe the plaintiff owes you money as a result of the disputed event, you should file a *Claim of Defendant*. The clerk will help you with this form. It must be served on the plaintiff. (See the section, *How Is The Defendant Notified?*, p. 6.) If you received notice of the suit *more than* 10 days before the hearing, then you must give the plaintiff at least 5 days notice. If you received notice *10 days or less* before the hearing, then notice to the plaintiff of the *Claim of Defendant* will be valid as long as it is given at least one day before the hearing.

If your claim is for \$750 or less, then the case may be heard in small claims court. If you wish to sue the plaintiff for more than \$750, you should see the clerk about having the case transferred to a formal court. You may *not divide* your claim and file two suits for it all.



## IV. WHAT BOTH PLAINTIFF AND DEFENDANT SHOULD KNOW

### How Do I Prepare For The Hearing?

Once the hearing date is set, and the parties and witnesses are served, gather all your evidence together and plan what you want to say. Useful evidence may include a repair bill, a sales slip, photographs, a cancelled check, an account book, a lease, or a contract. You may want to draw a diagram if that will make your case easier to understand. Write down what happened and organize your arguments in the order that best explains your position. You will have a limited time to explain your side, so give your most important points first. If your case involves defective goods or services, you may want to ask an expert to come to court to testify for you. If the expert cannot attend court, get a written statement from him or her.

**TAKE TO THE HEARING WHATEVER WILL PROVE THAT YOU SHOULD WIN.**

If you know you will be unable to attend, notify the other parties and the court clerk immediately to try to arrange a postponement (*continuance*). In case of an emergency, have someone go to court for you to ask for a continuance.

### What Time Should I Arrive At The Hearing?

The notice you received from the court tells you what day and time to appear for the hearing. Arrive early and go to the room specified by your notice. The *Calendar*, posted outside the hearing room, will contain a list of cases to be heard that day. Cases are not necessarily heard in the order listed.

Before the hearing begins, an officer of the court will attempt to find out whether all parties in the cases being heard that day are present. If you have asked for an interpreter, he or she will be present when your case is heard.

### What Happens At The Trial?

Before court starts, the judge or another court officer may explain small claims court procedures. Listen carefully! When the time comes for your case, the court clerk will announce it. Then, all parties and witnesses should come forward. All those involved in the case will be given an oath to tell the truth. (In some courts, everyone is given the oath together before the first case is called.)

The plaintiff speaks first. When the plaintiff and his or her witnesses finish speaking, it is the defendant's turn. After the defendant and his or her witnesses are through, the plaintiff may reply to what the defendant said.

When you speak, you should be truthful, brief, and to-the-point. If you have an important document or paper, mention it and give it to the judge. Do not argue with or interrupt the other party or the judge.

Most important of all, *relax*. The judge will take special care to make sure all the important facts are presented. If the judge asks you any questions, answer them truthfully, briefly, and directly.

If the defendant does not appear at the trial, the plaintiff does not automatically win the case. The plaintiff must still present enough testimony and evidence to convince the judge that he or she should win. If the plaintiff does so, the judge will rule the defendant in *default* and award a *judgment* to the plaintiff. The plaintiff must sign a statement saying that, to the best of his or her knowledge, the defendant is not a member of the military at the time of trial (*Declaration of Non-military Status*).

If the defendant has filed a *Claim of Defendant* in the case, that will be heard at the same time.

### When Does The Judge Decide?

Often, the judge will announce the decision immediately. Sometimes, the judge may want to think the case over, examine some particular law, or talk to someone outside court. In this event, the case will be taken under *submission*, and you will be notified of the decision by mail. If you do not hear from the court within two weeks, contact the small claims clerk. *If you change your address, inform the clerk immediately. Failure to do so could affect your legal rights.*

The decision will be based on what the judge believes is fair and in accordance with the law and common sense. If the judge decides the plaintiff is correct, a judgment will be given in his or her favor. The judgment will be for the amount the judge believes is proper; however, in no case, will it be for more than was requested. The judge may also award court costs to the winner.

## V. AFTER THE HEARING

### What If The Plaintiff Gets A Default Judgment?

If you wish to dispute a *default judgment* which was entered against you because you *failed to appear* at the small claims hearing, you must first ask the court to *set aside* the judgment. See the clerk and file a *Declaration and Notice of Motion to Vacate Judgment* within 20 days after you receive notice of the judgment. You must have a good reason and proof, if possible, to explain why you did not appear at your hearing. The court will decide whether or not to give you a new hearing.

### Who Can Appeal?

If the plaintiff wins on his or her claim, the defendant can appeal. If the defendant wins, the plaintiff cannot appeal unless the defendant has won a *Claim of Defendant*. A defendant who loses a *Claim of Defendant* cannot appeal.

### How Do I Appeal?

An appeal must be filed within 20 days of the decision. If you wish to file an appeal, see the small claims court clerk. It costs about \$20 to file an appeal.

### What Happens If The Case Is Appealed?

An appeal is a request to the superior court to reverse the decision of the small claims court. It will be treated as a new trial and handled as a formal court trial in which either side may have a lawyer and a jury may be requested. If the decision of the small claims court for the plaintiff is upheld, then the defendant must pay the plaintiff the amount of the judgment plus interest, costs, and \$15 as an attorney's fee. While the case is being appealed, the defendant does not have to make any payments on the small claims court judgment.

### How Do I Collect My Money?

If the court awards you a money judgment, first ask the defendant by letter, telephone, or in person to pay you voluntarily. If the defendant refuses to pay, see the court clerk for help. A judgment is good for at least 10 years.

### How Can The Court Help Me Collect?

THE COURT IS NOT A COLLECTION AGENCY. IT WILL NOT COLLECT THE MONEY FOR YOU. IT WILL SUPPLY ORDERS AND DOCUMENTS TO HELP YOU COLLECT.

The small claims clerk will give you a form for a *Writ of Execution*. This form tells a law officer to take control of (levy upon) an asset of the defendant (now called the *Judgment-Debtor*) in order to pay the judgment. You, the plaintiff, are now called the *Judgment-Creditor*.

To get a *Writ of Execution*, you will need to know at least one of the following: 1) what property the Judgment-Debtor owns and where it is located, 2) where the Judgment-Debtor works, 3) where the Judgment-Debtor's bank account is,

4) where the Judgment-Debtor's business is located, or 5) where any valuable personal property of the Judgment-Debtor is located.

You can get only one *Writ of Execution* in a county at a time; however, you may obtain separate Writs in as many counties as necessary at the same time. Each writ costs \$1.50.

In addition to the amount of judgment, you may recover your costs following judgment and interest computed at the legal rate of 7 percent. Ask the clerk to add these amounts to the *Writ of Execution*.

### How Do I Find The Judgment-Debtor?

If you do not know where to find the Judgment-Debtor, try the following steps: 1) check with neighbors at the Judgment-Debtor's former residence, 2) check with former co-workers, 3) check the telephone directory and directory assistance operator for a new listing, 4) check in the City Directory kept at most city libraries, 5) check the rolls of the Registrar of Voters for the county where you believe the Judgment-Debtor lives, 6) purchase a change of address record from the U.S. Postal Service for \$1, or 7) purchase an automobile registration history or driver's license record from the California State Department of Motor Vehicles.

### How Do I Locate The Judgment-Debtor's Assets?

If you do not know where the Judgment-Debtor's assets are located, you may require the Judgment-Debtor to come back to court to tell you. Ask the clerk to assist you in filing a form called *Order for Appearance of Judgment-Debtor* (also called *Order of Examination*). This order requires the Judgment-Debtor to appear at a hearing where you can ask questions about his or her assets. The order must be served on the Judgment-Debtor. (See *How Is The Defendant Notified?* p. 6.) However, if the home or place of business of the Judgment-Debtor is more than 150 miles from the court, you must follow special rules to require an appearance. See the clerk for the necessary procedures.

### What Else Can I Do To Collect?

The Judgment-Creditor may also obtain an *Abstract of Judgment* from the clerk for \$1.50. The Abstract can be recorded with the County Recorder against real estate owned by the Judgment-Debtor. If the property is sold, the debt must be paid out of the sale price.

### What Can The Judgment-Debtor Do?

If you can't pay a judgment entered against you, you may be able to legally protect some of your property from being taken to pay the debt. Such necessities of life as your house, furniture, clothes, wages, and other personal property may be protected under certain circumstances.

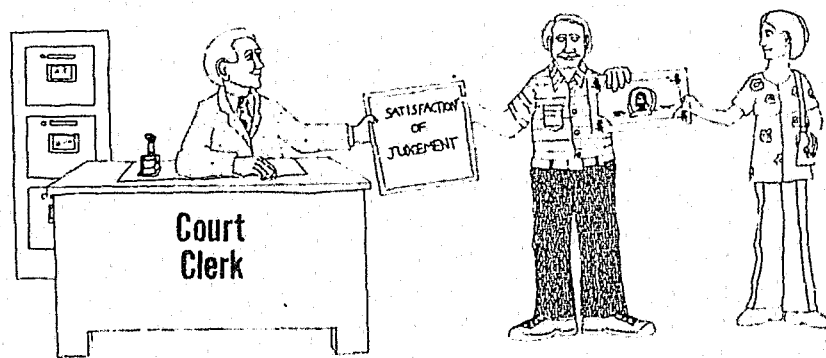
To protect your property, you must file a *Claim of Exemption*. See the back of the *Writ of Execution* for information. The form must be filed within 10 days of your receipt of the *Writ of Execution*, so *contact the clerk immediately if you need help*.

If you believe that the Judgment-Creditor has asked for costs which he should

not get, see the clerk immediately to file a *Motion to Tax Costs*. The clerk will set a hearing to examine whether the amount requested is justified.

### What If A Claim Of Exemption Is Filed?

The Judgment-Creditor may challenge a Claim of Exemption by filing a challenge within 5 days of receipt of the Claim. Otherwise, the Claim will be considered valid. The clerk can help you file a *Counter Declaration to Claim of Exemption* form.



### What Happens When The Judgment-Creditor Is Paid?

When the judgment is fully paid by the Judgment-Debtor, the Judgment-Creditor must file a *Satisfaction of Judgment* form with the clerk. The court may penalize the Judgment-Creditor for failure to file this form and award the Judgment-Debtor damages.

The Judgment-Debtor should make sure that the *Satisfaction of Judgment* is filed in order to clear the record. If you cannot get the Judgment-Creditor to file the form, see the clerk for help.

## VI. DEFINITIONS

**Agent**—Person who has the power to act for another person.

**Appeal**—Request to a higher court to reverse the decision of a lower court. An appeal from small claims court goes to superior court for a new trial.

**Assignee**—Person to whom property, or the right to do something is transferred. For example, a creditor may sell or give the right to collect a debt to another person.

**Bailiff**—Person in the court who keeps order. The bailiff is a law officer.

**Calendar**—List of cases to be heard in court on that day. When a case is taken *Off Calendar*, it is removed from the list of cases to be heard by request of one of the parties.

**Claim of Defendant**—Paper which tells how much money the defendant believes the plaintiff owes him or her.

**Claim of Exemption**—Statement by Judgment-Debtor that certain property should be legally protected from being seized to pay the judgment.

**Claim of Plaintiff and Order**—Paper which explains the plaintiff's claim and tells the amount the plaintiff believes is owed. It also tells the defendant when to appear for a hearing.

**Collection**—Means to obtain money owed as result of a judgment.

**Continuance**—Postponement of the hearing of a case due to a request by one of the parties.

**Costs**—Direct expenses involved in carrying out a lawsuit.

**Default**—Decision in favor of the plaintiff where the defendant did not come to the hearing.

**Defendant**—Person who is sued in a lawsuit.

**Dismissal**—Outcome when a case is dropped.

**Emancipated**—Person under 18 years old who is married or who is not under the control of a parent or guardian.

**Eviction**—Action taken by a landlord to force a tenant to move from the landlord's property because the tenant has not paid rent.

**Exemption**—To be excused from an obligation.

**Guardian Ad Litem**—Person who is appointed by a judge to act for another person who is too young or too ill to legally act for him- or herself.

**Hearing**—Trial

**Judgment**—Decision of the judge which declares the winner of the lawsuit.

**Judgment-Creditor**—Person to whom money is owed as a result of a judge's decision.

**Judgment-Debtor**—Person who owes money as a result of a judge's decision.

**Law Officer**—Sheriff, marshal, or constable.

**Levy**—To seize property by court order.

**Motor Vehicle Finance Sale**—Purchase of a car, truck, or other vehicle where monthly payments are paid according to a contract, and either (1) the buyer becomes owner only after at least some of the payments are made or (2) the seller may repossess the vehicle if payments are not made.

**Order for Appearance of Judgment-Debtor**—Paper which tells the Judgment-Debtor to come to court so that the plaintiff can ask questions about the defendant's assets.

**Party**—Person or group which is on one side in a lawsuit.

**Plaintiff**—Person who starts the lawsuit.

**Process Server**—Person who delivers the court papers to a party or witness.

**Retail Installment Account**—Contract or agreement to pay for items purchased by monthly payments including a finance or service charge.

**Self-mailer**—Form delivered to defendant with Claim of Plaintiff and Order which defendant should return to the clerk if the hearing time, date, or place presents a problem or if the defendant needs an interpreter.

**Service of process**—Delivery of court papers to a party or witness in the suit. Service can be carried out by certified mail, a law officer, personal service, or substituted service.

**Set aside**—To erase or remove.

**Stipulate**—Agreement by both parties.

**Submission**—Where the judge wishes to consider the case further following the trial before making a decision. The parties are notified by mail of the decision.

**Subpoena**—Court order which requires a person to come to court. *Subpoena Duces Tecum* is a court order which requires a person to bring specified papers or books to court.

**Unlawful Detainer**—Where a tenant keeps possession of the place where he or she lives after not paying rent to the landlord.

**Writ of Execution**—Paper which gives a law officer the right to seize assets of the Judgment-Debtor in order to pay a judgment.

## IV. SMALL CLAIMS ADVISORS

### What Is A Small Claims Advisor?

The small claims advisor is an attorney who can give you legal advice about your case. The advisor can help you decide whether you have a reason to sue, whom to sue, where to file your claim, how much money to claim, how to give the other party notice, what things you should bring to the hearing, and what persons or documents you should legally require to be present at the hearing. The advisor can also help you organize the facts and proof you wish to present to the judge.

In addition, if you are a defendant, the advisor can help you decide if you have a reason to sue the plaintiff through a *Claim of Defendant* and whether it should be filed in a formal court.

The advisor may contact the opposing parties or their attorneys to try to settle the case out-of-court. If you receive a judgment in your favor, the advisor can suggest how you can collect the amount of money awarded. Or, if you have a judgment against you, the advisor can help you decide whether to *appeal* the decision and how to legally protect your property from being seized.

The advisor cannot appear in court, talk to the judge about your case, nor prepare any document for you to present at your hearing. However, the advisor may prepare a *stipulated judgment* where both sides agree to settle the case.

### What Does It Cost?

There is no extra charge to talk to a legal advisor.

### How Do I See The Advisor?

You may ask the court clerk to direct you to the advisor's office or you may phone the advisor at (415) 558-5170 to make an appointment. If you are a defendant, to see an advisor you may check the proper box on the form you received with the *Claim of Plaintiff and Order* and return it to the court. The advisor will attempt to contact you.

You may see the advisor as many times as necessary regarding a case. However, you may not consult the advisor on more than 10 cases a year.

## IV. SETTLEMENT CONFERENCE (MEDIATION)

### What Is A Settlement Conference (Mediation)?

A settlement conference (also called mediation) is an informal method to settle your case. If all the parties agree, they sit down and each side presents its views to a specially-trained person called a *mediator*. After hearing each side, the mediator suggests how the case might be resolved. With the mediator's help, the parties may be able to work out a solution acceptable to all involved.

### What Does It Cost?

There is no extra charge to have your case heard by a mediator.

### Why Should I Choose A Settlement Conference?

If you are the *plaintiff*, you may be more likely to collect the money owed you by the defendant because he or she has voluntarily agreed to the mediator's decision.

If you are the *defendant*, you have a good chance of reaching a compromise with the plaintiff after discussing the claim with the plaintiff and mediator. You may be able to settle the case and avoid having a judgment entered against you.

### How Do I Prepare For The Settlement Conference?

Bring all papers, books, leases, pictures or other items which support your claim to the settlement conference. If there are witnesses who know the facts, they should also attend.

### What If I Don't Like The Mediator's Decision?

The mediator's decision is not binding. If you cannot accept the mediator's suggested settlement of your claim, you may ask to have your case heard by a judge in the regular small claims court. When the trial occurs, you may not talk about any settlement offers made during the settlement conference. You must simply tell the judge your side and present whatever witnesses, papers, or other items you have.

# APPENDIX E: JUDICIAL COUNCIL CASE REPORT FORM

STATE OF CALIFORNIA

ADMINISTRATIVE OFFICE OF THE COURTS

## SMALL CLAIMS EXPERIMENTAL PROJECT CASE REPORT

WEST ORANGE COUNTY  
MUNICIPAL COURT  
(49)

1	CASE NUMBER	2	FILING DATE
			MONTH DAY YR.

12	CLAIM OF DEFENDANT
	YES NO

3	LAST NAME (FIRST 15 LETTERS ONLY)	FIRST NAME	MIDDLE INITIAL	MULTIPLE PARTY
	PLAINTIFF'S NAME			YES NO
	DEFENDANT'S NAME			

13	AMOUNT OF JUDGEMENT (ROUND TO NEAREST \$)	\$	YES NO
	INSTALLMENT PAYMENTS ORDERED		

AMOUNT OF CLAIM (ROUND TO NEAREST DOLLAR)	\$
--	----

8	GROUP CLAIM
	YES NO

14	DID ANY PERSON OTHER THAN LITIGANT APPEAR FOR:	CHECK (X)
	PLAINTIFF	
	DEFENDANT	

LITIGANT CHARACTERISTICS		
TYPE OF LITIGANT	PLAINTIFF (X) CHECK ONE	DEFENDANT (X) CHECK ONE
CORPORATION		
OTHER BUSINESS		
GOVERNMENT AGENCY		
NATURAL PERSON		
COUNTY OF RESIDENCE (SEE LIST ON BACK)	WRITE 10 NUMBERS	

9	TYPE OF COMPLAINT	CHECK ONE (X)
	UNLAWFUL DETAINER (LANDLORD-TENANT)	
	CONSUMER GOODS (CONSUMER IS PLAINTIFF)	
	CONSUMER SERVICES (CONSUMER IS PLAINTIFF)	
	CONSUMER CREDITS	
	CONSUMER LOAN	
	PERSONAL INJURY OR PROPERTY DAMAGE	
	OTHER (SPECIFY)	

15	TYPE OF DISPOSITION	CHECK ONE (X)
JUDGEMENT AFTER TRIAL	FOR PLAINTIFF	
	FOR DEFENDANT	
	FOR PLAINTIFF	
	FOR DEFENDANT	
DISMISSAL	LACK OF JURISDICTION	
	DEFECTIVE SERVICE	
	NONAPPEARANCE OF PLAINTIFF	
	AT PLAINTIFF'S REQUEST	
	OTHER (SPECIFY)	
	SETTLEMENT/MEDIATION	
	TRANSFERRED	
	NONE OF THE ABOVE, OFF CALENDAR	

REQUESTS	PLAINTIFF (X) CHECK	DEFENDANT (X) CHECK
NIGHT SESSION		
SATURDAY SESSION		
CHANGE OF VENUE		
INTERPRETER (SPECIFY LANGUAGE BY CODE)	CODE	CODE

10	ORIGINAL TRIAL ORDER
	DATE MONTH DAY
	TIME OF TRIAL
	NIGHT
	SATURDAY
	REGULAR

16	TIME	MINUTES
	JUDICIAL TIME CONSUMED BY THIS CASE	

LANGUAGE USE	PLAINTIFF (X) CHECK OR CODE	DEFENDANT (X) CHECK OR CODE
ENGLISH SPEAKING		
SPANISH SPEAKING		
OTHER (SPECIFY BY CODE)	CODE	CODE

11	LAST REVISED TRIAL ORDER (IF ANY)
	DATE REVISED ORDER SIGNED MONTH DAY
	DATE TRIAL SET IN REVISED ORDER MONTH DAY
	REVISED TIME OF TRIAL
	NIGHT
	SATURDAY
	REGULAR

17	APPEAL FILED	YES (X)	NO (X)
	SATISFACTION OF JUDGEMENT FILED		

MAIL TO: JUDICIAL COUNCIL  
STATE BUILDING  
455 GOLDEN GATE  
SAN FRANCISCO, CA 94102

# INSTRUCTIONS FOR COMPLETING THE FORM

- ① **Case Number** — Use a Bates stamp to place the case number in the space provided.
- ② **Example of Filing Date:** 01 10 8 is Jan. 10, 1978.
- ③ **Name** — Write last name first then first name and middle initial (if any). If the last name of a natural person exceeds 15 letters write only the first 15 letters. Keep each letter within the space provided for it — don't let letters spill over into adjacent spaces. When the litigant's name is not for a natural person begin at the left most position and continue for the 15 spaces provided for last name *plus* the 11 spaces provided for first name and middle initial. For example,

A j a x C o n s  
1 2 3 4 5 6 7 8 9

t r u c t i o n  
10 11 12 13 14 15 16 17 18

A n d D e m o l  
19 20 21 22 23 24 25 26

i t i o n

would be written in the 26 available spaces as shown. Leave a space between words. Abbreviate key names and add to the index of such abbreviations used by your court. Example: San Francisco Construction And Electrical Contractors might be abbreviated

S F C o n s t r  
1 2 3 4 5 6 7 8 9

u c t i o n A n  
10 11 12 13 14 15 16 17 18

d E l e c t r i  
19 20 21 22 23 24 25 26

c a l C o n t r

a c t o r s

SF would be added to your index and used whenever San Francisco appeared as part of a litigant's name. Be consistent in the use of abbreviations.

**Multiple Party** — Indicate whether more than one party is a litigant. If more than one natural person is named as defendant or plaintiff check yes. If more than one corporation, business or government agency are litigants check yes.

- ④ Write the amount claimed as follows: \$010, \$050, \$100, \$601, etc., round to nearest whole dollar.
- ⑤ Classify both plaintiff and defendant by type in the first four lines. Check only one for each litigant. Write the County

of Residence I.D. number from the following list. Alameda is 01, Fresno is 10, etc.  
List of counties and their I.D. numbers.

1. Alameda	30. Orange
2. Alpine	31. Placer
3. Amador	32. Plumas
4. Butte	33. Riverside
5. Calaveras	34. Sacramento
6. Colusa	35. San Benito
7. Contra Costa	36. San Bernardino
8. Del Norte	37. San Diego
9. El Dorado	38. San Francisco
10. Fresno	39. San Joaquin
11. Glenn	40. San Luis Obispo
12. Humboldt	41. San Mateo
13. Imperial	42. Santa Barbara
14. Inyo	43. Santa Clara
15. Kern	44. Santa Cruz
16. Kings	45. Shasta
17. Lake	46. Sierra
18. Lassen	47. Siskiyou
19. Los Angeles	48. Solano
20. Madera	49. Sonoma
21. Marin	50. Stanislaus
22. Meriposa	51. Sutter
23. Mendocino	52. Tehama
24. Merced	53. Trinity
25. Modoc	54. Tulare
26. Mono	55. Tuolumne
27. Monterey	56. Ventura
28. Napa	57. Yolo
29. Nevada	58. Yuba

- ⑥ Indicate requests by either or both litigants for night or Saturday sessions or change of venue made before trial. Indicate requests by either or both litigants for an interpreter when such requests are made at any time before or at the trial. Specify the language as follows:

- 01 = Spanish
- 02 = Cantonese
- 03 = Other Chinese
- 04 = Tagalog
- 05 = Japanese
- 06 = Portuguese
- 07 = Italian
- 08 = German
- 09 = French
- 10 = Russian
- 11 = Sign Language
- 12 = Other

- ⑦ Indicate the language use of both litigants. If not English or Spanish, use the language codes in ⑥ to specify which language it is.
- ⑧ Check yes if more than one case is filed at the same time by the plaintiff.
- ⑨ Indicate the type of complaint.

**Unlawful Detainer** — (Landlord-Tenant or Tenant-Landlord) — Any dispute over real property, including possession, rent due, refund of deposit. Do not include property damage.

**Consumer Goods** — Complaints by purchaser of consumer goods, breach of warranties, etc. Consumer is plaintiff.

**Consumer Services** — Complaints by purchaser of services of auto repair, hairdresser, performance services. Consumer is plaintiff.

**Consumer Credit** — Complaints by suppliers of personal goods of services, open book accounts, installment sales contract, etc., for failure to pay.

**Consumer Loans** — Complaints for money due on loans, unsecured or secured by chattels or other securities. (Does not include loans secured by real property.)

**Personal Injury or Property Damage** — Complaints for any personal injury or property damage (including auto).

**Other** — If complaint does not fall under any of these, specify what it is and check the last box.

- ⑩ Indicate date set in original municipal court trial order. 09 01 would be Sept. 1. Check the time of trial specified in original trial order.
- ⑪ Use this box only if the municipal court trial order is revised. Show only information for the last revised trial order date, if the trial order is revised more than once. Use also when a motion to vacate judgment is granted and another trial is scheduled.
- ⑫ **Claim of Defendant** — Indicate whether the defendant has filed a counter claim.
- ⑬ **Amount of Judgment** — Show amount of judgment as \$010, \$097, \$486, etc. Show final judgment. If judgment for both litigants, show the net amount for the litigant the judgment favors.
- Installment Payments** — Indicate whether installment payments were ordered in the judgment.
- ⑭ Indicate whether a person other than the litigants appeared in behalf of the plaintiff or defendant.
- ⑮ Indicate the type of disposition. Check only one. If there is a judgment for both litigants, indicate the disposition for the litigant the judgment favors. (See instructions for 13.)
- If 30 days have elapsed since the original or last revised date of trial and there was no dismissal, settlement, transfer or judgment entered, check "None of the above — off calendar."
- ⑯ For judicial time indicate the time actually spent on the case by the judge. Express in minutes. 010 is ten minutes, 100 is one hundred minutes. Do not convert to hours or parts of an hour.
- ⑰ Check yes if appeal is filed. Check yes if satisfaction of judgment is filed. If both checked yes, mail form to Judicial Council. If one or neither not checked yes within 30 days from last entry of judgment check no where appropriate and mail form to Judicial Council. (117.10 CCP & CRC).

APPENDIX F: DCA LITIGANT QUESTIONNAIRES

STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

SMALL CLAIMS COURT EXPERIMENTAL PROJECT

Experience of Court Users

Plaintiff

If you have sued someone in Small Claims Court more than once, please answer this questionnaire with reference to your most recent case.

1. In what capacity did you sue?

a. As an individual ☐

b. As a corporation ☐

c. As state or local government ☐

d. As an unincorporated business ☐

e. As a finance company ☐

f. Other (Please specify) ☐ \_\_\_\_\_

If you checked any of "b" through "e", please have the person who handled the case complete this questionnaire.

2. Who did you sue?

a. An individual ☐

b. A corporation ☐

c. State or local government ☐

d. An unincorporated business ☐

e. Other (Please specify) ☐ \_\_\_\_\_

3. Why did you sue? Describe your claim briefly. \_\_\_\_\_

4. How much did you sue for? \$ \_\_\_\_\_.

5. How was your case finally handled?

a. I dropped the case ☐

b. I settled out of court ☐

c. A judge decided the case ☐

6. If you dropped your case, why did you drop it?

a. Failed to serve defendant ☐

b. Defendant paid amount in dispute before trial ☐

c. Reconsidered case ☐

d. Other (Please specify) ☐ \_\_\_\_\_

7a. Did you win a court judgment?

YES ☐

NO ☐

b. If you won a judgment, how much did you win?

\$ \_\_\_\_\_

(OVER)

8. How did you find out about Small Claims Court?

TV Public Service Announcements ☐ Consumer Organization ☐  
Radio Public Service Announcements ☐ Small Claims Booklet ☐  
Newspaper ☐ News Programs ☐  
Magazine ☐ Other (Please specify) ☐

9. Did the people who worked in the court seem interested in helping you?

YES ☐ NO ☐

10. Did you have any difficulties with any of the following?

- a. Learning your legal rights YES ☐ NO ☐  
b. Finding the court's location YES ☐ NO ☐  
c. Filling out the forms in court YES ☐ NO ☐  
d. Serving your claim on the person you wanted to sue. YES ☐ NO ☐  
e. Learning what evidence or witnesses were necessary to prove your case YES ☐ NO ☐  
f. If you answered "yes" to any of the above, please explain. (Give the letter of the item you checked "yes" and be specific.) \_\_\_\_\_

11. a. If you won a judgment, how much did you actually get paid? \$ \_\_\_\_\_

b. What did you do about trying to make the other person pay?

(Check as many as apply)

1. The other person paid me with no problem ☐  
2. I had the other person's property attached by a sheriff or marshal ☐  
3. I had the other person's wages garnished by a sheriff or marshal ☐  
4. The other person didn't have any money ☐  
5. I couldn't find the other person ☐

c. Describe any problems you had trying to collect your judgment.

12. When your case was over, do you think you understood enough about how to sue in Small Claims Court to be able to explain it to a person who had never been in court?

YES ☐ NO ☐ NOT SURE ☐

13. When your case was over, do you think you understood what your legal rights were?

YES ☐ NO ☐ NOT SURE ☐

(GO ON TO NEXT PAGE)

14. When was your trial held? Check one.

Weekday Morning ☐

Friday Afternoon ☐

Monday Evening ☐

Saturday ☐

15. Did you choose the time of trial?

YES ☐ NO ☐

16a. Did you appear in court for your trial?

YES ☐ NO ☐ → Go To Question #17

b. Answer the following question ONLY if your trial was held on an evening or Saturday AND you appeared.

If your trial had not been held on an evening or Saturday, would you have appeared?

YES ☐ NO ☐

17a. At the time of your case, did you know that a Small Claims Legal Advisor was available to advise you about your case free of charge?

YES ☐ NO ☐ → Go To Question #18

b. If yes, did you talk to the Advisor?

YES ☐ NO ☐

If yes, please answer: "c" through "f."

c. How many times did you talk to the Advisor?

One Time ☐

2-5 Times ☐

6 or More Times ☐

d. At what stage of your case did you talk to the Advisor?

Before you filed your claim ☐

Before trial ☐

After trial ☐  
(about collection or appeal)

e. Do you believe the Advisor helped with your case?

YES ☐ NO ☐ NOT SURE ☐

f. How did the Advisor help you? (Check as many as apply)

Helped prepare case ☐

Helped settle case out-of-court ☐

Explained legal rights ☐

Explained collection procedure ☐

Other (Please specify) ☐ \_\_\_\_\_

(OVER)

18. Would you pay a fee to see an Advisor?

YES ☐ NO ☐

a. If yes, check the maximum fee you would pay.

\$2.00 ☐

\$3.00 ☐

\$4.00 ☐

\$5.00 ☐

\$10.00 ☐

More Than \$10.00 ☐

19. Did you receive a copy of the booklet How to Use Small Claims Court?

YES ☐ NO ☐

20. If yes, did you find the booklet helpful?

YES ☐ NO ☐

21. Would you have known how to handle your case without the booklet?

YES ☐ NO ☐

22. Comments on booklet: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(GO ON TO NEXT PAGE)

23. As best as you can remember, how much time did you have to use for each of the following:
- a. Going to court to file your claim \_\_\_\_\_ Hrs.
  - b. Discussing the case with a lawyer \_\_\_\_\_ Hrs.
  - c. Preparing for trial other than discussing the case with a lawyer (Such as collecting evidence, etc. ) \_\_\_\_\_ Hrs.
  - d. Going to court for the trial \_\_\_\_\_ Hrs.
  - e. Collecting the judgment \_\_\_\_\_ Hrs.
24. How much time did you have to take off from work? \_\_\_\_\_ Hrs.
25. How many times did you have to go to the court? \_\_\_\_\_
26. List below, as best as you can remember, the costs to you to pursue your lawsuit.
- a. Filing Fee \$ \_\_\_\_\_
  - b. Witness Fee \$ \_\_\_\_\_
  - c. Wages or Income Lost \$ \_\_\_\_\_
  - d. Service Fee \$ \_\_\_\_\_
  - e. Collection Fee \$ \_\_\_\_\_
  - f. Other (specify what & how much) \_\_\_\_\_ \$ \_\_\_\_\_
27. Do you think a person can get a fair trial in Small Claims Court?
- YES ☐ NO ☐
28. Were you ever involved in a lawsuit before this last case?
- a. In Small Claims Court? YES ☐ NO ☐
  - b. In any other court? YES ☐ NO ☐
29. Which of these features would you like to see in an ideal Small Claims Court? Check whether you think each is desirable or not desirable. If you have no opinion on a particular feature, check "No Opinion".
- |   | Desirable                | Not<br>Desirable         | No<br>Opinion            |
|---|--------------------------|--------------------------|--------------------------|
| a. Trials held in evening.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. Trials held on Saturday.   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. An office of the Small Claims Court located in your neighborhood.            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. People available through the court to advise you on how to pursue your case. | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. Trials held in informal surroundings around a table and in private.          | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. A booklet which explains how to use Small Claims Court.                      | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| g. Clerk's office open evenings.  | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

(OVER)

30. Consider items "a" through "g" listed in question 29, and please check the largest fee you would be willing to pay for each of the services.

	\$0	\$2.00	\$4.00	\$5.00 or More
a.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

31. Were you basically satisfied with your experience in Small Claims Court?

YES ☐ NO ☐

To help us know who Small Claims Court is serving and to make the results of this study helpful to your needs as a user of Small Claims Court, we need to know a few facts about you.

- What is your age? Under 21 ☐ 21-30 ☐ 31-45 ☐ 46-62 ☐ Over 62 ☐
- What is your present marital status?  
Married ☐ Single ☐ Divorced ☐ Widower ☐ Widow ☐
- What is your occupation? Be as specific as possible. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- What level of formal education have you completed? Check below.  
Grade 11 or less ☐ 1-4 Yrs. College ☐  
High School Degree ☐ 5 Yrs./More College ☐
- Do you identify yourself as:  
White ☐ Puerto Rican ☐  
Black ☐ Asian ☐  
Chicano ☐ Other (Specify) ☐
- Are you a male or female? Male ☐ Female ☐
- About what was your family income for the last year?  
\$ 0 - 3999. ☐ \$12,000. - 15,999. ☐  
4000. - 7999. ☐ 16,000. - 20,000. ☐  
8000. - 11,999. ☐ Above 20,000. ☐

Please use the space below for anything else you would like to say about your experiences in Small Claims Court, or for suggestions for changing the court.

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THANK YOU

STATE OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS

SMALL CLAIMS COURT EXPERIMENTAL PROJECT

Defendant

Experience of Court Users

If you have been a defendant in Small Claims Court more than once, please answer this questionnaire with reference to your most recent case.

1. You were sued as:

- a. An individual ☐
- b. A corporation ☐
- c. An unincorporated business ☐
- d. State or local government ☐
- e. Other (Please specify) ☐ \_\_\_\_\_

→ If you checked any of these, please have the person who handled the case complete the questionnaire.

2. Who was suing you? (Check One)

- a. An individual ☐
- b. A corporation ☐
- c. An unincorporated business ☐
- d. State or local government ☐
- e. A finance company ☐
- f. Other (Please specify) ☐ \_\_\_\_\_

3. What was the claim against you? \_\_\_\_\_

4. How much money was in dispute in your case? \$ \_\_\_\_\_

5. How was your case finally handled? (Check One)

- a. I did not appear in court ☐
- b. The other side and I settled the case out of court ☐
- c. I went to court and the judge decided the case ☐
- d. Other (Please specify) ☐ \_\_\_\_\_

6. Did the people who worked in the court seem interested in helping you?

YES ☐ NO ☐

(OVER)

7. Did you have any difficulties with any of the following?
- a. Understanding the claim the other person served on you. YES ☐ NO ☐
  - b. Learning your legal rights. YES ☐ NO ☐
  - c. Finding the court. YES ☐ NO ☐
  - d. Learning what evidence or witnesses were necessary to prove your case. YES ☐ NO ☐
8. If you answered yes to any of the above in question 7, please explain. (Give the letter of the item and please be specific)
- \_\_\_\_\_
- \_\_\_\_\_
9. If you lost your case:
- a. Why do you think you lost. (If you don't know, say "don't know".)
  - \_\_\_\_\_
  - \_\_\_\_\_
  - b. How much money did the judge award the person suing you? \$ \_\_\_\_\_
  - c. How much did you end up paying? \$ \_\_\_\_\_
10. When your case was over, do you think you understood enough about how to sue in Small Claims Court to be able to explain it to a person who had never been in court?
- YES ☐ NO ☐
11. When your case was over, do you think you understood what your legal rights were?
- YES ☐ NO ☐ NOT SURE ☐
12. As best as you can remember, how much time did you have to use for each of the following:
- a. Discussing the case with a lawyer \_\_\_\_\_ HOURS
  - b. Preparing for trial other than discussing the case with a lawyer (such as collecting evidence, etc.) \_\_\_\_\_ HOURS
  - c. Going to court for the trial \_\_\_\_\_ HOURS
13. How much time did you have to take off from work? \_\_\_\_\_ HOURS
14. How many times did you have to go to court? \_\_\_\_\_
15. List below, as best as you can remember, the costs to you to defend your lawsuit.
- a. Attorney's fees \$ \_\_\_\_\_
  - b. Witness fees \$ \_\_\_\_\_
  - c. Wages or income lost \$ \_\_\_\_\_
  - d. Other (Specify what & how much) \$ \_\_\_\_\_

(GO ON TO NEXT PAGE)

16. Did you receive with the court papers a form (self-mailer) to send back to the court if you wished to change your time or place of trial, or receive time payments?

YES ☐ NO ☐ NOT SURE ☐

17. Did you send the self-mailer back to the court?

YES ☐ NO ☐ NOT APPLICABLE ☐

Go To Question #19

18. If yes, what item(s) did you request and were your requests granted?

	<u>Requested</u>	<u>Granted</u>	<u>Not Granted</u>
a. Change of trial date	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Change of trial time of day	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. Change of place of trial	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. Request for installment payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Request for interpreter	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. Request for appointment with Small Claims Advisor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. If any of your requests were not granted, explain why. (Please give the letter of the item and be specific) (If you don't know, say "don't know.")			

19. When was your trial held? (Check one)

Weekday Morning ☐

Friday Afternoon ☐

Monday Evening ☐

Saturday ☐

20. Did you choose the time of trial?

YES ☐ NO ☐

21a. Did you appear in court for your trial?

YES ☐ NO ☐ Go to Question #22

b. Answer the following question ONLY if your trial was held on an evening or Saturday AND you appeared.

If your trial had NOT been held on an evening or Saturday, would you have appeared?

YES ☐ NO ☐

22. At the time of your case, did you know that a Small Claims Legal Advisor was available to advise you about your case free of charge?

YES ☐ NO ☐ Go to Question #23

a. If yes, did you talk to the Advisor.

YES ☐ NO ☐ Go to Question #23

If yes, please answer "b" through "e."

b. How many times did you talk to the Advisor about your case?

One Time ☐

2-5 Times ☐

6 or More Times ☐

(OVER)

c. At what stage of your case did you talk to the Advisor?

Before you were sued ☐  
Before trial ☐  
After trial (about collection  
or appeal) ☐

d. Do you believe the Advisor helped with your case?

YES ☐ NO ☐

e. How did the Advisor help you? (Check all that apply)

Helped prepare case ☐  
Explained legal rights ☐  
Helped settle case out-of-court ☐  
Explained how to appeal ☐  
Explained collection procedure ☐  
Other (Please specify) ☐ \_\_\_\_\_

23. Would you pay a fee to see an Advisor?

YES ☐ NO ☐

a. If yes, check the maximum fee you would pay.

\$2.00 ☐  
\$3.00 ☐  
\$4.00 ☐  
\$5.00 ☐  
\$10.00 ☐  
More than \$10. ☐

24. Did you receive a copy of the booklet How to Use Small Claims Court?

YES ☐ NO ☐

25. Did you find the booklet helpful?

Yes ☐ NO ☐

26. Would you have known how to handle your case without the booklet?

YES ☐ NO ☐

27. Comments on booklet: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( GO ON TO NEXT PAGE )

28. Were you ever involved in a lawsuit before this last case.

a. In Small Claims Court? YES ☐ NO ☐

b. In any other court? YES ☐ NO ☐

29. The following are different features of Small Claims Courts across the country. Which of these features would you like to see in an ideal Small Claims Court? Check whether you think each is desirable or not desirable. If you have no opinion on a particular feature, check "No Opinion".

	<u>DESIRABLE</u>	<u>NOT DESIRABLE</u>	<u>NO OPINION</u>
a. Trial held in evenings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b. Trials held on Saturday.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c. An office of the Small Claims Court located in your neighborhood.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d. People available in court to advise you whether you have a case worth filing.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e. Trials held in informal surroundings, around a table and in private.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f. A booklet which explains how to use Small Claims Court.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g. Clerk's office open evenings.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

30. Consider items "a" through "g" listed in question 29, and please check the largest fee you would be willing to pay for each of the services.

	<u>\$0</u>	<u>\$2.00</u>	<u>\$4.00</u>	<u>\$5.00/More</u>
a.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
f.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
g.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

31. Were you basically satisfied with your experience in Small Claims Court?

YES ☐ NO ☐

32. Do you think one can get a fair trial in Small Claims Court?

YES ☐ NO ☐

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To help us know who Small Claims Court is serving and to make the results of this study helpful to those involved in Small Claims Court, we need to know a few facts about you.

1. What is your age? Under 21 ☐ 21-30 ☐ 31-45 ☐ 46-62 ☐ Over 62 ☐

2. What is your present marital status?

Married ☐ Single ☐ Divorced ☐ Widower ☐ Widow ☐

3. What is your occupation? Be as specific as possible. \_\_\_\_\_

-----  
(OVER)

4. What level of formal education have you completed? Check below:

Grade 11 or less \_\_\_\_\_

1-3 Yrs. College \_\_\_\_\_

High School Degree \_\_\_\_\_

4 Yrs/More College \_\_\_\_\_

5. Do you identify yourself as:

White \_\_\_\_\_

Black \_\_\_\_\_

Puerto Rican \_\_\_\_\_

Chicano \_\_\_\_\_

Asian \_\_\_\_\_

Other (Specify) \_\_\_\_\_

6. Are you a male or female? Male \_\_\_\_\_

Female \_\_\_\_\_

7. About what was your family income for the last year?

\$ 0 - 3999. \_\_\_\_\_

\$12,000. - 15,999. \_\_\_\_\_

\$4000. - 7999. \_\_\_\_\_

\$16,000. - 20,000. \_\_\_\_\_

\$8000. - 11,999. \_\_\_\_\_

Above 20,000. \_\_\_\_\_

Please use the space below for anything else you would like to say about your experience in Small Claims Court, or for suggestions for changing the court.

THANK YOU

**END**