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ISSUES & PRACTICES

The Use of Mediation and Arbitration in Small Claims Disputes

- The impetus for alternative programs in small claims disputes
- Program options in organization, sponsorship, staffing, and costs
- Selecting, training, and compensating your hearing officers
- Defining caseloads and processing cases: referrals, hearings, and agreements
- Case studies of six mediation and arbitration programs

a publication series of the **National Institute of Justice**

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James K. Stewart
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The Use of Mediation and Arbitration in Small Claims Disputes

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PREFACE

This report, part of the National Institute of Justice's (NIJ) series of reports for the criminal justice professional, provides a description of six small claims mediation/arbitration programs. It compares the policies and procedures of these programs, cites the advantages and disadvantages of various program options, and recommends best practices when they can be identified. This document is designed to serve as a guide to judges, court administrators, or policymakers who may wish to develop or modify similar programs.

Chapter 1 reviews criticisms of small claims courts, the emerging national movement toward the use of alternative forums for minor dispute resolution, and the goals that small claims mediation/arbitration programs are designed to meet. The methods used in conducting the study are outlined. This chapter concludes with a summary of the major findings and recommendations to emerge from this study.

Chapters 2 and 3 provide a detailed discussion of the advantages and disadvantages of the program options for small claims mediation/arbitration programs. This discussion is based on observations of the six mediation/arbitration projects, a review of relevant research literature, and discussions with key experts in the field. Major topics addressed in Chapter 2 include program goals, sponsorship, staff selection and training, and program costs. Chapter 3 looks at sources of case referrals, hearing procedures, the nature and enforceability of agreements, and evaluation procedures.

Chapter 4 presents case studies of the six projects investigated for this study. The projects differ greatly from one another, and the case studies are intended to capture this variation. Each case study includes an overview of the small claims court in the jurisdiction and a description of the history, organization, and operations of the mediation/arbitration program. The case studies have a common format to facilitate comparisons across the programs.

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CHAPTER 1

INTRODUCTION AND OVERVIEW OF THE REPORT

1.0 Establishment of Small Claims Courts

The small claims courts are America's "people's courts." They were created in the early part of this century to increase citizen access to justice for minor civil claims, including debt collections, landlord/tenant disputes, and complaints regarding poor workmanship and services. Critics had found the regular court system to be an inadequate forum for such disputes--too costly, too complex, and too cumbersome for use by ordinary tradespeople and wage-earners.[1] This critique was most powerfully stated by Roscoe Pound in 1913:

> [W]ith respect to the everyday rights and wrongs of the great majority of an urban community, the machinery whereby rights are secured practically defeats [those] rights by making it impracticable to assert them when they are infringed.[2]

In response to this dissatisfaction with the regular court system, several states established small claims tribunals, beginning with the Kansas Small Debtors Court in 1912 and the conciliation branch of the Cleveland Municipal Court in 1913. By 1923, statewide systems of small claims courts had been established in California, Idaho, Massachusetts, Nevada, and South Dakota, and such courts were operating in 12 major cities.[3] As of 1976, 36 states had statewide systems; six others had small claims courts as divisions of specified urban courts,[4] but had no statewide system; only eight states had no small claims courts.

While the specifics of the enabling legislation for small claims courts vary from state to state, the thrust of this reform effort was uniform across the nation--to provide a forum for the minor civil disputes of all citizens, regardless of their economic circumstances, cultural background, or legal sophistication, and to give litigants fuller participation in the resolution of those disputes. This was to be accomplished by: (1) reducing court costs through lower filing fees; (2) making the process simpler and more understandable to ordinary citizens (e.g., by requiring only a brief statement of the claim to initiate a suit, by not requiring a defendant to file an answer before appearing in court, by relaxing the rules of evidence); (3) eliminating the need for attorney representation; and (4) encouraging judges to

play a more active role in eliciting information from the parties and their witnesses.[5]

1.1 Criticism of Small Claims Courts

Ironically, small claims courts, which emerged as a response to the deficiencies of the regular court system, are now cited by many critics for those same deficiencies--excessive delay, high cost to litigants,[6] cumbersome procedures, and inaccessibility to ordinary citizens. Over the years, as the initial enthusiasm for reform died down, small claims courts became an institutionalized, but often neglected, part of the court system.

In recent years, there has been a revival of interest in small claims courts, largely as a result of the consumer protection movement, and the call for reform can be heard again. Frierson has even called for the abolition of small claims courts,[7] but most critics urge that the courts be improved rather than eliminated.[8] Current criticism of small claims courts can be divided into four major categories: (1) the negative attitude of the judiciary toward small claims duty; (2) the inaccessibility of the courts to ordinary citizens; (3) the mishandling of small claims cases by the courts, from intake through disposition and collection; and (4) the inappropriateness of the adversarial process for many of the cases typically heard in small claims court.

1.1.1 Negative Attitude of the Judiciary

Many judges do not savor small claims duty, viewing the work as stressful, trivial, and tiresome.[9] They often seek to justify this attitude by declaring that small claims are of little consequence to the community and involve few legal complexities.[10] Critics of small claims courts reject that reasoning. They claim that, while many judges who have presided over large monetary disputes may view small claims matters as unimportant, it is clear that the disputants themselves do not. And, in fact, many small claims cases are legally complex, especially since the recent introduction of consumer protection laws.[11]

Judges who complain about small claims duty often cite the awkwardness of the active role required of them in cases where one or both parties is unrepresented by an attorney, a role which contrasts sharply with the one they play in regular civil procedures.[12] The judges must continually cross-examine

the parties and their witnesses, examine physical evidence, and help both litigants develop their cases, all the while remaining impartial. Crowded small claims dockets both prohibit careful preparation and necessitate quick decisions by the judges.

Both the time pressure and the difficulty of dealing with pro se litigants may cause some small claims judges to process cases in hurried, assembly-line fashion. They may not give litigants an opportunity to tell their full stories, may fail to explore critical aspects of business transactions on which claims are based, and may fail to announce or explain their decisions in court. For some litigants, the experience is confusing and even embittering. A 1978 public opinion poll revealed a high level of dissatisfaction with all courts, especially among respondents with court experience. Those respondents who were dissatisfied with a recent court experience involving a minor civil case cited poor handling of the case by the court, the impersonal nature of the experience, and the poor quality of the judge as three of their principal reasons for dissatisfaction.[13]

1.1.2 Inaccessibility of the Courts

When small claims grievances arise, most people do not bring their complaints to court.[14] According to critics of small claims courts, several factors constrain the public's access to these courts: (1) public awareness of the courts is generally low; (2) court hours are inconvenient for working people; and (3) most small claims courts are located in downtown areas, which are often perceived to be unsafe.[15] Only a few courts have experimented with nighttime or weekend sessions, and almost all courts handle case intake only during the day. The prospect of making several trips downtown during working hours effectively discourages many complainants from pursuing their claims in court and exacerbates the problem of defendants not appearing for trial.

Potential litigants may also be discouraged by the problem of long delays between filing and resolution of the case. A nationwide survey of small claims courts conducted by Ruhnka and his colleagues revealed that the average time between case filing and trial was eight weeks, with some delays of up to 20 weeks or more.[16] A study of a Florida small claims court showed that only half of the cases were disposed of within 60 days of filing.[17] Moreover, litigants can expect delays on the day of the trial itself. Courts often schedule an entire day's cases for the same time; litigants must be present to respond to the calendar call and then wait, sometimes for several hours, or even all day, for their cases to be called.

A final barrier to the public's use of small claims courts is the financial cost of pursuing a claim. Fees must be paid to file the claim and to execute

service of process. More significantly, when the courts have only weekday sessions, litigants must take time away from their jobs and often lose a full day's wages. These lost wages, according to one recent study, typically amount to nearly a third of the amount of the disputed claim for both plaintiffs and defendants. In addition, many litigants, unwilling to take the risk of representing themselves, pay substantial lawyers' fees to pursue their cases.[18] In many cases, potential litigants tally up these costs and decide that their grievances are simply not worth pursuing.

1.1.3 Problems in Small Claims Case Processing

Inadequate assistance for pro se litigants. The small claims court is often an individual's first and only contact with the court system. Litigants, often ignorant of the judicial process and unaware of their legal rights, have little idea of either what to expect at their trial or how to organize their case presentation.[19] Some observers claim that the courts do not do enough to help disputants prepare for trial. A study of one New York small claims court confirms this charge, showing that over one-fourth of the sampled users felt they had not been given sufficient information about court procedures either before or during the trial.[20]

This problem of inadequate assistance is especially critical for pro se defendants. Unlike complainants, defendants usually do not have any direct contact before the trial with the small claims clerk, who can answer questions or offer advice. Furthermore, many individual defendants are sued by businesses, creditors, or landlords (the so-called "repeat players"), who have learned through experience how to handle their own claims or who can better afford to hire an attorney.[21] Such opposition puts a pro se defendant at a marked disadvantage. Finally, although recent years have seen the enactment of consumer protection laws that provide defendants with a variety of legal defense options, defendants are largely ignorant of them. Judges usually fail to suggest these defenses to pro se litigants, often because they, too, are unfamiliar with the new consumer law provisions.[22]

Problems created by attorney representation. Some commentators have criticized small claims courts for allowing parties to be represented by attorneys.[23] Gould claims that this practice defeats the very purpose of small claims court--to provide an informal, speedy, and inexpensive forum for the hearing of minor disputes.[24] The objections raised to allowing attorney representation include the following: (1) unrepresented defendants are at a disadvantage, especially in cases that are technically or legally complex;[25] (2) having one or both parties represented by attorneys increases the formality of the proceedings and produces more requests for continuances;[26] (3) having pro se litigants opposed by parties with attorney representation is awkward for the judges, exacerbating their role

conflict and making it difficult for them to be even-handed;[27] (4) attorneys' fees add considerably to the cost of pursuing or defending against a claim; (5) pro se plaintiffs, learning that the defendant will have counsel, may be discouraged from filing or appearing for trial;[28] (6) plaintiffs can use the threat of attorney representation to press pro se defendants into settling out of court;[29] and (7) business plaintiffs are more frequently represented by counsel than are individual defendants.[30]

The court as collection agency. With the recent rise of the consumer protection movement, small claims courts have been decried for their disproportionate use by businesses, creditors, and landlords against individual defendants.[31] Filings for consumer complaints are, in fact, relatively infrequent. A study of the Roxbury, Massachusetts, small claims court, for example, found that only 173 of 1,431 cases were consumer claims.[32] In the nationwide study of small claims courts conducted by Ruhnka and his colleagues, consumer claims comprised only one to 29 percent of the court caseloads.[33] In some courts, a small number of business plaintiffs are responsible for an enormous share of the caseload. In a Rhode Island small claims court, for example, three business plaintiffs were responsible for approximately 25 percent of the cases filed. Indeed, use of the court by these businesses was so heavy that the court had rubber stamps made to affix their names to court documents.[34]

The frequency of defaults. Several critics see the high number of small claims cases in which defendants do not appear for trial as an indicator of serious problems with the courts.[35] In many small claims courts, default rates run a staggering 40 to 60 percent.[36] Four contributing factors to this problem have been identified: (1) the time and location of the hearing is inconvenient for many defendants; (2) improper service of process can keep defendants from learning of a suit until after a judgment is entered against them;[37] (3) judges do not always examine the plaintiff's evidence carefully before issuing a default judgment;[38] and (4) defendants in collection cases sometimes believe that the goods or services they received are faulty and refuse to respond to the summons, not realizing the consequences of their refusal.[39]

The difficulty of collection. Successful complainants are often frustrated to learn that winning a case in small claims court does not automatically lead to payment of the claim. Uncollected judgments are a serious problem: studies show that anywhere from one- to three-fourths of judgment creditors are never paid.[40] The problem is especially severe for default cases. One consequence of this problem is that many judgment creditors must enlist the assistance of an attorney in order to be paid. The nationwide study by Ruhnka and his colleagues showed that in default cases, those creditors using an attorney were paid in roughly 60 percent of the cases, whereas those who did not were paid in only 33 percent of the cases.[41]

Small claims courts have been criticized for their lack of involvement in the collection process.[42] In many jurisdictions, it is up to the winning party to keep track of any payments made, to notify the court when the judgment has been satisfied, or to locate the debtor's assets and place of work when it is necessary for a garnishment of wages or property attachment to be executed. Attachment of the debtor's property is risky--the debtor may not own the identified property, other creditors may have claims against it, or it may be legally exempt from attachment. As a result, judgment creditors in many jurisdictions have to post bond in order to get a sheriff or marshal to execute an attachment.[43]

1.1.4 Inappropriateness of the Adversarial Process

Many cases that come before small claims courts are not well-suited to the adversarial process. In contrast to the regular civil courts, small claims courts do follow informal rules of procedure, giving the presiding judge wide latitude in handling cases and fostering a higher level of litigant participation. But many cases require a compromise solution or represent the culmination of a long history of problems between the parties. The courts, with their narrow focus on the complaint at hand, their "winner-takes-all" orientation, and their traditional split between civil and criminal divisions, may be ill-suited to handle these cases effectively. Cases involving a personal conflict between the parties--what some judges call "kids and pets" cases--are especially dreaded by many small claims judges.[44] They have neither the time, the authority, nor the inclination to deal effectively with them.

It may also be that some consumer cases could be better handled through an alternative forum. For example, some consumers may not question their financial liability, but need guidance in working out a new payment schedule. Or businesses concerned about their reputation may want to settle with consumers who complain about a product or service. Only money remedies are available in most small claims courts. But, for many of these cases, some form of equitable relief might be a better resolution.

1.2 Small Claims Mediation/Arbitration Programs

One of several techniques being explored to revitalize small claims courts is the use of mediation or arbitration for small claims cases. Mediation programs schedule meetings between the two disputing parties and a neutral hearing officer who facilitates communication between the disputants and aids them in reaching a mutually acceptable resolution to their conflict. Mediation can involve varying degrees of intervention, ranging from merely

providing the disputing parties with a place to meet and ground rules for discussion to actively recommending possible solutions to the conflict. By definition, mediators do not have the power to impose a settlement upon the parties. In comparison, arbitrators do have the power to impose dispute resolutions that are binding in court. Before conducting a hearing, an arbitrator may seek to mediate the dispute, but when the parties do not arrive at a settlement, the arbitrator is empowered to impose an "arbitrator's award" that becomes a judgment of the court after it is reviewed by a judge.

Mediation and arbitration projects for handling minor civil disputes were first developed in the 1950s. The arbitration program of the Manhattan small claims court, developed in 1954, was one of the first such programs in the United States (see Section 4.4 for a description of this program). Installation of the program was motivated by that court's enormous backlog of small claims cases and the need for faster case processing. Interest in such programs did not emerge in other jurisdictions until the late 1960s when they, too, began to experience severe problems with delays, large backlogs, and mounting citizen dissatisfaction with the small claims courts.

The late 1960s and early 1970s saw the development of several experimental mediation/arbitration programs which focused on both civil and minor criminal cases. For example, in 1969, the Philadelphia Municipal Court Arbitration Tribunal was established through the efforts of the American Arbitration Association, the local courts, and the local prosecutor's office in order to expedite the handling of minor criminal cases. Funding for this experimental project was provided by the Ford Foundation. The Citizen Dispute Settlement ("Night Prosecutor") Program was established in 1970 in Columbus, Ohio, by the City Attorney's Office. This program, designed to provide the option of mediation for neighborhood and family disputes and bad check cases, was designated an "Exemplary Project" in 1974 by the Law Enforcement Assistance Administration and has been replicated in several jurisdictions.[45]

In 1977, the U.S. Department of Justice, under the direction of former Attorney General Griffin Bell, developed the Neighborhood Justice Centers Program. Under this program, demonstration projects for the resolution of minor civil and criminal matters were developed in Kansas City, Los Angeles, and Atlanta (see Section 4.3 for a description of the latter program). The Law Enforcement Assistance Administration subsequently funded additional projects in Washington, D.C., Honolulu, and Houston. Federal funds also supported a statewide system of dispute settlement centers in Florida which is administered through the Florida Supreme Court's Office of the Court Administrator.[46]

In addition to neighborhood justice centers, which process diverse caseloads, several more specialized mediation/arbitration programs have also emerged in recent years. In California, for example, the mediation of certain custody disputes by personnel of the state's Conciliation Courts is now mandated by law. In addition, a variety of private, state, and local agencies, including departments of consumer affairs, have sponsored projects to mediate consumer disputes, and the U.S. Department of Housing and Urban Development and other agencies have sponsored landlord/tenant mediation programs.[47]

Programs designed for the mediation/arbitration of small claims disputes, the subject of this document, are one type of specialized dispute settlement program. The goals articulated by such programs can be grouped into two categories:

(1) Court Efficiency

Increasing the efficiency of case processing. Programs designed to meet this goal are generally aimed at reducing court backlog. Courts for which this goal is primary generally turn to arbitration, where lawyer-arbitrators can impose binding settlements and serve essentially as surrogate judges. It should be noted that, for both mediation and arbitration programs, the delay between filing and a scheduled hearing is typically shorter than the delay for a regular trial.

Reducing court system costs. Adding a mediation/arbitration program is far less costly than expanding the roll of judges. Lawyer-arbitrators typically volunteer their time, and existing court space can be used for arbitration rooms. Mediation programs, especially those that rely on post-filing referrals from the court clerk or from the bench, can also be operated inexpensively (see Section 2.5).

Allowing judges to provide added attention to cases on the regular civil docket. To the extent that a mediation/arbitration project reduces their caseload, judges may be able to give additional attention to regular civil cases that might involve more complex issues of law or matters of fact. Some observers have cautioned, however, that mediation/arbitration programs may not have this impact if their success leads to an overall increase in the number of filings. There is also the risk that some judges, who find small claims cases to be unchallenging or stressful,

will use an alternative forum as a "dumping ground" for as many cases as possible. This possibility is especially troublesome if cases are sent indiscriminately to such alternatives even when trial adjudication might be needed. Such a practice would lead to less, not more, efficient use of judge time.

(2) Quality of Justice

Providing a more appropriate forum. Even if sufficient judicial personnel are available to handle the caseload, certain cases can be handled better through mediation. Parties are typically provided with far more time in a mediation session than before a judge, they are more relaxed, and they are able to explore thoroughly the breadth of their dispute, not just the particular complaint at issue. With such a hearing, litigants are more fully involved in resolving their dispute, being led by a skilled hearing officer to negotiate a mutually acceptable settlement. In some cases, arbitration may provide these same advantages, but it resembles more closely a regular court trial. It is important to note, however, that not all small claims matters are necessarily best suited to an alternative forum--cases in which the parties have widely divergent power, those involving assertion of certain types of consumer rights, or those involving complex issues of law may be better handled through a regular court trial.

Improving collection of judgments. A recent evaluation of the Small Claims Mediation Program in Maine showed that mediated settlements are more likely to be paid than judgments of the court: 71 percent of mediation agreements were reported to be paid in full, compared with 34 percent reached through adjudication (see Section 2.1).[48]

Policymakers planning a small claims mediation/arbitration program must consider carefully the court's needs. Not all courts have long delays, large court backlogs, or an understaffed bench. Moreover, a court's need for such a program depends on the skills and predilections of the particular judges. Some judges are highly talented mediators and exert a great deal of energy to help the parties arrive at a settlement. Other judges, however, feel uncomfortable with the conflict of trying to maintain impartiality while helping the parties settle their case.

The enabling legislation for small claims courts typically gives the courts wide latitude for experimenting with innovative ways of handling minor

claims. Thus, in most states, a mediation/arbitration program can be established by rule or consent of the court. Funding is the most critical problem that must be faced in initiating such a program. In several jurisdictions, however, mediation/arbitration programs have proven their worthiness and have succeeded in becoming institutionalized in local, county, or state budgets. Others have been funded in part through filing fee surcharges assessed against all small claims complainants.

1.3 Methods Used in Conducting the Study

This study examined the policies and procedures of small claims mediation/arbitration programs. Potential mediation/arbitration programs for on-site investigation were first identified through a literature review and through information gathered at the National Seminar for Small Claims Court Judges held at the National Judicial College in Reno, Nevada, in May 1980. A phone survey of existing mediation/arbitration projects was then conducted during the summer of 1980, focusing upon those projects that were sponsored by small claims courts or had close referral ties with them. Programs that mediate minor civil matters independently of the courts, such as programs sponsored by the Better Business Bureau, were beyond the scope of this study and were not called. Six mediation/arbitration programs were selected for on-site investigation.

Mediation Projects. The four mediation projects included in this study were, in 1980, the longest-operating mediation programs known to have sizeable small claims caseloads.

1. Small Claims Mediation Program, Ninth District Court, Portland, Maine

This program, sponsored by the Maine Council for the Humanities and Public Policy, began as a small experiment in Portland's Ninth District Court. It has grown to encompass over a dozen courts throughout Maine and is now funded through the state court budget. Under this program, small claims litigants who are in court for their hearing may be asked by the presiding judge to submit their dispute to mediation. If both parties consent, they go immediately to another room in the courthouse with a lay mediator and try to resolve their case without adjudication. If a satisfactory agreement cannot be reached, the case is returned that day to the judge for a regular trial.

2. Citizen Dispute Settlement (CDS) Program, Pinellas County, Florida

The Pinellas County Citizen Dispute Settlement (CDS) Program began in 1977 with funding from the U.S. Department of Justice and is now funded through a variety of sources, including the County Court budget, court filing fee surcharges, the State of Florida, and the Florida Bar Association. The program operates out of courthouses in both St. Petersburg and Clearwater. Small claims disputants are referred to CDS for mediation by court clerks prior to filing and by judges who preside at small claims pretrial conferences. With both types of referrals, disputants can avoid a court trial if a mutually agreeable settlement is reached through CDS mediation.

3. Neighborhood Justice Center of Atlanta (NJCA), Inc.

The Atlanta NJC was originally funded by the Department of Justice, but now receives funds from the City of Atlanta, Fulton County, private foundations, and income earned by the executive director from consulting work. An independent corporation, the NJCA has a diverse caseload and has established a small claims case referral system with the local State Court of Fulton County. At the court filing desk, claimants are given the option of filing their small claim in court for a trial before a magistrate or filing with the NJCA for an informal mediation hearing. If a mutually satisfying settlement cannot be reached through mediation, parties are free to seek recourse in the courts.

4. Neighborhood Small Claims Court Program, San Jose, California

This program, which began as a joint experiment of the San Jose-Milpitas Municipal Court (now the Santa Clara County Municipal Court) and the Santa Clara County Bar Association, receives its funding primarily from private foundations. The program enables small claims disputants to have their cases mediated and/or arbitrated by volunteer attorneys during an evening session conducted at a local high school. Small claims matters brought by individual plaintiffs are referred to the program by the court clerk after filing. Cases are initially mediated by an attorney. If the mediation hearing does not result in a settlement of the case, the disputants may have their case arbitrated by another attorney that same evening or may proceed to a court trial. The arbitrator's decision is binding unless the case is appealed for court trial within five days of the decision.

Arbitration Projects. Two projects that provide for the arbitration of small claims matters by volunteer attorneys were investigated.

1. Arbitration Program of the Manhattan (New York County) Small Claims Court

Since 1954 the New York County Small Claims Part of the Civil Court of the City of New York has provided disputants with the option of arbitration of their controversy. During evening court hearings, referrals to arbitration are made by the presiding judge with the consent of both parties.

Arbitration awards are converted into judgments of the court and cannot be appealed. Because lawyers volunteer their time to serve as arbitrators, the costs of this program are minimal.

2. Night Small Claims Arbitration Program, Nassau County, New York

The Nassau County District Court has developed a small claims arbitration project modeled primarily after the program operated by the Civil Court of the City of New York. The Nassau County Court operates five facilities. Citizens throughout the county can elect to have their small claims case handled at an evening session in Mineola, which is centrally located in the county, or at a daytime session at one of the other four facilities. In Mineola, the disputants have the option of choosing either a regular trial or arbitration of their controversy by a volunteer attorney arbitrator.

Site visits were conducted to each of these six projects between September 1980 and January 1981. A project survey instrument was designed to elicit detailed information on both the routine processing of small claims matters and the mediation/arbitration program itself. A copy of the instrument appears in Appendix A. Major topics covered in the instrument include: (1) the small claims court's policies and rules, pretrial and trial procedures, judgment collection, and court caseload figures; and (2) the mediation/arbitration program's rules, policies and procedures, hearing officer selection and training, program costs, and evaluation data.

Prior to the project site visits, descriptive materials regarding the projects were requested from the project directors, including grant proposals, annual and quarterly reports, evaluation studies, and newspaper stories on the projects. Examination of these materials generated specific questions to ask the staff of each project.

During the site visits, efforts were made to observe the various components of the projects in operation. Representatives from the projects' referral sources were interviewed, intake and screening practices were observed, and dispute settlement hearings were attended. Project staff, including project directors, intake counselors, hearing officers, and relevant court personnel were questioned about their experiences with the program and related issues.

Case studies on all six projects were developed following the site visits (these appear in Chapter 4). The project directors were given the opportunity to review their case study reports and verify their accuracy.

1.4 Major Findings and Recommendations

Chapters 2 and 3 describe the advantages and disadvantages of various program options for mediation/arbitration programs and highlight model practices when they can be identified. Listed here are the major findings and recommendations from those two chapters. (The section in which each point is discussed is given in parentheses.) These findings and recommendations are based on information obtained during the site visits, an exhaustive review of the research literature, and input from an advisory panel.

Program Development

1. Because the enabling legislation in most states gives the courts broad powers to experiment with different methods of handling small claims disputes, it should be possible to establish a mediation/arbitration program in most jurisdictions by rule or consent of the court without specific legislative authorization (Section 1.2).

2. In general, small claims arbitration programs are designed primarily to increase court efficiency, whereas mediation programs give greater emphasis to improving the quality of justice (Section 2.1).

3. Mediation and arbitration programs that operate within or in conjunction with the court system need the continual involvement and support of the judiciary (Section 2.2.1).

4. Strong support from the local bar for a mediation/arbitration program can be obtained if the program organizers work actively for the bar's participation (Section 2.2.2).

Court Sponsorship

1. The primary motive for establishing an arbitration program for small claims cases is to move cases through the adjudicative process more quickly. An independent arbitration program, or one located outside the courthouse, would be cumbersome and therefore would not serve the court's need for greater efficiency (Section 2.3.1).

2. There are several advantages to having a small claims mediation program sponsored by the court and located in the courthouse (Section 2.3.1):

- A court-sponsored program requires a smaller operating budget than one that is independently operated.
- The prospects for continued funding are greater if the program is supported by the regular court budget or by a filing fee surcharge.
- Judicial support is more likely for a court-run program.

- Respondents may be more likely to attend a mediation session sanctioned by the court. The power of the court can be brought to bear against non-appearing parties.

- A mediation settlement can be reviewed immediately by a judge for correctness and evenhandedness and then be made a formal order of the court.

- If the mediation effort fails, the complainant does not need to file the case a second time.

- After a failed mediation, it might be possible in some jurisdictions for the parties to proceed immediately to adjudication (either a court trial or arbitration) without further delays or extra trips to the courthouse.

Referral Sources

1. Small claims arbitration programs, which are designed primarily to maximize the efficiency of the court, can rely exclusively on bench referrals as an administrative convenience (Section 3.2.1).

2. For a court-operated mediation program, a reliance on post-filing referrals from the clerk's office makes the most sense.

Bench referrals for such a program bring two disadvantages: (1) the delay between filing and the hearing date is greater if cases eventually going to mediation are added to the regular court docket; and (2) parties may feel they have less choice regarding their use of mediation when a judge, rather than a clerk, suggests the alternative.

One important disadvantage can be cited for pre-filing referrals from the clerk's office: if the case is not filed with the court, any mediation settlement that is reached cannot be made an order of the court.

The one disadvantage of post-filing referrals from the clerk's office is that litigants who do not reach a settlement may be required to return another day for a court trial. Some jurisdictions, however, may be able to schedule cases in a way that avoids that inconvenience (Section 3.2.1).

Selection of Cases

1. If the mediation/arbitration program receives only post-filing referrals from either the court clerk or the bench, the court's jurisdictional claim limit restricts the program's caseload. Several commentators recommend a

claim limit of $1,000 with future increases tied to the inflation rate. Similarly, the caseload of such programs will also be defined by any case exclusions imposed by the court. It is recommended that business plaintiffs or collection agencies not be barred from either the small claims courts or these alternative programs (Section 3.1.1 and 3.1.2).

2. Unless a mediation program's caseload is severely backlogged, the staff should strive to accommodate every case brought before it. The mediation process is not sufficiently understood at this time to warrant application of firm screening criteria. Typically, case-by-case screening is not attempted by arbitration programs (Section 3.1.3).

Informed Choice

1. With court-sponsored programs, court and program personnel must make clear to litigants that the choice between a trial and a mediation/arbitration hearing is theirs to make and that they will suffer no adverse consequences as a result of their decision (Section 3.2.2).

2. To guarantee that litigants are properly informed about the alternative forum, a written explanation should be drafted, either for the parties to read or to guide judges, clerks, or program intake counselors in their oral summaries of the program (Section 3.2.2).

Case Scheduling

1. Programs should experiment with evening and/or Saturday sessions (Section 3.2.3).

2. Hearing officers experience varying pressure to dispose of cases quickly, depending on the number of parties queued up to have their cases heard. Programs can minimize the severity of this problem through intelligent scheduling (Section 3.2.3).

Hearing Procedures

1. Court-operated programs should offer mediation and arbitration in succession. With this procedure, if mediation fails, the parties can choose to have their case immediately arbitrated by a second hearing officer (Section 3.3.1).

2. A court setting for the hearing is preferred, due to the lower costs of using courthouse facilities, the greater opportunity for judicial oversight, and the greater convenience to litigants (Section 3.3.2).

3. Hearing officers should begin each hearing with a comprehensive opening statement that informs disputants of the ground rules and procedures to be followed (Section 3.3.4).

4. Arbitration proceedings are more formal and therefore more similar to regular small claims trials than are mediation sessions. In either case, litigants and hearing officers must understand completely how the rules of evidence for the alternative may differ from those applied at a regular trial (Section 3.3.5).

5. Attorneys' participation in mediation and arbitration hearings should be limited to advising their clients. They should not be allowed to speak for them or to cross-examine the opposing party (Section 3.3.6).

Agreements

1. If an arbitrator can bring the disputants to a settlement prior to conducting the formal arbitration hearing, it should be made an order of the court. In court-sponsored mediation programs, any mediated settlement should be made an order of the court (Section 3.4.2).

2. Judicial review of arbitration awards and mediation settlements is essential when they are made orders of the court (Section 3.4.3).

3. Litigants should be allowed to appeal imposed arbitration awards for a trial de novo in the small claims court. Settlements reached through mediation need not be appealable, for such settlements were reached by mutual consent of the parties and not imposed by a hearing officer or judge (Section 3.4.4).

Program Administration

1. The administrative judge of the court or other court administrative personnel typically establish policy for a court-sponsored arbitration program (Section 2.3.2).

2. Court-sponsored mediation programs typically invest policy-making power in a central authority (e.g., coordinating judge, project director). Independent programs may have a large, diverse board of governors, in part to solidify the program's relationship with the courts and other government bodies (Section 2.3.2.).

3. Court-sponsored arbitration programs generally do not require any full-time administrative staff (Section 2.3.3).

4. The size of a mediation program's administrative staff is determined in large part by the diversity of the program's caseload and its referral sources. Programs that primarily handle small claims disputes and receive most referrals directly from the court require a relatively small staff and may be able to rely solely on part-time personnel (Section 2.3.3).

5. The program staff should routinely monitor hearing officers' conduct of mediation/arbitration hearings (Section 3.5.1).

6. All mediation/arbitration programs should implement a small-scale evaluation of their effectiveness in bringing parties to a fair and long-lasting resolution of their dispute (Section 3.5.2).

Hearing Officers

1. For court-run small claims arbitration programs, all hearing officers should be attorneys with extensive legal experience, especially if an arbitration award cannot be appealed. Screening of arbitrator applicants can be conducted by the local bar association (Section 2.4.1).

2. For mediation programs, mediators of varied backgrounds, including attorneys, are best (Section 2.4.1).

3. A small claims court whose small caseload or limited budget may preclude the establishment of a full-fledged program can still provide an alternative forum to litigants by combining the role of small claims administrator/clerk and mediator into a single staff position. This individual would handle all small claims filings and act as mediator when so instructed by the presiding judge (Section 2.4.1).

4. The ideal number of hearing officers for a given mediation/arbitration program depends on the size and diversity of the program's caseload, how frequently the hearing officers can hold sessions without becoming stale in their approach, and their level of compensation (Section 2.4.2).

5. Attorney hearing officers should serve pro bono. Non-attorneys should be paid, even if it is only a nominal fee (Section 2.4.3).

6. Extensive training should be given to all hearing officers, including attorneys and other professionals (Section 2.4.4).

Program Costs

1. Program staff will have to devote time to securing financial backing. For the greatest program stability, it is best for the program to receive support directly from the court budget. In addition, the program can be funded through a filing fee surcharge assessed against all small claims plaintiffs (Section 2.2.3).

2. The costs for a court-sponsored arbitration program cannot be precisely estimated, but they are minimal: (a) lawyer arbitrators can serve such programs without compensation; (b) if the sessions are conducted in the evenings, existing court facilities can be used at low cost; (c) the record-keeping required is not significantly greater for cases going to arbitration than for those that do not; and (d) in most jurisdictions, existing court personnel can administer the program on a part-time basis (Section 2.5).

3. The bulk of the budget expenditures for mediation programs is for staff salaries, fringe benefits, and mediator fees. Obviously, the costs of

the program are far less if volunteer lawyer-mediators are used. The costs for such a program are also lower when the program exclusively handles small claims cases referred by the court; a diverse caseload from multiple sources necessitates a large intake staff. A careful selection of program options should enable a court-operated small claims mediation program to keep its costs between $15 and $35 per case (Section 2.5).

CHAPTER 1: Footnotes

1. M. Minton and J. Steffenson, "Small Claims Courts: A Survey and Analysis," Judicature 55 (1972): 324; and B. Yngvesson and P. Hennessey, "Small Claims, Complex Disputes: A Review of the Small Claims Literature," Law and Society Review 9 (1975): 221.

2. Roscoe Pound, "The Administration of Justice in the Large City," Harvard Law Review 26 (1913): 302, 316.

3. S. Weller, J. C. Ruhnka, and J. A. Martin, "Success in Small Claims: Is a Lawyer Necessary?" Judicature 61 (1977): 177; and Yngvesson and Hennessey, "Small Claims, Complex Disputes," p. 224.

4. Weller, Ruhnka, and Martin, "Success in Small Claims," p. 177.

5. J. C. Ruhnka, S. Weller, and J. A. Martin, Small Claims Courts: A National Examination (Williamsburg, Va.: National Center for State Courts, 1978), pp. 1-3.

6. M. Cappelletti and B. Garth, "Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective," Buffalo Law Review 27 (1978): 195; D. Gould, Staff Report on the Small Claims Courts (Boston: National Institute for Consumer Justice, 1972), p. 6; and L. G. Kosmin, "The Small Claims Court Dilemma," Houston Law Review 13(5) (July 1976): 939.

7. J. G. Frierson, "Let's Abolish Small Claims Courts," Judge's Journal 16 (1977): 51.

8. T. L. Eovaldi and P. R. Meyers, "The Pro Se Small Claims Court in Chicago: Justice for the 'Little Guy'," Northwestern University Law Review 72 (1978): 951; Gould, Staff Report on the Small Claims Courts, p. 10; Kosmin, "The Small Claims Court Dilemma," pp. 937-938; C. S. Mack, "Fair Settlement of Just Consumer Claims," in Consumer Complaints: Public Policy Alternatives, ed. S. Divita and F. McLaughlin (Washington, D.C.: Acropolis, 1975), p. 166; B. A. Moulton, "The Persecution and Intimidation of the Low Income Litigant as Performed by the Small Claims Court of California," Stanford Law Review 21 (1969): 1684; Weller, Ruhnka, and Martin, "Success in Small Claims," p. 178; and Yngvesson and Hennessey, "Small Claims, Complex Disputes," p. 262.

9. The problem of negative judicial attitude was summarized by Nejelski: "The first problem is that the lower courts are at the bottom of a rigid caste system. As one juvenile court justice eloquently stated to me: 'The lower courts are the latrine duty of the judiciary. A judge puts in a few years at the bottom of a bureaucracy and hopes to move up.'" Paul Nejelski, Deputy Assistant Attorney General, U.S. Department of Justice, address on "The Federal Role in Minor Dispute Resolution," National Conference of Minor Disputes Resolution, May 26, 1977, pp. 14-15, quoted in R. Beresford, "It Takes a Big Judge to Handle Small Claims," Judge's Journal 16(4) (1977): 16.

10. Beresford, "It Takes a Big Judge to Handle Small Claims," p. 14; Gould, Staff Report on the Small Claims Court, p. 222; Kosmin, "The Small Claims Court Dilemma," p. 934; and L. Nader, "Disputing Without the Force of Law," Yale Law Journal 88 (1977): 1001.

11. T. McFadgen, "Dispute-Resolution in the Small Claims Context: Adjudication, Arbitration, or Mediation?" (LL.M. thesis, Harvard University Law School, 1972), pp. 47-49.

12. Kosmin, "The Small Claims Court Dilemma," p. 954; and Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 29-30.

13. Yankelovich, Skelly, and White, Inc., "Highlights of a National Survey of the General Public, Judges, Lawyers, and Community Leaders," in State Courts: A Blueprint for the Future, ed. T. J. Fetter (Williamsburg, Va.: National Center for State Courts, 1978), pp. 5, 25.

14. Moulton, "The Persecution and Intimidation of the Low Income Litigant," p. 1668; J. Weiss, ed., Little Injustices: Small Claims Courts and the American Consumer (1972), cited in Kosmin, "The Small Claims Court Dilemma," p. 939. A recent survey of consumer responses to unsatisfactory purchases showed that in less than two percent of the cases did the buyer take the grievance to a third party, including small claims court; see A. Best and A. R. Andreasen, "Consumer Response to Unsatisfactory Purchases: A Survey of Perceiving Defects, Voicing Complaints, and Obtaining Redress," Law and Society Review 11 (1977): 701-742, cited in Nader, "Disputing Without the Force of Law," p. 1007.

15. Frierson, "Let's Abolish Small Claims Courts," p. 20; J. H. Joseph and B. A. Friedman, "Consumer Redress Through the Small Claims Court: A Proposed Model Consumer Justice Act," Boston College Industrial and Commercial Law Review 18 (1977): 840; and J. V. Tunney, "S.2928 Consumer Controversies Resolution Act," in Consumer Complaints: Public Policy Alternatives, ed. Divita and McLaughlin, p. 160.

16. Frierson, "Let's Abolish Small Claims Courts," p. 18.

17. A. Stauber, "Small Claims Courts in Florida: An Empirical Study," The Florida Bar Journal 54(2) (1980): 135.

18. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 81-86.

19. McFadgen, "Dispute-Resolution in the Small Claims Context," pp. 25, 47-49; and M. Minton and J. Steffenson, "Small Claims Courts: A Survey and Analysis," Judicature 55 (1972): 327.

20. New York Public Interest Research Group, Inc., Winning Isn't Everything: A Study of the New York City Small Claims Court System (Albany: New York Public Interest Research Group, Inc., 1976), p. 7.

21. Cappelletti and Garth, "Access to Justice," p. 195; M. Galanter, "Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change," Law and Society Review 9 (1974): 364; and B. J. Graham and J. R. Snortum, "Small Claims Court: Where the Little Man Has His Day," Judicature 60 (1977): 260.

22. Minton and Steffenson, "Small Claims Courts: A Survey and Analysis," p. 327; Moulton, "The Persecution and Intimidation of the Low Income Litigant," p. 1667; and Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 27.

23. While allowing litigants to retain counsel in small claims cases has been widely criticized, several arguments have been made for continuing the process. First, attorneys are more skilled than pro se litigants at case presentation and at helping judges focus on the legal issues involved; see Gould, Staff Report on the Small Claims Courts, pp. 202-215; and Kosmin, "The Small Claims Court Dilemma," p. 960. Second, attorneys are more aware of appropriate consumer defenses; see Gould, ibid.; Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 24-26; and S. Weller and J.C. Ruhnka, Practical Observations on the Small Claims Court (Williamsburg, Va: National Center for State Courts, 1979), p. 22. Third, attorneys can act as a check on an incompetent or biased judge, can help explain the judicial process to their clients, and can temper their clients' expectations; see Gould, ibid.; and Ruhnka, Weller, and Martin, ibid. Finally, barring attorneys does not protect the inexperienced, perhaps inarticulate pro se litigant opposed by a "repeat player" who is more familiar with the adversarial process; see Kosmin, ibid. Weller and Ruhnka have argued that, so long as the courts do a relatively poor job of helping defendants prepare for trial, attorney representation should be permitted, but that their participation must be controlled. They should not be allowed to raise objections or directly question opposing parties or their witnesses, but only be allowed to advise their clients and give a brief presentation at the close of the trial; see Ruhnka, Weller, and Martin, ibid., pp. 71-72; and Weller and Ruhnka, ibid., pp. 21-22.

24. Gould, Staff Report on the Small Claims Courts, pp. 202-215.

25. Eovaldi and Meyers, "The Pro Se Small Claims Court in Chicago," pp. 953-954; Frierson, "Let's Abolish Small Claims Courts," pp. 20-21; Yngvesson and Hennessey, "Small Claims, Complex Disputes," p. 259. A recent study shows that while defendants fare less well when handling their own cases, plaintiffs do equally well, in part because most plaintiffs can show good cause for their claims; see Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 69-71.

26. Eovaldi and Meyers, "The Pro Se Small Claims Court in Chicago," pp. 953-954; and Kosmin, "The Small Claims Court Dilemma," pp. 954, 957-958.

27. Eovaldi and Meyers, "The Pro Se Small Claims Court in Chicago," pp.953-954; Gould, Staff Report on the Small Claims Courts, p. 208; and Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p.29.

28. Eovaldi and Meyers, "The Pro Se Small Claims Court in Chicago," p. 987; Kosmin, "The Small Claims Court Dilemma," p. 957-958; and A. Sarat, "Alternatives in Dispute Processing: Litigation in a Small Claims Court," Law and Society Review 10 (1976): 349-350.

29. Sarat, "Alternatives in Dispute Processing," pp. 349-350.

30. In many courts, a small group of attorneys is on retainer with several businesses, contributing to the courts' reputation as a collection agency for business corporations. See Joseph and Friedman, "Consumer Redress Through the Small Claims Court," p. 842; and Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 29. In some states, all corporations are required to be represented by an attorney; see Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 28. This practice has been labeled unfair to small businesses; see Gould, Staff Report on the Small Claims Courts, p. 213.

31. Graham and Snortum, "Small Claims Court: Where the Little Man Has His Day," p. 260; Minton and Steffenson, "Small Claims Courts: A Survey and Analysis," p. 324; and Weiss, Little Injustices, cited in Kosmin, "The Small Claims Court Dilemma," p. 939. The study by Ruhnka and his colleagues, however, suggests that there is no basic incompatibility between use of the courts by businesses and their use by individuals. When the total filings by individuals in each of 15 courts were converted to rates per 1,000 population of the respective jurisdictions, the investigators found that heavy business and collection agency usage produced a larger overall caseload, but did not decrease the rate of individual or consumer use of those courts. Based on this finding, the investigators oppose barring businesses, creditors, or collection agencies from the courts. Doing so, they claim, would force these complainants to file in the regular civil courts, where individual defendants would need an attorney and the court costs added to any judgment would be higher; see Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 42-45.

32. Gould, Staff Report on the Small Claims Courts, p. 8.

33. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 49-50.

34. R. Scobey, "The Big Problem of Small Claims: An Empirical Analysis of the Providence Small Claims Court," Rhode Island Bar Journal (March 1980): 2.

35. Graham and Snortum, "Small Claims Court: Where the Little Man Has His Day," p. 265; Tunney, "S.2928 Consumer Controversies Resolution Act," pp. 160-161; Weiss, Little Injustices, cited in Kosmin, "The Small Claims Court Dilemma," p. 939.

36. California Department of Consumer Affairs, The Small Claims Court Experimental Project: A Report to the Legislature on the Court Assistance Experiment (Sacramento: Department of Consumer Affairs, 1979), p. 103; Kosmin, "The Small Claims Court Dilemma," p. 967; and Yngvesson and Hennessey, "Small Claims, Complex Disputes," p. 243.

37. Tunney, "S.2928 Consumer Controversies Resolution Act," pp. 160-161; and Yngvesson and Hennessey, "Small Claims, Complex Disputes," pp. 243-246.

38. Kosmin, "The Small Claims Court Dilemma," p. 967. A 1976 report on the default problem in Connecticut showed that action could be taken on a default motion without the plaintiff (or attorney) being required to appear; see H. B. Rosen, "Nearer Thy Court to Thee: A Proposal for a More Convenient Forum for Defendants in Consumer Cases," Connecticut Law Review 8 (1976): 532.

39. T. L. Eovaldi and J. E. Gestrin, "Justice for Consumers: The Mechanisms of Redress," Northwestern University Law Review 66 (1971): 283; Gould, Staff Report on the Small Claims Courts, p. 140; and Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 50.

40. New York Public Interest Research Group, Inc., Winning Isn't Everything, p. 6; Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 161; Stauber, "Small Claims Courts in Florida," p. 136; and Yngvesson and Hennessey, "Small Claims, Complex Disputes," p. 254.

41. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 161-167.

42. Kosmin, "The Small Claims Court Dilemma," p. 971; Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 161-164; and Tunney, "S.2928 Consumer Controversies Resolution Act," pp. 160-161.

43. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, pp. 161-164.

44. Ibid., pp. 33-34.

45. See U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, An Exemplary Project--Citizen Dispute Settlement: The Night Prosecutor Program of Columbus, Ohio (Washington, D.C.: Government Printing Office, 1974).

46. In the late 1970s, the field of minor dispute resolution received considerable Congressional attention. The Senate and House Judiciary Committees held hearings on minor dispute resolution during 1978 and 1979, resulting in the drafting of the Dispute Resolution Act. This bill was designed to provide funding for innovative dispute resolution programs and to establish a national resource center and information clearinghouse. The bill was passed by the 96th Congress and signed by the President in February 1980, but the program has not yet received an appropriation, due to recent cutbacks in the federal budget. Plans are underway, however, to establish a National Institute for Dispute Resolution in 1982. To be funded by a consortium of private foundations, the Institute is designed to perform many of the functions once slated for the federal Dispute Resolution Program.

47. See the American Bar Association's Dispute Resolution Program Directory 1981, ed. Larry Ray (Washington, D.C.: American Bar Association, 1980), which provides useful summaries of dispute settlement projects, including information on program referral sources, types of cases, staff characteristics and training, and similar topics. Copies are available from The Special Committee on Resolution of Minor Disputes of the Public Services Activities Division, American Bar Association, 1800 M Street, NW, Suite 200, Washington, D.C. 20036, (202) 331-2258.

48. Craig A. McEwen and Richard J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," Maine Law Review 33 (1981): 261.

CHAPTER 2

PROGRAM OPTIONS: DEVELOPMENT, ORGANIZATION, AND STAFFING

2.0 Introduction

All six mediation and arbitration programs visited for this study share a common goal--to provide small claims disputants with a fair, efficient, and more satisfying alternative to traditional adjudication--but they diverge greatly in how they work to achieve that goal. The purpose of this chapter and Chapter 3 ("Program Options: Case Processing") is to review different program options, to cite the advantages and drawbacks of those options, and to make recommendations when model practices can be identified. This information can assist program planners in making decisions about the structure and operations of new programs. It can also help directors of other programs identify possible modifications in existing procedures or new ideas they may wish to consider. A summary of major findings and recommendations for both Chapters 2 and 3 appears in Section 1.4.

As a complement to these two chapters, Chapter 4 contains detailed case studies of the six programs:

- Small Claims Mediation Program, Ninth District Court, Portland, Maine (Section 4.1);
- Citizen Dispute Settlement (CDS) Program, Pinellas County, Florida (Section 4.2);
- Neighborhood Justice Center of Atlanta (NJCA), Inc., Atlanta, Georgia (Section 4.3);
- Arbitration Program of Manhattan (New York County), Small Claims Court (Section 4.4);
- Night Small Claims Arbitration Program, Nassau County, New York (Section 4.5); and
- Neighborhood Small Claims Court Program, San Jose, California (Section 4.6).

Each case study provides an overview of traditional small claims processing in the program's jurisdiction and examines in detail the development, organization, staffing, and procedures of the mediation/arbitration program.

Chapters 2 and 3 draw heavily on the interviews with the staff members, hearing officers, judges, court clerks, and other individuals involved with the six visited programs. The methods used in conducting this study were described in Section 1.3. Two additional sources informed this discussion of program options. First, an intensive study of small claims mediation in Maine was recently conducted by Professors Craig A. McEwen of Bowdoin College and Richard J. Maiman of the University of Southern Maine. This study, funded by the National Science Foundation, compared mediation and traditional adjudication of small claims disputes, with a special focus on litigants' satisfaction with the processing and outcome of their cases.[1] Second, information on the Court Alternative Mediation Program (CAMP) of Tucson, Arizona, was provided by Robert B. Donfeld, Presiding Judge of the Pima County Justice Courts, who serves as the program administrator. CAMP offers voluntary mediation as an alternative to formal adjudication to unrepresented parties in small civil cases.

Chapter 2 focuses on issues related to program development, organization, and staffing:

- Program goals. What is the impetus for establishing the alternative program--increased efficiency of case processing or improved quality of justice for disputants? (Section 2.1)

- Support of the judiciary and the local bar. What reception can a fledgling mediation/arbitration program expect from the justice community? What role should the judiciary and the local bar play in developing and implementing an alternative program? (Sections 2.2.1 and 2.2.2)

- Program funding. What sources of government and private funding are available to a mediation/arbitration program? (Section 2.2.3)

- Program authorization. Must a mediation/arbitration program for small claims disputes be authorized by legislation or by rule of the court, or can it be authorized simply through the consent of the small claims judges? (Section 2.2.4)

- Program sponsorship. Should the alternative program operate as an arm of the small claims court or as an independent entity? Should cases referred to the alternative be heard in the courthouse or elsewhere? (Section 2.3.1)

- Policy-making body. Is policy-making authority invested in the program staff, an advisory board, or the judiciary? (Section 2.3.2)

- Program staff. How large must the program staff be to handle its caseload? (Section 2.3.3)

- Selection and training of mediators/arbitrators. How are hearing officers recruited, selected, and trained? What size mediator/arbitrator pool is required? Should hearing officers receive remuneration? (Section 2.4)

2.1 Impetus for Establishing an Alternative Program

The goals of mediation/arbitration programs for small claims disputes (see Section 1.2) can be grouped into two major categories: (1) to increase the efficiency of case processing, and (2) to improve the quality of justice afforded small claims disputants. Programs are generally aimed at both, as was the case for each of the six programs visited for this document, but the relative emphasis placed on them does vary. In general, arbitration programs are designed primarily to increase court efficiency, whereas mediation programs are designed primarily to improve the quality of justice.

Programs designed to increase the efficiency of case processing may be aimed at one or more of the following specific changes: a reduction in the court caseload; a reduction in case backlog and the delay litigants experience between case filing and trial; and economies from the use of volunteer or low-cost mediators/arbitrators in place of judges. Sander and others caution that any improved system of dispute processing could increase the number of cases that are filed and processed,[2] possibly undermining the effort to relieve the court's burden.

The Manhattan small claims arbitration program was designed to increase the court's efficiency. When it began, many cases were delayed over two years from filing to trial. The program was started with the hope of eliminating this backlog and eventually reducing the judges' caseloads. This objective predominates program operations to this day--small claims litigants are strongly encouraged to have their case heard by an arbitrator; though some arbitrators do try to help the parties reach a settlement before conducting a formal hearing, most cases are disposed of rapidly; arbitration decisions are mailed to the parties rather than announced at the end of hearings; and arbitration awards cannot be appealed. With these procedures in place, the New York City Civil Court schedules approximately 100 cases for each small claims session. However, the time pressure on the judges and arbitrators is still intense.

Other alternative programs have focused more on the need to improve the quality of justice received by small claims disputants. Some judges do have a participatory approach to small claims cases, helping litigants to fashion compromise settlements or suspending judgments to allow parties to provide equitable relief. But, in general, most judges feel constrained by the "winner-takes-all" nature of the adversarial process, the requirement that trials address only the specific complaints at hand, and the limitation of judgments to the provision of monetary relief. Thus, a report issued by the American Bar Association in 1978 states: "Disputants appear to yearn increasingly for a simple and accessible procedure that permits them to tell their story and get prompt and constructive assistance toward the resolution of the underlying controversy."[3] Mediation (and, to a lesser extent, arbitration) can lead to a fuller exploration of the background of a complaint and to changes in the disputants' behavior that can prevent further problems between them.

The Neighborhood Justice Center of Atlanta (NJCA), Inc., is an example of a mediation program designed to assist parties in reaching fair and lasting resolutions to their minor disputes. This objective is clearly reflected in program procedures--participation in mediation is completely voluntary; mediation sessions are scheduled at the parties' convenience; sessions typically last up to one and one-half hours; and, with the mediator's help, the parties fashion their own settlements.

The success of mediation/arbitration programs in meeting their major objectives cannot always be easily assessed. However, available data do support the "quality of justice" arguments for developing the mediation alternative. McEwen and Maiman's recent study of Maine's small claims courts compares the relative satisfaction of litigants participating in adjudication and mediation. (See pages 85-86 for a fuller description.)[4] The evidence shows that mediation participants felt that they had a greater opportunity to explain their side of the case fully, had more freedom to explore issues beyond the complaint itself, and had a greater understanding of the other party's side of the dispute. The mediation process itself was found to be less confusing or intimidating than adjudication. Moreover, litigants perceived the settlements reached through mediation to be fairer than those reached through adjudication.[5]

Most important, McEwen and Maiman's data provide strong support for the hypothesis that mediated settlements are more likely to be paid than judgments of the court: litigants reported that 71 percent of mediation agreements with monetary settlements had been paid in full, compared with 34 percent of such judgments reached through adjudication.[6] The strength of this finding gives additional weight to the arguments for the use of mediation in small claims cases.

2.2 Program Development

The experience of court-related mediation/arbitration programs suggests four major components of early program development that are important to the later success of the alternative forum: judicial involvement in and support for the program; a good relationship between the program and the local bar association; a mix of government and private funding; and authorization for the program to obtain court referrals.

2.2.1 Need for Judicial Involvement

Mediation and arbitration programs that operate within or in conjunction with the court system need the early involvement of the judiciary. This is particularly crucial when programs seek case referrals from trials or preliminary hearings. Judicial support is also necessary to set up a referral system in the civil clerk's office; obviously, court clerks are unlikely to refer cases to a program if the judges are opposed to it. In all six programs visited for this study, local judges played a major role in getting the programs started, obtaining financial support, and planning program operations (see Chapter 4 case studies). Those wishing to start a program must have the backing or active involvement of at least one judge.

Once a program has been implemented, the importance of judicial support does not diminish. Such support can be instrumental in helping a project obtain new sources of financial support. For example, when the Atlanta NJC lost its federal grant support, several local judges sent letters to the city and county governments to request funding for the Center. Continued judicial support is also needed for the programs to keep a high volume of court referrals. For example, the Pinellas County Citizen Dispute Settlement Program routinely receives case referrals during small claims pretrial conferences from judges in the Clearwater court, but only rarely from those in St. Petersburg. Program staff attribute this difference to the better rapport and trust they have established over time with the judges in the Clearwater court.

Staff members of most of the visited programs report that some judges, despite program efforts to gain their support, remain resistant to the alternative program. Other judges become persuaded of the program's value as they see how it handles especially thorny cases or as they hear the program praised by fellow judges. But even in courts where most small claims judges endorse the program, individual judges may still refuse to refer cases. There is also considerable variation between judges who do support the program in the volume of cases they actually refer to mediation/arbitration.

2.2.2 Relationship with the Bar Association

In some jurisdictions, planners of small claims mediation/arbitration programs anticipate opposition from the local bar association, expecting that most attorneys will feel threatened by a program that minimizes the need for parties in small claims cases to retain legal counsel. Determan believes that lawyers should support small claims arbitration programs. First, he points out that most lawyers decline taking on small claims cases because they generate so little revenue. Thus, the amount of revenue lost to lawyers as a result of small claims arbitration programs will be minimal. Second, if arbitration is used for a relatively large small claims case, one or both parties will still seek legal representation. Finally, Determan argues that lawyers should take advantage of the opportunity[7] to enhance their public image by volunteering time to serve as arbitrators.

Five of the six programs visited for this document had strong support from local bar associations. The history of these programs suggests that any resistance from the local bar can melt away if the program organizers actively push for the bar's participation. The Neighborhood Small Claims Court Program in San Jose is co-sponsored and partially funded by the Santa Clara County Bar Association, and members of the bar serve as volunteer hearing officers. In Nassau County and Manhattan, the local bar associations agreed to screen applications from attorneys who wished to serve as volunteer arbitrators. The Maine program received its initial impetus from the Cumberland County Bar Association. The Atlanta NJC chose a member of the local bar to serve on the board of directors, and the Younger Lawyers Association of the state bar agreed to finance one of the Center's brochures. Only the Pinellas County CDS program met initial resistance from the bar, but this was overcome when the program added attorneys to the mediator staff.

2.2.3 Funding Sources

The programs visited for this report have received support from a wide range of government and private funding sources. The two arbitration programs in New York operate as part of the small claims court itself, and all costs associated with the program are assumed by the counties' civil court budgets. Two of the mediation programs, in Atlanta and Pinellas County, were supported during their first years of operation by grants from the Law Enforcement Assistance Administration of the U.S. Department of Justice. As their grant period came to a close, the Atlanta NJC staff and advisory board began successful fund-raising efforts on a number of fronts, including local foundations, business associations, and city, county, and state governments. In

addition, the executive director earns money for the program by serving as a consultant to other mediation programs across the country. Similarly, the Pinellas County CDS Program worked to obtain funding from several sources, including the Florida Bar Association, the Florida Department of Health and Rehabilitative Services, the Juvenile Welfare Board of Pinellas County, and a county court filing fee surcharge. Recently, this program also received funding from the county court budget.

The programs in both Maine and San Jose had initial funding from private sources. The Maine program, which is now funded under the state court budget, was supported during its first two years by Maine's Council for the Humanities and Public Policy. Early funding sources for the San Jose program included an apartment owners' association, a finance company, and the San Francisco Foundation. More recently, two major sources of funding were the Santa Clara County Bar Association and the Hewlett Foundation.

Continued funding for these programs is a perpetual concern even when some form of government funding is available, and program staff must devote considerable time to lobbying for financial backing. None of the visited programs charges users fees, but other programs may wish to consider this option. For the greatest program stability, the best arrangement is for the program to receive funding as part of the court budget. Alternatively, the court can finance the program by adding a nominal surcharge to the filing fee paid by all plaintiffs whether or not they use the alternative forum, as in Pinellas County. Programs that operate independently of the court can still draw support from it, but obviously cannot rely solely on that support.

2.2.4 Program Authorization

Mediation/arbitration programs need authorization to operate within or in conjunction with the courts. This authorization can be granted through statutory provisions, by rule of court, or by the informal consent of the judiciary. Examples of all three types are provided by the visited programs. The Maine program began as a court experiment, but legislation now authorizes the use of mediation in small claims cases throughout the state.[8] In Manhattan, the authority for small claims arbitration is granted by the Rules of the Civil Court of the City of New York.[9] In the State Court of Fulton County, Georgia, the judges and civil court clerks informally agreed to refer small claims cases to the Atlanta NJC.

The enabling legislation in most states gives the courts broad powers to experiment with different methods of handling small claims disputes.[10] Thus, it should be possible to establish mediation/arbitration programs in

most jurisdictions by rule or consent of the court and to avoid the lengthy process of obtaining specific legislative authorization.

2.3 Program Organization

2.3.1 Court Sponsorship vs. Program independence

Should an alternative forum for handling small claims cases be independent from or part of the court? The debate over this question focuses on three considerations: convenience to the disputants, efficiency, and the quality of justice that can be provided. A related question is whether the program should be located in the courthouse or elsewhere. Of the six programs visited for this report, only the Atlanta NJC is a fully independent forum. It is important to emphasize, however, that despite its independent administration, the Center must work closely with judges and court clerks to obtain referrals of small claims cases. Table 2.1 shows the program sponsor, physical location, and sources of small claims referrals for all six visited programs.

Table 2.1

Mediation/Arbitration Programs and the Courts: Sponsorship, Physical Location, and Sources of Small Claims Referrals

Program	Program Sponsorship	Physical Location	Sources of Small Claims Referrals
Mediation Programs			
Portland, ME	Court	Courthouse	Bench
Pinellas County, FL	Court**	Courthouse	Bench, Filing Desk (pre-filing referrals), Walk-ins, Other
Atlanta, GA	Independent	Residential Area	Filing Desk, (pre-filing referrals), Walk-ins, Other
San Jose, CA*	Court**	Local High School	Filing Desk (post-filing referrals)
Arbitration Programs			
Nassau County, NY	Court	Courthouse	Bench
Manhattan, NY	Court	Courthouse	Bench

*Unsuccessfully mediated cases proceed to arbitration if both parties consent

**Program is court-sponsored, but receives funding from multiple sources.

For an arbitration program like the one in Manhattan, the primary motive for establishing the alternative is to move cases through the adjudicative process more quickly, thus unclogging the court backlog and minimizing the number of return trips required of the disputants. A cadre of arbitrators, responsible to the presiding judge, is in place for each session to process cases right then and there. An independent arbitration program, or one located outside the courthouse, would not serve the court's needs for greater efficiency.

For mediation programs, the issue is more complex. Ruhnka cites the following advantages to having a mediation program both sponsored by the court and located in the courthouse:

- If the mediation effort fails, the complainant does not need to file the case a second time.
- Parties can proceed immediately to adjudication (either a court trial or arbitration) without further delays or extra trips.
- A mediation settlement can be reviewed immediately by a judge for correctness and evenhandedness and then be made a formal order of the court.[11]

Eovaldi and Gestrin echo Ruhnka's argument that a court program is more convenient to the litigants.[12] Jewell argues that the quality of justice will be higher when a program is directly accountable to the court; with an independent program, he asserts, disputants can be deprived of equal protection of the law.[13] Feeley, arguing that the lower courts already operate with "flexibility and [a] concern for substantive justice," is concerned that independent programs "may end up doing in a time-consuming and cumbersome manner what the lower courts do more quickly and more effectively."[14]

Program staff at the visited programs identified additional arguments in favor of program operation within the court system. First, judicial support and sanctioning of the alternative are more likely in a court-run program. Second, the alternative forum can benefit from the prestige, credibility, and authority of the court system. Respondents, for example, may be more likely to attend a mediation hearing sanctioned by the court. Third, the prospects for continued funding of the alternative are greater if the program is supported by a regular court budget. Finally, an independent program, especially one located outside the courthouse, requires a larger operating budget for clerical and intake staff, capital expenditures, and building rental (see Section 2.5).

The executive director of the Atlanta NJC argues that alternative programs should be independent of the court. Her major concern is the possible adverse impact of court sponsorship on the mediation process itself. With a court-operated program, especially one that receives referrals directly from judges, there is the question of whether litigants are being coerced into mediation. Thwarting the litigants' preference for a formal trial and forcing them to try mediation, she argues, may be a self-defeating exercise. Court-operated programs must be sensitive to this issue. But, in fact, it is possible for them to set up referral mechanisms that guarantee litigants' freedom of choice (see Section 3.2.2).

The Atlanta director also claims that mediators in court programs are under greater pressure to dispose of cases at a faster pace, whereas those with an independent program can devote as much time as necessary to each case. Similarly, Johnson asserts that it is especially important for a mediation program to remain independent from the courts during its early development when the staff needs time to experiment with different approaches.[15] In fact, the pressure that mediators feel to dispose of cases need not be an inherent feature of court-operated programs. Thoughtful case scheduling is critical so that adequate time can be devoted to each case that reaches mediation (see Section 3.2.3).

A final issue to be raised is whether a court-operated mediation program can win the acceptance of the community. In communities where citizens hold public institutions in high regard, a program operating under court auspices might be more easily accepted. But where citizens regard public institutions with distrust, a program may fare better if it is located outside the courthouse and administered independently.[16] On the other hand, it could be argued that a court-operated mediation program may be among the better ways to enhance the court's overall reputation.

Considering the arguments just reviewed, the weight of evidence at this time is on the side of court sponsorship. As noted previously, even without court sponsorship, a program must have strong ties to the courts in order to be successful.

2.3.2 Policy-making Body

The four mediation programs visited for this study have invested the power to establish policy in a variety of ways. In general, court-sponsored programs have centralized authority. Policies for the Pinellas County CDS Program, for example, are established by the project director, who is a circuit court judge, in consultation with the program director who oversees day-to-day operations. In Maine, policies for the statewide mediation program are

determined by the program's coordinating judge, who tries small claims cases in the Portland court, and the program administrator, who also serves as a mediator. In San Jose, the court's initial planning of the Neighborhood Small Claims Court Program was assisted by an 11-member Citizen's Advisory Committee, but the program is now guided primarily by the Municipal Court judge who initiated it.

In contrast, the Atlanta NJC--which is independent of the courts, but must rely on court support for case referrals--has empaneled a large and diverse advisory board to establish policy. Three of the members are court personnel: the director of court services of the Atlanta Judicial Circuit, the chief probation officer of the Juvenile Court, and the court administrator of the Fulton County Superior Court. These personnel, rather than judges, were placed on the board because of their ability to facilitate court referrals at the point of case intake. Other members include representatives from the local bar associations, Atlanta Legal Aid, the County and City Attorneys' Offices, the Atlanta Bureau of Police Services, and the Atlanta Office of Community Affairs. These members were included to solidify the Center's connections with the city and county governments and with other groups whose political (or financial) support might be needed.

The two arbitration programs in New York have no separate staff or advisory board; major policies are determined by the administrative judge and other court administrative personnel who are charged with setting court procedures.

2.3.3 Program Staff

The visited mediation programs also vary in the number of paid staff members they employ. Staff size appears to be determined in large part by the diversity of the program's caseload. At one extreme, both the Maine and San Jose programs primarily handle small claims disputes and receive referrals directly from the court (see Table 2.1). Neither program has full-time personnel. In Maine, where small claims mediation hearings are held immediately following bench referral, the program administrator needs only a few days each month to perform his administrative duties. The Portland judge who oversees the program does not draw any of his salary from the program budget. In San Jose, where the mediation hearings are held at a local high school, a larger part-time staff is needed; two temporary deputy court clerks, a security officer, and a bar association clerical worker help run the program.

At the other extreme, both the Atlanta NJC and the Pinellas County CDS Program mediate a wide range of cases, including small claims disputes, and they receive cases from a number of referral sources, including the courts. Consequently, both of these projects must employ their own intake staffs.

The full-time staff of the Pinellas County program includes the program director, an assistant director, four intake counselors, and a secretary; an additional secretary and security personnel work for the program on a part-time basis. The Atlanta NJC has five full-time staff members: the executive director, an assistant director, two intake counselors, and an intake/clerical assistant. Two part-time administrative assistants round out the NJCA staff.

The arbitration programs in Nassau County and Manhattan require little administrative attention since all cases sent to arbitration are referred directly from the evening court session. The Nassau County program employs no full-time personnel; a regular court employee schedules the arbitrators. In New York City, a full-time staff member is responsible for scheduling nearly 800 volunteer arbitrators for hearings in six different small claims courts, including the Manhattan court.

The duties of the staff members for all six programs and their qualifications are described in the Chapter 4 case studies.

2.4 Mediators/Arbitrators

The hearing officers, of course, are the core of any mediation or arbitration program. This section reviews how hearing officers might be selected, with a special focus on the advantages and disadvantages of using attorneys; the size of the mediator/arbitrator pool; the compensation of hearing officers and the training of hearing officers.

2.4.1 Selection of Hearing Officers

The selection of hearing officers for the San Jose, Nassau County, and Manhattan programs is conducted by the local bar associations. In Nassau County, for example, attorneys interested in becoming arbitrators are referred by the court to the bar association. Applicants must then complete an extensive questionnaire detailing their education, the nature of their legal practice, their civic activities, and other related facts; the questionnaire is similar to that used by the bar association to screen candidates for judicial posts. The bar association committee, after interviewing the applicants, makes recommendations to the administrative judge who gives final approval. In Maine, mediator applicants must submit their resumes to a panel composed of the coordinating judge, the program secretary, and one or more program mediators. This panel also interviews applicants, and the coordinating judge makes the final decision. In both Atlanta and Pinellas County, selection of hearing officers is the responsibility of the project director.

Several qualifications for hearing officers were suggested by the staffs of all six visited programs: professional experience in handling consumer problems; good oral and written communication skills; personality traits such as maturity, self-confidence, objectivity, and friendliness; and a willingness to handle controversy. The executive director of the Atlanta NJC seeks a representative cross-section of the community in the mediator pool, but she will not accept mediator applicants who are 25 years old or younger. While younger applicants may be equally competent as mediators, she feels that they are less likely to be respected by older disputants whose cases they would handle.

Use of attorneys. The largest controversy regarding selection of hearing officers is whether attorneys are well-suited to serve as mediators. Those who favor using attorneys argue that mediators must be capable of pinpointing the legal issues involved in a particular case. Beresford and Cooper, in defending the San Jose program's reliance on attorney hearing officers, note that attorneys can better inform the parties about the decision a judge would be likely to make if their case were to proceed to trial.[17] Opponents to this position assert that most attorneys will focus on legal technicalities instead of fundamental notions of fairness and will retreat from a full exploration of the factors that underlie a dispute. Snyder claims that laymen can bring a fresh approach and greater enthusiasm to a mediation program than can those whose daily work is in the legal system.[18] It appears that the best solution is to use mediators of varied backgrounds, including attorneys, as is done in the Pinellas County CDS Program and the Atlanta NJC. For some cases, because of the nature of the case or the disputants' expectations, an attorney can do the best job. For other cases, a mediator with different expertise or experience will do best.

For court-run arbitration programs, on the other hand, all hearing officers should be attorneys. Court personnel from both Nassau County and Manhattan assert that litigants are willing to try arbitration because they are told that the arbitrators have extensive legal experience. In fact, when describing the arbitration alternative, some judges and clerks announce to the litigants that "the only difference between the judge and the arbitrator is a judicial robe." Clearly, having non-lawyers sit as arbitrators would not meet these courts' needs for fast, efficient, and unimpeachable adjudication.

Clerk/mediator position. Some small claims courts may wish to provide an alternate forum for litigants even though a small caseload or lack of funds may preclude the establishment of a full-fledged mediation program. One possibility is for these courts to combine the roles of administrator/clerk and mediator into a single paid staff position.[19] This individual would handle all small claims filings and also act as mediator when so instructed by a judge. It should be noted that a full-time court employee might eventually tire from having to juggle competing demands and from being the sole person to conduct mediations. However, by beginning in this small way, the

court may be able to prove the viability of the program and thus establish the foundation for a full-scale effort.

2.4.2 Size of the Pool

The total number of hearing officers in mediator/arbitrator pools varies tremendously from one program to the next. At two extremes, six mediators are available to the Court Alternative Mediation Program in Tucson, Arizona, while the small claims arbitrators in Manhattan and five other New York City courts are drawn from a city-wide pool of over 800 attorneys. The ideal number of hearing officers for a given program depends on the size and diversity of the program's caseload, how frequently the program director feels that hearing officers should be assigned cases, and how frequently hearing officers themselves are willing to hear cases. Hearing officers should not be assigned so often that their approach becomes stale, nor should they be assigned so rarely that their skills or their familiarity with program procedures can diminish. The demands that can be made on the hearing officers depend to a great extent on whether they are compensated. In Maine, for example, the paid mediators hear cases at least once a week, whereas the volunteer arbitrators in Manhattan are scheduled to sit approximately once every eight weeks.

2.4.3 Compensation for Mediators/Arbitrators

Three of the visited programs recruit hearing officers solely from their local bar associations and do not pay for the attorneys' services (San Jose, Nassau County, and Manhattan). Beresford and Cooper, among others, note that these kinds of alternative programs afford lawyers an excellent opportunity for pro bono service.[20]

At the other three visited programs, where the majority of the mediators are not attorneys, the mediators are compensated for their time. Mediators for the Pinellas County CDS Program receive $10 per hour, with a maximum fee of $30 per evening. The Atlanta NJC's mediators are paid $15 per case, or $5 per case if one of the disputants does not show up. Mediators in Maine receive $75 per day, or $37.50 if no cases go to mediation on a particular day; in addition, they are reimbursed for travel expenses to courts outside Portland.

The staff at these latter three programs believe that mediators should be paid for their services, even if it is only a nominal fee. Although mediators might be willing to donate their services, they may feel a greater sense of obligation to the program if they are compensated. This makes them more

likely to attend training sessions and to show up, notify the program, or find a substitute when they are assigned to mediate.

2.4.4 Training

The types and extent of training provided to hearing officers vary a great deal across the six visited programs. Arbitrators in Manhattan and Nassau County must attend only a brief orientation meeting before they are assigned cases. At the Manhattan meeting, the new arbitrators hear presentations on the history of the Small Claims Part, relevant court rules and directives, and major issues involved in small claims arbitration. Each arbitrator receives copies of the required court forms to review. The San Jose and Maine programs provide more extensive training; new hearing officers review selected written materials, observe sessions, and receive on-the-job training. Additionally, in Maine, program staff may attend the first sessions of new mediators and provide feedback on their performance. Mediators for the Court Alternative Mediation Program in Tucson are trained by the Pima County Victim/Witness Program. This training, which takes place over an eight-week period, includes lectures, demonstrations, and role-playing exercises. In addition, trainees observe two mediation sessions and lead two sessions with a partner. They then conduct two sessions on their own and receive feedback on their performance.

Of the six programs visited for this report, the Atlanta NJC has the most extensive training regimen for new mediators. Training sessions are conducted over a four-day period by a team of four or five people, including the executive director, other staff members, and veteran mediators. The sessions are a mix of lectures, audio-visual presentations, demonstrations, role-playing exercises, and discussions. Each trainee is given a detailed training manual prepared by the NJCA to use as a reference guide. Approximately 15 hours of the 40-hour training period are devoted to teaching the "nuts and bolts" of mediation, including how to deliver the opening statement; when to use parties' first versus last names; how to identify and separate major issues in a case; how to silence parties and when it is constructive to remain silent; how and when to caucus; and how to write an agreement. After these weekend training sessions, the new mediators observe five sessions conducted by veteran mediators, thus gaining exposure to a range of mediator styles and approaches.

The directors of programs with less extensive training justify this by pointing out that lawyers and other professionals, such as psychologists, social workers, and professors, simply do not require lengthy training to become good hearing officers. But this notion has been sharply criticized by many practitioners, who insist that mediation and arbitration require skills that one cannot assume are possessed by any person, not even a professional. Even

legal training does not equip a new hearing officer with sufficient knowledge of consumer issues or a full understanding of mediation and arbitration.[21]

In addition to the initial training of new hearing officers, some programs provide ongoing training for their hearing staff. For example, biannual seminars are held in Maine for the mediators; judges and other individuals involved in the program also attend. Similarly, the Citizen Dispute Settlement Program in Florida holds annual meetings during which mediators share their ideas and experiences. The specific meeting agenda varies from one year to the next; guest lecturers, role-playing, and video-taped materials have all been used to provide refresher training.

Monitoring of hearing officer performance is discussed in Section 3.5.

2.5 Program Costs

The information available on the costs of the six visited programs is sketchy and incomplete. Approximate costs per case can be derived for only three of the programs, and information is not available at any of the sites on the comparative costs per case for trial adjudication. Nevertheless, factors that add to the cost of an alternative program can be identified. Also, it is clear that a mediation/arbitration program, if certain economies are made, can be implemented at relatively low cost.

The total costs of the two arbitration programs in New York are difficult to determine. In Manhattan, for example, line item budgets for the operation of the Small Claims Part are not available, and the Civil Court budget cannot be disaggregated to determine the costs allowable to the Small Claims Part. However, the extra costs of the arbitration component are minimal: without the arbitration project, all of the clerical and recordkeeping work on each case would still have to be performed; a single staff member works full-time on scheduling the arbitrators for all six New York City small claims courts; and the lawyer arbitrators provide their services at no charge. In addition, regular small claims trials are conducted at night. The arbitration program uses court hearing rooms that otherwise would go unused, and there are no extra costs for opening the building or providing security.

Estimated costs and caseload figures for the four mediation programs are presented in Table 2.2. From that table it can be seen that the total budget and the total cost per case are higher for the Pinellas County CDS Program and the Atlanta NJC. It should be noted that budget figures for the Portland and San Jose programs include only additional costs of the programs to the courts. A portion of the normal court administrative costs has not been added to those figures. At all four mediation programs, the bulk of the

budget expenditures is for staff salaries, fringe benefits, and mediator fees. The Pinellas County CDS Program, for example, estimates that 90 percent of its budget is devoted to labor costs.

Table 2.2

Program Costs, Caseload, and Total Cost Per Case Estimates for Mediation Programs

Program	Estimated 12-Month Total Budget	Estimated 12-Month Caseload (total filings)	Estimated Cost/Case
Portland, ME	$ 25,000	not available	---
Pinellas County, FL*	$152,000	3,729	$41
Atlanta, GA**	$160,000	1,881	$85
San Jose, CA***	$ 20,000	1,669	$12

*Budget for first nine months of 1980 was $114,000. Caseload figure is for calendar year 1979.

**Budget figure is for calendar year 1980. Caseload total for 15-month period (March 1978-May 1979) was 2,351 cases.

***Budget figure is for calendar year 1980. Caseload total for 13-month period (December 1979-December 1980) was 1,808 cases.

Two key factors explain the higher costs of the Atlanta and Pinellas County Programs. First, each program handles a diverse caseload, including small claims matters referred from the court. The referral sources for each program's caseload are equally diverse. Thus, both programs employ their own intake staff for processing cases (see Section 2.3.3). In contrast, all of the cases handled by the Neighborhood Small Claims Court Program in San Jose are post-filing referrals from the court clerk's office. The recordkeeping required for these cases is the same as any other small claims case in the Municipal Court.

Second, as noted in Section 2.4.3, the programs in both Pinellas County and Atlanta have a diverse team of hearing officers and pay them a fee for their services. The program heads at both locations feel that payment is warranted and that it enhances the hearing officers' commitment to the program. The Atlanta NJC pays its mediators $15 per case heard. In contrast, the San Jose program relies on lawyer mediator/arbitrators who volunteer their services. If the San Jose program were to pay its hearing officers the same fee paid to mediators in the Atlanta NJC, the total budget would be approximately $45,000 (or $27 per case), more than double the current budget estimate of $20,000.

Additional factors can be identified that affect the cost of an alternative program: (1) Location. Programs that use courthouse space typically do not pay rent (e.g., Maine, Pinellas County, Manhattan, and Nassau County). (2) Travel reimbursement. If the program covers a wide geographical area and the hearing officers sometimes travel to various hearing sites, their reimbursement can represent a significant additional cost. For example, travel costs in 1980 for the Atlanta NJC were $7,600. (3) Administrative duties. If a program does adopt a rigorous training regimen for new hearing officers (see Section 2.4.4), systematically monitors their conduct of hearings, and executes a follow-up evaluation of the program (see Section 3.5), this will add to the program's effectiveness, but will increase its administrative costs. In addition, if the funding for the program is not secure, the staff will have to devote large portions of time to lobbying for future support.

The history of the San Jose program proves that a program specifically designed to provide mediation/arbitration of small claims cases alone can be implemented at low cost. A careful selection of program options should enable a program to keep its costs between $15 and $35 per case.

CHAPTER 2: Footnotes

1. For this study, three Maine courts employing small claims mediation (Augusta, Brunswick, and Portland) were compared to three "equivalent" courts that relied exclusively on adjudication of small claims cases (Biddeford, Lewiston, and Waterville). McEwen and Maiman utilized five major data sources: (1) interviews with litigants from 403 contested cases conducted four to eight weeks after their cases were tried or mediated; (2) information from reports filed with the courts by mediators after each hearing; (3) tape recordings of over 70 mediation hearings; (4) observers' notes on over 30 small claims court sessions; and (5) information from court docket books on over 18,000 small claims cases over a five-year period. See Craig A. McEwen and Richard J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," Maine Law Review 33 (1981): 237-268.

2. M. Rosenberg and M. Schubin, "Trial By Lawyers: Compulsory Arbitration of Small Claims in Pennsylvania," Harvard Law Review 74 (1961): 463; and F. E. A. Sander, "Varieties of Dispute Processing," (address delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota, 1976) Federal Rules Decisions 70 (1976): 113-114.

3. American Bar Association, Report on the National Conference on Minor Disputes Resolution (Washington, D.C.: American Bar Association Press, 1978), p. 2. In surveys of small claims plaintiffs in two California courts, over 40 percent of the respondents said that the opportunity to discuss case settlement in a private and informal manner would be a desirable feature of an ideal small claims court. See California Department of Consumer Affairs, The Small Claims Court Experimental Project: A Report to the Legislature on the Court Assistance Experiment (Sacramento: Department of Consumer Affairs, 1979), p. 85.

4. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," pp. 255-257.

5. A nationwide study of 15 small claims courts indicates that 87 percent of plaintiffs and 62 percent of defendants were satisfied when their case had been settled before trial; this was the only situation for which a majority of both parties expressed satisfaction. See J. C. Ruhnka, S. Weller, and J. A. Martin, Small Claims Courts: A National Examination (Williamsburg, Va.: National Center for State Courts, 1978), p. 74.

6. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," p. 261. The figure for adjudicated cases includes only contested cases; see p. 247.

7. D. W. Determan, "The Arbitration of Small Claims," Forum 10 (1974): 832.

8. ME. REV. STAT. ANN. tit. 14, ch. 738, see C. 7469 (Supp. 1980).

9. Rule 2900.33.

10. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 93.

11. J. C. Ruhnka, Housing Justice in Small Claims Courts (Williamsburg, Va.: National Center for State Courts, 1979), p. 117.

12. T. L. Eovaldi and J. E. Gestrin, "Justice for Consumers: The Mechanisms of Redress," Northwestern University Law Review 66 (1971): 322.

13. Armond M. Jewell, Judge of the Los Angeles Municipal Court, Minority Report, in California Department of Consumer Affairs, The Small Claims Court Experimental Project, p. 123.

14. Malcolm Feeley, The Process is the Punishment: Handling Cases in a Lower Criminal Court (New York: Russell Sage, 1979), pp. 239-240.

15. E. Johnson, Jr., "Toward a Responsive Justice System," in State Courts: A Blueprint for the Future, ed. T. J. Fetter (Williamsburg, Va.: National Center for State Courts, 1978), p. 130.

16. American Bar Association, Report on the National Conference on Minor Disputes Resolution, p. 27.

17. R. Beresford and J. Cooper, "A Neighborhood Court for Neighborhood Suits," Judicature 61 (1977): 186-187.

18. F. Snyder, "Crime and Community Mediation--The Boston Experience: A Preliminary Report on the Dorchester Urban Court Program," Wisconsin Law Review (1978): 775.

19. T. McFadgen, "Dispute-Resolution in the Small Claims Context: Adjudication, Arbitration, or Mediation?" (LL.M. thesis, Harvard University Law School, 1972), pp. 106-108; and Massachusetts Standards for the Operation of the Small Claims Procedure in the District Courts (1980), Commentary, Standard 2:01.

20. Beresford and Cooper, "A Neighborhood Court for Neighborhood Suits," p. 186.

21. "Report on the Small Claims Process in Maine," submitted by the Ad Hoc Committee on Small Claims to the Advisory Committee on Court Management and Policy (undated), p. 44; K. B. Ittig, "The Political Economy of Local Consumer Protection: An Empirical Study of Two Models for Consumer Redress," (Ph.D. thesis, Cornell University, 1976), p. 193; and McFadgen, "Dispute-Resolution in the Small Claims Context," pp. 87-88.

CHAPTER 3

PROGRAM OPTIONS: CASE PROCESSING

3.0 Introduction

This chapter reviews program options related to the processing of cases by small claims mediation/arbitration programs. As in Chapter 2 ("Program Options: Development, Organization, and Staffing"), the advantages and disadvantages of the procedures used by the six programs visited for this study are cited, and, when appropriate, model practices are identified. Specifically, this chapter treats the following issues:

- Definition of caseload. If the program is court-operated, what factors define its caseload? Are certain types of clients more likely to benefit from mediation than others? (Section 3.1)

- Case referral. Are cases referred to the alternative program by non-court sources prior to filing in court, by court clerks at the time of filing, or from the bench? (Section 3.2.1)

- Informed choice. What information is provided to disputants about the alternative program? How much choice are parties given in deciding whether they will use mediation/arbitration? (Section 3.2.2)

- Case scheduling. If the alternative program sets its own schedule, how are respondents notified of the hearing and its scheduled time? To what extent should evening and Saturday hearings be made available? How much time should be allowed for each hearing? (Section 3.2.3)

- Hearing procedures. How does the mediation/arbitration session proceed? What is the role of the hearing officer? Should attorneys be allowed to attend the session? Can the confidentiality of a hearing be preserved? (Section 3.3)

- The agreement. How can mediation/arbitration agreements be enforced? What is the importance of judicial review of these agreements? Should appeal of the agreement be allowed? (Section 3.4)

- Monitoring and evaluation. What type of monitoring of mediator/arbitrator performance should be done? What kind of follow-up of participant satisfaction with the settlements should be executed? (Section 3.5).

Section 1.4 summarizes the major findings of this study, highlighting the model practices and recommendations identified in both Chapters 2 and 3.

3.1 Definition of Caseload

An alternative program can restrict the types of cases it will handle in three ways: (1) by the jurisdictional claim limit of the small claims court itself; (2) by blanket exclusions, imposed by either the court or the program; and (3) by the exclusion of individual cases with little chance of benefiting from mediation/arbitration. The six visited programs vary greatly in their use of these restrictions.

3.1.1 Jurisdictional Claim Limit

In all jurisdictions, "small claims" are defined by an upper monetary limit. For those mediation/arbitration programs that receive only post-filing referrals from the court clerk (e.g., San Jose Neighborhood Small Claims Court Program) or from the bench (e.g., Maine mediation program, Manhattan and Nassau County arbitration programs), this claim limit defines the program's caseload. For those programs that also receive case referrals prior to court filing (e.g., Atlanta NJC, Pinellas County CDS Program), the caseload is not constrained by the court's claim limit.

The small claims limit is typically designed to be high enough to handle common claims, but not so high as to make litigants uncomfortable with informal trial procedures. A jurisdictional limit that is too low denies litigants access to inexpensive, simple procedures for claims they would not pursue in the regular civil court. On the other hand, with limits too high, litigants often feel uncomfortable with informal procedures, and the number of appeals out of the small claims court is likely to be greater. These considerations have led several commentators on small claims courts to recommend a claim limit of $1,000, with future increases tied to the inflation rate.[1]

Three of the visited programs were located in jurisdictions with claim limits of $1,500 (Manhattan and Nassau County, Pinellas County, Florida). The other three were in jurisdictions with claim limits below the recommended figure: Atlanta ($300); San Jose ($750); and Maine ($800).

3.1.2 Blanket Exclusions

In many jurisdictions, certain cases are automatically excluded from the small claims court, either because of the types of parties involved or because the parties are represented by legal counsel. Again, whether a mediation/arbitration program's caseload is similarly restricted depends on whether the program routinely receives small claims referrals prior to court filing. Variation across the six visited programs is considerable:

- In both Maine and Pinellas County, Florida, no blanket case restrictions are imposed beyond the jurisdictional claim limit. In Pinellas County, the filing clerks informally limit complainants to 15 filings per day.

- In Fulton County, Georgia, corporations, partnerships, associations, and collection agencies are barred from filing in small claims court. Defendants, but not plaintiffs, may be represented by an attorney. However, because the Atlanta NJC is an independent corporation, these restrictions do not limit its caseload in any way.

- The Santa Clara Municipal Court, the sponsor of the San Jose mediation/arbitration program, does not allow attorney representation. The court does permit filings by businesses, but only those cases filed by individual plaintiffs are referred to the alternative program.

- In the Manhattan Small Claims Part, corporations, partnerships, associations, and assignees are barred from filing. The Nassau County Court bars only corporations and assignees from filing. In both jurisdictions, if both parties appear for trial with legal counsel, the case is removed to the regular civil court. If only one party has an attorney, the case is kept in the small claims court; if the case does go to arbitration, the attorney may accompany his client at the hearing.

Ruhnka and his colleagues have strongly recommended that business plaintiffs and collection agencies not be barred from filing in small claims courts; they argue that business use of the courts does not prevent consumer plaintiffs from using them, and that little point is served by forcing businesses

to file in the regular civil court, where attorneys are required and higher filing fees are charged.[2] The issue of attorney participation in mediation/arbitration hearings is discussed more fully in Section 3.3.6.

3.1.3 Screening of Cases for Mediation

In the two arbitration programs visited for this study, individual cases are not screened for their suitability for arbitration. The litigants themselves must choose whether to exercise that option. But in the mediation programs, case-by-case screening does occur and can be performed by the judge, a court clerk, or the program intake staff.

Practitioners and commentators on mediation programs often suggest that mediation is most appropriate when disputants are involved in a valued, ongoing relationship.[3] In such cases, it is argued, the parties are more willing to entertain possible compromises and more likely to uphold the terms of any settlement reached. To test this hypothesis, McEwen and Maiman divided small claims disputants in the Maine courts according to whether they were involved in a relationship that predated their dispute and could be expected to continue indefinitely in the future. Their data provide limited evidence that workable settlements can be reached through mediation even when no ongoing relationship exists between the disputants. McEwen and Maiman point out that disputes between strangers tend to be more circumscribed and are often focused on a single issue or question of fact. For such cases, it may be easier to identify a simple compromise.[4] Mediators interviewed for this study confirmed that mediation often leads to a settlement when no ongoing relationship exists between the disputants.

There are a number of case characteristics that argue for a dispute to be handled through traditional adjudication rather than through mediation:

- more than two parties are involved;
- the judgment hinges on a strictly legal point;
- the parties are abusive or argumentative toward each other;
- the power and bargaining abilities of the two parties differ markedly;
- one party is clearly lying about a fundamental fact of the case;

- one or both parties indicate that they do not want to compromise and would prefer to have a judge declare a winner in the case; and

- one party has no real interest in the outcome of the case (e.g., in insurance liability cases, where determination of liability would require an insurance company, rather than the defendant himself, to pay the judgment).

If any of these conditions are present in a case, mediation may be inappropriate.

Both Kosmin and Mack have urged that small claims courts require evidence of private attempts at settlement before a complainant be allowed to file.[5] Obviously, were a court to adopt this criterion, an alternative program that only received post-filing referrals from that court would find its caseload severely restricted. There may be times, however, when this criterion could be reasonably applied by the program itself, either because of the nature of the case or because of the program's heavy caseload. Application of this criterion should be weighed against the risk that contact between the parties may cause them to become further entrenched in their positions, thus making any future mediation less likely to succeed.

The executive director of the Atlanta NJC is outspoken in her opposition to tight screening of cases prior to their acceptance by an alternative program. She contends that it cannot be determined that a case is inappropriate for mediation unless a hearing is held. If both parties want to try mediation, the NJCA will hear the case. Even if a settlement is not reached, she explains, the mediator can help the parties better understand the issues surrounding their dispute and inform them of their remaining options.

Clearly, the mediation process is insufficiently understood at the present time to warrant a strict application of the criteria described here. As just noted, even though many mediators and commentators expect mediation to work best when the parties are involved in an ongoing relationship, research evidence to date suggests that this assumption may be false. Thus, unless a program's caseload is severely backlogged, the staff should strive to accommodate every case brought before it.

3.2 Case Referral and Scheduling

3.2.1 Point of Referral

Cases can be referred to an alternative program at three different points in case processing: (1) non-court referral prior to the filing of a complaint with the court; (2) at the filing stage, either before or after filing, by the court clerk; and (3) from the bench by the presiding small claims judge.

Non-court referral. Of the six visited programs, only the Atlanta NJC and the Pinellas County CDS Program handle cases referred from non-court sources. At both programs, these cases involve a wide range of disputes, including small claims matters. Both programs worked hard to develop referral arrangements with a number of local agencies, including local police departments, consumer affairs agencies, the Better Business Bureau, legal aid offices, and city and state attorney's offices. In addition, publicity campaigns have resulted in a large number of self-referred cases being handled by the two programs. At the Atlanta NJC, parties can file complaints at the Center's neighborhood location or can call in; intake counselors are available to serve them. At the Pinellas County program, parties must file their cases in person.

Referral at filing. The San Jose, Pinellas County, and Atlanta programs all receive small claims referrals from the court filing clerks. In San Jose, the clerk refers a case to the alternative program after the complainant has filed the case with the court. Unless the complainant requests a court hearing, this referral is made automatically in cases involving a non-business plaintiff. In Pinellas County, on the other hand, the clerk refers cases to the alternative before the plaintiff registers the claim with the court. Clerks in the Clearwater court distribute a one-page notice describing the Citizen Dispute Settlement Program to anyone who comes to file a small claim. In the St. Petersburg court, however, this notice is given only to those complainants who specifically ask about the availability of faster or less expensive alternatives to the small claims court (see Section 4.2).

The clerks at the small claims filing desk in the State Court of Fulton County play an active role in screening cases for the Atlanta NJC. Before each case is filed, the clerk talks with the complainant about the case to determine whether it might be better handled by the NJCA than by the court. For example, they ask the complainant to estimate the likelihood of the respondent being willing to participate in voluntary mediation; if the complainant believes that a court subpoena will be necessary to compel the respondent's appearance, referral to the NJCA is viewed as inappropriate, and the claim is filed with the court. Several factors lead the clerks to recommend the alternative program: (1) the complainant cannot pay the $14

small claims filing fee (no fee is charged by the NJCA); (2) the claim exceeds the small claims jurisdictional limit, but the complainant does not wish to file in the regular civil court; (3) the complainant balks at the prospect of a three-month delay between filing and the court hearing; (4) the respondent lives outside Fulton County; and (5) the claim is against a local business known to be amenable to mediation.

On several mornings each week, an intake volunteer from the NJCA is stationed near the filing desk to talk with any complainants to whom the clerks have suggested mediation. The intake volunteer describes the Center and the mediation process, emphasizing its voluntary nature, the possibility of rapid turnaround time, and the absence of any filing fee. The complainants must then decide whether to try the NJCA or to file with the court, as they had originally intended. When an intake volunteer is not in the clerk's office, the clerks still refer appropriate cases to the Center, giving the complainants a copy of its brochure and suggesting that they call in to schedule a mediation hearing.

Referral at trial. In four of the six programs visited, small claims cases can be referred to the alternative program from the bench. In Manhattan and Nassau County, litigants are told about the arbitration alternative at the opening of the court session. Parties who do not want their case arbitrated must request a hearing by the court during the calendar call. Cases are not referred to arbitration at any other point in time, reflecting the courts' concern with increasing efficiency and minimizing the number of return trips required of the disputants.

In each Maine court where mediation is available, the presiding judge first inquires as to the parties' pretrial settlement attempts. If no attempt has been made, the judge can require the parties to meet, either alone or before a mediator, at their option, and try to arrange a settlement. In some cases, though, the judge may decide that an immediate trial is preferable. If the parties agree to try mediation and it fails, they return to court later that day for a regular trial.[6] Cases are not referred to mediation before the day of the scheduled court hearing.

In Pinellas County, two hearings for small claims cases are required. Before the trial itself, a pretrial conference is held approximately one month after filing so that both parties can summarize their side of the case and furnish the other party with a list of witnesses and copies of any evidence to be presented. The judges use the conference to explain small claims trial procedures to pro se litigants, to encourage them to settle their case out of court, and to set a date for the final hearing, often three months hence.[7] Occasionally, a judge will refer a case out of a conference hearing to the CDS Program. In Clearwater, a CDS staff member attends all pretrial conferences. The judge explains to the litigants that they may try to settle their

case before the final hearing; if the parties do wish to try mediation, the staff member takes them to the CDS office in the courthouse, and a session is usually conducted on-the-spot by another staff member. As noted previously, this program also accepts cases referred from the filing desk, a number of local agencies, and self-referrals.

Bench vs. clerk referral. Given the efficiency goals of the court-operated arbitration programs, their reliance on bench referrals makes the most sense as an administrative convenience. But for a mediation program, advantages can be cited for both clerk and bench referrals.

Those who favor mediation referrals from the court clerk list three key arguments: (1) Clerk referral reduces the delay experienced by litigants between filing and the hearing date. If cases are referred from the bench, litigants may have already waited up to 20 weeks or more since filing their case.[8] In contrast, when cases are referred from the filing desk, the alternative program can typically schedule a hearing within ten days. (2) Parties have more choice regarding their use of mediation when a clerk, rather than a judge, suggests the alternative.[9] Bench referral necessarily involves a greater element of coercion. (3) With clerk referral, many, if not most, cases can be handled exclusively through the mediation alternative, perhaps leading to a decrease in the workload of the court.

As noted, referral from the court clerk can come either before or after the complainant files with the court. For post-filing referrals, two additional advantages can be cited. First, when a case has already been filed with the court, a judge can make the mediation settlement an order of the court, enforceable by the legal remedies available for the collection of any small claims court judgment. Second, with post-filing referrals, mediation is viewed by litigants as an integral part of the court process, thus decreasing the problem of no-shows at scheduled hearings. It should be noted that if referral to the alternative program occurs after filing, a complainant will have paid the filing fee. Thus, if the mediation program is court-operated, post-filing referral is entirely appropriate. But if the program is independent of the court, as in Atlanta, then referrals should be made before the complainant files.

Of course, bench referral also enhances the enforceability of any settlement reached through mediation. Beyond that, referral from a judge demonstrates that the court sanctions the alternative, making litigants more willing to try mediation and more likely to reach a settlement.[10] If the alternative program is court-operated, as in Maine, bench referral means that those who try mediation and fail could have their trial the same day. In contrast, with post-filing referral from the clerk, litigants wanting a trial must typically be scheduled on the court docket for another day.

On balance, for a court-operated mediation program, post-filing referral from the clerk's office affords the greatest number of advantages. The major drawback to this procedure is that litigants who cannot reach a settlement may be required to come back to court another day for trial, although in some jurisdictions, it may be possible to avoid that inconvenience. For example, the court clerk could schedule a case for both a morning mediation session and an afternoon trial, which could be cancelled were the parties to reach a mediated settlement. Of course, this introduces unpredictability to the court docket, but that cost must be weighed against the benefits to the litigants of being able to have their dispute resolved in a single day. Even if a program relies on court clerk referral, judges should not be precluded from making referrals for exceptional cases.

If clerk referral is used, the court's administrative judge must make sure that the clerks know that the mediation alternative is an integral part of the court's approach to small claims disputes. The authors of the California Court Assistance Experiment concluded that insufficient use of a small claims mediation alternative in San Diego was at least partly attributable to an inadequate selling job to parties by the court clerks. The clerks were given little incentive to spend time explaining the availability of mediation to filers.[11]

3.2.2 Informed Choice

Two important issues surrounding the use of mediation/arbitration for small claims cases are: (1) the type of information provided to parties about the alternative; and (2) the degree of choice afforded parties in determining whether they will use it. These issues are clearly intertwined. Parties cannot make an informed choice unless they understand the differences between trial adjudication and case processing through the alternative.

Information about the alternative forum can be provided to disputants via written materials, by persons located at referral sources, or by program staff and hearing officers. At a minimum, litigants need the following questions answered:[12]

- How quickly can the hearing be scheduled?
- Can the respondent be forced to attend, or is participation voluntary?
- Do the parties waive any legal rights by accepting the alternative forum? (If so, a written waiver should be secured.)

- What is the role of the hearing officer? What qualifications does that person have?
- What is the format of the hearing?
- What "standard of justice" is applied? Is substantive consumer law applied?
- Can the confidentiality of the hearing be preserved?
- What options are available if the attempt at mediation fails?
- If one party is unhappy with an arbitration award, what right of appeal does that person have?
- Is the mediated settlement or the arbitrator's award enforceable by the court?

To guarantee that litigants are properly informed about the alternative forum, the program should prepare a written description that addresses these questions, either for the parties to read or to guide judges, clerks, or program intake counselors in their oral summaries of the program. In Maine, the availability of the mediation program is announced by the judges at trial. With no written explanation or checklist to guide their remarks, the amount of information given to the litigants varies tremendously from judge to judge. This situation led Maine's Ad Hoc Committee on Small Claims to suggest that a written explanation of the program be prepared for use in the state's small claims courts.[13]

Several authors have stressed the importance of giving small claims disputants total choice regarding their use of an alternative forum.[14] In theory, all six programs visited for this report allow parties to choose freely between trial adjudication and mediation/arbitration, with one exception: in San Jose, each defendant is summoned to attend the mediation hearing and cannot ask for a regular trial until after mediation has been attempted.

In practice, however, more subtle constraints on litigants are apparent. One such constraint on litigant choice was noted previously--the coercion that may be present when a judge "recommends" the alternative program, as in Maine. Because judges possess great authority and prestige, litigants may feel that they cannot refuse a judge's recommendation. In Manhattan and Nassau County, in order to have their case heard by the judge instead of an arbitrator, litigants must answer "by the court" when their case is called. From the opening remarks made by the judge or a court officer, the litigants understand that the judge would prefer that the cases go to arbitration; this may prevent many litigants from exercising their right to a regular trial. Finally, in San Jose, the court clerk automatically refers

cases involving non-business plaintiffs to the mediation program unless the plaintiff voices an objection; those who do object must state briefly their reasons for preferring a courtroom trial.

In their study of the Maine small claims courts, McEwen and Maiman assessed the impact of litigant choice on the outcome of mediation. They found that those parties who were given a choice to use mediation were not more likely to reach a settlement than those who were directed to try it by the presiding judge.[15] This finding suggests that nonconsenting litigants may still have a good chance of resolving their dispute through mediation. But this does not justify failing to make clear to litigants that the choice between a trial and a mediation/arbitration hearing is theirs to make and that they will suffer no adverse consequences as a result of their decision. A defendant can be summoned to attend a mediation/arbitration hearing, but should be given the opportunity to request a regular court trial instead.

3.2.3 Case Scheduling

The visited programs vary a great deal in the manner in which they schedule hearings. Three aspects of case scheduling are reviewed in this section: (1) the notification of parties of the scheduled hearing; (2) the use of evening and Saturday sessions; and (3) the amount of time allowed per session.

Notification of parties. Both the Atlanta NJC and the Pinellas County CDS Program accept non-court and pre-filing clerk referrals and therefore handle their own scheduling. When a complainant files with the Atlanta NJC, for example, the intake worker schedules the hearing, at the complainant's convenience, for seven to ten days after filing. The complainant is cautioned to pick a day and time that is probably convenient for the respondent as well. A form letter sent to the respondent indicates the complainant's name, the nature of the claim, the purpose of the voluntary mediation hearing, the complainant's possible recourse to the courts, and the scheduled time of the session. If the respondent does not reply to this letter, an intake counselor calls to urge the party to attend. If the scheduled time is inconvenient for the respondent, the counselor will reschedule the hearing and then notify the complainant of the change. Sometimes a hearing must be rescheduled several times to oblige both parties. In Pinellas County, the respondents are sent a similar letter, but they are not routinely asked to notify the program of their plans to attend, nor does the program staff follow up the notification letter.

Small claims disputants in Maine, Manhattan, and Nassau County are not referred to the alternative forum until the day of their trial. In all three

jurisdictions, defendants are sent a summons by certified mail to ensure their attendance at the court hearing. In San Jose, where the mediation/arbitration program is court-operated, plaintiffs are routed to the program at the filing stage by the court clerk, and defendants are issued a summons to attend the evening mediation hearing.

Use of evening and Saturday sessions. As noted in Section 1.1.2, critics of small claims courts have noted the inconvenience of their hours to working people and urged them to experiment with evening and Saturday sessions. Most courts schedule hearings only during weekday business hours; this forces small claims litigants to take time off from work, and they often suffer a loss of wages.

Of the visited programs, the Atlanta NJC, an independent program, offered the widest range of times, from 9:30 a.m. to the early evening. And only the Atlanta NJC experimented with Saturday sessions. Hearings were scheduled on one Saturday per month, but those sessions had a high no-show rate and were abandoned after a one-year trial period. In Pinellas County, evening mediation sessions are scheduled routinely, but if the parties prefer a daytime hour, they are accommodated. In addition, cases referred to the program out of the small claims pretrial conference are usually mediated immediately during the court's daytime session.

The programs in Maine, San Jose, Manhattan, and Nassau County[16] are less flexible in their hours. In Maine, sessions are conducted immediately after referral from the presiding small claims judge; small claims cases are heard only one day a week beginning at 9:00 a.m. Interestingly, in the other three jurisdictions, only evening sessions are scheduled. Court personnel in Manhattan frankly admitted that this practice discourages some parties from filing or appearing in court.

Programs should experiment with flexible hours. Restricting hours to any single time of day will effectively deny access to the alternative forum for many disputants. If the program staff eventually discovers that certain time slots go largely unused, they can be dropped; but at some later point, the program should offer those hours on a trial basis once again.

Time allowed per session. None of the visited programs has established guidelines for the maximum amount of time to be allowed per session; the length of a session is left to the discretion of the hearing officer. Hearing officers experience varying pressure to dispose of cases quickly, depending on the number of parties queued up to have their cases heard. To some extent, this pressure is felt by hearing officers at all of the programs, but it is greatest for the mediators in Portland, Maine, where one small claims judge refers cases to the mediation program all at once at the end of the calendar call. Clearly, programs can minimize the severity of this problem through intelligent scheduling.

3.3 The Hearing

This section is devoted to an examination of various aspects of the mediation/arbitration hearing itself. The most basic difference between hearings observed at the six programs is in the resolution technique employed--arbitration vs. mediation. Differences are also apparent in the type of setting where hearings take place; the procedures employed when one party does not appear for a scheduled hearing; the length and content of the hearing officer's opening statement; the format of the session; the role of attorneys; and the confidentiality of the proceedings.

3.3.1 Arbitration vs. Mediation

The difference between arbitration and mediation is a simple, but fundamental one: arbitrators, like judges, have the authority to impose a judgment, whereas mediators have no such power (see Section 1.2). The mediator's role is to aid the disputants in reaching a mutually agreeable resolution to their conflict. As a result, mediation hearings are more informal and relaxed. The full circumstances surrounding the dispute can be aired, not just the immediate complaint at hand. With mediation, disputants have greater participation in the process, and it is more likely to result in a resolution that seems fair to both parties. Arbitration proceedings may be more or less informal than a regular trial, depending on the style of the particular judges and arbitrators involved. The fact is that arbitrators in a court-operated program act as surrogate judges; the primary motive for such a program is to help the court work through its caseload more efficiently.

Three of the six programs visited for this report--the Atlanta NJC, the Pinellas County CDS Program, and the small claims mediation program in Maine--use mediation exclusively. In contrast, the San Jose Neighborhood Small Claims Court Program provides disputants with the opportunity for both mediation and arbitration of their case. Mediation is attempted first. If a settlement is not achieved within a reasonable amount of time, as determined by the mediator, disputants can submit their case to immediate arbitration or return to court on another day for trial. If arbitration is chosen, a new hearing officer conducts the hearing, for the hearing officer who had already mediated the dispute would undoubtedly find it difficult to adopt an unbiased stance for the second hearing.[18] If one party is unhappy with the arbitrator's award, appeal for a trial de novo can be made to the Municipal Court.

The idea of combining both mediation and arbitration in a single program has been suggested by several commentators. Joseph and Friedman, in explaining

this provision of the Model Consumer Justice Act, argue that neither procedure alone can be depended on to resolve all disputes (see Appendix B).[19] A successful mediation hinges on the good faith of the parties. And the process works best when there are only two parties involved and they have nearly equal bargaining abilities. With mediation and arbitration offered in succession, both major goals for establishment of the alternative--improved "quality of justice" for litigants and increased efficiency of small claims case processing--can be achieved.

For a court-operated program, one drawback to this scheme exists: if the parties refuse arbitration or want to appeal the arbitrator's award, they typically will have to make a second trip to court (see Section 4.2.1). San Jose's experience, however, suggests that the number of cases requiring a regular trial will be quite small. If it is logistically possible for the court to schedule trials on the same day as the mediation/arbitration hearings, it should be done. But if it is not possible, this single disadvantage is not sufficient grounds for rejecting this alternative.

3.3.2 Setting

At two of the six programs visited for this study, hearings are held in non-court locations. In Atlanta, mediation hearings take place at the NJCA itself, which is a large, old, two-story house with several offices and spacious hearing rooms. Independence High School in San Jose, California, provides the setting for the mediation and arbitration hearings of the Neighborhood Small Claims Court Program.

In the other four visited programs, hearings are held in courthouse locations. Although these hearings sometimes take place in courthouse offices, they are often held in vacant courtrooms. For example, arbitration sessions in Manhattan take place in several small courtrooms that flank the larger one where parties are first assembled for the calendar call. The arbitrator sits with the litigants at a table in front of the judge's bench. The impact of the formal court atmosphere on litigant behavior is often apparent; for example, litigants often address the arbitrators as "your honor."

A non-court setting may help put the parties at ease and contribute to better mediation/arbitration sessions in some cases. But this has to be weighed against the greater costs to the program of maintaining a separate facility, the fewer opportunities for judicial oversight of the program, and the greater inconvenience to litigants who subsequently want a regular court

hearing. Care must also be taken to choose a non-court setting that does not undermine respect for the program.

Another important aspect of the hearing setting is the degree of privacy afforded the parties. In five of the six programs visited, only those involved in the case being heard are present in the hearing room. Parties waiting to have their cases heard wait in the hallway or in a separate room. In Manhattan, however, litigants for up to five other cases are present in the hearing room and sit quite close to the table at which the parties and the hearing officers are seated.

Seating arrangements during the hearings are similar in the six programs, with the hearing officer seated at a rectangular table in a position between the two disputants. When present, disputants' attorneys and witnesses typically join the parties and the hearing officer at the table. If there are several witnesses involved in a case, they may be seated apart from the table until they are called upon to present their testimony. In Pinellas County, when sessions are held in an intake counselor's office, the hearing officer typically sits behind a desk, and the disputants, their attorneys, and witnesses sit in front. Because this imposes a barrier between the parties and the hearing officer, this arrangement is not preferred.

3.3.3 Handling No-shows

The visited programs employ varying procedures for handling the problem of no-shows at scheduled hearings. If the program is sponsored by the court, the power of the court can be brought to bear against the non-appearing party. For example, in Manhattan and Nassau County, where the arbitration programs receive cases by bench referral, the presiding judge dismisses those cases in which the plaintiff fails to appear in court. If the defendant alone fails to appear, the case is referred to an arbitrator for an inquest; if the arbitrator is satisfied that the plaintiff's case has merit, a default judgment is entered against the defendant. Similarly, in San Jose, if the defendant ignores a summons to appear at an evening mediation hearing, a hearing officer can review the plaintiff's case and recommend to the court that a default judgment be entered. If the plaintiff fails to attend the hearing, the case is dismissed.

At the Atlanta NJC, which is run independently of the court, there are no penalties that can be exacted against non-appearing disputants. If a party fails to show up within 15 minutes of the scheduled time, a staff member calls the person to set up another time. If the same party fails to show up again, and the other party has come both times, the Center issues a letter to the latter party, indicating that the person made a good faith effort to settle the dispute, but that the other party failed to show up as promised on

two separate occasions. If the case is pursued in court, the party may be able to submit the letter as evidence that attempts at settlement were already made.

3.3.4 Opening Statement

Hearing officers typically begin a mediation or arbitration session with a brief opening statement that describes the purpose of the session and the procedure to be followed. Of the hearing officers at the six programs visited for this report, the mediators at the Atlanta NJC deliver the longest and most informative opening statements. The content of the opening statement is discussed with all mediators during their initial training sessions.

The mediators first introduce themselves and then deliver a statement similar to the following:

> I am a trained mediator with the Neighborhood Justice Center of Atlanta (NJCA). I was assigned to your case and have not met either of the parties involved prior to this hearing. My role is to help you to reach an agreement that is mutually satisfying. If an agreement cannot be reached, the matter may be taken to court for a judge's decision. NJCA mediation sessions are confidential, and the Center will fight any attempt to compel me to discuss these proceedings in a court of law. I am going to write down certain case facts during the session, but I will destroy these notes afterwards.
>
> Both parties must pay attention to the proceedings and participate in the session. First, the complainant will be allowed to speak without interruption, and then the respondent will have the same opportunity. If you have any questions, please hold them until the other person is finished speaking. The session will proceed informally; both parties can discuss various issues with each other after the initial presentations.
>
> If we reach a settlement, it will be set forth in writing and signed by both parties. During the session, each side should give thought to how the case can be settled. You should not sign anything you cannot live up to.
>
> The Neighborhood Justice Center will contact you 30 to 60 days from today's date to collect follow-up information on your feelings about the NJCA and whether you have maintained the agreement.

This comprehensive statement fully informs disputants of the mediator's unbiased stance, the ground rules and procedures to be followed during the mediation session, and the responsibility of both disputants to fashion and sign an agreement only if they will uphold it. There is no good reason for failing to provide disputants with a complete introduction to the alternative forum before proceeding.

3.3.5 Session Format

As noted previously, arbitration proceedings are more formal and, thus, more similar to regular small claims trials than are mediation sessions. For example, terms such as "cross-examination" and "exhibits" are used frequently by arbitrators, whereas mediators usually describe the proceedings using less technical language. Further, parties involved in arbitration are sworn in by the hearing officer before testifying. Those involved in mediation, except in the San Jose program, are not.

In arbitration sessions observed in Manhattan and Nassau County, the plaintiff, after being sworn in, describes the complaint and presents any supporting witnesses or exhibits. The defendant is then given the opportunity to question the plaintiff and those witnesses. Next, the defendant testifies under oath and presents relevant exhibits and witnesses; in turn, the plaintiff is allowed to cross-examine. Throughout the session, the arbitrator may ask questions to clarify issues and points of fact. No written record of the proceedings is maintained, although the arbitrator does keep brief notes for use during the session. In both Manhattan and Nassau County, the arbitrators themselves are not allowed to adjourn cases, change the amount of the suit, or change the title of a party to a suit. While they must seek formal authorization for such actions from the presiding judge, that authorization is routinely given.

The arbitrator's award becomes a judgment of the court upon the presiding judge's approval, which is almost always given. As with trial adjudication in these courts, decisions are not announced for fear of the losing party becoming disruptive; instead, they are mailed to the parties the day after the hearing. As noted in Section 1.1.1, many critics of small claims courts disagree with this practice.

Arbitrators differ in the extent of their efforts to settle cases before the hearings are initiated. Some favor such settlements and encourage the parties to fashion their own resolution to the dispute, but others move immediately to the arbitration hearing. If a settlement is reached, the arbitrator will record a settlement stipulation; if the defendant does not

pay the settlement, a court judgment can be entered in the amount of the settlement.

In mediation sessions observed at the other four programs, complainants also speak first and present their evidence and witnesses. Respondents are given the same opportunity. The disputants can then ask questions of each other and any witnesses who are present. During this informal discussion, the mediator helps pinpoint relevant case facts, tries to identify possible areas of agreement, and helps compensate for unequal bargaining abilities that the parties may have. If the mediator discovers that the parties' disagreement goes beyond the small claims complaint at hand, the discussion can be broadened, and a resolution to the full dispute can be fashioned. In some cases, the mediator may choose to caucus with each litigant separately, either alone or with a party's lawyer or witnesses.[20] Alternatively, the mediator may ask the parties to leave the room and talk with just the lawyers. Parties may sometimes adjourn with their lawyers or witnesses to discuss privately the acceptability of a particular agreement that has been suggested.

There is considerable variation in the mediators' approaches to these sessions. Some take an active role in summarizing the disputants' positions, pointing to areas of agreement, offering incentives to settle, and proposing the specific terms of a settlement. Other mediators are more restrained, leaving it to the parties themselves to arrive at their own agreement.[21] The extent to which mediators are active depends in part on their interpersonal styles and prior professional experiences. But it also reflects the type of training they receive. At the Atlanta NJC, which has the most rigorous training program, the mediators are encouraged to take an active role in the mediation hearings.

Rules of evidence are typically informal or nonexistent for both mediation and arbitration hearings. At some of the hearings observed for this report, confusion regarding acceptable rules of evidence was apparent on the part of hearing officers as well as disputants. This occurred most frequently when cases were referred from the bench and the parties had already been informed of the rules of evidence applied in small claims trials. For example, in Nassau County all written evidence must be filed with the court clerk for distribution to the opposing party prior to the day of the scheduled hearing. During one arbitration hearing in this court, a litigant tried to present written receipts in support of his case, although the receipts had not been filed with the court beforehand. The other party objected, citing the small claims evidence rule, and the arbitrator was unsure as to whether the receipts should be admitted. This incident demonstrates the importance of making sure that hearing officers and litigants understand completely how the rules of evidence for the alternative forum might differ from those applied at trial.

If a settlement is reached, the mediator writes out the specific terms of the agreement, reads it aloud, signs it, and asks both parties to sign it. Each party receives a copy of the signed agreement form. The nature of agreements is discussed more fully in Section 3.4.1. If the parties cannot agree on an appropriate settlement, the mediator informs them of their remaining options for resolving the dispute. In addition, at the Atlanta NJC, the mediator issues an "Unable to Settle" form to the parties to use as they wish. This form states that they made a good faith attempt to participate in mediation of their dispute, but that the Center was unable to help them.

3.3.6 Role of Attorneys

Of the six programs visited for this study, only the San Jose program prohibits disputants from having attorney representation. In Atlanta, Pinellas County, and Maine, attorneys for both sides are permitted to attend the mediation hearing. In Manhattan and Nassau County, only one party may be represented by legal counsel; when both parties have attorneys, the case is transferred to the regular civil court. The parties who are represented by counsel during an arbitration hearing have a decided advantage over their pro se opponents. The attorneys may speak on behalf of their clients, who may even not be present, and may question the opposing party and any witnesses. Some arbitrators at both locations express concern over the fact that attorneys often intimidate pro se litigants, either through deliberate action or simply by their obvious familiarity with arbitration proceedings, their superior ability to present evidence in a convincing way, and their skill in detecting weaknesses in the opponent's case. These arbitrators report that they sometimes have to intervene when an attorney tries to question the opposing party in an inappropriately "tough" or "bullying" manner.

Staff members and mediators in Atlanta, Pinellas County, and Maine are unanimous in their belief that parties do not need attorney representation for a mediation to be successful, and it is reportedly rare for them to be present. When attorneys do attend a mediation hearing, they are typically asked to advise or consult with their clients, but not to speak for them or to cross-examine the opposing party. Occasionally, attorneys have to be reminded that they can play only a limited role at hearings. But the mediators report that, in the vast majority of cases, lawyers are cooperative and helpful in bringing the parties to a successful resolution of their dispute. Clearly, if the attorneys' participation can be circumscribed in this way, there is no need to ban them from attending mediation/arbitration sessions.

3.3.7 Confidentiality of the Proceedings

The issue of confidentiality of mediation proceedings is a complex and controversial one. The Atlanta NJC's policy, which is explained to disputants in the mediator's opening statement, is to try to preserve the confidentiality of its proceedings by fighting any attempt to compel mediators to discuss the hearings in a court of law. Notes the mediators make during their sessions are destroyed immediately afterward. In Pinellas County, a mediator and an intake counselor from the CDS Program were once subpoenaed in an unsuccessfully mediated case that later went to court. The judge in the case upheld a motion to quash the subpoena, thus establishing a precedent in that jurisdiction for maintaining the confidentiality of mediation proceedings. But a 1978 report of the American Bar Association warns that, in the absence of legislation providing for the confidentiality of such hearings, it cannot be assured.[22]

This issue must be anticipated by any alternative forum that handles cases independently of the courts. Unfortunately, at the present time, there are no guidelines that can be offered for dealing with it.

3.4 The Agreement

3.4.1 Nature of Agreements

In the Maine, Atlanta, Pinellas County, and San Jose programs, mediation settlements can provide both equitable and monetary relief. There is one exception: for small claims cases referred to the Pinellas County CDS Program out of pretrial conferences, but not those referred from other sources, agreements can provide only monetary relief (see Table 3.1, page 67).

In the Maine and San Jose programs, where cases are referred only after plaintiffs have filed in court, monetary relief alone is arranged in the overwhelming majority of settlements. McEwen and Maiman's study of the Maine mediation program showed that only 12 percent of the settlements involved non-monetary relief. Although respondents in 40 percent of the mediated cases indicated that non-monetary issues were involved in the dispute, such matters seldom led to separate terms in the agreement, but did affect negotiations over the size of the monetary settlement.[23]

In the Pinellas County and Atlanta mediation centers, where small claims complaints can be referred to the program before plaintiffs file in court,

the settlements often focus on the future behavior of the disputants and corrective action that can be taken to restore equity between the parties. For example, in one agreement reached through the Pinellas County program, the respondent agreed to pay the complainant for medical expenses incurred as a result of a fist-fight between them. In addition, both parties agreed to avoid each other in the future, and, if they should meet by chance, they would both depart without speaking with or touching one another (see Figure 3.1).

As noted before, the small claims courts in Manhattan and Nassau County do not have equity jurisdiction. Therefore, arbitrators' awards or settlements reached before the actual hearings can provide only monetary relief. Some critics of arbitration programs for small claims disputes argue that arbitrators are more likely to "split the difference" between the parties than to impose the civil burden of proof that guides judges' decisions. There is some evidence to support this charge. Ruhnka et al. found that Manhattan judges' awards averaged 94 percent of the claim amount, whereas arbitrators' awards averaged 83 percent of the claim.[24] Similarly, Ittig's examination of Buffalo's arbitration project revealed that, although there was no difference in the percentage of cases decided in the plaintiff's favor, arbitrators did give smaller awards than judges.[25]

As part of their study of the Maine mediation program, McEwen and Maiman examined whether mediated settlements also tended to "split the difference" more often than judges' decisions at trial. In fact, for almost half of the adjudicated cases in their sample, the plaintiff was awarded all or nearly all of the claim, whereas this occurred in only 17 percent of the mediated cases. Still, in about one-third of the adjudicated cases, the judge did award less than the plaintiff had claimed. McEwen and Maiman also noted that mediated settlements did not typically cut the plaintiffs' claims in half; only one-fifth of the mediated settlements fell between 45 and 55 percent of the original claim. Reviewing these results, McEwen and Maiman concluded that in this instance, the "all or nothing" image of trial adjudication is somewhat overdrawn, as is the "split the difference" image of mediation.[26] It should be noted that, while mediated settlements may more often "split the difference," the purpose of mediation is to find a fair and lasting resolution to the dispute which will satisfy both parties and which both parties will follow.

3.4.2 Enforceability of Agreements

When a dispute is referred to mediation by the clerk after filing or from the bench, the settlement is typically converted to an order of the court, enforceable by the legal means available to small claims judgment creditors whose cases were tried in court.[27] This procedure is followed in both

Figure 3.1

Sample Written Agreement: Pinellas County CDS Program

St. Petersburg Office
893-5796

Clearwater Office
448-3946

SIXTH JUDICIAL CIRCUIT OF FLORIDA
CITIZENS DISPUTE SETTLEMENT PROGRAM

CDS NO. 801811C

THE MATTER OF K.E. AND D.M.
WAS HEARD THIS 20 DAY OF November, 1980, BEFORE W.D.
, HEARING OFFICER. THE PARTIES HAVE AGREED TO THE FOLLOWING:

K.E. will make payment of $107.25 for doctor bills incurred by D.M. as of a result of their altercation. Payment is to be made by K.E. by check to Citizens Dispute Settlement. Half the total is due in our office on 11/24. The remaining half is due in our office on 11/31. It is also agreed that there will be no future contact of any nature between K.E and D.M. Both men shook hands and admitted to being sorry that the incident took place.

THE PARTIES AGREE THAT THIS AGREEMENT SHALL CONSTITUTE A FAIR, JUST, AND EQUITABLE SETTLEMENT BETWEEN THEM AND SHALL ABIDE BY THE FINDINGS, TERMS, AND CONDITIONS HEREIN ABOVE SET FORTH.

SIGNED THIS 20 DAY OF November, 1980.

K.E

D.M.

W.D.
HEARING OFFICER

INTAKE COUNSELOR

Maine and San Jose (see Table 3.1). The Atlanta NJC, which is independent of the court, has no authority to enforce mediation agreements. The Pinellas County CDS Program also lacks this authority for cases referred to it before court filing.[28] However, for CDS cases referred out of pretrial conferences, agreements are recorded on a stipulation form and returned to the court for the judge's signature; if the judgment creditor notifies the court that the settlement terms have been breached, the settlement becomes a judgment of the court. This procedure is not preferred, for it adds an extra burden on both the judgment creditor and the court. With post-filing referrals, the presiding judge should convert settlements into formal judgments of the court. In Manhattan and Nassau County, all arbitrators' awards have the force and effect of small claims court judgments. However, when a mutually acceptable settlement is reached before arbitration, the arbitrator prepares a "stipulation of settlement" form, which states the size of the settled claim and how and when payment will be made. If the defendant does not pay the settlement, a court judgment falls due for the total amount, with no further notice to the defendant.

Table 3.1

Mediation/Arbitration Programs and the Courts: Sources of Small Claims Referrals, Types of Agreements, and Court Enforcement of Agreements

Program	Sources of Small Claims Referrals	Types of Agreements	Court Enforcement of Agreements
Mediation Programs			
Portland, ME	Bench	Monetary and Equitable Relief	Court Order
Pinellas County, FL	Bench, Filing Desk (pre-filing referrals), Walk-ins, Other	1. Bench Referral: Monetary Relief 2. Pre-filing Referral: Monetary and Equitable Relief	1. Court Stipulation** 2. None
Atlanta, GA	Filing Desk (pre-filing referrals), Walk-ins, Other	Monetary and Equitable Relief	None
San Jose, CA*	Filing Desk (post-filing referrals)	Monetary and Equitable Relief	Court Order
Arbitration Programs			
Nassau County, NY	Bench	Monetary Relief	1. Arbitrator Award: Court Order 2. Pre-hearing Settlement: Court Stipulation**
Manhattan, NY	Bench	Monetary Relief	1. Arbitrator Award: Court Order 2. Pre-hearing Settlement: Court Stipulation**

*Unsuccessfully mediated cases proceed to arbitration if both parties consent.
**If terms of the agreement are breached, a monetary settlement becomes a court order.

3.4.3 Judicial Review of Agreements

In four of the six programs visited, each arbitrator's award or mediation settlement is reviewed by a small claims judge before it is converted to an order of the court.[29] The Atlanta NJC is independent of the courts, and information on its cases, including settlement agreements, is not recorded with the courts or reviewed by any judge. Most of the cases referred to the Pinellas County CDS Program have not yet been filed in court; mediation settlements reached in those cases are therefore not subject to judicial review. A small percentage of CDS cases are referred out of pretrial conferences; settlements reached in these cases are reviewed by the presiding judge before stipulations of settlement are issued.

Judicial review of settlements is essential in programs where settlements are made orders of the court. Where judicial review is required, program staff members and hearing officers reported that the reviewing judge seldom returns or modifies a case resolution reached through the alternative forum.

3.4.4 Appeal of Agreements

If an arbitrator's award is imposed, the parties should have the same rights of appeal as those who have a regular trial. This practice is followed in San Jose: parties who are dissatisfied with an arbitration award may appeal the case within five days for a trial de novo in the small claims court. The number of such appeals has been small. On the other hand, in Manhattan and Nassau County, parties are informed before they enter arbitration that an arbitrator's award cannot be appealed, but cases can be reviewed by a judge for gross errors by the arbitrator, e.g., issuing a non-monetary decision, failing to obtain the parties' consent to arbitration, or denying one party the opportunity to cross-examine. In such cases, the arbitrator's decision may be ruled void and the case reset on the court calendar.

In San Jose and Maine, settlements reached through mediation cannot be appealed once they become orders of the court. This policy is justified, for such settlements were reached by mutual consent of the parties and not imposed by a hearing officer or judge.

The right to appeal is not an issue in mediation settlements that are reached at the Atlanta NJC. If parties seek an "appeal" of their settlement, they can simply turn to the court system for redress. The situation is the same for disputants who come to the Pinellas County CDS Program before filing in court.

3.5 Monitoring and Evaluation

3.5.1 Monitoring Performance of Hearing Officers

At the six programs visited for this study, monitoring of the hearing officers' performance is restricted primarily to a count of successful hearings and a review of agreements or arbitration awards. In the five programs that receive bench referrals or post-filing referrals from the court clerk, case outcomes are reviewed by a judge before a court order or stipulation of settlement is entered. At the Atlanta NJC, which is independent of the courts, the intake coordinator routinely reviews the case files and the written agreements drawn up.

Programs can become aware of serious problems with a particular hearing officer through complaints. Staff at all four mediation programs mentioned that frustrated or disappointed hearing participants sometimes voice complaints about their mediator. And in Manhattan and Nassau County, litigants can ask for a judicial review of an arbitrator's award if the arbitrator committed a gross procedural error.

Monitoring of the hearing officers' conduct of mediation/arbitration sessions should be a routine part of program operations. The program director (or an appointee) must routinely sit in on hearings, noting whether the hearing officers provide a thorough and accurate introduction, follow the program's outlined procedures, and conduct the hearings in a fair, impartial, and helpful manner. At the four mediation programs, when new mediators are being trained, their first few sessions are observed, and they are given feedback on their performance. But once the training has stopped, monitoring of their performance stops as well. It should not.

Effective monitoring also requires that the program assess the hearing participants' reactions to the hearing officer and the conduct of the session. Following each session, the participants can be asked to fill out a three or four item questionnaire that asks for their assessment of the hearing officer's skill, fairness, and helpfulness. Such a questionnaire, however, cannot substitute for the actual observation of hearings.

3.5.2 Follow-up Evaluation

All mediation/arbitration programs should implement a small-scale evaluation of their effectiveness in bringing parties to a fair and long-lasting resolution of their dispute. Such an evaluation not only allows a program to check

the quality of provided services, but can also be used to "sell" a good program to potential funding sources. This is especially important if the mediated agreements or arbitration awards provide for equitable, as well as monetary, relief, or if they prescribe the future conduct of the parties.

Figure 3.2 displays a sample questionnaire for a follow-up assessment of a mediation program. It could be adapted easily for an arbitration program. Such a questionnaire should be administered to hearing participants between three and six months after their session.[30] If staff resources are sufficient, the disputants should be contacted by telephone and asked the questions orally. If not, the questionnaires can be mailed, but the number of completed questionnaires will be significantly smaller. It should also be noted that complainants are more likely to cooperate with the follow-up assessment than are respondents.

The questions listed in the sample questionnaire focus on the disputant's overall satisfaction with the mediation process, opinions of the mediator's performance, and whether the two parties have lived up to the terms of the agreement. The questions are simply worded, and the number of response alternatives is small. This not only makes the questionnaire easier to administer by telephone, but also simplifies the tally of responses and any data analyses that are executed.[31]

This information can be used by a program to monitor the effectiveness of individual hearing officers, the suitability of certain types of cases for mediation/arbitration, or any special problems presented by cases coming from a particular referral source. Mounting this kind of data collection effort is essential. In its absence, decisions about changes in the program or the training given to hearing officers will be based on casual observation and hearsay instead of solid facts.

Figure 3.2

Sample Follow-up Questionnaire: Mediation Program

All responses to this questionnaire are totally confidential. It is not necessary to sign your name to this questionnaire. We are only interested in the combined views of the people served by the mediation program.

(Please mark your response by placing a checkmark in the appropriate space.)

1. Did your mediation session result in a written agreement?

   _____Yes _____No

2. Were you satisfied with the way in which the mediation hearing was handled?

   _____Yes _____No

3. What are your opinions of the mediator who conducted your hearing?
   (a) Was the mediator fair and impartial?

   _____Yes _____No

   (b) Was the mediator skillful in conducting the hearing?

   _____Yes _____No

   (c) Was the mediator helpful in resolving the dispute?

   _____Yes _____No

4. Are you satisfied with your overall experience with the mediation program?

   _____Yes _____No

5. If you had a similar problem in the future, where would you go for help?

   _____Mediation Program _____Criminal Justice System _____Social Service Agency

   _____Other (specify): _____

6. Did your mediation session result in a written agreement?

   _____Yes – – – – ▷
   a. Are you satisfied with the terms of the agreement?
      _____Yes
      _____No
   b. Have you lived up to all the terms of the agreement?
      _____Yes
      _____No
   c. Has the other party lived up to all the terms of the agreement?
      _____Yes
      _____No

   _____No – – – – ▷
   a. Do you feel the mediator did everything he/she could to bring about an agreement?
      _____Yes
      _____No
   b. What has happened to your dispute since the hearing?
      _____Resolved
      _____Partially resolved
      _____Remained unsolved

7. When did your mediation session take place (give month and year)?_____

8. Were you the COMPLAINANT (person filing the complaint) or the RESPONDENT (person complained against)?

   _____Complainant _____Respondent

9. Since your mediation hearing, have you had any more problems with the other party?

   _____Major Problems _____Minor Problems _____No Problems

CHAPTER 3: Footnotes

1. R. Braucher, "Redress of Consumer Grievances," in Consumer Complaints: Public Policy Alternatives, ed. S. Divita and F. McLaughlin (Washington, D.C.: Acropolis, 1975), p. 41; L. G. Kosmin, "The Small Claims Court Dilemma," Houston Law Review 13(5) (July 1976): 950; Chamber of Commerce of the United States, "Model Small Claims Court Act," Washington, D.C., 1977, sec. 3.1. Another source recommends $1,500; see "Alternative Legal Services--Part 2: The Role of the Small-Claims Court," Consumer Reports (November 1979): 670.

2. J. C. Ruhnka, S. Weller, and J. A. Martin, Small Claims Courts: A National Examination (Williamsburg, Va.: National Center for State Courts, 1978), pp. 42-45.

3. L. Fuller, "Mediation: Its Forms and Functions," Southern California Law Review 44 (1971): 314; E. B. Primm, J. Bartlett, and S. Bartlett, presentation on "Mediation Skills," National Seminar for Small Claims Court Judges, National Judicial College, Reno, Nevada, May 1980; and F. E. A. Sander, "Varieties of Dispute Processing" (address delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, St. Paul, Minnesota, 1976) Federal Rules Decisions 70 (1976): 118-120.

4. The data revealed no significant difference between the rates of successful mediations for respondents who had a continuing relationship with their small claims opponent vs. those who had no continuing relationship. Craig A. McEwen and Richard J. Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," Maine Law Review 33 (1981): 251, 267.

5. Kosmin, "The Small Claims Court Dilemma," p. 970; and C. S. Mack, "Fair Settlement of Just Consumer Claims," in Consumer Complaints: Public Policy Alternatives, ed. Divita and McLaughlin, p. 162.

6. This action is governed by Section 7469 of Maine's Small Claims Statute, ME. REV. STAT. ANN. tit. 14, ch. 738 (Supp. 1980):

   1. Preliminary inquiry. Prior to the hearing, the court shall determine what efforts the parties have made to settle their dispute.

   2. Use of court. The court may require the parties to meet in the courtroom to attempt to settle their dispute. The meeting may be in private or before a mediator, as the parties elect.

7. The practice of requiring litigants to attend two sessions for small claims disputes should be discouraged.

8. One nationwide survey of small claims courts revealed that the average time between case filing and trial was 8 weeks, with some delays of up to 20 or more weeks; see J. G. Frierson, "Let's Abolish Small Claims Courts," Judge's Journal 16 (1977): 18. In the jurisdictions of the six programs visited for this report, delays during this interval ranged from 3 to 28 weeks.

9. American Bar Association, Report on the National Conference on Minor Disputes Resolution (Washington, D.C.: American Bar Association Press, 1978), p. 14; and P. Nejelski, "The 1980 Dispute Resolution Act," Judge's Journal 19 (1980): 35-36.

10. Cook, Roehl, and Sheppard examined outcomes for cases handled by three Neighborhood Justice Centers, including the Atlanta NJC. Of cases referred to these independent programs by the bench, a full 71 percent were resolved, with or without a hearing; those referred from all other sources were resolved only 45 percent of the time. U.S. Department of Justice, National Institute of Justice, Neighborhood Justice Centers Field Test: Final Evaluation Report (Executive Summary), by Royer F. Cook, Janice A. Roehl, and David I. Sheppard (Washington, D.C.: Government Printing Office, 1980), p. 10.

11. California Department of Consumer Affairs, The Small Claims Court Experimental Project: A Report to the Legislature on the Court Assistance Experiment (Sacramento: Department of Consumer Affairs, 1979), pp. 82, 85.

12. See M. Budnitz, "Consumer Dispute Resolution Forums," Trial 13 (1977): 47.

13. "Report on the Small Claims Process in Maine," submitted by the Ad Hoc Committee on Small Claims to the Advisory Committee on Court Management and Policy," (undated) pp. 43-44.

14. Budnitz, "Consumer Dispute Resolution Forums," p. 47; D. Gould, Staff Report on the Small Claims Courts (Boston: National Institute for Consumer Justice, 1972), pp. 115-116; and Raymond Shonholtz, Testimony before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary, House of Representatives, 95th Congress, 2nd Session on S. 957, Dispute Resolution Act, July 27 to August 2, 1978 (Serial No. 68), pp. 131-133.

15. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," p. 252.

16. There are five small claims court locations in Nassau County, New York. In Mineola, the only location where the arbitration alternative is provided, evening court sessions are held. Citizens throughout Nassau County can elect to have their small claims case handled in Mineola, or they can have a daytime hearing before a judge at one of the other four locations.

17. Felstiner and Williams assert that mediation should focus on encouraging direct communication between disputants, rather than "defining the agreement as the sine qua non of success in mediation." W. L. F. Felstiner and L. A. Williams, "Mediation as an Alternative to Criminal Prosecution," Law and Human Behavior 2 (1978): 242.

18. Gould, Staff Report on the Small Claims Courts, p. 160.

19. J. H. Joseph and B. A. Friedman, "Consumer Redress Through the Small Claims Court: A Proposed Model Consumer Justice Act," Boston College Industrial and Commercial Law Review 18 (1977): 864; Chamber of Commerce of the United States, "Model Small Claims Court Act," sec. 5.1 and 5.2.

20. Some practitioners recommend that a mediator who caucuses with one of the disputants must always caucus with the other in order to prevent the appearance of bias.

21. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," p. 244.

22. American Bar Association, Report on the National Conference on Minor Disputes Resolution, p. 14.

23. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," p. 253.

24. Ruhnka, Weller, and Martin, Small Claims Courts: A National Examination, p. 145.

25. K. B. Ittig, "The Political Economy of Local Consumer Protection: An Empirical Study of Two Models for Consumer Redress," (Ph.D. thesis, Cornell University, 1976), p. 152.

26. McEwen and Maiman, "Small Claims Mediation in Maine: An Empirical Assessment," pp. 253-254.

27. It should be noted that when a mediation/arbitration program receives referrals from the bench or post-filing referrals from the clerk, and settlements reached are made orders of the court, the terms of those settlements must not extend beyond the court's jurisdiction. For example, if the court can provide only monetary relief, a written agreement must be restricted to a description of the payments to be made.

28. The question arises as to whether a settlement reached through a court-independent mediation program is an enforceable contract. Neither the Atlanta NJC nor the Pinellas County CDS Program has yet encountered this issue, however, and it is not clear how the courts would resolve it.

29. This policy is recommended in the Model Consumer Justice Act. Chamber of Commerce of the United States, "Model Small Claims Court Act," sec. 5.1 and 5.2.

30. For the Neighborhood Justice Centers Field Test, follow-up questionnaires were sent to hearing participants six months after their session. See National Institute of Justice, Neighborhood Justice Centers Field Test: Final Evaluation Report (Executive Summary), p. 6.

CHAPTER 4

CASE STUDIES: MEDIATION AND ARBITRATION PROGRAMS

4.0 Introduction

The purpose of this chapter is to describe the development, organization, and current procedures of each of the six mediation/arbitration programs which formed the basis for the discussion in Chapters 2 and 3. These case studies are included here to give a full, cohesive account of how each program works, showing how its procedures have been adapted to its criminal justice environment and how those procedures interrelate.

Each section of this chapter covers a single program, in the following sequence:

4.1 Small Claims Mediation Program, Ninth District Court, Portland, Maine;

4.2 Citizen Dispute Settlement (CDS) Program, Pinellas County, Florida;

4.3 Neighborhood Justice Center of Atlanta (NJCA), Inc.;

4.4 Arbitration Program of Manhattan (New York County) Small Claims Court;

4.5 Night Small Claims Arbitration Program, Nassau County, New York; and

4.6 Neighborhood Small Claims Court Program, San Jose, California.

As noted in Section 1.3, information about these programs was obtained through lengthy site visits and from documents and forms provided by the programs. A copy of the data collection instrument used during each of these site visits appears in Appendix A.

To facilitate comparison across the programs, each case study follows the same outline, divided into two parts: (1) an overview of routine case proc-

essing in the small claims court; and (2) a detailed description of the mediation/arbitration program. The overview of routine court procedures has been included so that the context in which each program operates can be fully understood. The outline is as follows:

4._.1 Overview of General Small Claims Procedures

Court Jurisdiction

The Pretrial Process

The Trial

Collection Procedures

4._.2 The Mediation/Arbitration Program

Program Development

Program Staff

Program Budget

Program Operations

- Case Referral and Screening
- Case Scheduling
- Hearing Procedures
- Nature of Agreements
- Collection and Enforceability

Caseload Summary

Program Impact

For those who wish to contact the programs directly for further information, the name and address of a contact person is given at the conclusion of each case study.

4.1 Small Claims Mediation Program, Ninth District Court, Portland, Maine

In August 1977, the Maine Council for the Humanities and Public Policy, the Maine Labor Relations Board, and the Cumberland County Bar Association sponsored a pilot small claims mediation program in Portland's Ninth District Court. An $8,000 grant for the program's first year from the Council for the Humanities and Public Policy allowed the court to hire two mediators. A second grant was awarded by the Council in 1978 to expand the project.

In this project, small claims litigants in court for their hearing can submit their dispute to mediation upon the suggestion of the presiding judge and the consent of both parties. Litigants desiring mediation proceed to another room in the courthouse with a mediator to try to resolve their case without

adjudication. If a satisfactory agreement cannot be reached, the case returns to the courtroom that same day for a regular trial before the judge. In Portland, the mediators hear between two and eight cases per court session.

The most recent small claims statute, effective with suits filed after July 1, 1980, specifically authorizes the use of mediation in small claims cases. Public funding of the project through the state court budget began in 1979. The program now offers mediation to litigants in over a dozen courts throughout the state. The following sections provide details on the program's operations in Portland, its principal site.

4.1.1 Overview of General Small Claims Procedures

Court Jurisdiction

Small claims cases are brought in Maine's District Courts, which have original jurisdiction concurrent with the Superior Court in all civil actions where the amount in demand does not exceed $20,000.[1] In 1977-78, small claims cases comprised more than a third of all civil filings in the District Court, the largest number of filings of any kind of civil case.[2] Small claims rules and procedures in Maine District Courts are governed by state statute, 14 MRSA C. 738, effective with suits filed after July 1, 1980, which specifically authorizes the use of mediation (see Appendix B).

The small claims court is available to parties who wish to file a complaint against another party for $800 or less, exclusive of interest and court costs. A plaintiff must file in the jurisdiction where the defendant resides or has a place of business or registered agent. There are no restrictions on who may sue in small claims court nor any limitations on the number of filings by a single party.

The Pretrial Process

Upon arrival at the clerk's office to file a claim, the plaintiff pays a $10 fee[3] and, with the clerk's assistance if necessary, completes a small claims complaint form with the name and address of both parties, the amount of the claim, and the circumstances that gave rise to the claim. The clerk informs all plaintiffs that small claims cases can be handled without an attorney. In addition, clerks may advise a plaintiff to bring witnesses, bills, receipts, and other relevant materials to court on the day of the hearing. At present, a small claims information booklet for litigants is being prepared by the Maine Attorney General's Office.

Service of process is done through certified mail. A defendant receives a copy of the plaintiff's complaint form along with a summons; the plaintiff is notified via regular mail after service has been made. If certified mail service cannot be completed successfully, sheriff delivery of process will be arranged by the clerk at the request and expense of the plaintiff.

The date and time of the hearing in District Court is recorded on the small claims complaint form. At present, the clerks may only schedule 40 small claims hearings per week. The clerks estimate that currently there is a three to four month wait between the filing of a small claim and the court hearing.

The Trial

All small claims cases in the Portland court are assigned for 9:00 a.m. on Tuesday and are handled by one of the two judges assigned to hear small claims. With up to 40 cases on the day's docket, litigants must sometimes wait several hours for their case to be called. Lawyers are not barred from representing parties in small claims court, nor are they required for any particular types of litigants or cases.[4] Rules of evidence are informal during the trial itself; "good hearsay" is allowed, and the judges play an active role in eliciting appropriate information from the parties.[5]

Both monetary relief and equitable relief (limited to orders to repair, return, replace, reform, refund, or rescind) can be provided.[6] Payment of a monetary judgment may be ordered in installments. Judges do not always announce their judgments at the conclusion of trial; in Portland, one of the small claims judges prefers not to announce his decision, whereas the other judge announces his decision in court roughly half the time. A case can be appealed within 10 days of judgment entry if there is a transcript of the initial hearing, but such transcripts are not normally made. Court rules require five days advance notice if one of the parties wants a transcript.

Collection Procedures

With enactment of the recent small claims statute, Maine instituted a new procedure for court involvement in the small claims collection process. In all cases, the court sends the judgment order to both parties. This order announces the judgment, gives the time period available for appeals, and explains that a disclosure hearing (to determine the defendant's assets and income) can be held one month from the judgment unless payment is made. If payment is made by the defendant prior to the disclosure hearing, the plaintiff must notify the court clerk so that the disclosure hearing can be cancelled, and the court does not keep any record of the judgment that might

affect the defendant's credit rating. In the absence of a notification of payment or an appeal request, the clerk must send another notice to both parties indicating the date of the disclosure hearing. If the plaintiff receives payment from the defendant and fails to notify the clerk, "costs incident to notice of a disclosure hearing shall be chargeable to the plaintiff."[7]

4.1.2 The Mediation/Arbitration Program

Program Development

In the summer of 1977, the Cumberland County Bar Association suggested the use of mediators within the court system (1) to provide an alternative to the sometimes hasty and confusing courtroom adjudication of small claims cases, and (2) possibly to reduce the excessive delays from case filing to trial experienced in Portland's District Court. At the same time, the Chairman of the Maine Council for the Humanities and Public Policy, an attorney who practiced in the Portland District Court, had witnessed the dissatisfaction of litigants with the small claims court. Largely due to his initiative, the Council awarded a grant for approximately $8,000 to launch a pilot small claims court mediation project in Portland.

A pool of mediator applicants was assembled by the Maine Labor Relations Board from its State Panel of Mediators (a group experienced in collective bargaining) and from graduates of a conflict resolution seminar conducted in 1976 at the University of Maine Law School and sponsored by the Council for the Humanities and Public Policy. Initially, two mediators were selected from this group of applicants. Several District Court judges supported the program by providing both court rule authorization for small claims mediation and the necessary court facilities.

Encouraged by the apparent success of the program's first year of operation, the Council for the Humanities and Public Policy awarded a second grant in the amount of $26,000. Later, the Maine Chief Justice obtained a $10,000 grant from the Culpepper Foundation to support the project for six months until its first public funding began in July 1979. At present, the mediation program's annual budget of $25,000 is drawn from the state legislative appropriation for the courts.

The program has expanded considerably since its inception in 1977. In addition to handling small claims cases, the mediators now handle divorce settlements, including property division, alimony, child support, and custody arrangements. The program has also expanded into over a dozen other courts

across the state. This expansion has largely been determined by judge and clerk acceptance of mediation, as well as by the availability of local mediators. The program has met occasional resistance from judges and court clerks when attempts have been made to expand it into more sparsely populated areas, where smaller caseloads and minimal court delays diminish the incentive for using mediation.

Program Staff

Two individuals in Portland administer the statewide court mediation program. The program administrator is responsible for scheduling mediators in each court and devotes approximately two days per month to his duties. One of the Portland judges assigned to hear small claims serves as the program's coordinating judge at no cost to the program. He approves the appointment of new mediators, monitors their performance, approves all program expenditures, and, along with the program administrator, addresses various policy and procedural issues.

The program's hearing staff is composed of 12 part-time paid mediators, five of whom are based in the Portland area. Mediators are not formally recruited; most applicants hear of the program through communications media, from friends, or through contact with the courts. A panel composed of the coordinating judge, the program administrator, and one or more mediators reviews applicants' resumes and conducts interviews. While the input and recommendations of other panel members are considered, the coordinating judge has the final hiring authority.

In general, the program seeks individuals with "humanist" backgrounds to serve as mediators, though no explicit definition of "humanist" has been given. According to program supporters, mediators do not need any special education or legal training, but do need:

- patience, common sense, and compassion;
- the ability to deal with disputants in a friendly, yet objective and impartial manner;
- an appreciation of the rights of both sides to be heard;
- the ability to recognize the basic elements of a dispute.[8]

As stated previously, the program's initial pool of mediators included individuals with collective bargaining experience and a group who had completed a University of Maine Law School seminar on community conflict resolution.

Mediators who joined the program more recently, however, have undergone only informal training. Initially, a trainee sits in on sessions conducted by an experienced mediator. Then, the trainee mediates while the experienced mediator observes; afterward, the two discuss each session in detail. Ongoing training consists of biannual seminars during which all mediators assemble and speak on their own experiences; other individuals who are interested or involved in the mediation program, including judges, may also attend these seminars. The mediators' performance is only informally monitored by the program administrator or the coordinating judge.

Program Budget

The total annual budget for the statewide mediation effort is $25,000. An estimated 99 percent of this budget is devoted to paying the mediators. Mediators are paid $75 a day; $37.50 is paid to mediators who show up at the court as scheduled, but do not receive any cases to mediate. Expenses for travel to courts outside Portland are reimbursed at 20 cents per mile. Administrative costs consist of the two days per month charged by the program administrator at the regular per diem rate (i.e., a total of $150 per month). Other expenses are minimal, e.g., duplication of forms, the purchase of a filing cabinet. Courthouse space is provided to the program by the court at no charge.

Program Operations

Case referral and screening. Maine's new small claims legislation, which authorizes the use of mediation in small claims cases, requires the presiding judge, prior to each hearing, to determine what efforts the parties have made to settle their dispute. The judge can then require the parties to meet and try to arrange a settlement before they will be afforded a court hearing.

In some cases, judges decide that an immediate trial is preferable, and mediation is not suggested to the parties. Case characteristics which often lead the presiding judge to proceed to trial include:

- the case hinges on a strictly legal point;
- the parties are abusive or argumentative toward each other;
- one party is clearly lying about a fundamental fact of the case;
- one or both parties indicate that they do not want to compromise and would prefer to have a judge declare a winner in the case; or

- one party has no real interest in the outcome of the case (e.g., in insurance liability cases, where determination of liability requires an insurance company, rather than the individual himself, to pay the judgment).

According to the Maine statute, if settlement efforts are required, the parties have the right to choose between a private meeting and a session with a mediator.[10] In practice, the actual degree of litigant choice on whether a case will be mediated depends largely on the presiding judge. Some judges do not routinely inform litigants that they are allowed to refuse mediation in favor of a private meeting, whereas other judges do stress the voluntary nature of mediation. Not informing litigants that mediation is voluntary has potentially serious consequences, for if a mediation settlement is reached, it becomes an order of the court and, unlike a small claims decision imposed by a judge, it cannot be appealed. Thus, litigants going to mediation are effectively waiving their appeal rights and should be so informed.

The judges also have different ways of introducing mediation: some judges provide a thorough explanation of mediation, whereas others give virtually no information. At a minimum, all small claims judges across the state inform parties at the beginning of each court session that a mediator is available to hear cases. In addition, many judges reportedly stress the fact that mediation sessions are more private and informal than courtroom trials. Clearly, if litigants are to make an informed choice about mediation, they must be given a full explanation of the process.

If a case does proceed to mediation and a mutually acceptable settlement is arranged, the terms of the settlement are approved that day by the judge and converted into a judgment of the court.[12] If the mediation process is unsatisfactory (i.e., a mutually acceptable settlement cannot be reached), the case is heard by the judge later the same day.[13]

Case scheduling. All small claims cases in the Portland court are assigned for a 9:00 a.m. Tuesday hearing. The presiding judge briefly describes the court procedures, announces the availability of mediation, and then reads the docket. If both parties to a case are present, they approach the bench, and a decision is made as to whether the parties will meet privately to settle their case, meet before a mediator, or go directly to trial after the docket has been read.

Judges vary as to when they actually submit cases to the mediator. One of the small claims judges in Portland, for example, prefers to read the entire docket before sending any cases out to mediation. In contrast, the other Portland judge sends out each case immediately, and mediation hearings

proceed as the remaining docket is being read. The mediators favor the latter judge's method: it lessens delay, and, because fewer parties are awaiting their turn, it minimizes the pressure on the mediators to dispose of cases quickly. Because only one mediator is assigned per small claims court session, this waiting period can last up to two and one-half hours, although a 45 minute wait is more typical.

Hearing procedures. The mediation session itself takes place in a specially designated room in the courthouse. Both parties are seated at a table with the mediator. Attorneys and witnesses may also be present at the mediation session and are seated with or near the parties. Even though both parties must agree to mediation and, once approved by the court, mediated settlements cannot be appealed, there is no formal or written waiver of rights.

The mediators begin each session by introducing themselves and explaining the mediation process as an opportunity for the parties to discuss their case informally before an impartial third party and to try to reach an acceptable resolution. If the case is not resolved, they explain, it will be returned to court for a hearing. There is no standard opening speech for mediators and, beyond providing this basic information, the nature of the introduction depends on the preferences of the individual mediator. One mediator's approach is to stress that he knows nothing in advance about the case, is not a lawyer, and has no judicial authority. He informs parties that he will not try to "judge" the case, but will advance possible agreements that the parties can either accept or reject.

The plaintiff is allowed to speak first without interruption, describing the basis of the claim and all relevant facts. Various types of evidence, including bills, receipts, and photographs, may be submitted by the plaintiff at this time. Witnesses for the plaintiff may also give testimony. After the plaintiff is satisfied that his view of the complaint has been described fully, the defendant is allowed to ask questions of the plaintiff and tell his side of the story. Once both sides of the complaint have been aired, there is no set format for the mediation session to follow.[14] The mediator helps draw out all the relevant facts, focuses the discussion, and identifies possible areas of agreement to the parties.

Attorneys are allowed to participate actively, clarifying testimony, summarizing facts of the dispute, or addressing questions to witnesses, their clients, or parties on the opposing side. Occasionally, particularly when there is an opposing pro se litigant, the mediator must intervene and remind a lawyer that mediation is an informal proceeding. On the whole, however, the mediators interviewed in the course of this study agree that attorneys are helpful in focusing the discussion, providing suggested solutions, and maintaining their clients' interest in pursuing mediation.

During the session, a mediator may choose to caucus with each litigant separately, either alone or with a party's lawyer or witnesses. Alternatively, the mediator may ask the parties to leave the room so they can meet with just the lawyers. Parties may also adjourn with their lawyers or witnesses to discuss privately the acceptability of a particular agreement that has been suggested.

The mediators report that individual sessions last from five minutes to three hours. They try to let the sessions go on as long as necessary when they feel an agreement between the parties may eventually be reached. The amount of time allowed for each session also depends on the day's mediation caseload; the mediators did report feeling pressure to mediate a case quickly when other parties are waiting to have their cases heard. Although multiple sessions may be allowed in some cases, they are used only rarely.

Nature of agreements. If a settlement is reached through mediation, the mediator writes the terms of the settlement on a mediator's report form (see Appendix C). If a mediation settlement is not reached, the form is partially filled out with basic information on the case and returned to the judge. As with small claims judgments, mediation agreements may provide either monetary or equitable relief between the parties. If necessary, an installment payment plan can be arranged and included in the agreement with the consent of both parties.

After the mediator writes out the conditions of the settlement, both litigants sign the form. It is then sent to the judge for final approval and is made an order of the court.[15] The mediator's report is attached to the case file when the settlement becomes a court judgment and is given to the clerk for filing.

As noted above, a mediation settlement approved by the court may not be appealed.

Collection and enforceability. Because an approved settlement has the force and effect of a small claims court judgment, collection procedures are the same as in cases decided by a judge. The judgment order is sent to both parties. A disclosure hearing is scheduled one month from the date of judgment unless the court clerk is notified by the plaintiff that the judgment has been fully satisfied by the defendant. If the defendant does satisfy the judgment within the required time period, no record of the judgment is maintained by the court, thus protecting the defendant's credit rating.

Caseload Summary

The program does not have recent data on its caseload. In the Portland court, the mediators hear between two and eight cases each day that the small claims court is in session.

Program Impact

Professors Craig A. McEwen of Bowdoin College and Richard J. Maiman of the University of Southern Maine have conducted a study of small claims mediation in the Maine District Courts. Begun in 1979, this research involved a comparison of three Maine courts that were offering small claims mediation (Augusta, Brunswick, and Portland) with three courts that were not (Biddeford, Lewiston, and Waterville). During the course of the study, however, mediation sessions occurred in all three of the non-mediation courts, and the final sample of cases used in the study included mediation and trial adjudication cases from all six courts.

A number of data collection techniques were used: (1) interviews were conducted with plaintiffs and defendants in contested small claims cases; (2) information was recorded from all available mediation reports; (3) mediation sessions were tape-recorded, transcribed, and coded; (4) court proceedings were closely observed, and notes were taken for later coding; and (5) information was recorded from the docket records for over 18,000 small claims cases heard in the six courts over a five-year period.

The currently available report on this research relies largely on the interview data. Material from the other data collection efforts will be analyzed and reported in the future. The major findings from the interview study include:

(1) Two-thirds of the mediation sessions ended in agreements. The highest settlement rates were for cases involving unpaid bills and private sales (85% and 83%, respectively). Traffic accident cases had the lowest settlement rate among mediated cases (41%).

(2) The cases that were most likely to be settled at mediation were those with business plaintiffs and individual defendants (94%). Those with the lowest settlement rates had individual plaintiffs and businesses or government institutions as defendants.

(3) In 65 percent of mediated cases, some form of payment plan was arranged, in comparison to only 24 percent of adjudicated cases.

(4) Only 12 percent of mediated agreements involved any stipulations other than a monetary exchange.

(5) Fully 79 percent of mediation litigants stated that they understood everything that was going on in the session, in comparison to 65 percent of the litigants going through trial adjudication.

(6) Sixty-seven percent of persons having their cases mediated reported that they felt the process was fair, compared to 59 percent of persons having their cases adjudicated.

(7) Over two-thirds of the mediated cases resulted in defendants paying settlements in full, compared to only one-third of tried cases and 53 percent of unsuccessfully mediated cases. In only 13 percent of mediated cases was there no payment, compared to 45 percent of adjudicated cases.

(8) Seventy-three percent of the mediation defendants stated that they felt a legal obligation to pay their settlement, in comparison to only 31 percent of adjudication defendants. Similarly, 64 percent of mediation defendants reported feeling a moral obligation to pay; only 12 percent of adjudication defendants expressed such feelings.

In summary, McEwen and Maiman report that mediated settlements appear to be more successfully collected than adjudicated judgments; the reason for this may be in the perception of legal and moral responsibility on the part of defendants. While mediated settlements were a smaller proportion of the plaintiff's original claim than were adjudicated judgments, on the average, plaintiffs were paid a much higher proportion of their original claim following mediation.

Contact for Further Information

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Portland, Maine 04112

4.2 Citizen Dispute Settlement (CDS) Program, Pinellas County, Florida

The Pinellas County Citizen Dispute Settlement (CDS) Program, located in the county courthouse in St. Petersburg, Florida, began in 1977 with funding from

the U.S. Department of Justice, Law Enforcement Assistance Administration. During its first year of operation, CDS opened a second office in the Clearwater, Florida, County Courthouse. Funding sources for the program now include the County Court budget, court filing fee surcharges, the State of Florida, and the Florida Bar Association.

CDS is designed to offer free voluntary mediation services to help individuals in resolving minor criminal and civil disputes, including small claims. Small claims cases are referred to CDS for mediation by court clerks at the pre-filing stage and by judges who preside at small claims pretrial conferences. With both types of referrals, disputants can avoid a court hearing if a mutually agreeable settlement is reached through CDS mediation. The program handles an annual total caseload of approximately 3,700 cases.

4.2.1 Overview of General Small Claims Procedures

Court Jurisdiction

In Pinellas County, small claims cases are brought in the County Division of Florida's Sixth Judicial Circuit Court. Jurisdiction of the County Division includes violations of city and county ordinances, criminal misdemeanors, and civil cases involving $5,000 or less. The County Division's jurisdiction over ordinance violations and criminal misdemeanors is concurrent with that of the Circuit Court. Claims of $1,500 or less, exclusive of court costs, interest, and attorney's fees, are handled by the Small Claims Division. There are no restrictions placed on who may sue in small claims court.

Courthouses are located in Clearwater, the Pinellas County seat, and St. Petersburg. Small claims cases can be filed and heard in both locations.

The Pretrial Process

In the Clearwater courthouse, there is a separate small claims filing area staffed by small claims clerks. In St. Petersburg, the cadre of civil clerks handles all civil filings, including small claims. At either clerk's office, individuals wishing to file a small claim are first given an "Instruction Sheet for Small Claims Cases." This sheet contains detailed information on the court's rules and procedures from the point of filing through judgment and appeals. The clerks are available to explain items on the instruction sheet or to answer other questions.

After reading the instruction sheet, the plaintiff informs the clerk about the nature of the claim. The court has several different "Statement of Claim" forms for claims arising out of different types of actions. For example, a landlord filing a claim against a former tenant for unpaid rent is given a statement of claim form entitled, "Landlord/Tenant--Unpaid Rent." A claimant suing a debtor for repayment of a loan is given a form entitled, "Money Loaned."

Clerks may need to provide plaintiffs with assistance in filling out the statement of claim form and determining what supporting documents, if any, should be attached to the form. For example, a landlord suing a tenant for unpaid rent is instructed to attach a copy of the written lease, a statement of account, ledger sheets, and rent receipts. The completed statement of claim form is signed by both the clerk and the plaintiff (or plaintiff's attorney or agent). While no formal limitations are imposed on the number of filings by a single party, clerks informally limit complainants to 15 filings per day.

The clerk collects a filing fee of $15 for small claims cases involving under $100 and $20 for claims of $100 or more. At filing, plaintiffs decide which method of service they prefer and pay the clerk accordingly--$3 to serve a defendant by certified mail or $12 for service by the sheriff. Each defendant is given a copy of the statement of claim and the instruction sheet for small claims cases.

Either party may demand a trial by jury. The right to a jury trial is waived if it is not demanded by the plaintiff when the claim is filed or by the defendant within five days after the summons is served. The demand must be submitted in writing to the Clerk of Court, along with a $150 deposit.

The Trial

Pinellas County Small Claims Court requires two hearings for small claims cases: a pretrial conference, held approximately three to four weeks after filing, and a final hearing, held two to three months after the pretrial conference.

The purpose of the pretrial conference is to assist litigants in preparing to prove or defend the claim at the final hearing. To this end, the plaintiff describes the basis for the claim, the defendant summarizes the defense, and both parties provide to each other a list of witnesses (who can be subpoenaed to ensure their presence at the final hearing) and any written documentation to be used as evidence. Pretrial conferences are held on Tuesdays in Clearwater and on Wednesdays and Thursdays in St. Petersburg and are assigned at

specific times throughout the day: 9:00, 10:00, and 11:00 a.m.; and 1:30 p.m. County Court judges, assigned by rotation to hear small claims cases, preside at pretrial conferences. Attorneys may represent parties at these conferences, but they are not required. As described on page 94, judges sometimes refer cases out of pretrial conferences to CDS.

Some judges take a very active role in helping pro se litigants at the pretrial conference. One pretrial conference observed for this report involved a plaintiff's claim that the defendant had ruined her silk blouse during dry cleaning. The defendant asserted that the blouse manufacturer's dyes, and not the dry cleaning process, was to blame. The presiding judge informed the plaintiff that the defendant is an expert in dry cleaning and advised her to subpoena another expert who could counter the defendant's assertion.

Judges often encourage litigants to settle their case during the pretrial conference. In one conference, the judge was able to arrange an installment schedule for the defendant to pay off an overdue bill to the plaintiff and then recorded the agreement on a stipulation form. An affidavit from the plaintiff notifying the court of the defendant's failure to pay would bring an automatic judgment against the defendant. Otherwise, the case would be dismissed when the time period for payment had expired or when the plaintiff notified the court that the stipulation had been fully satisfied. If a settlement is not reached at the pretrial conference, the judge sets a date and time for the final hearing on the case. If a settlement is reached by the parties prior to the trial date, plaintiffs must notify the court in writing so that the case can be dismissed.

At the final hearing, procedures are typically informal, with judges playing an active role in eliciting relevant facts from litigants and witnesses. Either party may be represented by counsel. The Instruction Sheet for Small Claims Cases, distributed to plaintiffs when they file, provides the following information about final hearing procedures:

> At the trial you may: (a) tell your story of the case to the judge; (b) ask the other person in the case any questions you wish concerning the claim; (c) show the papers or photos discussed at the pretrial conference to help explain your story; (d) call on your witnesses to help explain the case. Do not be afraid to talk to the judge. He is there to be fair to all parties.

Small claims judgments in Pinellas County can provide only monetary relief. Judgments are typically announced and explained by the judge at the end of trial, unless the judge feels that the announcement would be disruptive in a particular case. Small claims litigants can appeal their cases to the Circuit Court within 30 days after the judgment is rendered. Appeals are

seldom filed, however, for it is extremely difficult to have a judgment reversed unless the final hearing was recorded or transcribed. A court reporter is not used unless a litigant pays a $30 fee in advance at the clerk's office.

Collection Procedures

The final judgment is mailed to both parties; a successful plaintiff receives from the clerk's office a writ of execution, along with a letter explaining the steps to follow in collecting the judgment. The court has no direct involvement in judgment collection, however; all investigative work (e.g., searching the tax collector's office for a record of the defendant's real property) must be conducted by the plaintiff. For a fee of $6, the plaintiff can obtain a certified copy of the judgment from the clerk's office to serve as a judgment lien against any real property of the defendant. Alternatively, the plaintiff can pay a fee to the county sheriff to obtain a garnishment of the defendant's wages.

4.2.2 The Mediation/Arbitration Program

Program Development

In 1975, the U.S. Department of Justice designated one of the earliest citizen mediation programs, the Columbus, Ohio, Night Prosecutor's Program, as an "Exemplary Project."[16] This program was used as a model for the development of similar mediation efforts across the country,[17] including, with the assistance of U.S. Department of Justice funds, Citizen Dispute Settlement (CDS) Programs in Dade County (Miami) and Orange County (Orlando), Florida. Encouraged by the early success of these two programs, the judiciary and local bar associations in Florida supported the development of additional CDS programs throughout the state. In the fall of 1976, the Chief Judge of Florida's Sixth Judicial Circuit, with the encouragement of a Florida Supreme Court Justice, submitted a grant application to the U.S. Department of Justice, Law Enforcement Assistance Administration, for a CDS program in St. Petersburg. The grant was awarded, and program operations were begun in October 1977.

The program was located in the Pinellas County courthouse in St. Petersburg. Its staff consisted of a full-time program director, responsible for overall program administration and day-to-day operations, an assistant director, two intake counselors, and a secretary. A pool of part-time paid mediators was recruited and screened by the program director from various community organizations, including the local bar association. In 1978, a second office was opened in the Pinellas County courthouse in Clearwater and staffed with an

intake counselor and part-time secretary. Both office locations were planned during the program's early stages, as St. Petersburg and Clearwater are the two major population centers in Pinellas County.

Initial staff members visited the Miami CDS Program to observe program operations and obtain copies of existing forms to adapt for use in Pinellas County. To generate interest in the new program, the director contacted several local police departments, discussed potential case referral arrangements with judges and court clerks, initiated newspaper, television, and radio press coverage, and spoke at numerous community group functions. Brochures and announcements describing the program were developed for distribution at various community agencies (see Appendix C).

This case study focuses on CDS handling of small claims cases referred by court clerks and judges. However, it should be noted that formal referral arrangements have been established with several other organizations, including local police departments, the Office of Consumer Affairs, the Office of the State Attorney, and the state's Department of Health and Rehabilitative Services. The program mediates both civil and criminal cases. In addition to mediating cases with adult disputants, CDS arbitrates cases involving juvenile offenders referred by the county Juvenile Welfare Board, which provides CDS with funds to support juvenile arbitration.

Program Staff

Seven full-time staff members are presently employed by the Clearwater and St. Petersburg offices of the Pinellas County Citizen Dispute Settlement Program:

- a program director in the St. Petersburg office, who is responsible for overall program administration, setting program policy in coordination with the Chief Judge of the Judicial Circuit, fund-raising, and public relations;
- an assistant director who works at both program locations and assists with program administration, oversees the Clearwater program office, oversees the budget, maintains caseload statistics, and prepares budget and quarterly reports;
- four intake counselors, two in each program location, who conduct intake interviews, maintain case files, and handle case follow-ups; and

- one full-time secretary in the St. Petersburg office, who does typing, bookkeeping, and conducts intake interviews, plus a part-time secretary in the Clearwater office.

The program's hearing staff is composed of 25 part-time paid mediators. When the program began, the staff actively recruited mediator applicants through media coverage and public appearances, but word-of-mouth referrals are now the source of most applicants. The program seeks individuals whose experience will be useful in dealing with the types of disputes handled by the program. For example, the program does try to keep a minimum number of attorneys in its mediator pool to handle cases that involve legal issues; occasionally, the program director recruits additional lawyers by contacting the local bar association. Investigators from the Department of Consumer Affairs are selected because they are particularly well-suited to handle consumer problems. In addition, the present pool of mediators includes college professors in the social sciences, probation officers from the Department of Corrections, Parole and Probation, and counselors from the public school system and the Department of Health and Rehabilitative Services. In selecting mediators, the program director looks for traits of friendliness, receptivity to people and ideas, objectivity, and a willingness to handle controversy and argument.

Training of new mediators involves a review of selected written materials, observation, and on-the-job training. First, trainees read (1) a Citizen Dispute Settlement Training Manual developed by the Florida State Court Administrator's Office,[18] and (2) a folder containing information to help in mediating disputes (e.g., a copy of Florida's landlord-tenant law), along with past memoranda to mediators describing program policies and procedures. Next, trainees attend several mediation sessions so that they can observe different mediator styles before handling their own cases. A CDS staff person attends the first sessions conducted by new mediators to provide feedback on their performance.

Annual meetings are held at which all CDS mediators get together to share ideas and experiences. The format of the meetings varies from year to year. Guest lecturers, role-playing, and videotaped training materials have been used occasionally to provide refresher training at these meetings.

Program Budget

The Citizen Dispute Settlement Program began in 1977 with a $130,000 grant from the U.S. Department of Justice, Law Enforcement Assistance Administration. The program stopped receiving federal grant support in 1980. In anticipation of losing that funding, project staff worked to obtain funding

from a number of sources, including Pinellas County, the State of Florida, the Florida Bar Association, the Juvenile Welfare Board (for arbitration of cases involving juveniles), and a court filing fee surcharge. The program was recently accepted for funding under the County Court budget.

For the nine-month period from January 15 through October 10, 1980, CDS' total budget was approximately $114,000. Ninety percent of the total budget was devoted to salaries for the program staff: the mediators, who are paid $10 per hour with a maximum of $30 per evening; and the court bailiffs, who must be present when evening sessions are held and are paid $21 per evening. Other program expenses for the nine-month period include $3,532 for telephone, $1,325 for postage, and $775 for staff travel. In addition, the program paid $5,430 to Pinellas County for administration of its grant monies. CDS does not have to pay rent for its courthouse offices or for use of courthouse space for evening mediation hearings.

Program Operations

Case Referral and Screening. Small claims cases are referred to CDS at two separate points during case processing: (1) referral of claimants by court clerks prior to case filing, and (2) referral of disputants by the presiding judge during the pretrial conference.

A one-page announcement, entitled "Explanation of Citizen Dispute Settlement Program," (see Appendix C) is given to all complainants who appear for filing in the Clearwater court. In St. Petersburg, however, it is given only to complainants who ask the clerk about the availability of alternatives to small claims court, usually because they cannot afford the court's filing fee or balk at the lengthy wait for a court trial. The Clerk of Court in St. Petersburg does not give the notice out routinely, believing it is improper to discourage potential litigants from filing in court.

The notice cites two advantages of the CDS program in comparison with small claims court: no fee is charged, and a CDS hearing can be held more quickly than a court hearing, usually in about nine days. It is explained that if the intake counselor believes that CDS can help in resolving the dispute, a hearing will be scheduled at a convenient time and location, and a notice of hearing will be sent to the respondent. At the hearing itself, both parties will receive an opportunity to discuss their sides of the case before a hearing officer, who will try to help the parties reach a settlement. The notice of explanation given to claimants states that, although attendance and settlement rates are high, "CDS is not a court, and the program has no authority to make the other side come to the hearing." Claimants are also apprised that, if their dispute cannot be settled through CDS, case filing in small claims court remains an option.

A claimant wanting to try mediation can walk down to the CDS office and describe the claim to an intake counselor. A CDS complaint form is completed on each case (see Appendix C). This form asks for the case referral source (e.g., small claims filing desk), the complainant's prior involvement with CDS, a brief description of the complaint, an indication of the type of case,[19] and each party's name, address, employer, home and business phone numbers, work hours, age, and race. On the evening of the hearing, this information can help the program staff assign the best mediator for a particular case. A hearing date and time, usually seven to ten days hence, is chosen at the convenience of the complainant. A CDS form letter is then mailed to the respondent, providing a brief description of the CDS program, the complainant's name, a description of the complaint, and the date and time of the scheduled hearing. Hearings can be rescheduled if the respondent notifies CDS that the initial hearing time is inconvenient. The program director feels that CDS' location in the courthouse leads more respondents to try the program than if it were located elsewhere.

Small claims cases are also referred to CDS by judges during daytime pretrial conferences. In Clearwater, a CDS staff member is present in the courtroom during these conferences. The judge explains the staff member's presence to litigants and suggests that they go to the CDS office for mediation if they are interested in settling the case before the final hearing. If both parties wish to try mediation, the CDS staff member escorts them to the program's office and then returns to the courtroom. Most judges schedule a final hearing with the litigants before they leave the courtroom in case the mediation is unsuccessful. Other judges prefer to schedule a final hearing only after a mediation has failed to produce a settlement.

When the litigants arrive at the CDS office, an intake counselor completes the basic case intake form. Mediation is often conducted on-the-spot in the CDS office by the intake counselor, although a hearing can also be scheduled for a later date. If a settlement is reached through mediation, the settlement terms are set forth on a stipulation form, which is returned to court for the judge's approval. If a final hearing was scheduled by the judge prior to mediation, the judge simply removes the case from the trial calendar. Stipulations in mediated cases operate in the same manner as stipulations in cases that are settled before a judge (see page 89).

In St. Petersburg, small claims cases are also referred to CDS during pretrial conferences. However, a CDS staff member is not positioned in the courtroom during the conferences, and fewer cases there go to the program for mediation.

Case Scheduling. Most mediation sessions are held during the evening, although daytime sessions can also be scheduled. In St. Petersburg, sessions are held two nights per week from 4:30 to 7:00 p.m. in the downtown court-

house where the CDS office is located. A half hour is allotted for each session. If the parties indicate a preference for a daytime mediation hearing, it is typically scheduled on a Friday at the CDS office. In addition, staff members can mediate cases on an as-needed basis during the program's regular office hours.

In Clearwater, all mediation sessions are held in the main courthouse where CDS is located. Sessions are scheduled two nights per week at half-hour intervals, beginning at 4:00 p.m. Again, CDS staff members can mediate cases in the daytime at the parties' request.

At both locations, mediators typically handle three to four cases each per evening.

Hearing Procedures. At the evening sessions, a CDS staff member is present with the files for all scheduled cases. Based on their background or experience, mediators may request or be assigned by that staff member to a particular case. While waiting for the parties in a case to arrive, the mediator reviews the case file.

Disputants check in with the staff member when they arrive for their hearing. When both parties have arrived, the mediator takes them to a vacant courtroom or conference room. Most sessions take place in a small courtroom, and the parties are seated with the mediator at a table in front of the judge's bench.

The mediator begins each session with a brief opening statement. The content of that statement is not prescribed and varies between individual mediators. At a minimum, the mediator explains that the session will permit both parties to discuss their sides of the complaint in an attempt to reach a mutually acceptable settlement.

Next, the complainant describes the basis of the claim, sometimes with the benefit of evidence such as receipts and photographs. The respondent can then refute the claim and present supporting evidence. Witnesses may give their testimony at any point during the session. The disputants are free to question each other and engage in an informal discussion while the mediator attempts to identify important facts and possible areas of agreement. The mediator takes brief notes during the session which are kept in the case file.

Attorneys can attend mediation sessions to consult with clients, but cannot speak on their clients' behalf. Mediators feel that lawyers are generally

constructive when present, although pro se parties facing represented opponents are sometimes intimidated by an attorney's presence.

If an agreement is reached, the terms are recorded by the mediator on a settlement form (see Appendix C). Beneath the specific settlement terms, the form reads:

> The parties agree that this agreement shall constitute a fair, just, and equitable settlement between them and shall abide by the findings, terms, and conditions herein set forth.

The agreement is signed by the mediator and both parties before copies are distributed; each party receives a copy, one copy is retained for the case file, and the last copy may be sent to the case referral source, such as the police department or the State Attorney's Office.

If disputants are unable to reach a settlement, the mediator explains the options that remain for handling the case, such as filing a small claim or, if the case was already filed and referred out of a pretrial conference, returning to court for a final hearing.

While there is some variation in the length of mediation sessions, most last from 30 to 45 minutes.

Nature of Agreements. There are no restrictions placed on the types of agreements reached through CDS mediation. The settlement terms depend completely upon the wishes of the parties. When monetary agreements are reached, mediators have the disputants establish a payment schedule.

For small claims cases that were filed with the court and referred to CDS during the pretrial conference, the settlement terms are also recorded in the stipulation form, which is returned to court for the judge's signature. Of course, for cases referred before filing with the court, the judgment does not become an order of the court.

Collection and Enforceability. The Citizen Dispute Settlement Program has no authority to enforce mediation agreements. As explained earlier, however, settlements reached in small claims cases referred during the pretrial hearing become a court stipulation. If the defendant breaches the terms of the stipulation, an automatic judgment is entered against him. When this occurs, collection procedures are the same as those described on page 90 for other small claims judgments.

Caseload Summary

The program's total caseload for calendar year 1979 was 3,729, an increase of approximately 60 percent over the 1978 caseload. During 1979, 55 percent of the cases were criminal cases, and 45 percent were civil in nature. Most of the civil cases involved landlord-tenant disputes, with consumer disputes being the next largest civil case category.

Hearings were scheduled in a total of 4,632 cases from October 1978 through January 15, 1980.[20] Criminal justice agencies (State Attorney's Office, sheriff's office, and several local police departments) constituted the largest referral source during this 15-1/2 month period, accounting for 54 percent of the total caseload. Referrals from other criminal justice officials (including judges, court clerks, Legal Aid, and members of the Florida Bar Association) constituted 16 percent of the caseload; 17 percent of the cases were referred from county and other government agencies; and 14 percent of the caseload came from other sources, including self-referrals. These data were not analyzed for small claims cases alone.

Of the 4,632 cases for which hearings were scheduled during the reporting period, 4,147 cases, or 90 percent, were closed at the time that statistics were compiled for the program's annual report. An examination of these closed cases reveals that 71 percent were resolved, 22 percent were unresolved (generally because no hearing was held), and 7 percent were unresolved and referred to another agency such as the State Attorney's Office or the Civil Court. Juvenile cases comprised the largest case category of these closed cases, at 32 percent. The largest civil case category, landlord/tenant disputes, comprised 18 percent of the closed cases, followed by consumer disputes at 12 percent.

Program Impact

In 1979, follow-up questionnaires were mailed to 500 mediation participants three months after their CDS hearings were held; 187 questionnaires were returned.[21] Seventy-five percent of respondents indicated that mediation was helpful, and 85 percent of respondents felt that the mediator understood and paid attention to their problem. Responses to the question, "If an agreement was reached at your hearing, how satisfied are you with it?" were: very satisfied (55%), partially satisfied (26%), and unsatisfied (19%). For cases reaching an agreement, 59 percent of respondents indicated that the agreement was being followed at the time of the follow-up, 14 percent said it was being partially followed, and 27 percent indicated that it was not being followed at all. These data have not been analyzed to compare responses for plaintiffs and defendants, nor were they analyzed for small claims cases alone.

Contact for Further Information

Una C. McCreary
Citizens Dispute Settlement Program
150 Fifth Street North
St. Petersburg, Florida 33701

4.3 Neighborhood Justice Center of Atlanta (NJCA), Inc.

The Neighborhood Justice Center of Atlanta, funded in 1977 by the U.S. Department of Justice, Law Enforcement Assistance Administration, has established a small claims case referral system with the local State Court of Fulton County. At the court filing desk, claimants are given the option of filing their small claim in court for a trial before a magistrate or filing with the independent Neighborhood Justice Center for an informal mediation hearing. If a mutually satisfying settlement cannot be reached through mediation, parties are free to seek recourse in the courts. Other civil and minor criminal complaints are also mediated by the Center. Its annual total caseload is approximately 1,900 cases. Funding sources now include the City of Atlanta, Fulton County, private foundations, and income earned by the executive director from consulting work.

In addition to its more informal nature, several features distinguish dispute handling at the Center from traditional case processing by the court. For both parties, participation in mediation is free and completely voluntary. A mediation hearing can be scheduled within seven to ten days after a complaint is initiated, whereas a court hearing involves a two or three month delay. While court trials are held exclusively during the daytime hours, mediation sessions can be held during the day or evening at the parties' convenience.

4.3.1 Overview of General Small Claims Procedures

Court Jurisdiction

The procedures set forth below describe the Small Claims Division of the State Court of Fulton County in Atlanta. The State Court has concurrent jurisdiction with the Superior Court except in cases involving equitable relief, real property disputes, felonies, personal injury, and domestic relations. The State Court tries misdemeanor, traffic, and county ordinance cases and also issues warrants and conducts preliminary hearings on felonies; the Civil Division serves as a commerce court with no upper jurisdictional dollar limit.

The Small Claims Division of the State Court of Fulton County is available to any individual with a claim for under $300 who is not represented by an attorney. While self-employed individuals can file small claims suits, corporations, partnerships, associations, and collection agencies are barred from filing in the Small Claims Division. A small claims suit must be filed in the jurisdiction where the defendant resides (if suing an individual or sole proprietorship) or has a place of business or registered agent. Although the court has a separate landlord-tenant calendar, tenant-initiated, but not landlord-initiated, claims under $300 may be filed and tried in the Small Claims Division.

Most of the State Court's business is conducted in the downtown Atlanta courthouse. Satellite locations at the northern and southern ends of the county can handle traffic cases and preliminary hearings and can accept all types of filings.

The Pretrial Process

In the downtown court location, small claims are filed at the civil filing desk. Plaintiffs must pay a filing fee of $14 unless they sign an affidavit of indigency. The clerk helps the plaintiffs complete a summons with the litigants' names and addresses, along with the amount and an explanation of the claim.[22] The clerk also advises the plaintiffs about the evidence needed to prove liability and amount of damages. Plaintiffs complete a preaddressed postcard, later used to notify them of the hearing date and time. At filing, plaintiffs are given a one-page pamphlet entitled, "It's Your Court: How to Sue in the Small Claims Court," which was prepared by the Atlanta Office of Community Affairs.

Service of process is accomplished by a marshal, who will serve the summons to any person of legal age at the defendant's address. The marshal must file an affidavit attesting to proper service with the court. As explained on the summons, a defendant must go to the court clerk's office and sign an appearance card indicating that he will appear in court to defend the case. This answer must be filed in person within 45 days of service to prevent an automatic default judgment against the defendant.[23] After the defendant files an answer, both parties are notified in writing of the small claims hearing date. If a defendant files a counterclaim of $300 or more, the case is automatically transferred to the court's regular civil calendar, and the plaintiff receives written notification to this effect from the clerk's office.

The filing clerks estimate that approximately 70 small claims cases are filed each month, with approximately 60 appearing on the monthly court calendar. They also estimate that there is a two or three month wait from the filing of a small claim to the scheduled court hearing.

The Trial

Small claims cases are scheduled on the second and fourth Tuesdays of each month at 9:00 a.m. Two magistrates preside at small claims hearings, each serving in this capacity on one Tuesday per month.[24]

Defendants are allowed to be represented by attorneys in the Small Claims Division. When the calendar is called at the beginning of the court session, defendants must announce whether they have chosen to appear with counsel. If the defendant does have an attorney, the plaintiff is also given the option to retain counsel. If both parties are represented by attorneys, the case is automatically removed to the regular civil calendar.

Small claims trial procedures and rules of evidence are informal, and the magistrates play an active role in eliciting information from the parties. No transcripts are prepared for trials in the Small Claims Division unless a party requests one in advance and pays for it. Small claims judgments can provide only monetary relief. Magistrates typically announce their decisions in court at the conclusion of the hearing.

Small claims litigants can take an appeal to the court's Appellate Division by filing an enumeration of the magistrate's errors within 30 days of the decision. If no transcript of the hearing was made, the appealing party can submit a written description of the proceedings to the magistrate, who will either suggest revisions in the description or approve it. The approved description is filed with the Appellate Division, where a panel of three judges is established to review the appeal.

Collection Procedures

The plaintiff receives formal notification of the court's decision in the mail, along with an information sheet detailing collection procedures. The plaintiff first makes a demand for payment upon the defendant, and the defendant can submit payment in any manner that is acceptable to both parties. The court does not become involved in negotiations over the payment schedule. If the defendant refuses to pay the judgment, the plaintiff can go to the county marshal to garnish the defendant's wages or to impose a levy on the defendant's property, but the burden is on the plaintiff to identify the defendant's place of employment or property.

4.3.2 The Mediation/Arbitration Program

Program Development

In 1977, the National Institute of Justice (NIJ), U.S. Department of Justice, in coordination with the Office for Improvements in the Administration of Justice (OIAJ), funded three neighborhood justice centers, including the Atlanta NJC, and an experimental field test of their operations. The NJCs were designed to accomplish two primary goals: (1) to create a community-based mechanism for the resolution of minor criminal and civil cases through mediation; and (2) to reduce court caseloads by handling disputes that might be better handled through a non-adversarial process.[25]

The prime mover behind the Atlanta NJC application to NIJ was Judge Jack Etheridge of the Atlanta Judicial Circuit. Judge Etheridge's first step was to name an advisory board. Since it was intended that the NJCA would work closely with the courts, advisory board members were selected to represent legal and court-related interests. Court administrators and others who could facilitate referrals to the NJCA, rather than judges, were named to the board.[26] It is important to note that the board began as, and remains, the Center's sole policy-setting and decision-making body. It authorizes expenditures and oversees all project operations.

In 1977, the advisory board met frequently to discuss the grant application and to determine program policy. A representative of Economic Opportunity of Atlanta, a local community action agency, was recruited to write the application, and input was solicited from various community organizations, including the Criminal Justice Coordinating Committee and the City of Atlanta's Planning Department. On November 15, 1977, NIJ awarded the grant to the Atlanta NJC and two other centers, in Kansas City, Missouri, and Los Angeles. The advisory board established a non-profit corporation, the Neighborhood Justice Center of Atlanta, Inc., to serve as the official grantee.

The board immediately turned its attention to finding a suitable location for the Center and to hiring staff. Qualifications established for the position of executive director included: a college degree and, ideally, a legal education; skills in human relations, counseling, and conflict resolution; understanding of the judicial system; and management experience. Four other NJCA staff members were also hired: a deputy director; a program assistant specializing in community relations; a program assistant specializing in case intake and interviewing; and an administrative assistant. All received training at the NIJ-sponsored workshop for staff of the three NJCs. Thirty-four individuals were selected by Atlanta NJC staff vote to serve in the initial mediator pool, based on their professional experience in dealing with people, their effectiveness in both written and oral communication, and

their willingness to attend a 40-hour training session held on two consecutive weekends.

The NJCA staff moved quickly to develop referral plans with the local courts, the police, and others. A key source of referrals, and the focus of this case study, is the civil desk of the State Court of Fulton County. There are two other major referral points at the State Court: (1) the criminal warrants desk, and (2) probable cause hearings on criminal matters. Case referral arrangements are also in place with a number of other agencies, including the Atlanta Police Department, the Atlanta Legal Aid Society, the Governor's Office of Consumer Affairs, the DeKalb County Court, and the local Better Business Bureau.

The Center did not approach the State Court with the attitude that it was doing things wrong, but emphasized that the NJCA could help the courts by providing an alternative mechanism for dispute resolution. According to the present executive director, both personal contact with judges and other court personnel and consistent, reliable, and professional performance were the keys to building the court's confidence in the program.

Despite the early cooperation of potential referral agencies, the NJCA did not receive any cases during its first month of operation, March 1978. Staff members say that two or three months are generally needed to make contacts with the courts and other agencies, to work out referral mechanisms, to develop program brochures, and to train the initial pool of mediators.

Program Staff

The Atlanta NJC presently employs five full-time staff members:

- an executive director, whose duties include overall administration, coordination with the advisory board, public relations, fund-raising, and consulting for other mediation programs;
- a deputy director, who assists with Center administration, trains volunteers, and coordinates the daytime hearing schedule on a daily basis;
- an intake coordinator, who conducts case intake and coordinates the entire intake function, including recordkeeping and quality control;
- an intake counselor, who conducts case intake and coordinates the evening hearing schedule; and

- an intake and clerical assistant, who helps with case intake and recordkeeping.

In addition, the Center employs two part-time administrative assistants, each working 20 hours per week, to do typing and bookkeeping.

NJCA volunteers now include 60 active mediators, plus 15 to 30 intake volunteers or student interns at any given time. In addition to word-of-mouth referral, volunteer recruitment is accomplished through contact with various local groups and volunteer organizations, including the Junior League, Volunteer Atlanta, and the American Association of Retired Persons, in order to obtain a representative cross-section of the community. The executive director estimates that the Center accepts approximately one-half of all mediator applicants.

Training sessions for new mediators are conducted every six to eight months by a team of four to five people, including the executive director, other staff members, and veteran mediators.[27] The training is conducted over a four-day period. Lecture, role-playing, discussion, and videotape formats are utilized, and each trainee receives a detailed, illustrated training manual developed by the NJCA staff to use as a reference guide. Much of the 40-hour training is devoted to teaching the "nuts and bolts" of mediation, including: (1) delivery of the opening statement; (2) when to use parties' first, versus last names; (3) how to identify and separate major issues in a case; (4) how to silence parties and when to remain silent; (5) how and when to caucus; and (6) how to write an agreement. After completing the weekend training session, the trainees must observe five mediation sessions conducted by veteran mediators, thus ensuring exposure to a range of individual mediator styles and approaches.

NJCA intake volunteers, in addition to on-the-job training, receive three to four hours of training on completion of intake forms and session scheduling. Their performance is monitored by the Center's intake coordinator, who reviews case files on a regular basis.

Program Budget

The Atlanta NJC's initial 18-month grant was awarded November 1977 from the U.S. Department of Justice, Law Enforcement Assistance Administration, and totaled $209,000. The Center, no longer a recipient of federal government monies, is now funded by a variety of sources, including the City of Atlanta, Fulton County, private foundations, and income earned by the executive director from consulting with other mediation programs.

The Center's budget for calendar year 1980 was approximately $160,000. Nearly 60 percent of this total was allocated to personnel salaries and fringe benefits. Fees paid to mediators are also a significant part of the budget. Mediators receive a fee of $15 for each case they mediate or $5 if a session is postponed because the disputants fail to show up. These fees make up the bulk of the contractual budget line (approximately $30,000), which also includes costs for accounting and computer services, insurance, mediator training, and staff development.

The remaining 1980 budget categories were: (1) travel, comprised mostly of local travel expenses for staff and intake volunteers who must go to a location other than the NJCA office ($7,600); (2) supplies ($3,240); (3) office equipment ($660); and (4) other ($26,000), which includes rent, utilities, telephone, postage, photocopy machine, printing of brochures and stationery, library and journal subscriptions, and janitorial services.

Program Operations

Case Referral and Screening. Small claims cases are referred to the Center prior to filing at the civil filing desk of the State Court of Fulton County. A court clerk talks with each claimant to learn basic information about the case before deciding whether it might be better handled by the NJCA than by the court. The clerk may ask specific screening questions to determine suitability of the case for mediation, although the precise screening criteria used vary from clerk to clerk. For example, the clerk often asks about the likelihood that the responding party will participate in voluntary mediation; if the claimant believes that a court subpoena will be necessary to compel the defendant to respond, the clerk will not refer the case to the Center, but will have the claimant file with the court. Often, an ongoing relationship between the disputing parties argues for the case to be referred. Claims against local businesses that wish to maintain a good reputation are also regarded as good referral candidates. Other factors that may lead clerks to refer a case to the NJCA include: (1) the claimant cannot pay the $14 small claims filing fee; (2) the amount of the claim exceeds the upper small claims limit of $299.99 and the claimant does not wish to file a regular civil suit; (3) the claimant balks at the two or three month delay from case filing to court hearing; and (4) the respondent lives outside of Fulton County.

On several mornings each week, an NJCA intake volunteer is present at the civil filing desk. If the court clerk perceives a case to be appropriate for referral, the intake volunteer is asked to discuss the possibility of mediation with the claimant. The intake volunteer first gives a brief description of mediation: no fee is charged; the respondent's participation is voluntary; the hearing is informal; it can be scheduled during the

day or evening within ten days of intake; mediation can help clarify the issues and possible areas of agreement even if a settlement is not reached; and, if mediation proves unsuccessful, the claimant can still return to court and file a claim. The claimant is also given a copy of the Atlanta NJC's brochure which describes the Center's operations (see Appendix C).

If a complainant is interested in trying mediation, the intake volunteer records the full name, address, and phone number of both the complainant and respondent. A hearing is scheduled for seven to ten days later at the complainant's convenience, keeping the respondent's convenience in mind as well. The complainant is given a "Notice of Hearing" form (see Appendix C) containing the date and time of the scheduled hearing and is reminded to bring relevant evidence, witnesses, and documents that will be useful during the mediation session.

The day after a case referral is made, a form letter (see Appendix C) is sent to the respondent indicating the name of the complainant, the nature of the complaint, the purpose of the Center's voluntary mediation, the complainant's possible recourse to the courts, the date and time of the scheduled hearing, and a suggestion to bring relevant materials and witnesses to the hearing. The respondent is asked to call the Center immediately. If respondents do not reply, a staff person calls to encourage them to attend the mediation session.

Prior to the hearing, complete intake interviews of both parties are conducted via telephone by one of the Center's intake counselors. During these interviews, the counselor records information about the dispute, the relationship between the parties, and the age, sex, race, marital status, occupation, and annual family income of both parties. Altogether, intake for each case takes approximately one hour.

Due to staffing constraints, the Center does not have an intake volunteer at the civil filing desk during all hours of court operation. When a volunteer is not present, the clerks screen cases, distribute the NJCA's brochure when appropriate, and suggest that the parties call the Center from a telephone in the clerks' office to schedule a mediation hearing. The NJCA's staff and intake volunteers agree that filing desk referrals are less frequent when a volunteer is not present. Filing desk clerks may also refer appropriate cases to the Center when they receive calls for information; they give a brief description of the mediation service, along with the Center's telephone number. No screening of individual cases is conducted by the Center. The NJCA will handle any case in which both parties are willing to try mediation.

Case Scheduling. Mediation hearings can be scheduled on Monday through Friday in one of the following time slots: 9:30, 10:00, and 11:30 a.m.; 1:30, 6:00, 6:30, and 7:00 p.m.; if necessary, a hearing can be scheduled at another time. While the Center can accommodate up to seven hearings concurrently, four sessions are typically held in one hearing slot. At one point, the Center also scheduled hearings on one Saturday each month, but these sessions had a high "no-show" rate and were abandoned after a trial period.

When a case is initiated, the intake counselor or volunteer allows the complainant to select a tentative hearing date and time for seven to ten days later. If the proposed hearing slot is found to be inconvenient for the respondent, the intake counselor reschedules the hearing and notifies the complainant of the change. Sometimes the hearing must be rescheduled several times to oblige both parties. The parties are then called again on the day before the hearing to remind them of it, and further rescheduling may be necessary at that point.

As stated previously, the Atlanta NJC's deputy director is responsible for coordinating the mediation hearing schedule on a daily basis, ensuring that a mediator is assigned to each case. An effort is made to set up mediator schedules one month in advance.

Hearing Procedures. Disputants' names are taken down by a staff member when they arrive at the Center for their scheduled hearing. In order to avoid any perception of bias, program staff avoid talking with disputants who are waiting for their hearing. If one or both parties in a case fails to appear within 15 minutes after the hearing was scheduled to begin, a staff member will call them and try to reschedule the session.[28]

While waiting for the parties to arrive, the mediator reviews the case file. When both parties arrive, the mediator greets them and directs them to a vacant mediation room. The mediator then delivers an opening statement similar to the following:

> I am a trained mediator with the Neighborhood Justice Center of Atlanta (NJCA). I was assigned to your case and have not met either of the parties involved prior to this hearing. My role is to help you to reach an agreement that is mutually satisfying. If an agreement cannot be reached, the matter may be taken to court for a judge's decision. NJCA mediation sessions are confidential, and the Center will fight any attempt to compel me to discuss these proceedings in a court of law. I am going to write down certain case facts during the session, but I will destroy these notes afterwards.

> Both parties must pay attention to the proceedings and participate in the session. First, the complainant will be allowed to speak without interruption, and then the respondent will have the same opportunity. If you have any questions, please hold them until the other person is finished speaking. The session will proceed informally; you can discuss various issues with each other after the initial presentations.
>
> If we reach a settlement, it will be set forth in writing and signed by both parties. During the session, each side should give thought to how the case can be settled. You should not sign anything you cannot live up to.
>
> The Neighborhood Justice Center will contact you 30 to 60 days from today's date to collect follow-up information on your feelings about the NJCA and whether you have maintained the agreement.

After the mediator delivers the opening statement, both parties are allowed to tell their sides of the complaint, presenting any witnesses and evidence they have. The disputants are then free to ask questions of each other and any witnesses who are present, and the mediator tries to focus that discussion on the relevant facts of the case. Caucusing, when one party meets alone with the mediator, may take place at various points during the session. According to NJCA rules, a mediator who caucuses with one side in a case must always caucus with the other side as well.

If a settlement is reached, the mediator writes out the specific terms of the agreement and reads it aloud for the parties' final consent. Three copies of the agreement are made and signed by the mediator and the parties; one copy remains in the NJCA case file, and one copy is given to each party. The mediator thanks the parties for attending the hearing and reaching an agreement and reminds them to expect the follow-up call 30 to 60 days hence.

If the parties cannot settle, the mediator informs them of their remaining options. For example, parties may be told how they can register a complaint with the Consumer Affairs Office or file a claim in small claims court. In addition, an "Unable to Settle" form may be issued to the parties, stating that they made a good faith attempt to mediate their dispute, but that the NJCA was unable to help them.

While attorneys can be present, few have attended a mediation session. Their involvement is restricted to advising their clients; they are not permitted to speak on behalf of their clients or to conduct cross-examinations. The executive director reports that attorneys usually serve a constructive function when they attend the sessions.

A typical mediation session lasts approximately one and one-half hours, but they range between ten minutes and six hours. Multiple sessions for a single case rarely occur.[29]

Nature of Agreements. No restrictions are imposed on the types of agreements resulting from mediation. Settlements may focus on future behavior of the parties (e.g., the respondent will no longer let her children play in the complainant's yard); corrective actions to restore equity between the parties (e.g., the respondent will dry clean the complainant's garment again at no charge); or monetary exchanges (e.g., the respondent will refund $63 to the complainant for faulty automobile repairs). Monetary agreements may be paid by cash, check, or money order, either in a lump sum or in installment payments, whatever is agreed upon by the parties. Because small claims cases are referred to the Center at the pre-filing stage, no information on the cases or agreements is ever recorded with the court system.

Collection and Enforceability. Disputants are told at the outset that an agreement reached through mediation can only be upheld if both parties are willing to honor it. The Center has no authority to enforce mediation agreements. If the terms of an agreement are breached, the aggrieved party is often advised to seek recourse in the courts.

Caseload Summary

During the 15-month field test funded by the U.S. Department of Justice (March 1978-May 1979), the Atlanta NJC handled 2,351 cases.[30] Of these cases 1,041 (44%) were resolved, while 1,310 (56%) were closed without a resolution. A more detailed analysis of case resolutions is presented in Table 4.1. Data were also obtained on case referral sources. Small claims clerks constituted the NJCA's largest referral source, followed by criminal court judges, community agencies, and self-referrals.

Program Impact

As part of the Department of Justice's field test of the three neighborhood justice centers, a telephone follow-up of disputants was conducted six months

Table 4.1

Case Resolutions, Neighborhood Justice Center of Atlanta, March 1978-May 1979

Cases Resolved	Number	Percent
Resolved through hearing	657	27.9
Resolved by parties prior to hearing	384	16.3
Total	1041	44.2

Cases Unresolved	Number	Percent
No resolution reached through hearing	156	6.7
Case withdrawn/one party did not attend	436	18.5
Respondent refused to participate/not reached	718	30.5
Total	1310	55.7

Source: U.S. Department of Justice, National Institute of Justice, Neighborhood Justice Centers Field Test: Final Evaluation Report, by Royer F. Cook, Janice A. Roehl, and David I. Sheppard (Washington, D.C.: Government Printing Office, 1980), pp. 32-34, 141-143.

after their mediation hearing.[31] Presented in this section are the major results of this follow-up for the Atlanta NJC. Unfortunately, these data were not analyzed for small claims cases alone.

Disputants in successfully mediated cases were asked about their satisfaction with the Atlanta NJC and the stability of their mediation agreements. Over 85 percent of both complainants and respondents indicated that they were satisfied with their overall experience with the Center, the mediation process, the assigned mediator, and the terms of the agreement reached. Regarding agreement stability, 95 percent of complainants and 90 percent of respondents indicated that they kept all terms of the mediated agreement. When asked if they had experienced any more problems with the other party, 72 percent of complainants and 83 percent of respondents responded negatively. Finally, the majority of these complainants (73%) and respondents (79%) said that they would return to the Center if a similar problem arose in the future.

Contact for Further Information

Edith B. Primm, Executive Director
Neighborhood Justice Center of Atlanta, Inc.
1118 Euclid Avenue, N.E.
Atlanta, Georgia 30307

4.4 Arbitration Program of the Manhattan (New York County) Small Claims Court

Since 1954 the New York County Small Claims Part of the Civil Court of the City of New York has provided disputants with the option of voluntary arbitration of their controversies. During evening court hearings, referrals to arbitration are made by the presiding judge with the consent of both parties. Arbitration awards are converted into judgments of the court for purposes of collection and may not be appealed. Similar arbitration mechanisms are in operation in all five boroughs of New York City. The combined annual small claims court caseload across the New York City courts is approximately 65,000 cases; the majority of cases reaching trial are arbitrated rather than heard by a judge. Because local lawyers volunteer their time to serve as arbitrators, the costs of the program are minimal.

4.4.1 Overview of General Small Claims Procedures

Court Jurisdiction

The Small Claims Part is a division of the Civil Court of the City of New York and has concurrent jurisdiction with the regular civil division of the Civil Court for matters under $1,500. Corporations, partnerships, associations, and assignees are prohibited from filing cases in the small claims court.[32] Plaintiffs must file their claims in a small claims court whose jurisdiction encompasses the place where the defendant lives, works, or has a place of business.

The Pretrial Process

The fee for small claims case processing is $4.53 and includes a $3 filing fee and $1.53 for the cost of service of process by certified mail. Clerks collect the fees and assist claimants in preparation of their filing forms. If claimants require further assistance, they may be referred to a consumer counsel, a volunteer attorney who provides free advice to litigants; one is present daily at the clerk's office. A booklet entitled, "A Guide to Small Claims Court," prepared by the New York State Office of Court Administration, is available for litigants and provides useful information regarding small claims filing, case processing, and collection procedures. In addition, claimants can request access to court directives dealing with the small claims process. By filing, plaintiffs waive their right to a trial by jury.

Notices of claims are sent to defendants via certified mail. If the defendant is not home, the post office leaves a notice of attempt to deliver a certified letter. If the defendant does not pick up the letter at the post office, a second attempt to deliver it will be made if the plaintiff pays an additional $1.53. If the defendant refuses the certified letter, the court is notified by the post office; a subsequent letter mailed to the defendant announces that the refusal constituted "service" and gives the trial date. Clerk's office personnel reported that problems and delays in service of process are common.[33] Unlike plaintiffs, defendants can request jury trials if they agree to pay a jury fee and post security to guarantee payment of any judgment against them at trial; such cases are transferred to a daytime civil court session.

Cases are scheduled Monday through Thursday evenings at 6:30 p.m. in the Manhattan court. Two judges are available for case handling on Tuesdays and Wednesdays, and a single judge is available the other two nights. Judges are assigned to hear small claims on a rotated schedule. The nightly caseload is

formidable: approximately 100 cases are scheduled each evening.[34] Cases are scheduled for hearing roughly three to four weeks after filing.

The Trial

A court officer initiates the session each evening by orienting litigants to the court procedures and the arbitration option, explaining the differences between court trial and arbitration, and stressing that arbitration awards cannot be appealed. The officer also highlights the benefits of arbitration, particularly the greater likelihood that a case will be heard that evening if it is arbitrated due to the larger number of arbitrators than judges available. Typically, seven arbitrators are available each evening in addition to the one or two judges. The fact that arbitrators must have been admitted to the bar for ten years or more is noted, a requirement identical to that for judges of the Civil Court of the City of New York.

The court officer tells the litigants to state "by the court" during the calendar call if they wish their case to be heard by a judge or "application" if they wish to make a motion (e.g., for adjournment). Otherwise, their case will be referred to arbitration. Both parties must agree to it before a case can go to arbitration. Typically, the majority of cases each evening are heard by arbitrators.

The judge handles requests for motions as the calendar call proceeds. Requests for adjournments are commonly granted. If both parties are represented by an attorney, the case is transferred for trial to the daytime session of the Civil Court. Counterclaims by defendants may not exceed the jurisdictional limit of the Small Claims Part; if a counterclaim is announced during the calendar call, the case may be adjourned to allow the plaintiff to prepare.

Rules of evidence are relaxed in small claims trials, but witnesses are sworn in, stenographers prepare transcripts for use in potential appeals, and interpreters are available on request. If a trial commences, but then appears to require an extended hearing, it may be declared a mistrial and reset to a later date in order to expedite the processing of other cases awaiting trial. Judges vary in how often they encourage settlement by the parties before the trial itself. If such a settlement is reached, a "Stipulation of Settlement" form is completed to describe the agreement (see Appendix C).

Judgments are limited to monetary awards. Judges vary in whether they announce their judgment at the time of trial, though most do not. In either case, litigants later receive formal notification of the judgment by mail.

If the defendant fails to appear at the scheduled time of the hearing, the plaintiff proceeds to an inquest conducted by an arbitrator. If the arbitrator is satisfied that the case has merit, a default judgment, with the judge's approval, is entered against the defendant. A default judgment can be vacated and the case reset for trial if the defendant subsequently can show good reason for having failed to appear. If the plaintiff fails to appear at the scheduled hearing, the case is dismissed.

Adjudicated cases before a judge may be appealed within 30 days of judgment on the ground that "substantial justice" was not done in the case; technical errors are not grounds for appeal. The "Guide to Small Claims Court" discourages appeals, noting the need for an attorney.

Collection Procedures

As in most jurisdictions, judgment collection is a problem in the New York County Small Claims Part. "A Guide to Small Claims Court," which is available to disputants, indicates that, "It is not the court's function or duty to collect what is owed to you. You have the primary responsibility for taking the action necessary to collect your judgment." There are a variety of options that a judgment creditor can exercise, including: (1) garnishing the wages of the defendant, providing that the defendant has a weekly income in excess of $85 and that the plaintiff can identify the defendant's employer; (2) having a marshal or sheriff seize funds from the defendant's bank account; or (3) having a law enforcement officer seize and sell at auction property of the defendant in payment of the judgment (certain property such as the defendant's clothing and household goods are exempt). The guidebook presents detailed suggestions on methods of collection and also notes pitfalls that are common in collection efforts.[35]

If a defendant defaults in payment of a "Stipulation of Settlement" for a period of 15 days or more, the plaintiff can provide the court with an affidavit indicating the non-payment. The court will then enter a formal judgment for the amount of the plaintiff's award, together with graduated costs (e.g., $60 on a $1,000 judgment), interest, and the $4.53 filing fee.

4.4.2 The Mediation/Arbitration Program

Program Development

The New York City Small Claims Court was established in 1934. At the time, over one million cases were pending in the Municipal Court of New York City,

and delays of over two years between filing and trial were common. In 1935, the law regarding small claims was amended to allow for "official referees" to hear cases at the designation of the presiding judge. Those referees were often retired judicial personnel. In 1954, arbitrators began to hear small claims matters by authority of Rule 2900.33 of the Rules of the New York City Civil Court.

Program Staff

The small claims arbitration component has only one full-time staff member. As a member of the Chief Administrative Judge's staff, her task is to schedule the arbitrators for hearings in Manhattan, Queens, Brooklyn, the Bronx, Staten Island, and Harlem. On the day that arbitrators are scheduled to work with the program, she calls the attorneys and reminds them of their schedule. Files are maintained in the Chief Administrative Judge's office of the number of cases that arbitrators have heard and their preferred times to arbitrate. In the Manhattan court, the arbitrators are scheduled to sit approximately once every eight weeks; at the other locations, arbitrators sit more often, every four to six weeks.

Clearly, many additional members of the court staff are involved in the arbitration process. The Manhattan Small Claims Part employs a small claims clerk and seven support personnel in the clerk's office, plus four court officers, varying numbers of court reporters (depending upon the number of judges sitting), and one or two judges for each evening session. Since the majority of cases reaching trial proceed to arbitration, all of these personnel contribute to the operation of the arbitration program.

At present, over 800 attorneys serve as volunteer arbitrators in the New York City Small Claims Part. The program has not found it difficult to maintain a satisfactory pool of arbitrators. Notices advertising for new arbitrators are posted once a year in the local bar journal. The notice requests interested attorneys to write to the Chief Administrative Judge, indicating when they were admitted to the bar, their type of practice, and related matters. Arbitrators must be admitted to the bar for ten years or more, a requirement in force for Civil Court judges as well. All applications are forwarded to the local bar associations for review. Following this review, the Chief Administrative Judge makes the appointments.

An orientation session is held for all new arbitrators. They are welcomed by the Chief Administrative Judge and introduced to the President of the Association of Arbitrators, the Chief Clerk of the Civil Court, the staff member in charge of scheduling arbitrators, and others. A brief history of the Small Claims Part, relevant court rules and directives, and major issues

involved in small claims arbitration are presented. The court forms involved in handling these cases are discussed, and the role of the consumer counsels, the clerk's office, and others are noted. Members are offered the opportunity to join the Association of Arbitrators; its past president estimates that approximately 70 percent do join and contribute dues to the Association.

Most arbitrators enjoy their work with the court and find it a rewarding form of public service. Some have agreed to be on call in case another arbitrator cancels on short notice. Little turnover occurs in the pool of arbitrators; the staff person who schedules arbitrators estimates that approximately ten arbitrators resign each year, usually because they are moving from the area.

Program Budget

The total cost of the Small Claims Part arbitration program is difficult to determine. Line item budgets for the operation of the Small Claims Part are not available, and the present Civil Court budgeting system does not allow disaggregation of the costs allocable to the Small Claims Part.

The extra costs of the arbitration component are minimal. The salary of the staff member who schedules hearing officers is clearly allocable to the program, but only a small portion of the salaries for clerks, court officers, and judges can be attributed to the program itself. The arbitrators, as noted, provide their services for free. Further, the court hearing rooms used by the arbitrators would be unused at night if the arbitration program did not exist. And without the arbitration project, all of the clerical work involved in case filing, serving summons, entering settlements or judgments, and completing collection forms would still have to be performed by the clerk's office for cases proceeding to adjudication.

Program Operations

Case Referral and Screening. Cases are referred to the project at the time of court hearings, with disputants themselves choosing whether to have their cases handled through arbitration. A case will be tried by the judge if either the plaintiff or the defendant requests it. Recent statistics on the characteristics of cases proceeding to arbitration or trial are not available, although some evidence exists that cases in which one party is represented by an attorney are somewhat more likely to proceed to trial than are cases in which both litigants are unrepresented by counsel. (As was noted earlier, if both parties are represented by attorneys, the case is transferred to a daytime civil session.)

Court personnel also indicate that they have observed a "bandwagon" effect during the docket call, such that if a number of the cases called early in the calendar call request a hearing before the judge, then a high number of later cases will also do so. Further, these personnel believe that the varying quality of the court officer's initial presentation of the arbitration option affects the proportion of cases proceeding to trial.

Case Scheduling. All cases, regardless of whether they proceed to arbitration or trial, are scheduled in the same manner (see pages 111-112). The cases proceeding to trial are likely to be rescheduled repeatedly prior to completion of trial due to the heavy caseloads, whereas the arbitrated cases are typically completed the night of the scheduled hearing.

Hearing Procedures. According to court personnel, each arbitrator typically handles three to seven cases per night, exclusive of inquests conducted when a defendant fails to appear. The arbitration hearings are held in small rooms near the main courtroom. Typically, the parties for two to five cases are present in the arbitration room awaiting their own hearings, seated within easy hearing distance of the disputants and the arbitrator. In contrast, in the main courtroom, other litigants are seated sufficiently far from the bench that they can only barely hear the proceedings.

The arbitrator begins each hearing by explaining the nature of arbitration, emphasizing the fact that an arbitrator's decision is not appealable. Litigants are asked to sign a form consenting to arbitration (see Appendix C); the arbitrator also signs the form, indicating that "litigants were informed that arbitrator's award is final and no appeal is permitted."

After being sworn in by the arbitrator, the plaintiff describes the complaint and presents witnesses and exhibits to substantiate the grievance. The defendant or his attorney, if one is present, is given the opportunity to question the plaintiff and his witnesses on relevant issues. The defendant is then allowed to testify under oath and present relevant exhibits and witnesses; in turn, he is cross-examined by the plaintiff. No written record of the proceedings is maintained, although the arbitrator does keep brief notes for use during the sessions.

Rules of evidence during the hearings are relaxed. Some of the arbitrators allow the disputants to air their views quite fully and bring in subsidiary matters, whereas others attempt to keep the discussion more focused on the complaint at hand. Litigants in some cases refer to arbitrators as "your honor" or "judge"; the arbitrators differ in the degree to which they discourage this form of address. Arbitrators themselves are not allowed to adjourn cases, change the amount of the suit, or change the title of a party to a suit. While they must seek formal authorization for such actions from the judge, that authorization is almost always given.

The arbitrators differ in their willingness to encourage the parties to settle before conducting the hearing and imposing an award. Some arbitrators greatly favor settlements by the parties and will work with them to iron out an agreement, going to a regular arbitration hearing only as a last resort. Other arbitrators move immediately to the hearing. If a settlement is reached, a "Stipulation of Settlement" is drawn up and approved by the presiding judge (see page 112).

Arbitrators do not announce their decisions at the close of the hearing. Court personnel report that problems had occurred when announcements were made at the close of hearings, such as arguments and fights among litigants. Arbitrators generally write out their decisions on the "arbitrator's award" form (see Appendix C) as soon as the parties leave the room and before the next case is called, but they may delay a decision until noon the following day if they wish to review relevant case law. Parties fill out a self-addressed envelope before their case is heard, and the decision is mailed to them.

If a party to a case writes the arbitrator questioning the decision, the arbitrator as a matter of policy must write a summary of his recollections of the case and forward the litigant's letter and that summary to the Chief Administrative Judge. The court then responds to the litigant on behalf of the arbitrator. Arbitration awards cannot be appealed, but they can be reviewed for gross errors, e.g., if the arbitrator exceeded his authority by issuing a non-monetary decision, if consent of the parties to arbitration was not obtained, or if parties were not provided the right to cross-examine. In such cases, an arbitrator's decision could be ruled void and the case reset for court consideration.

Nature of Agreements. The arbitrator's awards are routinely converted into judgments of the court after review by a judge, differing from regular judicial judgments only in that they cannot be appealed. Arbitrators can also conduct inquests, as was noted earlier, and recommend default judgments in cases that are judged to be meritorious.

Collection and Enforceability. A discussion of issues involved in collection in New York small claims cases is provided on page 113. Since arbitration awards become judgments of the court, the issues of collection and enforceability do not differ from those involved in routine court judgments.

Caseload Summary

Approximately 65,000 small claims cases are filed annually in the New York County Small Claims Part. The small claims clerk of the Manhattan court

reported that 16,000 matters were filed in the Manhattan Small Claims Court alone in 1980. Accurate and detailed figures on the proportion of cases proceeding to arbitration are not available.

Program Impact

Follow-up studies of litigants who had an arbitration hearing have not been conducted.

Contact for Further Information

Phoenix Ingraham, Chief Clerk
Civil Court of the City of New York
111 Centre Street
New York, New York 10013

4.5 Night Small Claims Arbitration Program, Nassau County, New York

The Nassau County District Court has developed a small claims arbitration project modeled primarily after the program operated by the Civil Court of the City of New York (see Section 4.4). The County Court operates five facilities. Citizens throughout the county can elect to have their small claims case handled at an evening session in Mineola, which is centrally located in the county, or at a daytime session at one of the other four facilities. At Mineola, the disputants have the option of choosing arbitration of their controversy by a volunteer attorney arbitrator. The combined annual small claims caseload for the Nassau County District Court is approximately 13,000 cases; roughly 2,000 of these cases are processed through the Night Small Claims Program at Mineola, and, in turn, approximately half of these cases proceed to arbitration. Currently, 18 attorneys serve as arbitrators.

4.5.1 Overview of General Small Claims Procedures

Court Jurisdiction

The Small Claims Part, a component of the Nassau County District Court, has concurrent jurisdiction with the regular civil division of the District Court for disputes under $1,500. The court does not have equity jurisdiction. Corporations and assignees are prohibited from filing small claims cases in

the Nassau County District Court, but unlike the New York City court, partnerships and associations are allowed to file small claims matters. The court does not place any limitations on the number of claims filed by a single party.

The Pretrial Process

A plaintiff must file in the jurisdiction in which the defendant lives, works, or has a place of business. By filing, plaintiffs waive their right to a trial by jury and all right to appeal except on the grounds that substantial justice was not done. The fee for small claims case processing is $4.53, including a $3 filing fee and $1.53 for the cost of certified mail to obtain service of the notice of claim. Clerks collect the fees and assist claimants in preparation of their filing forms. All written evidence must be filed with the court clerk for distribution to the opposing party prior to the day of the scheduled hearing. A booklet entitled, "A Guide to Small Claims in the District Court of Nassau County," written by the Chief Clerk of the Nassau County District Court, is available at the court for all disputants and provides a detailed discussion regarding small claims filing, case processing, and collection procedures.

The clerk's office mails the small claims summons to the defendant by certified mail. Service of process is handled by the Nassau County District Court in the same way as in New York City (see page 111). The Mineola court summons indicates that the defendant should appear at the court at 6:00 p.m. of the scheduled evening to present a defense and any counterclaim. Procedures for obtaining a jury trial and other relevant rules and procedures of the court are noted on the summons, as is the availability of the guidebook to small claims. If a defendant requests a jury trial, he must pay a jury fee and post security to guarantee payment of any judgment against him at trial; such cases are transferred to the daytime civil division of the court.

The time from case filing to trial is approximately 45 to 60 days, according to the court clerk's office. At the Mineola Night Claims Program, three sessions are scheduled per week, on Tuesday, Wednesday, and Thursday evenings. Court personnel in Mineola estimate that 30 to 50 cases are scheduled for each session.

The Trial

Court sessions are scheduled to begin at 6:00 p.m. at the Mineola Night Small Claims Program. The presiding judge, who hears small claims on a stated

schedule, begins the small claims session by describing the calendar call, court procedures, and the availability of arbitration. The judge explains that when both parties are present, the case will be heard; when the plaintiff is absent, the case will be dismissed; when the defendant is absent, an inquest will be held, and the plaintiff can receive a default judgment. When both sides to a dispute are represented by an attorney, the case will be transferred to the daytime civil session of the court. Two calendar calls are held, and cases are marked for inquest or dismissed only after the defendant or plaintiff fails to appear by the second calendar call.[36]

Litigants are told that they have the option of having their case heard by an arbitrator. The judge explains that there is probably not enough time to try all of the cases scheduled for that night, so many of them will have to be rescheduled for a later session. Arbitrated cases, on the other hand, can be handled that same night. Litigants are instructed to answer "by the court" during the calendar call if they do not wish to have their case arbitrated.

A judge interviewed for this study actively encourages the litigants to have their case handled by an arbitrator. He notes in his introductory speech to litigants that every case deserves the dignity of a more informal conference to determine if a mutually acceptable and beneficial settlement can be reached without a formal trial and a "winner-takes-all" decision. The judge tells the litigants that compromising is not a sign of weakness or a statement about the merits of the case; rather, it is simply a way of expediently resolving the controversy. Other judges differ in how much they urge litigants to try arbitration.

Rules of evidence are relaxed in the small claims trials, but witnesses are sworn in and stenographers prepare transcripts for use in potential appeals. The plaintiff first presents his view of the dispute, providing the court with any relevant documents and exhibits and presenting witnesses. The defendant is then given the opportunity to cross-examine the plaintiff and any witnesses. In turn, the defendant presents his case and is cross-examined by the plaintiff. If a defendant announces a counter-claim at the hearing, the case may be adjourned to allow the plaintiff to prepare.

Judges typically do not announce their decisions at the time of trial; litigants are mailed copies of the judge's decision. Only monetary relief can be provided through the judgment.

Adjudicated cases may be appealed within 30 days of judgment. The Nassau County guidebook to small claims procedures discourages small claims appeals, noting that: (1) appeals cannot involve technical defects in case

processing, only assertions that substantial justice was not rendered; (2) the legal skill required for a successful appeal necessitates hiring a lawyer; and (3) the appellant must provide the appellate court with the minutes of the trial, which must be purchased from the court reporter.

Collection Procedures

The court advises the winning plaintiff to make a number of efforts to collect from the defendant. If these are not successful, the District Court marshal can be contacted for assistance. The marshal is empowered to execute wage garnishments, seize bank account funds, or seize and sell certain types of property. The guidebook to small claims in Nassau County warns readers that collection is often difficult and time-consuming and that the marshal has many cases to handle.[37]

4.5.2 The Mediation/Arbitration Program

Program Development

The Night Small Claims Program, with its arbitration option, was implemented initially in May 1978 in the Lynbrook branch of the Nassau County District Court. The Presiding Justice of the Appellate Division, Second Department of the Supreme Court of the State of New York, had instructed the Chief Administrative Judge of the District Court to investigate the possibility of establishing a project modeled after the night small claims and arbitration program of the Small Claims Part of the Civil Court of the City of New York.

Consequently, the Chief Clerk of the District Court visited the Manhattan court, observed its operations, and discussed replication issues with court personnel. The Chief Clerk also conducted an informal survey to determine perceived needs for a night small claims court in Nassau County. He presented his findings to the local judges, who then decided to implement the program in the Lynbrook facility, with hearings held one night per week. The Chief Clerk contacted the local bar association to seek volunteer arbitrators for the program. The bar association agreed to screen all candidates for the position and to establish standards for arbitrators. The program was eventually moved from Lynbrook to Mineola because of that facility's more central location and the greater availability of parking and courtroom space.

Program Staff

Because of the Mineola facility's relatively small caseload of small claims cases, estimated at approximately 2,000 per year, the Night Small Claims Program has no full-time personnel. The secretary to the Chief Clerk of the Nassau County District Court is responsible for the scheduling of arbitrators. She provides them with a monthly schedule indicating when they are to serve. Scheduling is arranged to suit the individual preferences of arbitrators, and an alternate is scheduled for each evening in case the scheduled arbitrator is unable to serve. Typically, each arbitrator serves as a scheduled arbitrator one month and as an alternate the following month. Other court personnel at Mineola serve small claims litigants as a normal part of their duties.

Persons interested in becoming arbitrators are now referred by the court to the bar association. Candidates are required to fill out an extensive questionnaire detailing their education, characteristics of their legal practice, civic activities, and related facts (see Appendix C). A bar association committee, which is also responsible for reviewing candidates for judicial posts, interviews the arbitrator candidates and makes recommendations to the Chief Administrative Judge of the court. He reviews the committee's recommendations and approves candidates for service, who must then sign an oath of service (see Appendix C). The arbitrators are provided limited training and orientation, for their extensive legal experience (minimum of 10 years) is believed to be sufficient preparation. At present, there are 18 arbitrators in the pool. The court has not had to appoint any new arbitrators since June 1980.

Program Budget

The arbitration component of the Night Small Claims Program is inexpensive, but a precise estimate of its cost has not been calculated. The arbitrators serve without pay, and the only court staff person devoting considerable time to the arbitration component is the secretary of the Chief Clerk who schedules the arbitrators. Only a small portion of the salaries for other staff (clerks, court officers, judges) can be allocated to the arbitration component. All of the clerical work involved in case filing, serving summonses, entry of settlements or judgments, and preparation of collection forms would still be required for cases proceeding to trial if the arbitration project did not exist. And the courthouse space used by the arbitrators would otherwise be unused at night.

Program Operations

Case Referral and Screening. Cases are referred to the project only at the time of court hearings. Litigants are provided the option to select trial adjudication or arbitration; a case will go to trial if either the plaintiff or the defendant indicates at the calendar call a desire to have the case heard by the judge (see page 120).[38] Detailed statistics on the characteristics of cases proceeding to arbitration or adjudication are not available.

Case Scheduling. Routine scheduling of small claims matters was discussed on page 119 of this case study. All cases, regardless of whether they proceed to adjudication or arbitration, are scheduled in the same way.

Hearing Procedures. One arbitrator is available during each evening small claims session to conduct hearings in a room down the hall from the courtroom. Litigants agreeing to arbitration are sent to the arbitrator as the calendar call proceeds. Parties awaiting arbitration are seated in the hallway outside of the arbitration room. Typically, six to eight cases per night go to arbitration.

The hearings in Nassau County are modeled after those in the Small Claims Part of the Civil Court of the City of New York. First, the arbitrator reads aloud the agreement to arbitrate, stressing the waiver of the right to appeal, and asks the parties to sign the form. The plaintiff testifies first and presents any exhibits or witnesses. The defendant can cross-examine the plaintiff before testifying and declaring any counter-claims. The defendant is then open for cross-examination by the plaintiff. No written transcripts of the proceedings are maintained.

As in Manhattan, arbitrators themselves are not allowed to adjourn cases, change the amount of the suit, or change the title of a party to a suit. While they must seek formal authorization for such actions from the judge, that authorization is almost always given.

Arbitrators do not announce their award decisions at the close of arbitration hearings; rather, decisions are mailed. Court personnel report that, in the past, arguments and fights among litigants sometimes occurred when decisions were announced. Arbitration awards cannot be appealed, but they can be reviewed for gross errors such as a failure to obtain the consent of the parties to arbitration. Such cases can be ruled void and reset for court consideration.

Arbitrators, like the judges, vary in their emphasis upon case settlements vs. imposed decisions. Some arbitrators try to help the parties settle their

case before the hearing, believing that a settlement is more likely to produce a long-lasting resolution of the controversy. Other arbitrators place little emphasis upon such settlements, preferring instead to move immediately to the arbitration hearing. Estimates of the total number of settled cases are not available.

Nature of Agreements. The arbitration awards are converted into judgments of the court after review by a judge, differing from regular judicial judgments only in that they cannot be appealed. Only monetary relief can be provided by such awards. As noted previously, the arbitrators also conduct inquests for cases in which the defendant fails to appear and they can recommend default judgments.

The arbitrators can handle pre-hearing settlements in one of three ways. First, in a case for which a monetary settlement is reached, the arbitrator marks the case as settled. If the settlement is not paid by the agreed-upon date, the case can be returned to court, and the settlement may be converted into a formal judgment of the court. Second, in a case for which some kind of equitable relief is agreed upon (e.g., the defendant agrees to make further repairs on a television at no extra charge), the arbitrator, with judicial approval, can adjourn the case for one week. If the settlement is carried out, the case is closed. Third, in some cases, the arbitrator will ask the judge to mark a case as settled, usually if the arbitrator suspects that the defendant will not pay the settlement and needs the judge to remind him of future consequences. Whenever possible, the arbitrators themselves handle settled cases in order to avoid taking additional judge time.

Collection and Enforceability. A discussion of issues involved in collection in Nassau County small claims cases can be found on page 121. Since arbitration awards become judgments of the court, the issues of collection and enforceability are identical to those for routine court judgments.

Caseload Summary

The annual small claims caseload for the five facilities of the Nassau County District Court is estimated by the court clerk's office to be 13,000 cases. Approximately 2,000 of these cases are processed by the Night Small Claims Program at the Mineola facility, and an estimated 50 percent of those cases proceed to arbitration. The proportion of cases going to arbitration varies nightly, depending upon a variety of factors, including the predilections of the judge assigned to the session and the persuasiveness of his instructions to litigants at the outset of the session. Detailed caseload data regarding the Night Small Claims Program are not available.

Program Impact

Follow-up studies of litigants who had an arbitration hearing have not been conducted.

Contact for Further Information

Arthur F. Gange, Chief Clerk
District Court of Nassau County
272 Old Country Road
Mineola, New York 11501

4.6 Neighborhood Small Claims Court Program, San Jose, California

The San Jose, California, Neighborhood Small Claims Court Program provides small claims disputants with the opportunity for mediation and/or arbitration of their case by volunteer attorneys. Small claims matters brought by individual plaintiffs are referred to the program by the court clerk after filing. Cases are scheduled for evening hearings at a local high school, and defendants receive a summons to attend. Cases are initially mediated by an attorney. If the mediation hearing does not result in a settlement of the case, the disputants may have their case arbitrated by another attorney that same evening. The arbitrator's decision is binding unless the case is appealed for trial within five days of the decision. The annual caseload of the program, given the current rate of case processing, is estimated to be 1,800 cases per year.

4.6.1 Overview of General Small Claims Procedures

Court Jurisdiction

The Santa Clara County Municipal Court has exclusive original jurisdiction in small claims cases involving $750 or less. Corporate and other business entities may sue in small claims court, but they must be represented by nonlawyer officers or regular nonlawyer employees. With some exceptions, assignees are prohibited from suing in small claims court. The court has the power to award money damages and can provide equitable relief (e.g., ordering a defendant to perform a specific action).

The Pretrial Process

A plaintiff must file a small claims case in a court which has jurisdiction over the defendant's residence or place of work. In filing a small claims case, the plaintiff gives up the right to a trial by jury and the right to appeal the judgment. The defendant can appeal an adverse court judgment and receive a trial de novo in the Superior Court and can request a trial by jury on appeal, if so desired. The right to a jury trial is rarely exercised.

The fee for filing a small claims case is $2. The court clerk collects an additional $3 for each defendant to whom a copy of the claim is to be mailed. The filing form is brief and straightforward; information requested includes the name and address of the plaintiff and defendant, a brief statement of the nature of the claim, and the date and place where the damages occurred or the obligation was to be performed. The form provides information regarding the appropriate names to use in suing individuals, firms, partnerships, and corporations. Deputy clerks provide assistance to the plaintiffs in filling out the form.

Information from the filing form is transcribed onto a small claims filing packet. Use of this packet is a highly efficient method for managing paper flow in the small claims court. The first form in the packet, the "claim of plaintiff and order form," sets out the complaint and lists various procedures and restrictions to which the plaintiff agrees by signing the form (e.g., plaintiffs cannot appeal the court judgment). It also includes the order to the defendant to appear. The reverse side of the form lists relevant information for the plaintiff and defendant regarding small claims procedures. The packet includes copies of this form to be mailed to the defendant, to be retained by the plaintiff, and two copies to be retained for court files.

The second form in the packet is the "notice of entry of judgment." This form specifies the judgment, with the reverse side providing information regarding appeals and enforcement of judgments. Copies are sent to the plaintiff and the defendant, and one is placed in the court file. One section of the reverse side of this form can be detached and mailed by the plaintiff to inform the court when full satisfaction of the judgment has occurred.

A pamphlet entitled, "Your Small Claims Court," developed by the State of California, provides information for both defendants and plaintiffs regarding small claims court procedures in simple and understandable language. The pamphlet points out some of the problems with small claims case processing and asks plaintiffs to be cautious when considering a lawsuit: "Is it going to be worth it? You'll spend some time preparing for court. If you

get a judgment, and the person you sue really hasn't the money to pay, it'll take more time--and possibly more money--to follow up and collect what you can." The pamphlet encourages disputants to settle out of court, but to use the small claims court when necessary: "Remember: The Small Claims Court is the people's court. Use it, and do not be afraid of it. It is the least expensive, most efficient way to settle claims under $750."

Notices of claims are typically sent to defendants by certified mail. Procedures and rules employed in the San Jose court for use of certified mail are similar to those of the New York courts (see Sections 4.4.1 and 4.5.1).

Small claims cases are scheduled Monday through Thursday at the Santa Clara Municipal Court and Tuesday, Wednesday, and Thursday evenings at the Neighborhood Small Claims Court Program. The Small Claims Division clerk's office schedules approximately 90 cases at the court and 18 cases at the Neighborhood Program each day they are in session. The court clerk refers only those cases brought by individuals to the Neighborhood Program. The interval between filing and hearing dates is approximately ten days. The court itself will process such cases (1) if the plaintiff declines to go to the Neighborhood Program, (2) if a party refuses arbitration after an unsuccessful mediation, or (3) if a party to arbitration objects to the award. Although the vast majority of business cases are heard at the courthouse, business defendants are occasionally involved in cases referred to the Neighborhood Program.

As was noted earlier, the Small Claims Division also hears appeals from arbitration at the Neighborhood Small Claims Court Program. Such cases are set for trial de novo and proceed in the same fashion as any other case scheduled by the Small Claims Division.

The Trial

Judges are assigned to the Small Claims Division on a rotated schedule and receive three month assignments to the Division. In addition, judges pro tem are assigned as needed. Small claims court trials in the Santa Clara County Municipal Court are conducted with relaxed rules of evidence; transcripts are not routinely made. The plaintiff first presents his case, including any witnesses and documentation, and is then cross-examined by the judge or the defendant. The defendant then presents his case and is cross-examined by the judge or the plaintiff. Parties are not allowed to be represented at trial, but can consult with attorneys prior to trial.

If a defendant fails to appear at trial, a default judgment may be issued following presentation of evidence by the plaintiff. Defendants may file

motions to vacate such default judgments within 30 days of the date the clerk mailed the notice of entry of judgment. If the motion to vacate the judgment is denied, an appeal of that decision can be made to the Superior Court within 10 days of the motion's denial. If the Superior Court finds that the motion should have been granted, it will try the case.

If the plaintiff fails to appear at the time of trial, the case is typically dismissed by the court or judgment is entered on the basis of evidence introduced by the defendant.

The judges typically do not announce their decision at the end of trial, but mail the litigants an entry of judgment form. A small claims judgment may be appealed by the defendant (or by the plaintiff when a counter-claim was successfully prosecuted by a defendant). A notice of appeal must be filed within 20 days after the date on which judgment was entered in the Small Claims Division. Appeals are set for trial de novo in the Superior Court, where parties may be represented by attorneys. No further appeals of the case are allowed beyond the Superior Court.

Collection Procedures

The entry of judgment form mailed to plaintiffs lists the options for collection should the defendant fail to pay, but makes clear that the court itself is not responsible for judgment collection. It also informs them that they may consult an attorney in the collection process and that they may be represented by counsel in any proceedings that follow the entry of judgment.

A plaintiff may obtain a writ of execution from the court clerk to garnish the defendant's wages, seize personal property of the defendant, or seize funds from the defendant's bank account. This writ must be served by a marshal, constable, or sheriff. The plaintiff may also obtain an abstract of judgment from the clerk; when filed with a county recorder, this abstract becomes a lien on the defendant's real property until the judgment is satisfied. The plaintiff may also request the court to issue an order of examination which requires the defendant to appear in court and reveal his assets. Costs incurred in the various collection actions--including fees for the issuance of forms and actions on the part of marshals, constables, or sheriffs--can be added by the plaintiff to the original judgment.

When full payment of the judgment has been made, the plaintiff must send a satisfaction of judgment form to the court. This form, appended to the entry of judgment form (described in page 126), indicates that full satisfaction of the judgment has been achieved and requires the plaintiff's signature to this effect.

4.6.2 The Mediation/Arbitration Program

Program Development

The Neighborhood Small Claims Court Program was implemented in January 1977 as a joint project of the San Jose-Milpitas Municipal Court (now the Santa Clara County Municipal Court) and the Santa Clara County Bar Association. The initial planning for the program was conducted by an 11-member citizen's advisory committee, which included the president of the local bar association, the director of the San Jose Housing Service Center, the director of the local apartment owners association, and an executive of the Mexican-American Community Services Agency. A judge with the Santa Clara County Municipal Court was the key architect of the program and has provided ongoing leadership and support throughout its development.

The advisory committee's enthusiasm was instrumental in the development of the project. The apartment owners association donated $1,000 for the initial operation of the project. Other sources of early funding included the San Francisco Foundation ($5,000), the Packard Foundation ($5,000), the Santa Clara County Bar Association ($1,000), and a finance company ($1,000). The Hewlett Foundation subsequently provided the project with a $28,700 grant in 1978 and a $20,000 grant in 1979, which funded the program through June 1981.

One major aim of the project, as initially conceived, was to encourage greater access to justice in the Hispanic community. Thus, the program first operated at the Hillview Community Recreation Center in a predominantly Hispanic, low-income section of eastern San Jose. The Hillview Center is operated by the Parks and Recreation Department of the City of San Jose, and space for evening use was donated to the Neighborhood Small Claims Program. Community members were encouraged to file cases directly at the Center. During the project's first year of operation, 156 cases were processed.

In December 1979, two important changes were made to increase the project's caseload: (1) the project moved from the Hillview Community Center to Independence High School in San Jose; and (2) referral procedures at the clerk's office were modified so that almost all small claims filed by individual plaintiffs were automatically referred to the project. Since the move, case filings typically occur at the court, although cases can still be filed directly at the project site, as had occurred routinely at the Hillview Center.

Program Staff

The Neighborhood Small Claims Court Program has part-time staff only:

- two part-time deputy court clerks, who maintain case files, collect fees when complainants file cases at the night court location, monitor the evening case schedule, and answer litigants' questions; they are hired by the court clerk's office, but paid from the project grant administered by the bar association;
- a deputy sheriff, who serves as a security officer at the evening sessions; he is on the payroll of the sheriff's department, but his evening salary is drawn against the project grant; and
- a bar association clerical staff member, who is responsible for scheduling the volunteer attorneys; 75 percent of her salary comes from the project grant.

The project presently has over 100 volunteer attorneys from the Santa Clara County Bar Association. Lawyers who are interested in serving on the project apply to the Santa Clara County Bar Association, which interviews the candidates. The Bar Association does not use any detailed screening criteria, although a minimum of five years of experience in legal work is generally required. Hearing officers are then appointed by the court on the recommendation of the Bar Association. Because the program enjoys a large number of volunteers, they are usually scheduled to serve no more than one time per month even if they request to be scheduled more often. Typically, four attorneys are scheduled each evening, and each handles approximately four cases per evening.[39]

Although the project plans to expand its training for hearing officers in the future, at present, it is limited. The hearing officers are given a manual that summarizes program procedures, relevant laws, and related materials. They also attend an orientation session at which they learn the procedures involved in mediation, arbitration, and default review. They observe a full screening session of the program, and, when first assigned to cases, they are given any needed help by the veteran volunteer attorneys. Most of the attorneys participating in the project have at least five years of legal experience, and many have served as temporary judges in small claims court.

Program Budget

The project grant, which is administered by the Santa Clara County Bar Association, pays the salaries of the temporary deputy court clerks, deputy

sheriffs, and a bar association clerical worker for work associated with the project. The attorney hearing officers serve without compensation. The original space used by the project at Hillview Community Center was donated free by the City of San Jose, but Independence High School, the present site, does charge for use of its premises by the project.

Judges are involved in the project through their review of mediation and arbitration decisions in chambers and conversion of these decisions into judgments of the court. Other personnel at the clerk's office are involved in case processing, including initial filing, entry of judgment, and collection form processing. These personnel would, of course, need to perform these or similar tasks if the Neighborhood Program did not exist. Thus, it is not clear what proportion of their salaries should be attributed to the project.

The project estimates that the total annual budget for the project as currently constituted is $20,000. The project's successful use of volunteer services helps keep costs down.

Program Operations

Case Referral and Screening. As noted previously, cases involving individual plaintiffs are automatically referred to the project at the time of filing at the court clerk's office. Defendants are notified to attend the evening mediation hearing. During the first five months of operation under the current referral procedure (see page 127), 11 percent of those referred did not wish to participate in the Neighborhood Program. Most stated that the time of the hearing was not convenient; only three percent of those refusing indicated a preference for having their cases handled by a judge.

Case Scheduling. Cases are scheduled by the clerk's office at the time of case filing. A maximum of 18 cases per night are scheduled. The project had attempted to schedule up to 25 per evening, but found that this resulted in excessive delay for the litigants. As noted on page 127, the Neighborhood Program operates three evenings per week.

Hearing Procedures. When disputants arrive, they are greeted by a deputy clerk, sworn in, and taken to a private room for their mediation hearing with a volunteer attorney. The mediator first explains the process, noting that the mediator has no power to decide the case and is simply there to help them reach a resolution. The plaintiff then is asked to describe the complaint, to submit any relevant documents for review by the mediator, and to present any witnesses. The defendant responds with his view of the case and presents his evidence and witnesses. The mediator tries to move the parties to a settlement and suggests possible grounds for resolution.

If a mediation session is successful, the mediator writes up the settlement in summary form, and the parties sign it. A judge of the Small Claims Division then reviews the settlement and converts it into a judgment of the court.

If a settlement is not achieved within a reasonable time, as determined by the mediator, then the mediator suggests the option of proceeding to arbitration. Another attorney is available, usually that same evening, to serve as an arbitrator and impose a judgment. If either party disagrees with the arbitration award, an appeal can be made for a trial de novo in the small claims court by objecting to the award within five days of receipt of the arbitrator's decision. If the parties agree to arbitration, they sign a form acknowledging the binding nature of the arbitration and their right to appeal within five days. If a mediation session does not result in a settlement and the parties do not agree to proceed to arbitration, the case is then referred to the court clerk who schedules a trial at the small claims court.

If the defendant fails to appear at the scheduled hearing, a hearing officer can serve as a referee and review the plaintiff's case. If the case is judged to be meritorious, the hearing officer can recommend that a default judgment be issued in favor of the plaintiff. If the plaintiff fails to appear at the scheduled time, the case is dismissed.

Nature of Agreements. Judges of the Municipal Court can accept, modify, or reject the recommendations of hearing officers for settlements, arbitrated decisions, or default judgments. All hearing officer recommendations are reviewed by a judge within a few days of the hearing. Most recommendations are accepted, and they become regular court judgments. Monetary settlements make up the overwhelming majority of cases, but some orders for specific performance also occur. The form used to record mediation/arbitration settlements appears in Appendix C.

Collection and Enforceability. A discussion of issues involved in the collection of small claims judgments was presented on page 128. Since mediated settlements, arbitration decisions, and default judgments are all converted into judgments of the court, the issues of collection and enforceability do not differ from those involved in routine court judgments.

Caseload Summary

Recent data are not available regarding the types of cases referred to the project. Data are available, however, for the cases processed during the first 24 months of project operations (January 1977-December 1978). Auto

property damage was the largest single category, comprising 37 percent of the caseload, followed by miscellaneous contracts other than landlord-tenant (26%), landlord-tenant (14%), miscellaneous non-auto torts (14%), auto repairs (7%), and other real property (2%).

The project processed 156 cases in 1977, 219 cases in 1978, 246 cases from January through November 1979, and 1,808 cases from December 1979, when the project moved to its new location and adopted the new referral procedure, through December 1980. Approximately two-thirds of the cases are mediated to successful resolution, and 15 percent are arbitrated; the remaining cases include defaults and rescheduled cases. According to the project, less than two percent of arbitrated cases are appealed for a trial de novo.

More detailed information regarding case processing is not available. The project operates on a low budget and has not had the resources for extensive studies of case processing.

Program Impact

No follow-up study of litigants served by the Neighborhood Small Claims Court Program has been conducted.

Contact for Further Information

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CHAPTER 4: Footnotes

1. The District Courts also have original jurisdiction concurrent with the Superior Court in domestic relations proceedings and original criminal jurisdiction over ordinance violations and misdemeanors. They may also hear preliminary or probable cause hearings on felonies. (Source: U.S. Department of Justice, National Criminal Justice Information and Statistics Service, National Survey of Court Organization. Washington, D.C.: Government Printing Office, 1973.)

2. State of Maine, Administrative Office of the Courts, Annual Report, 1978, as cited in "Report on the Small Claims Process in Maine," submitted by the Ad Hoc Committee on Small Claims to the Advisory Committee on Court Management and Policy (undated), p. vi.

3. The filing fee can be waived if proper application is made and the court finds that the plaintiff is without sufficient funds.

4. It used to be the case that attorneys had to represent corporations, but this is no longer true under the new statute (see section 7463).

5. Section 7470, ME. REV. STAT. ANN. tit. 14, ch. 738, (Supp. 1980), states: "At the hearing, rules of evidence shall not apply. The court shall admit any material and proper evidence. The court shall assist in developing all relevant facts." The statute appears in Appendix B.

6. See section 7471 of the small claims statute concerning judgment.

7. See sections 7472 and 7473 of the small claims statute.

8. Walter Corey and Parker Denaco, "Small Claims Mediation," April 1978, reprinted in Robert W. Donovan, "Mediation in the Maine Courts," Paper presented at the National Seminar for Small Claims Court Judges, National Judicial College, Reno, Nevada, May 1980, p. 7.

9. See section 7469 of the small claims statute.

10. See section 7469 of the small claims statute.

11. See section 7469.4 of the small claims statute.

12. See section 7469.3 of the small claims statute.

13. See section 7469.4 of the small claims statute.

14. A. L. Greason, "Humanists as Mediators: An Experiment in the Courts of Maine," American Bar Association Journal, 66 (May 1980): 578.

15. See section 7469.4 of the small claims statute.

16. U.S. Department of Justice, Law Enforcement Assistance Administration, National Institute of Law Enforcement and Criminal Justice, An Exemplary Project--Citizen Dispute Settlement: The Night Prosecutor Program of Columbus, Ohio (Washington, D.C.: Government Printing Office, 1974).

17. See U.S. Department of Justice, National Institute of Law Enforcement and Criminal Justice, Neighborhood Justice Centers: An Analysis of Potential Models, by Daniel McGillis and Joan Mullen (Washington, D.C.: Government Printing Office, 1977), for an examination of six dispute settlement centers, including the Columbus, Ohio, Night Prosecutor Program.

18. Florida State Court Administrator's Office, CPS Training Manual. Available from the Office of Court Administration, Supreme Court Building, Tallahassee, FL 32304.

19. Type of case is coded as assault, consumer, employee/employer, family/domestic, juvenile, landlord/tenant, neighborhood, pets, truancy, other.

20. Data presented in this section were obtained from Pinellas County Citizen Dispute Settlement Program, "Final Report--1979," pp. 14-16.

21. Ibid., pp. 17-19.

22. Businesses must be sued in their exact legal name. Plaintiffs who are unsure of the defendant's proper name are directed to the Secretary of State's Office, which maintains a corporate charter and registered agent list. A trade name index is available at the Superior Court if no corporate record can be found.

23. A fee is levied on defendants who wait 30 to 45 days after service to file an answer. In cases of automatic default, a jury must determine the amount of damages.

24. Magistrates, rather than judges, began handling small claims cases in July 1980.

25. U.S. Department of Justice, National Institute of Justice, Neighborhood Justice Centers Field Test: Final Evaluation Report, by Royer F. Cook, Janice A. Roehl, and David I. Sheppard (Washington, D.C.: Government Printing Office, 1980), p. 8.

26. Three persons from the local court system served on the initial board: the director of court services of the Atlanta Judicial Circuit; the chief probation officer of Juvenile Court; and the court administrator of the Fulton County Superior Court. Other Board members represented the Atlanta Bar Association, the Gate City Bar Association, Atlanta Legal Aid, County and City Attorneys' Offices, the Atlanta Bureau of Police Services, the Atlanta Office of Consumer Affairs, and a local community organization.

27. The first group of mediators was trained by a family mediation service (The Bridge) and by the American Arbitration Association.

28. If one party fails to show up for two scheduled hearings and the other party has been present both times, the NJCA will issue a "To Whom it May Concern" letter to the latter, indicating that a good faith attempt was made to attend, but that the other party failed to show up as promised on two separate occasions.

29. During the NJCA field test period of March 1978 through May 1979, only two percent of mediated cases (17 out of 813) required more than one hearing.

30. The data reported in this section were obtained from the NIJ Neighborhood Justice Centers Field Test: Final Evaluation Report, pp. 32-34, 141-143.

31. Ibid., pp. 45-86.

32. The City of New York can file small claims cases.

33. In cases in which service cannot be obtained (e.g., the address is wrong, the defendant moved), the plaintiff is instructed to obtain service through the assistance of friends or hired process servers.

34. This total excludes cases handled in a special small claims program in upper Manhattan (Harlem). Hearings are conducted at that site four times per week.

35. Recent changes in New York law have made it easier for citizens to collect judgments against businesses. Many times, plaintiffs are aware of the name under which a defendant conducts business, but are not aware of the legal name of the company. The law now allows plaintiffs to amend the legal name of the defendant before or at trial. Furthermore, if a plaintiff wins a judgment against a business, having cited the common business name rather than the legal name, and the defendant fails to pay the judgment in 35 days, the plaintiff may sue again in the correct legal name for the amount of the award, costs, reasonable attorney's fees, and an additional $100. The additional $100 penalty provides a disincentive for a business to evade collection when the plaintiff is unaware of the business's legal name.

36. In contrast, in New York City, litigants who are not present at the first calendar call are marked absent, and action is taken on their cases immediately.

37. See Note 35 above.

38. In Nassau County, the opening statement in which the arbitration option is described is presented by the presiding judge. A court officer delivers this statement in the New York County Small Claims Part. It can be speculated that the judge may be more effective in persuading litigants to use arbitration, but there is no evidence on this point.

39. When the project first started, volunteer attorneys also donated time for public relations efforts and other services.

APPENDIX A
Site Visit Instrument

I. Overview

1. What is the size and type of community served by the court?

2. Type of court (e.g., justice of the peace, district court, etc.) and substantive jurisdiction:

3. Are the court and/or alternative location easily accessed? Describe: (1) location in community, and (2) relevant physical characteristics of building(s).

4. Is there a directory in the front lobby of the courthouse in which the location of the small claims clerk or court is identified?

II. THE SMALL CLAIMS COURT

A. Small Claims Court Rules and Policy

1. Secure copies of relevant legislation, court rules, and administrative orders related to the operations of the small claims court (especially operation of the alternative mechanism).

2. Monetary jurisdictional claim limit:

3. Does the small claims court have concurrent or exclusive jurisdiction? If jurisdiction is concurrent, what implications does that have for litigants?

4. Are there any restrictions on who can file a claim? If there are such restrictions, what is the basis for them?

   a. Corporations, partnerships, associations:

   b. Assignees or collection agencies:

   c. Limitations on number of filings by a single party:

   d. Other:

5. Must businesses be identified by their legal name? If so, how are plaintiffs assisted with this?

6. Does the defendant have the right to transfer a case to the regular civil court or a superior court? If so, under what circumstances?

7. Are defendants permitted to file counterclaims?

   a. Describe requisite procedure.

   b. Can a counterclaim be first announced at the trial itself?

   c. Is a case transferred to the regular civil court if the counterclaim exceeds the small claims limit?

8. Are lawyers barred? Does this vary by type of litigant? Are there any cases for which attorney representation is required?

9. Does a defendant have the option of a jury trial for a small claims case? Must the case be transferred for that right to be exercised?

10. What rights of appeal do litigants have? Are there any restrictions (e.g., requirement to post an appeal bond, waiver requirements, etc.)?

B. Small Claims Procedures

1. Court personnel involved in small claims (list):

   a. Judges:

   b. Judges pro tem (attorneys):

   c. Clerks:

   d. Others:

2. How are small claims assignments made within the court?

   a. Assignment of judges:

   b. Assignment of clerks:

   c. Other staff assignments:

   d. Budget line:

The Pretrial Process

3. Describe the filing procedures used for small claims matters. What fees are charged? (Secure copy of complaint forms.)

4. Is a pamphlet available that describes small claims procedures? (Secure a copy.) How is it made available to the public?

5. Are there other educational materials (e.g., slide/tape show, file, hand-out sheets) available for litigants? Describe.

6. Clerk assistance to litigants:

   a. Assistance to plaintiff when filing:

   b. Advice to plaintiff (e.g., types of proof or witnesses needed):

   c. "Quasi-legal" advice to plaintiff (e.g, how to identify correct defendant, possibility of penalty damages being claimed, etc.):

   d. Do clerks screen cases in any way?

   e. Availability of paralegal assistance (e.g., law students, consumer advocates, etc.):

   f. Bilingual services:

   g. Assistance to defendants:

   h. Other:

7. Describe procedures used for service of process. What recordkeeping, if any, is done to guarantee proper service?

8. Is the defendant required to appear or file an answer before trial?

9. Are any efforts made to encourage litigants to settle before trial? Describe. Is this a court policy or does it vary from judge to judge?

The Trial

10. Describe the manner in which cases are scheduled.

   a. On what day(s) of the week or month are small claims cases scheduled?

   b. Are all cases assigned for the same time? If so, how many trial parts are there?

   c. Are cases assigned for specific times throughout the day?

   d. Special dockets (e.g., defaults, collections, dry cleaning or automobile repairs, etc.):

   e. Are there any evening or weekend sessions? If not, explain.

11. Are trial procedures and the rules of evidence informal or formal? Describe in detail (e.g., judge's role at the trial, presentation of evidence, telephoning of witnesses, etc.). Do individual judges vary a great deal in this regard?

12. Do the judges ever try to "mediate" between the litigants at trial? Is this the policy of the court or does it vary from judge to judge? Give examples.

13. What is the court's philosophy regarding the granting of continuances for evidence presentation with pro se litigants? Does this vary from judge to judge? Give examples.

14. How does the court handle cases where one or both litigants fail to appear?

    a. Both litigants fail to appear:

    b. Plaintiff fails to appear:

    c. Defendant fails to appear:

    d. Are defaults granted automatically? If not, what is a plaintiff required to show?

    e. If a default judgment is registered against a defendant, what recourse does that person have?

    f. How does the court know if a non-appearing defendant was properly given service?

15. Are judgments typically announced at the end of the trial? Do the judges explain the decision? If not, explain.

16. Do the judges ever stay execution of a judgment in order to facilitate equitable relief between the parties? Give examples.

17. Can defendants request that payment of the judgment be made in installments? How is this handled?

Collection

18. What involvement does the court have, if any, in the collection of judgments?

    a. Is there statutory authority for the court to provide remedies for judgment creditors?

    b. Is there an information sheet available for litigants that describes possible problems in the collection of judgments and what remedies are available?

    c. At what point in time would a court examination of assets be conducted? Under what circumstances?

d. Does the judge enter a judgment satisfaction plan at the end of trial?

e. Does the court clerk provide any help to judgment creditors in collecting the judgment (e.g., how to locate debtor's assets, how to arrange for writs of garnishment or attachment, etc.)?

f. How is satisfaction of judgment recorded?

g. Are there data available on the percentage of cases for which judgments are paid?

C. Small Claims Caseload and Case Outcomes

1. Are there any groups or agencies in the community (e.g., Better Business Bureau, Attorney General's complaint office, legal service organizations) that typically refer cases to the small claims court?

   a. Are any precise data available on source of referrals?

   b. How active are these referral sources in handling small claims matters outside the court? Describe.

2. How many small claims cases are filed per month? Per year?

3. How many small claims cases appear on the docket each week?

4. How long after filing does it take for cases to appear on the docket?

5. Are data available on the nature of the small claims caseload handled by the court?

   a. Size of filed claims:

   b. Type of plaintiff (e.g., individual consumer, business, landlord, etc.):

   c. Type of defendant:

   d. Type of case (e.g., dental or medical malpractice, landlord-tenant dispute, consumer complaint, collection, etc.):

6. Are data available on the outcomes of cases (e.g., award as a percentage of claim, win/loss, etc.)? Are these measures cross-tabulated against other variables (e.g., use of lawyer, type of litigant, type of case, etc.)? Are data available on satisfaction of judgment? Are these cross-tabulated?

7. What is the court's budget for small claims? If budget figures are not broken out in this way, can an estimate be given (e.g., use percentage of staff time spent on small claims)?

III. THE ALTERNATIVE PROGRAM

A. History of the Program

1. Who originally developed the idea for the program? When?

2. Why was there a perceived need for the program?

3. Was a formal needs assessment ever conducted? Describe.

4. Which people or groups supported the program from the start?

   a. Why?

   b. What arguments were used to generate further support?

   c. Does this support continue to the present time? Describe.

5. Which people or groups were resistant to the program?

   a. Why?

   b. How was this resistance overcome? What arguments were used?

   c. Does this resistance continue to the present time? Describe.

6. What is the level of community awareness about the program?

7. Characterize community attitudes about the program and the manner in which these attitudes have changed over time.

8. What programs elsewhere in the country, if any, were used as models? What features of those models were most attractive? Least attractive?

9. Is the alternative program located inside or outside the court? How and why was this location selected? What disadvantages does the site have?

10. What steps were followed in implementing the program?

11. What problems were encountered during program implementation? How were they overcome? What lessons were learned?

12. What was the original funding source? Budget?

13. What was the original staff size? If court staff were not assigned solely to the program, how many hours per week did each person spend with it in the beginning?

14. How many cases were handled during the first year?

    a. Any data on the types of cases or the types of litigants involved?

    b. What was the cost per case during the first year?

15. What are the program's prospects for continued operation? Are there any plans for its expansion or reduction?

16. Are any future changes in the program expected or proposed? Describe. Who has made each proposal? Why?

B. Program Overview, Rules, and Policy

1. List all personnel involved in the operation of the program.

    a. How many work full-time?

    b. How many work part-time?

    c. How many are regular court employees?

2. Which resolution technique(s) is offered through this alternative?

    a. Conciliation:

    b. Mediation:

    c. Arbitration (binding or non-binding):

    d. Combination of mediation and arbitration:

    e. Other:

3. Are cases other than small claims handled through this same alternative mechanism? Describe.

4. In what way is the availability of the alternative made known to the litigants (e.g., small claims pamphlet, in court, radio advertisements)?

5. At what point are cases referred to the alternative (e.g., before or at filing, during trial)?

6. What are the major referral sources for the alternative? Clerk? Judge? Other?

7. Are individual cases screened to determine whether use of the alternative is appropriate? If so, who does the screening? What criteria are used?

8. Do all clerks and/or judges actively push for use of the alternative? Do they differ in the percentage or types of cases they will refer to the alternative? Explain.

9. What advantages/disadvantages of the alternative are cited to the litigants? If use of the alternative is voluntary, in what ways are litigants encouraged to use it?

10. How much choice do litigants have in whether they use the alternative?

11. Can a judge assign a case to the alternative mechanism in the absence of a request by either party? If so, what criteria (e.g., case complexity, type of parties) are used? Are certain types of cases excluded (i.e., blanket exclusion)?

12. What must litigants do before their case can be handled through this alternative mechanism?

    a. Written agreements:

    b. Waivers:

    c. Must both parties agree to it?

    d. Must a judge or other court official approve that course of action?

13. What specific provisions are made to ensure due process? Have any problems ever arisen in this regard?

14. What rights to appeal or reconsideration do litigants have? How often does this occur?

C. Program Procedures

1. How is scheduling of the session handled?

2. How much time is allowed for a session? How long does it typically last? Are multiple sessions ever allowed?

3. How does the session proceed? Describe in detail.

4. What happens if one or both litigants fail to appear?

5. What happens if the mediator (arbitrator) determines that a case is inappropriate for handling through the alternative?

6. Are attorneys barred or required for any cases?

7. How do mediators (arbitrators) deal with litigants with very different bargaining abilities or power?

8. How do mediators (arbitrators) deal with a situation in which they feel that one party is being "bullied" somehow into an unfair settlement?

9. What happens if the litigants cannot agree on a settlement?

10. If a settlement is reached or imposed, how is it recorded? What procedure is followed to make it an order of the court?

11. Are non-monetary agreements ever implemented? How are they enforced?

12. Is a continuance of the case granted after a mediated settlement to guarantee its execution?

13. What standards of proof are applied in these cases?

14. Can mediators (arbitrators) grant continuances or stay execution of judgment?

15. Develop a summary flow chart of case processing.

16. Is a transcript of the proceeding made? Are notes taken by a clerk or mediator (arbitrator) kept on record?

D. The Mediators (Arbitrators)

1. How many mediators (arbitrators) are there at the present time?

2. How are the mediators (arbitrators) recruited?

3. Must mediators (arbitrators) meet certain requirements (e.g., professional background, experience)?

4. Are applicants screened in any way? Describe.

5. Give a demographic breakdown for the mediators (arbitrators) if possible.

6. Describe the entire training process in detail. Are written training materials available?

7. Do the mediators (arbitrators) work full- or part-time? If part-time, how frequently do they work? Are the mediators (arbitrators) paid or do they volunteer their time?

8. How are the mediators (arbitrators) assigned to cases?

9. How many cases do individual mediators typically handle in one day? One week?

10. Does the court systematically review the work of the mediators (arbitrators), even in the absence of an appeal for a particular case?

11. Are the mediators (arbitrators) under any pressure to keep up their "batting average"?

12. What kind of staff turnover is there? Explain.

13. If volunteer mediators (arbitrators) need to be removed from the program, how is that handled? For what reasons might they be removed?

14. Are periodic staff meetings held to discuss problems with the program? Describe. Who attends?

E. Program Costs

1. Is a budget available for the alternative program alone? If not, can a reasonable estimate be made? (Specify time period.)

   a. Staff:

   b. Operating costs:

   c. Other:

2. What funding sources have been used? Have the source and amount of funding varied over time? Are any changes in funding level or sources anticipated?

3. What is the cost per case? (Define "case" as a dispute resulting in a mediation or arbitration hearing.)

4. How does this cost compare against that for cases going to trial?

F. Caseload Characteristics and Program Evaluation

1. What type of evaluation or monitoring of the program has been or is presently being conducted? Are any planned for the future? (Secure report or data.)

2. Are detailed data collection forms being used for each case? (Secure copy of forms.)

3. Summary: What percentage of small claims cases result in a mediation (arbitration) hearing? What percentage of those cases result in a settlement? What percentage of those go to trial?

4. Are any data available on the types of litigants and the types of cases that are routed through the alternative? Total number of cases processed?

5. Is there any evidence that some litigants agree to the alternative mechanism merely to create delays? What is the court doing to prevent this?

6. Has the distribution of types of cases handled by the program changed during its history? How?

7. What effect has the availability of this alternative had on the court's caseload, if any?

8. Are any data available on litigant satisfaction with the alternative? Percentage of cases resulting in a settlement? Percentage of settlements being maintained? Percentage of judgments being paid? (Secure copy of instruments and data if available.)

9. Are there any savings in time or money to the litigants through use of the alternative? Describe. Does this depend on the type of case?

10. Are there any savings in time or money to the court through the use of the alternative? Describe. Has use of the alternative permitted the judges to devote more time to handling other litigation? Does this depend on the type of case?

APPENDIX B

Model Legislation

CHAPTER 738

SMALL CLAIMS

Chapter 738, Small Claims, was enacted by 1979, c. 700, § 4.

§ 7461. Purpose

It is the purpose of this chapter to provide a simple, speedy and informal court procedure for citizens so they may easily resolve small claims without undue procedural burdens.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 2.
1963, c. 402, § 158.
1977, c. 564, § 71.
1977, c. 593, § 2.
Former § 7452 of this title.

1. In general

Dist.Ct.Civ.Rules, rule 59 governing motions for new trial was not available in small claims cases. Boothbay Register, Inc. v. Murphy (1980) Me., 415 A.2d 1079.

District Court Civil Rules do not apply to actions under small claims procedure except as to proceedings subsequent to rendition of judgment, such as, for example, proceedings for enforcement of judgment or appeals therefrom; rules do not apply to anything that affects rendition of final judgment in the small claims court, such as motion to amend or motion for findings or for a new trial. Id.

§ 7462. Definitions

As used in this chapter, unless the context indicates otherwise, the following terms have the following meanings:

1. Representative. "Representative" means the person representing a corporation, partnership or governmental entity.

2. Small claim. "Small claim" means a right of action cognizable by a court, if the debt or damage does not exceed $800, exclusive of interest and costs. It shall not include an action involving the title to real estate.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 1.
1957, c. 44.
1961, c. 39.
1971, c. 206, § 1.
1975, c. 171.
Former § 7451 of this title.

§ 7463. Representation

1. Attorney. A party may be represented by an attorney in a small claim proceeding.

2. Corporation, partnership or governmental entity. A corporation, partnership or governmental entity may be represented by a person other than an attorney in a small claim proceeding, as provided under Title 4, section 807.

1979, c. 700, § 4.

§ 7464. Bringing a claim

1. Venue. A small claim shall be brought in the division of the District Court where the right of action accrued, where the defendant resides, where the defendant has a place of business or, if the defendant is a business entity, where its registered agent resides.

2. Personal jurisdiction. The personal jurisdiction in a small claim action shall be coextensive with that of the District Court.

3. Not exclusive. The procedure of this chapter shall be an alternative and not exclusive.

4. Statement of claim. A plaintiff shall provide a brief statement of his claim to the clerk of the District Court. The clerk shall briefly record the notice of the claim.

5. Hearing. On receiving a claim, the clerk shall set a date for hearing. The date may not be less than 14 days from the date notice is mailed to the defendant.

6. Fee. At the entry of the statement, a fee of $5 shall be paid. The clerk may pay the cost of notices from the fee and the remainder may be retained by the court as costs.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 3.
1957, c. 198, § 1.
1963, c. 402, § 159.
1965, c. 19, § 4.
1971, c. 206, §§ 2, 3.
1971, c. 622, § 56.
1977, c. 593, §§ 3, 4.
Former § 7453 of this title.

1. In general
District Court Civil Rules do not apply to actions under small claims procedure except as to proceedings subsequent to rendition of judgment, such as, for example, proceedings for enforcement of judgment or appeals therefrom; rules do not apply to anything that affects rendition of final judgment in the small claims court, such as motion to amend or motion for findings or for a new trial. Boothbay Register, Inc. v. Murphy (1980) Me., 415 A.2d 1079.

§ 7465. Filing without fee

1. Filing. A person may, without fee, file an application in the District Court requesting permission to proceed without payment of a filing fee.

2. Contents. The application shall be on a form supplied by the clerk. It shall include:

A. The monthly income received and monthly expenses necessary for family support; and

B. A statement that the plaintiff has no other funds from which fees may reasonably be paid.

3. Procedure. The clerk shall present an application to the court as soon as is practicable. If the court finds that the plaintiff is without sufficient funds to pay the filing fee, it shall order waiver of the fee. The clerk shall promptly notify the plaintiff of the decision.

1979, c. 700, § 4.

§ 7466. Notice

1. Notice to plaintiff. The clerk shall cause notice of the hearing to be given to the plaintiff by ordinary mail, addressed to the address given to the clerk by the plaintiff. The clerk shall make an entry on the docket indicating the date of the mailing, which shall be sufficient showing of that notice.

2. Notice to defendant. The clerk shall cause notice and a brief statement of the claim to be given to the defendant by postpaid registered or certified mail, addressed to his last known postoffice address. That notice shall direct the defendant to appear at the time and place of the hearing. If the defendant does not receive the mailed notice at least 7 days prior to the hearing, as evidenced by a signed receipt, service shall be completed as in other actions at law at the expense of the plaintiff. At the request of the plaintiff, the clerk shall arrange for that service.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 6.
1957, c. 281, § 2.
Former § 7454 of this title.

§ 7467. Continuances

While continuances are not favored, a continuance may be granted for good cause. Continuances may be granted by the clerk when service has not been completed.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 7.
1971, c. 206, § 4.
Former § 7455 of this title.

§ 7468. Removal and transfer

Every cause begun under this chapter shall be decided under this chapter. A small claim may not be removed to the Superior Court.

The court may order transfer to another District Court division for good cause.

1979, c. 700, § 4.

§ 7469. Mediation

1. Preliminary inquiry. Prior to the hearing, the court shall determine what efforts the parties have made to settle their dispute.

2. Use of court. The court may require the parties to meet in the court room to attempt to settle their dispute. The meeting may be in private or before a mediator, as the parties elect.

3. Hearing. If settlement efforts have failed or are inappropriate, the court shall hold a hearing without delay.

4. Court approvals. Every settlement shall be submitted for court approval. The court shall approve every reasonable settlement. An approved settlement shall have the force and effect of a judgment. An approved settlement may not be appealed.

1979, c. 700, § 4.

§ 7470. Evidence

At the hearing, the Rules of Evidence shall not apply. The court may admit any material and proper evidence. The court shall assist in developing all relevant facts.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 7.
1971, c. 206, § 4.
Former § 7455 of this title.

§ 7471. Judgment

1. Judgment. A judgment may provide monetary or equitable relief. The court may order payment of a monetary judgment in installments.

2. Costs. If the plaintiff prevails, he shall be awarded costs in addition to his judgment.

3. Equitable relief. Equitable relief may be granted only as between the parties. It shall be limited to orders to repair, return, replace, reform, refund or rescind.

4. Failure to appear. If either party fails to appear for the hearing, the court may render judgment for the other party, including a dismissal. The court may continue the case if the failure is for good reason.

5. Judgment order. The court shall enter the judgment order. It shall provide both parties with a copy, either personally or by certified mail. That order shall contain:

A. The name of the prevailing party;

B. The time allowed for appeal;

C. The amount of judgment and costs and method of payment;

D. Other court ordered action;

E. A statement of the duties and consequences relating to satisfaction and disclosure, including a statement that if the judgment is satisfied, no record of judgment will exist which might adversely affect his credit; and

F. A disclosure hearing date.

1979, c. 700, § 4.

Derivation:
R.S.1954, c. 109, § 7.
1971, c. 206, § 4.
Former § 7455 of this title.

§ 7472. Satisfaction and disclosure

1. **Satisfaction.** If the judgment, including costs, is satisfied prior to the disclosure hearing date, then:

A. The prevailing party shall notify the clerk of satisfaction; and

B. The clerk shall enter the disposition of the case as "no cause of action."

2. **Disclosure.** The court shall hold a disclosure hearing to determine the assets and income available to satisfy the judgment, if:

A. The clerk has not received notice of satisfaction from the prevailing party prior to the disclosure hearing date;

B. The time for appeal has passed without notice of appeal; and

C. The judgment does not order installment payments.

Disclosure proceedings shall comply with sections 3124 to 3137, except that the subpoena requirements of those sections shall be met by the court order and the 2nd notice by the clerk.

1979, c. 700, § 4.

§ 7473. Disclosure notice

If a disclosure hearing is required under section 7472, subsection 2, the clerk shall send by certified mail, to both parties, notice of the disclosure hearing.

1979, c. 700, § 4.

§ 7474. Appeal

1. **Scope of appeal.** A party may appeal an adverse decision to the Superior Court. An appeal may be only on questions of law.

2. **Procedure.** An appeal shall be filed within 10 days of entry of judgment. It shall be filed with the District Court that heard the case. The clerk shall transmit to the Superior Court all documents relating to the case and any recording of the hearing.

1979, c. 700, § 4.

1. In general

Where no electric sound recording had been made of small claims hearing and defendant did nothing to obtain statement of district court proceedings for use on appeal in lieu of a transcript, superior court properly denied appeal, for in the absence of transcript or its equivalent, appellate court had no way of reviewing district court's factual finding. Boothbay Register, Inc. v. Murphy (1980) Me., 415 A.2d 1079.

District Court Civil Rules do not apply to actions under small claims procedure except as to proceedings subsequent to rendition of judgment, such as, for example, proceedings for enforcement of judgment or appeals therefrom; rules do not apply to anything that affects rendition of final judgment in the small claims court, such as motion to amend or motion for findings or for a new trial. Id.

§ 7475. Effect of judgment

Any fact found or issue adjudicated in a proceeding under this chapter, may not be deemed found or adjudicated for the purpose of any other cause of action. While the doctrine of collateral estoppel may not apply to facts found or issues adjudicated, the judgment obtained shall be res judicata as to the amount in controversy. The only recourse to an adverse decision shall be appeal.

1979, c. 700, § 4.

Derivation:
1969, c. 367, § 2.
Former § 7457 of this title.

2. Model Consumer Justice Act. Washington, D.C.: Chamber of Commerce of the United States, 1977. Sections 5.1 and 5.2

Section 5.1 (Settlement; Mediation)

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

(1) If unsatisfied that previous good faith settlement efforts have been made, the court shall require the parties to meet in the courthouse, in private or before a mediator, at their election, to attempt to settle their dispute.
(2) If satisfied that such efforts have been made, the court shall proceed to the hearing without delay.

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

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

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

(e) Every reasonable settlement shall be—
(1) approved by the court;
(2) regarded as a judgment entered by the court; and
(3) processed for collection as prescribed by Section 8.2.

Section 5.2 (Arbitration)

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

(b) The clerk shall inform litigants appearing for a hearing that—
(1) they have the right to choose a hearing by binding, non-appealable arbitration or by appealable courtroom adjudication;
(2) arbitration requires the consent of all parties to an action; and
(3) parties cannot withdraw from arbitration subsequent to its commencement without the consent of the court.

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

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

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

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

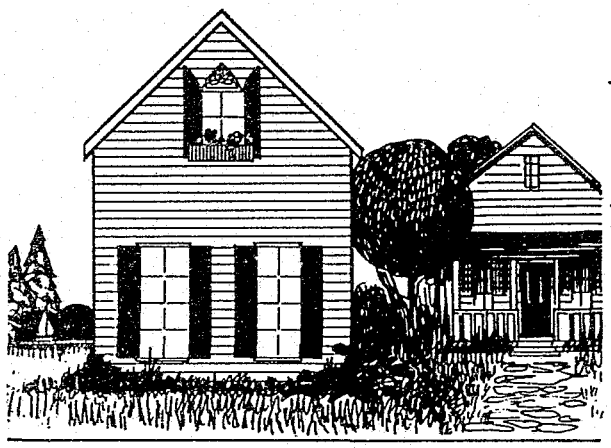
APPENDIX C

Program Brochures and Forms

Types of Disputes We Will Not Handle.

- Problems between strangers — no on-going business or personal relationship
- Problems requiring legal assistance — filing lawsuits, criminal defenses, divorces, wills, etc.
- Disputes involving bad checks given to merchants
- Problems in which one of the parties refuses to participate willingly
- Problems which can't be settled by compromise

When in doubt — call us at 523-8236 — if we can't help you, we will help you get help!

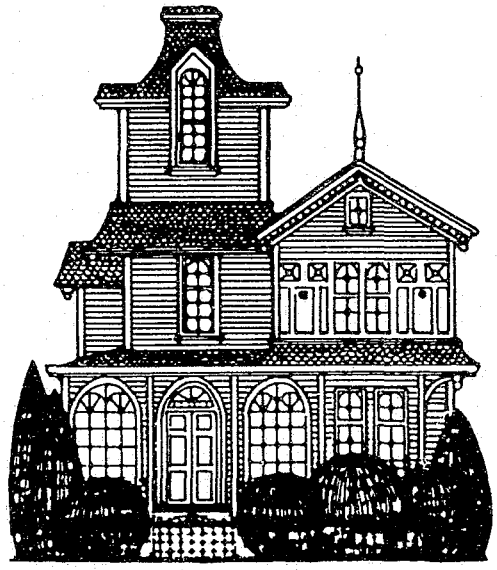


NEIGHBORHOOD JUSTICE CENTER OF ATLANTA, INC.

Edith B. Primm	Executive Director
JoAnn Bayneum	Deputy Director
H. Carol Lucas	Intake Co-ordinator
Garrett Justice	Intake Counselor/ Night Co-ordinator
Virginia Conrads	Administrative Assistant
Valerie Coyle	Administrative Assistant

Call or write the Center for further information: 523-8236 • 1118 Euclid Avenue, N.E., Atlanta, Georgia 30307.

Neighborhood Justice Center of Atlanta, Inc.



Problem Solvers

Having an argument with your spouse, friend, landlord, neighbor, local merchant or employer?

Maybe the Neighborhood Justice Center can help you work out a quick, fair and lasting solution — at no cost to you!

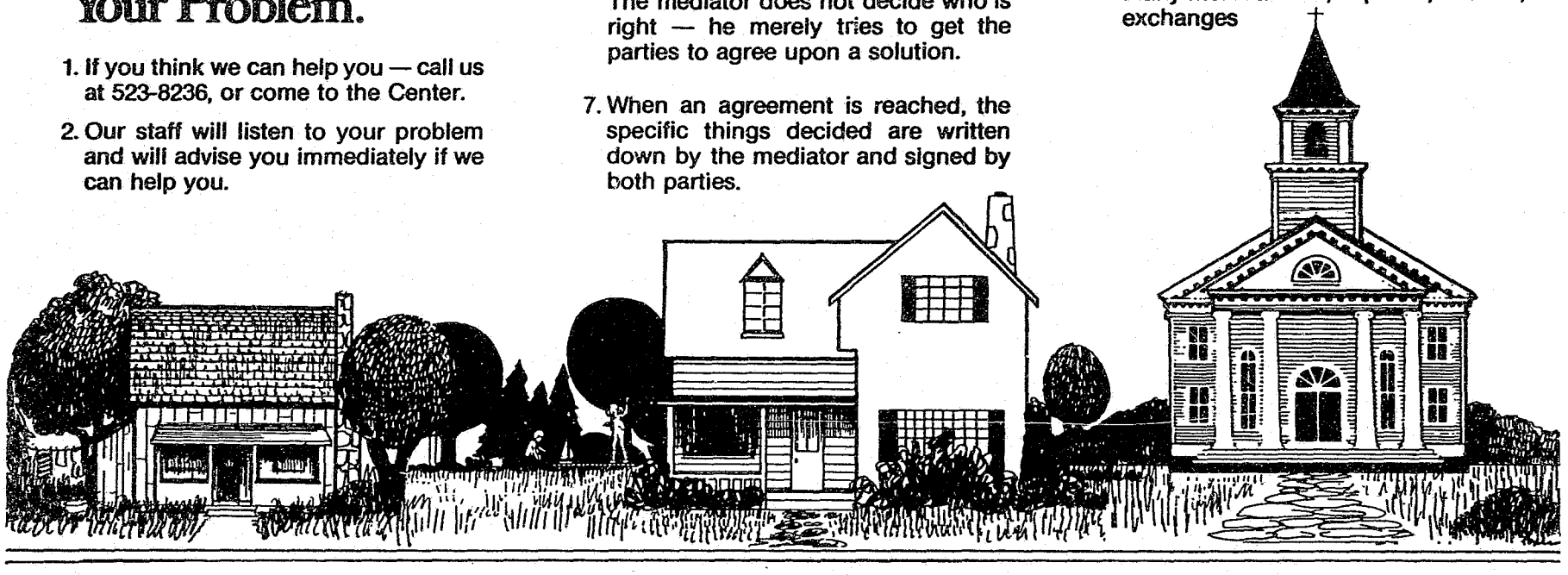
The Center provides you with an alternative to the courts by offering a *free* mediation service.

How to Get the Center to Help Solve Your Problem.

1. If you think we can help you — call us at 523-8236, or come to the Center.
2. Our staff will listen to your problem and will advise you immediately if we can help you.
3. If we can help you, our staff will ask you for information concerning you, your problem and the person you have a complaint against.
4. We will then contact the other person and try to persuade him/her to agree to come to the Center to work out the problem with you and a neutral, trained mediator.
5. Next, we will schedule the case for mediation at a convenient time for both parties — during the day, evenings or weekends.
6. At the hearing, the mediator listens to both parties in an effort to learn how both would like to resolve the problem. The mediator does not decide who is right — he merely tries to get the parties to agree upon a solution.
7. When an agreement is reached, the specific things decided are written down by the mediator and signed by both parties.

Types of Disputes We Will Handle.

- **Domestic** problems involving family members
- **Neighborhood** problems — noise, pets, nuisances
- **Landlord-tenant** problems — security deposits, repairs, damages
- **Small claims** over money, personal property
- **Juvenile** problems — fights, vandalism
- **Consumer-merchant** problems — faulty merchandise, deposits, refunds, exchanges



2. Brochure, Pinellas County Citizens Dispute Settlement Program

CITIZENS DISPUTE SETTLEMENT PROGRAM

ST. PETERSBURG OFFICE

150 - 5th Street North
Room 166
St. Petersburg, Florida 33701

Telephone: 893-5796

CLEARWATER OFFICE

Old Clearwater Courthouse
324 South Fort Harrison Avenue
Clearwater, Florida 33516

Telephone: 448-3946

THE PINELLAS COUNTY
CITIZENS DISPUTE SETTLEMENT PROGRAM

QUESTIONS AND ANSWERS

I. WHAT IS THE CITIZENS DISPUTE SETTLEMENT PROGRAM (CDS)?

In operation since October 1977, it is designed to offer an alternative to the usual criminal court procedures for persons who may be involved in certain county and municipal ordinance violations and misdemeanors. CDS is also designed to offer an alternative to police officers who respond to a citizen complaint which turns out to be civil in nature.

The complainant who is considered by the police officer or State Attorney's Office to be eligible for the program is referred to CDS. Further consideration of the complainant's eligibility is made by the intake officer of the Citizens Dispute Settlement Program, on the basis of the complainant's statement, to determine whether the Program's mediation service and other procedures could resolve the dispute more effectively than prosecution in the criminal courts.

II. WHO IS ELIGIBLE TO PARTICIPATE IN THE CITIZENS DISPUTE SETTLEMENT PROGRAM?

Participation is available to any person who has a complaint against another person that could, but not necessarily would result in a criminal charge. The program is also available to citizens who have a complaint which is civil in nature. In order for CDS to work effectively, there must be a dispute between two or more persons. The parties might be relatives, neighbors, landlord and tenant or involved in some other kind of relationship.

On occasion, a businessman may want to utilize our program to resolve a complaint against a customer as a first step to avoid a court suit. Some types of criminal (misdemeanor) charges that generally arise from such disputes are:

SIMPLE ASSAULT
HARASSMENT
NEIGHBORHOOD DISPUTES
ANIMAL NUISANCE
NOISE NUISANCE
DOMESTIC BATTERY
MINOR PROPERTY DAMAGE
TRESPASS

Common kinds of civil problems that result in disputes are:

LANDLORD-TENANT COMPLAINTS
EMPLOYEE-EMPLOYER DISPUTES
BUSINESS-CONSUMER PROBLEMS
MONEY OWED
RESTITUTION

Sometimes complaints will be of both a civil and criminal nature in the same complaint.

III. WHAT IS THE PURPOSE OF A CITIZENS DISPUTE SETTLEMENT HEARING?

The purpose of the Citizens Dispute Settlement Hearing is not to determine right or wrong or to impose the sanctions of the law. The fundamental purpose is to assist the parties involved in a dispute in reaching a mutually satisfactory settlement or other agreement--whether it is restitution, a promise to discontinue the problem behavior, or some similar conclusion of the dispute--and putting such agreement in writing.

The Citizens Dispute Settlement Hearing therefore gives the parties the opportunity to settle differences before a formal criminal or civil charge is made. This opportunity not only helps to isolate and expose the real problems, but it also creates the possibility for the parties to reach a more lasting agreement.

Citizens Dispute Settlement Program also acts as a referral service to help disputants find other agencies that may deal with specific problems that cannot be resolved in a mediation hearing.

IV. HOW DOES THE CITIZENS DISPUTE SETTLEMENT PROGRAM DIFFER FROM PROSECUTION IN COURT?

The person complained against in a Citizens Dispute Settlement Hearing is not criminally charged. Such person does not enter the already burdened criminal justice system. The Citizens Dispute Settlement Hearing gives the parties the opportunity to settle their differences without an arrest being made, a formal charge being filed, and the case being heard in court. In some instances, when an arrest has taken place, the parties may still participate in the Citizens Dispute Settlement Program, if the State Attorney's Office refers the case to the Citizens Dispute Settlement Program. Participants do not have to be represented by counsel. In the event mediation is not successful, the case can still be referred back to the State Attorney's Office for prosecution if the facts justify.

Citizens Dispute Settlement also handles community arbitration of juvenile offenders. The object of this program is to divert first-time offenders from the court system by giving them an opportunity to make restitution, work in community-service projects, learn about the criminal justice system or receive whatever help is available in the community to meet the needs of the child in terms of creating a healthy and law-abiding citizen.

V. WHO IS THE HEARING OFFICER?

The CDS Program is staffed by a team of professional Hearing Officers. The purpose of the Hearing Officer is to draw the parties toward an agreement through mediation of their disputes, interpreting each party's point of view and identifying the real basis of the conflict. By utilizing his training and knowledge, the Hearing Officer can suggest possible solutions when the parties cannot reach an agreement. The Hearing Officer may be a lawyer, psychologist, social or criminal justice worker or arbitrator, or has a combination of these qualifications.

VI. WHO ADMINISTERS THE CITIZENS DISPUTE SETTLEMENT PROGRAM?

The CDS Program was organized by the 6th Circuit. The Project Director is Circuit Judge David Patterson. The Program Director and full-time administrator is Lynn H. Ball, a former prosecutor for the State Attorney's Office.

VII. WHAT BENEFITS DOES THE CITIZENS DISPUTE SETTLEMENT PROGRAM OFFER THE POLICE AND THE COMMUNITY?

CDS offers an alternative for cases in which there is insufficient evidence to prosecute or it is the type of case in which prosecution might aggravate the situation. By resolving these kinds of problems, CDS can cut down on the number of recurring police calls. In many situations citizens can be referred to CDS rather than the officer telling the citizen nothing can be done.

Experience has shown that since minor criminal conduct frequently stems from a history of interpersonal misunderstanding or friction, a chance for the persons involved to work out their differences with a third party in an informal hearing, rather than in the more traditional courtroom setting, is generally welcomed by the participants. The Citizens Dispute Settlement Program is easily accessible to the community. The hearings are conducted on weekday evenings, approximately ten days after the complaint is made, to permit the working person to partitipate in the program quickly and without a loss of wages or fear of loss of employment.

The Citizens Dispute Settlement concept has additional benefits aside from those afforded the participants. Handling county and municipal or-violations, misdemeanors and some minor felony cases, the Citizens Dispute Settlement Program provides a significant reduction in the criminal caseload of the County Court and of the State Attorney's Misdemeanor Division. Moreover, Citizens Dispute Settlement Hearings can be conducted at a substantially lower cost than court proceedings, since police time involved in serving warrants, appearing as witnesses and handling bonding procedures is eliminated. Experience has proved that the program is able to help people effect a solution close to 75% of the time.

Persons with problems can contact CDS directly in St. Petersburg at 893-5796. In Clearwater, call 448-3946.

3. Announcement for Distribution at State Consumer Affairs Office, Pinellas County Citizens Dispute Settlement Program

M E M O R A N D U M

TO: THE CONSUMER

FROM: LYNN H. BALL, DIRECTOR OF CITIZENS DISPUTE SETTLEMENT PROGRAM

SUBJECT: EXPLANATION OF CITIZENS DISPUTE SETTLEMENT PROGRAM

In the event Consumer Affairs investigates your complaint and finds no violation of a consumer protection law, it may be the Citizens Dispute Settlement Program can help you.

Citizens Dispute, or C.D.S., has offices in Clearwater and St. Petersburg. The Clearwater office is located at 324 South Fort Harrison Avenue, Room 111, and the telephone number is 448-3946. The St. Petersburg office is located in the County Building at 150 Fifth Street North, Room 166, and the telephone number is 893-5796.

C.D.S. is a program which offers a formal mediation service. Upon filing a complaint with C.D.S., a Notice of Hearing is sent to the other party. The hearing is set within approximately seven days and is set at the convenience of both parties. The hearing is held in front of a mediator in a courtroom. The mediator aids the parties in coming to a fair settlement of the dispute. The service is free to the general public.

If you think C.D.S. may be able to help you, call either of the above numbers between 8:30 a.m. and 5:00 p.m., Monday through Friday.

4. Announcement for Distribution at Small Claims Filing Desk, Pinellas County Citizens Dispute Settlement Program

CITIZENS DISPUTE SETTLEMENT PROGRAM

County Building
150 Fifth Street North
Room 166
St. Petersburg, Florida 33701
893-5796

Old Courthouse
324 South Fort Harrison Avenue
Room 111
Clearwater, Florida 33516
448-3946

EXPLANATION OF CITIZENS DISPUTE SETTLEMENT PROGRAM

Small Claims personnel have suggested that the Citizens Dispute Settlement Program (C.D.S.) may be a good way of taking care of your problem. The C.D.S. Program has two advantages compared to Small Claims Court. First, the program is free to the general public. Second, it is quicker as you will get a hearing on your case in about 7 days.

C.D.S. is not a court or a law enforcement agency. If you go to C.D.S., you will talk to an intake counselor who will ask you about your case. If the intake counselor thinks C.D.S. can help you, a notice of hearing will be sent to the other side. A hearing will be scheduled, usually during the evening hours, at a convenient time and at the closest hearing site to your home.

At the hearing you will have the opportunity to tell the facts to the hearing officer and the other side will have the opportunity to respond. The hearing officer is not a judge and he cannot rule on the case, rather, he tries to help both sides enter into an agreement to settle the controversy.

C.D.S. is not a court and the program has no authority to make the other side come to the hearing. Experience has shown that between 80% and 85% of the people attend the hearing. At the hearing about 70% of the parties settle their dispute. If you cannot settle your case, you can still try Small Claims Court.

There are two offices for C.D.S. in Pinellas County. The St. Petersburg office is located at 150 Fifth Street North, Room 166, and the telephone number is 893-5796. The Clearwater office is located in the Old Courthouse at 324 South Fort Harrison Avenue and the telephone number is 448-3946.

C.D.S. will be happy to talk to you about your problem.

5. Complaint Form, Pinellas County Citizens Dispute Settlement Program

Amt. of Time to take complaint: _____ Amt. of time to close file:_____

CITIZEN DISPUTE SETTLEMENT PROGRAM COMPLAINT FORM

Today's Date ___/___/___ Intake Counselor: _____

CDS #_____ Courthouse Assign.:_____

Referred From: _____ Prior CDS participant on same charge?
___no ___yes As C R

Complainant's name: _____

Mailing address: _____

Employed by: _____ Age: _____ Race: _____

Home Phone:_____ Bus. Phone:_____ Work Hrs.:_____

* *

Respondent's name: _____

Mailing address: _____

Employed by: _____ Age: _____ Race: _____

Home Phone:_____ Bus. Phone:_____ Work Hrs.:_____

* *

2nd Complainant, Respondent, or Witness:

_____ name: _____

Mailing address: _____

Employed by: _____ Age: _____ Race: _____

Home Phone:_____ Bus. Phone:_____ Work Hrs.:_____

* *

Type of Case: A C E F J Type of Notice: (C L)
LT N P T O Specific Charge _____

1st Hearing Date: M T W Th F ___/___/___ at _____ __m Notice sent ___/___/___

2nd Hearing Date: M T W Th F ___/___/___ at _____ __m Notice sent ___/___/___

Complaint: _____

6. Notice of Hearing, Neighborhood Justice Center of Atlanta, Inc.

NEIGHBORHOOD
JUSTICE CENTER
OF ATLANTA, INC.

Dear _____:

On _____, _____

filed a complaint at this Center against you regarding _____

_____

_____.

A review of this case indicates that this problem could be resolved through mediation at the Neighborhood Justice Center of Atlanta, Inc. instead of in Court. The Neighborhood Justice Center requires that both parties agree to a mediation hearing with a third party, a neutral mediator, who is trained by the Center to assist in the resolution of disputes such as this one.

This procedure is completely voluntary. However, if you do not agree to attempt mediation, the option of taking this complaint to Court remains open to _____. This program is a means of avoiding legal hassles and Court costs.

THE HEARING BETWEEN _____ VS. _____
WILL BE HELD AT THE NEIGHBORHOOD JUSTICE CENTER, 1118 EUCLID AVE. N.E.
DATE _____ TIME _____.

Attend promptly. You are allowed to bring to the hearing relevant documents, witnesses and any other material which you believe will be helpful. Although an attorney is not necessary, if you wish to have your attorney present, we would certainly allow him/her to attend.

The staff of the Neighborhood Justice Center is looking forward to working with you. Call us immediately upon receipt of this letter at 523-8236.

Sincerely,

_____
Staff-Neighborhood Justice Center of Atlanta

1118 EUCLID AVENUE, N.E.
ATLANTA, GA. 30307
TEL (404) 523-8236

7. Consent to Arbitration Form, Manhattan (New York County) Small Claims Court

CIVIL COURT OF THE CITY OF NEW YORK
Small Claims Part, County of

..... vs. .....

S. C. No.....19.....

Our consent is hereby given to submit this controversy to..... ..... as Arbitrator, pursuant to the Civil Court Code and the Rules on Arbitration of the Civil Court by which we agree to be bound.

Upon the filing of the Arbitrator's award, judgment with disbursements and costs shall be entered by the Clerk of the Court. The controversy involves..... and is more particularly set forth in the notice of claim.

WE WERE INFORMED THAT ARBITRATOR'S AWARD IS FINAL, AND THAT NO APPEAL WILL BE PERMITTED.

Dated:.....19.....

.....	.....
Attorney for Claimant	*Claimant in Person*
.....	.....
Attorney for Defendant	*Defendant in Person*

8. Oath of Arbitrator and Arbitrator's Award, Manhattan (New York County) Small Claims Court

OATH OF ARBITRATOR

I, ..., the arbitrator designated in the above entitled case, do hereby solemnly swear that I will well and faithfully and impartially and to the best of my ability hear and determine as arbitrator the controversy in the above entitled case.

Sworn to before me this .....

.....day of.....19.....

.....

J. C. C.

LITIGANTS WERE INFORMED THAT ARBITRATOR'S AWARD IS FINAL AND NO APPEAL IS PERMITTED.

.....

Arbitrator

ARBITRATOR'S AWARD

The undersigned, the arbitrator in the above entitled case, having heard the disputants, makes this finding and award:

..... is entitled to recover from ..... the sum of $.....

.....

Arbitrator

Dated:.....19.....

43-1041-11M-1018102(77) 346

9. Mediator/Arbitrator's Report, San Jose Neighborhood Small Claims Court Program

MUNICIPAL COURT OF CALIFORNIA, SANTA CLARA COUNTY JUDICIAL DISTRICT

Neighborhood Small Claims Court Case No._____

_____

PLAINTIFF(S) (State full name of each plaintiff)

_____

Defendant(s) (State full name of each defendant)

Appearances

_____

(Name each person present and identify)

_____

(Any party who is absent but who was

_____

duly served with notice of hearing.)

Statement by Mediator/Arbitrator/Referee
(Continue on back of page if more space is needed.)

_____

(Write concise summary of relevant facts that (a) shows the proposed settlement is

_____

fair; or (b) states findings that support the award; or (c) describes evidence that

_____

would support a default judgment.)

Stipulation by the Parties
(Before signing, cross out paragraph that doesn't apply.)

EACH PARTY AGREES:

(a) to the settlement described above and asks the Court to enter an appropriate judgment or order pursuant to this stipulation.

(b) to arbitrate this dispute before the arbitrator appointed by the Court whose award will be binding on the parties unless a party objects to it within 5 days of its date by written objection delivered to the Clerk of the Court, 200 West Hedding Street, San Jose 95110. The Arbitration Rules have been explained to me and I understand them.

Date:_____

_____
(Plaintiff's Signature

_____
(Defendant's Signature)

_____
Interpreter's Signature
If Interpreter used

Med-Arb-Ref Form Rev 4-16-79

10. Mediator's Report, Maine Small Claims Mediation Program

Docket No. _____ Court _____ Judge/Justice _____

Date _____ Time Begun _____ Time Ended _____

Plaintiff _____ Plaintiff's Attorney _____

Defendant _____ Defendant's Attorney _____

Category:

	Individual	Proprietorship	Corporation	Gov't Agency
Plaintiff	( )	( )	( )	( )
Defendant	( )	( )	( )	( )

Type of Case: Small Claim ( ), Landlord-Tenant ( ), Disclosure ( ), Domestic ( ),

Other ( ) _____
(describe)

Plaintiff's Claim: Amount $ _____. Nature _____

_____

_____

_____

_____

Resolution of Claim : If resolved, Amount $_____, other than money _____

Conditions _____

_____

_____

If not resolved, case continued ( ), referred to Judge ( ), other ( ) (explain)

_____

_____

Agreed by Plaintiff _____

Agreed by Defendant _____

Mediator _____

The above Resolution is hereby approved and adopted as an order of the Court.

Judge/Justice _____

11. Stipulation of Settlement, Manhattan (New York County) Small Claims Court

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF

SMALL CLAIMS PART

Claimant *—against—* Defendant(s)	Index No. **STIPULATION OF SETTLEMENT**

It is hereby agreed by and between the parties hereto that this claim is settled for the sum of $, to be paid, on or before to claimant, at or as follows:

Upon such payment, parties hereto shall be released from liability as to each other covering the matters in the within dispute.

In the event of default in payment by defendant(s), for fifteen (15) days, claimant, upon presenting an affidavit setting forth such default, shall be entitled to enter judgment without further notice to the defendant, for the amount sued for, together with interest, costs and disbursements.

.....
Claimant

Dated:

.....
Defendant(s)

12. Agreement Form, Pinellas County Citizens Dispute Settlement Program

St. Petersburg Office
893-5796

Clearwater Office
448-3946

SIXTH JUDICIAL CIRCUIT OF FLORIDA
CITIZENS DISPUTE SETTLEMENT PROGRAM

CDS NO. _____

THE MATTER OF _____ AND _____

WAS HEARD THIS _____ DAY OF _____, 19__, BEFORE

_____, HEARING OFFICER. THE PARTIES HAVE

AGREED TO THE FOLLOWING:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

THE PARTIES AGREE THAT THIS AGREEMENT SHALL CONSTITUTE A FAIR, JUST, AND EQUITABLE SETTLEMENT BETWEEN THEM AND SHALL ABIDE BY THE FINDINGS, TERMS, AND CONDITIONS HEREIN ABOVE SETFORTH.

SIGNED THIS ____DAY OF_____, 19___.

_____ _____

_____ _____

_____ _____

_____ _____

HEARING OFFICER INTAKE COUNSELOR

13. Questionnaire for Arbitrator Candidates, Nassau County Night Small Claims Program

QUESTIONNAIRE FOR ARBITRATORS

Bar Association of Nassau County
15th and West Streets
Mineola, New York 11501
(516) 747-4070

DATE _____

1. NAME OF APPLICANT: _____
Print or Type

2. BUSINESS ADDRESS: _____

3. BUSINESS TELEPHONE NUMBER: _____

4. FIRM NAME: _____

5 RESIDENCE: _____

6. HOME PHONE NUMBER: _____

7. DATE OF BIRTH: _____

8. LEGAL EDUCATION: Law School Attended:
(Date of graduation and degree)
Post Graduate:

_____

9. List all courts in which you are presently admitted to practice, and dates of admission.

_____

_____

Do Not Write Below This Line

FOR COMMITTEE USE ONLY

ACTION BY COMMITTEE: _____

_____

_____
Committee Chairman

10. Indicate general nature of your law practice and legal specialties, if any.

_____

_____

11. State whether you have previously served as an Arbitrator.
Yes___ No___

If so, indicate approximate number of cases in which you have served as an Arbitrator. _____

12. Type of matters in which you have served as an Arbitrator:

_____

13. List Associations or Tribunals with which you have been affiliated as an Arbitrator.

_____

_____

14. What percentage of your practice in the last five years was:

1. Civil: _____
2. Criminal: _____
3. Administrative: _____

15. In the past five years have you engaged in any other occupation other than that of law? Yes___ No___
If so, give details.

_____

_____

_____

16. Have you ever been the subject of any complaint charging you with a breach of ethics or with unprofessional or illegal conduct by, or made to, any court, administrative body, bar association, disciplinary committee, or other professional group?
Yes___ No___

If so, furnish full particulars, including disposition.

_____

_____

_____

17. What is the present state of your health?

a. Excellent _____ Good _____ Fair _____ Poor _____

b. Do you suffer from any impairment of eyesight, hearing or other physical handicap? Yes___ No___
If so, give details.

_____

_____

18. Have you published any books or articles on any legal subjects? Yes___ No___
If so, list them.

_____

_____

19. List any honors, awards, or other forms of recognition which you have received as a lawyer.

_____

_____

20. a. List bar associations and professional societies of which you are a member.

_____

_____

b. List membership and chairmanship of any committee in bar associations and professional societies.

_____

_____

21. Furnish any additional information which you consider pertinent, or set forth any facts which you feel may qualify you as an Arbitrator. _____

_____

_____

_____

I hereby consent to a full disclosure of the proceedings relating to my application for appointment as an Arbitrator and authorize this Committee to make any inquiry of any person or organization concerning my qualifications for such position.

_____

Signature of Applicant

CONSENT AND AFFIRMATION

If appointed, I hereby agree to serve on a panel of Arbitrators or as a single Arbitrator pursuant to 22 NYCRR Part 28, and affirm that I will equitably and justly try all matters coming before me to the best of my ability.

_____

Signature

Dated: _____

14. Arbitrator's Consent and Oath, Nassau County Night Small Claims Program

CONSENT AND OATH or AFFIRMATION

I, ...(Print or type name).....the undersigned attorney-at-law, hereby agree to serve on a panel of arbitrators or as a single arbitrator pursuant to 22 NYCRR Part 28 until I file written notice to the contrary with the Arbitration Commissioner. I hereby swear or affirm equitably and justly to try all matters coming before me.

Signature .....

ON ....., 19 , before me came ....., to me personally known, who acknowledged that he executed the above.

.....
justice/judge/referee/notary public/court clerk

BIOGRAPHICAL INFORMATION

After the consenting attorney has completed the above, before returning this form, he should complete the following so that he can be placed on the list of attorneys to be selected as arbitrators:

Name .....

Business Address .....

.....

Business Telephone .....

Firm affiliation ..... ☐ Partner ☐ Associate

Associations with other attorneys not covered above:

.....

.....

Admission to the Bar: Month ..... Year .....

Social Security Number: ...../...../.....

.....

For completion by Commissioner: Firm Code ☐ ☐ ☐ ☐

Association Code ☐ ☐ ☐ ☐

*U.S. GOVERNMENT PRINTING OFFICE : 1983 0-381-934/5164