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SMALL CLAIMS IN ARKANSAS: A JUDICIAL COMMENT

Joel C. Cole*

The concept of small claims courts is certainly not new.¹ In fact the great majority of states have provisions for small claims courts.² In recent years, however, there has been a reawakening of interest in such courts as an inexpensive forum for consumer actions.³ The

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1. Roscoe Pound is generally credited with having written the first article on small claims courts in this country. See Pound, *The Administration of Justice in the Modern City*, 26 Harv. L. Rev. 302 (1913).

2. The following statutes provide for small claims courts: Alaska Stat. § 22.15.040 (1975); 1977 Ark. Acts 725; Cal. Civ. Pro. Code § 116 (West Cum. Supp. 1977); Colo. Rev. Stat. § 13-6-402 (Cum. Supp. 1976); Conn. Gen. Stat. Ann. § 51-15 (West Cum. Supp. 1977); D.C. Code § 11-1301 (1973); Fla. Stat. Ann. § 34.01 (West 1974); Ga. Code Ann. § 24-1001 (1971); Haw. Rev. Stat. § 633-27 (Supp. 1975); Idaho Code § 1-2301 (Cum. Supp. 1977); Ill. Ann. Stat. ch. 110A, § 281 (Smith-Hund Cum. Supp. 1977); Ind. Code Ann. § 33-11.6-1-3 (Burns Cum. Supp. 1976); Iowa Code Ann. § 631.1 (West Cum. Supp. 1977); Kan. Stat. § 61-2702 (1976); La. Rev. Stat. Ann. §§ 13-2097-2098 (West Cum. Supp. 1977); Me. Rev. Stat. tit. 14, § 7452 (1964); Mass. Gen. Laws Ann. ch. 218, § 21 (West Cum. Supp. 1977-1978); Mich. Comp. Laws Ann. § 600.8401 (Cum. Supp. 1977-1978); Minn. Stat. Ann. § 491.01 (West Cum. Supp. 1977); Mo. Ann. Stat. § 482.300 (Vernon Cum. Supp. 1977); Mont. Rev. Codes Ann. § 93-322 (Cum. Supp. 1977); Neb. Rev. Stat. § 24-521 (1975); Nev. Rev. Stat. § 73.010 (1973); N.H. Rev. Stat. Ann. § 503:2 (1968); N.J. Stat. Ann. § 2A:6-41 (West 1952); N.M. Stat. Ann. § 16-5-1 (Repl. 1970); City Civ. Ct. Act § 1802 (McKinney 1963); Uniform Dist. Ct. Act § 1802 (McKinney 1963); Uniform City Ct. Act § 1802 (McKinney 1963); N.C. Gen. Stat. § 7A-211 (1969); N.D. Cent. Code § 27-08.1-01 (Supp. 1977); Ohio Rev. Code Ann. § 1925.01 (Supp. 1976); Okla. Stat. Ann. tit. 12, § 1751 (West Cum. Supp. 1976-1977); Or. Rev. Stat. §§ 46.405, 55.011 (1975); P.R. Laws Ann. tit. 32, § 3031 (1968); R.I. Gen. Laws § 10-16-2 (Supp. 1976); S.D. Compiled Laws Ann. § 15-39-1 (Supp. 1977); Tex. Rev. Civ. Stat. Ann. art. 2460a (Vernon 1971 & Cum. Supp. 1976-1977); Utah Code Ann. § 78-6-1 (Supp. 1975); Vt. Stat. Ann. tit. 12, § 5531 (Cum. Supp. 1977); V.I. Code Ann. tit. 4, § 111 (1967); Wash. Rev. Code Ann. § 12.40.010 (Cum. Supp. 1976); Wis. Stat. Ann. § 299.01 (West Cum. Supp. 1977-1978); Wyo. Stat. § 1-562 (Cum. Supp. 1975).

3. See generally Massachusetts Public Interest Research Group, *A Case Study or How to Activate Small Claims Courts* (undated); Allison, *Problems in the Delivery of Legal Services*, 63 A.B.A.J. 518 (1977); Comenetz, *Report on the Kansas Small Claim Procedure*, 44 J. Kan. B.A. 75 (1975); Driscoll, *De Minimis Curat Lex—Small Claims Courts in New York City*, 2 Fordham Urban L.J. 479 (1974); Forbes, *What the Legal Community Needs to Know about the Small Claims Court*, 6 Creighton L. Rev. 317 (1972-1973); Fox, *Small Claims Revisions—A Break for the Layman*, 20 De Paul L. Rev. 912 (1971); Haemmel, *The North Carolina Small Claims Courts—An Empirical Study*, 9 Wake Forest L. Rev. 503 (1973); King, *Measuring the Scales: An Empirical Look at the Hawaii Small Claims Court*, 12 Hawaii B.J. 3 (Summer 1976); Kosmin, *The Small Claims Court Dilemma*, 13 Hous. L. Rev. 934 (1976) [hereinafter cited as Kosmin]; Muir, *The Hawaii Small Claims Court: An Empirical Study*, 12 Hawaii B.J. 19 (Summer 1976); Roodhouse, *Small Claims Court—What Does It Provide and How Well Does It Do So?*, 51 Calif. St. B.J. 126 (1976); Sarat, *Alternatives in Dispute Processing: Litigation in a Small Claims Court*, 10 Law & Soc'y Rev. 339 (1976); Yngvesson

recent establishment of small claims divisions within some Arkansas municipal courts and the response to these divisions, at least in Pulaski County,⁴ only emphasize the need for this state to provide such a forum for those persons who, because of station in life or the small amount involved, could not otherwise afford the costs of litigation. This need was addressed by the Arkansas General Assembly through the passage of Act 725 of 1977, known as the Small Claims Procedure Act.⁵ This Act provides that "each municipal court in this state is authorized to establish a Division within such court to be known as the 'Small Claims Division' "⁶ and then goes on to provide procedural guidelines for these divisions.

HISTORY

The municipal courts in Arkansas have long been considered "small claims courts" because of their very limited jurisdiction as to amount⁷ in controversy and geographic area.⁸ They have, however, been used primarily by collection agencies,⁹ and a very high

& Hennessey, *Small Claims, Complex Disputes: A Review of the Small Claims Literature*, 9 Law & Soc'y Rev. 219 (1975); Comment, *The Nature and Operation of the New York Small Claims Courts*, 38 Alb. L. Rev. 196 (1974); Comment, *The Small-Claims Court in the State of Washington*, 10 Gonz. L. Rev. 683 (1975); Note, *Small Claims in Indiana*, 3 Ind. Legal F. 517 (1970); Comment, *Small Claims Courts in Texas: Paradise Lost*, 47 Tex. L. Rev. 448 (1969); *Small Claims Courts: An Overview and Recommendation*, 9 U. Mich. J.L. Ref. 590 (1976) [hereinafter cited as *Overview*]; *Judicial Reform at the Lowest Level: A Model Statute for Small Claims Courts*, 28 Vand. L. Rev. 711 (1975).

4. During the first ten months of operation (November 12, 1976, to September 12, 1977), there were 437 cases filed in the North Little Rock and Sherwood Small Claims Divisions.

5. 1977 Ark. Acts 725.

6. *Id.* § 2.

7. Ark. Const. art. 7, § 43 provides that towns and cities may create corporation courts "invested with jurisdiction concurrent with justices of the peace in civil and criminal matters." The jurisdiction of justices of the peace was limited to \$100 for personal injury cases and to \$300 for contract or property damage cases by Ark. Const. art. 7, § 40.

See also Ark. Stat. Ann. § 22-709 (Repl. 1962) which invests municipal courts with the same jurisdictional limits except that it provides for a limit of \$500 in contract matters. *But see* United Loan & Inv. Co. v. Chilton, 225 Ark. 1037, 287 S.W.2d 458 (1956), which holds this \$500 limit void, as it exceeds the \$300 limit set by the Arkansas Constitution.

Further limitation is placed upon the jurisdiction of municipal courts by Ark. Stat. Ann. § 22-712 (Repl. 1962) which provides that "municipal courts and justices of the peace shall not have jurisdiction in civil cases where a lien on land or title or possession thereto is involved."

8. Ark. Stat. Ann. § 22-710 (Repl. 1962) provides that "[t]he jurisdiction of [municipal] courts as provided in section 9 of Act No. 60 § 22-709 shall be coextensive with the county; provided in counties having two [2] judicial districts, the jurisdiction above mentioned shall be limited to the district in which said court is situated."

9. The Small Claims Procedure Act § 3 specifically bars actions brought "by any collection agency, collection agent, assignee of a claim or by any person, firm, partnership, association or corporation engaged, either primarily or secondarily, in the business of lending

percentage of the civil filings have resulted in default judgments. In addition, there have been at least two attempts to establish small claims courts at the circuit court level prior to 1976, but both were unsuccessful. The first was in 1973 in the Boone County Circuit Court upon a recommendation of the Harrison Bar Association. The judge of that court, through a local rule, created a separate division with a jurisdictional limit of \$500. He set guidelines for the use of that division and suggested a format for a typical complaint and answer. However, the division was soon abolished because the presiding judge believed that he lacked statutory or constitutional authority to regulate the division sufficiently.¹⁰

Apparently as a result of the Boone County effort, the second attempt at establishment was initiated. Representatives Roger Logan and Preston Bynum offered a bill in the 1975 General Assembly which would have authorized circuit court small claims divisions, defined small claims, and established certain procedural guidelines for operating and using the divisions.¹¹ This bill was very comprehensive, including provisions that would have allowed for the appointment of a referee to be paid from court costs and would have set the maximum claim limit at \$1000. This bill passed the House but died in the Senate Committee on State Agencies and Governmental Affairs.¹²

The small claims issue, however, did not end at that point, since the General Assembly directed the Legislative Council to make an interim study¹³ of the laws of Arkansas and other states with respect to the collection of small debts. Apparently as a result of this study, the 1977 session of the General Assembly enacted the Small Claims Procedure Act.¹⁴ This act is essentially a verbatim copy of the proposed 1975 act that failed to pass.

money at interest.”

While this provision would seem to be in the consumer's interest, current thought is that it will only force collection matters into the more costly process of circuit court and thereby deprive the consumer of the real benefit of small claims procedure—low cost. The modern argument is that collection matters should be actionable in small claims courts. See Kosmin *supra* note 3, at 951; *Overview supra* note 3, at 599-600.

10. Arkansas Legislative Council, *Collecting Small Debts*, Staff Report No. 76-24 (1976) [hereinafter cited as *Arkansas Legislative Council*] states that “[t]wo problems mentioned were that some attorneys were sending litigants to the court to fill out the claim and answer forms . . . and some nonlocal attorneys were filing answers and demanding jury trials. Another problem cited was that sometimes the dignity of the court was compromised.”

11. H. B. 8, 70th General Assembly (Ark. 1975).

12. See Arkansas Legislative Council, *supra* note 10.

13. *Id.*

14. 1977 Ark. Acts 725.

The most current information available indicates that at present at least eighteen courts of this state are following some form of small claims procedure,¹⁵ and several other cities and counties have such procedures in the formative stages.

ESTABLISHMENT OF ONE SMALL CLAIMS COURT AND ITS PROCEDURE

On September 24, 1976, the Consumer Advisory Board held a hearing on the feasibility of establishing some form of small claims procedure. This hearing was an outgrowth of the 1975 legislative effort and the interim study by the Arkansas Legislative Council.¹⁶ Several individuals were invited to attend and comment on the matter. Among those were the Judge of the Fourteenth Judicial District (which includes Boone County), where the first effort was made, and the Judge of the North Little Rock Municipal Court (Civil Division).

Because of the need for and interest in small claims procedure, the North Little Rock Municipal Court offered its services and facilities on an experimental basis to determine whether small claims proceedings could be effectively operated at that level. As a result of the North Little Rock offer, Arkansas Consumer Research (a nonprofit corporation) and the Consumer Protection Division of the attorney general's office provided and have continued to provide invaluable assistance in preparing and printing forms and information booklets.¹⁷ The efforts of these organizations have also been instrumental in assisting in the formation of other small claims courts.

The considerations for using the North Little Rock Municipal Court for the experiment were (1) that its location in a metropolitan area made it accessible to a substantial number of citizens; (2) that it had an existing civil division which operated on a once per week schedule; (3) that it had sufficient clerical personnel who could implement the new system by using proven filing procedures; and

15. The counties in Arkansas which currently have small claims courts are Ashley, Baxter, Benton, Carroll, Columbia, Crittendon, Cross, Faulkner, Fulton, Garland, Hot Springs, Jefferson, Lafayette, Logan, Miller, Pulaski, and Randolph. The town of Hampton, in Calhoun County, also has a small claims court.

16. See Arkansas Legislative Council, *supra* note 10.

17. *E.g.*, Arkansas Consumer Research, *How to Use the Small Claims Court* (undated) [hereinafter cited as *How to Use*]; Arkansas Consumer Research, *The Small Claims Court—A Guide to Your End of the Justice System* (undated) [hereinafter cited as *Guide*].

For an example of another state's materials, see P. Jischke & S. Suttle, *How to Sue for \$400.00 or Less Without a Lawyer in Oklahoma* (2d ed. 1972).

(4) that the judge was willing to undertake such an effort in addition to his existing court duties.

A major problem with anything new is the dissemination of information about its existence and about how and where further information can be obtained. In this regard the media, through public service announcements and news conferences, publicized the existence of the small claims court, not only to Pulaski County residents, but to the state as a whole. This publicity has proved to be a stepping stone to the formation of small claims courts in other counties.

The success of such a court cannot be measured by any standard except its use by the public. The success of the North Little Rock court in the first ten months of its operation, from November 12, 1976, to September 12, 1977, is illustrated by Table 1.

The key to any court proceeding is the commencement of the action which involves not only the filing of the suit, but also the service of process. Act 725 provides a procedure somewhat different from that being used by small claims courts in operation prior to the effective date of the Act.¹⁸ In North Little Rock and in some of the

18. 1977 Ark. Acts 725, § 5 provides as follows:

Actions . . . shall be commenced whenever the claimant . . . shall file with the clerk of the court an affidavit in substantially the following form:

In the *Municipal Court, City of _____, State of Arkansas.*

Plaintiff

vs.

Defendant

Small Claims Division

No. _____

STATE OF ARKANSAS)

s.s.

COUNTY OF _____)

_____, being duly sworn, deposes and says:

That the defendant resides at _____, in the above-named county (or "that the obligation sued upon was contracted to be performed at _____ in the above-named county"), and that the mailing address of the defendant is _____.

That the defendant is indebted to the plaintiff in the sum of \$____; that plaintiff has demanded payment of said sum, but the defendant refused to pay the same and no part of the amount sued for has been paid,

and

That the defendant is wrongfully in possession of certain personal property described as _____; that the value of said personal property is \$_____, that plaintiff is entitled to possession thereof and has demanded that defendant relinquish possession of said personal property, but that defendant wholly refuses to do so.

TABLE 1
SUMMARY OF NORTH LITTLE ROCK SMALL CLAIMS DIVISION (1st TEN MONTHS OF OPERATION)

Total Cases Filed	No. of Cases Tried	Default Judgments	Consent Judgments	Cases Pending or Non Est Returns	Cases Settled or Dismissed Prior to Trial	Judgments for Plaintiff	Judgments for Defendant	Appeals/Transfers to Circuit Court
327	148	73	9	67	54	101	23	10
% of Total Filings	45.3%	22.3%	2.8%	20.5%	16.5%	30.9%	7%	

other municipal courts using a small claims procedure, a form entitled "Statement of Claim"¹⁹ is provided. The form requires the

Subscribed and sworn to before me this ____ day of _____, 19____.

Notary Public
(Clerk or Judge)

My Commission Expires:

On the affidavit shall be printed:

ORDER

The people of the State of Arkansas, to the within-named defendant:

You are hereby directed to pay the above claim and/or relinquish the property described above to the plaintiff or appear and answer the foregoing claim and to have with you all books, papers, receipts, and witnesses needed by you to establish your defense to said claim.

This matter shall be heard at _____ (name and address of building) in _____, City of _____, State of Arkansas at the hour of _____ o'clock of _____ day of _____, 19____.

YOU ARE FURTHER NOTIFIED THAT IN CASE YOU DO NOT SO APPEAR, JUDGMENT WILL BE GIVEN AGAINST YOU AS FOLLOWS:

For the amount of said claim as it is stated in said affidavit, or for possession of the personal property described in said affidavit.

And in addition, for costs of the action, including costs of service of the order.

Dated this _____ day of _____, 19____.

Judge (or Clerk)

DEFENDANT: If you have a counterclaim against the plaintiff or a setoff to plaintiff's claim, it must be filed in writing with this court prior to 48 hours of the time set for your appearance in this action.

Section 10 provides that an answer shall be made in substantially the following form:

COUNTERCLAIM OR SETOFF

In the _____ Court, City of _____.

Plaintiff

vs.

Defendant

STATE OF ARKANSAS)

s.s.

COUNTY OF _____)

_____, being first duly

(defendant)

sworn, deposes and says:

That said plaintiff is indebted to the defendant in the sum of \$____ for _____, which amount defendant prays may be allowed as a claim against the plaintiff herein.

Subscribed and sworn to me this ____ day of _____, 19____.

Notary Public (Judge or Clerk)

19. Compare the forms in note 18 *supra* with the following North Little Rock small claims form:

IN THE MUNICIPAL COURT OF NORTH LITTLE ROCK
 SMALL CLAIMS COURT
 CIVIL DIVISION
 200 West Pershing
 North Little Rock, Arkansas 72114
 Telephone: 753-4155

 PLAINTIFF

 ADDRESS

TYPE OF PRINT
 CAREFULLY

VS. NO. _____

 DEFENDANT

 ADDRESS

STATEMENT OF CLAIM

IF YOU NEED MORE SPACE WRITE ON BACK.
 I HEREBY GIVE UP MY RIGHT TO AN ATTORNEY.

 Plaintiff

NOTICE

TO:

 DEFENDANT

 ADDRESS

 BUS. ADDRESS

You are hereby notified that _____ has made a claim against you and is requesting judgment in the sum of _____ dollars (\$____), as shown in the above statement.

The court will hold a hearing on this claim on _____ at 2:00 p.m. in the Small Claims Court located at 200 West Pershing, North Little Rock.

DEFENDANT:

SEE REVERSE SIDE FOR COMPLETE INSTRUCTIONS
 BRING THIS FORM WITH YOU TO COURT

The entire reverse side reads as follows:

1. If you feel that you do not owe the complainant the full amount demanded, or that the complainant actually owes you money, you may write a letter to the clerk stating your side or you may bring these facts into court on your hearing date. If you write a letter to the clerk, put the claim number from your summons in the top right corner of the letter.
2. It is unnecessary for you to hire a lawyer to represent you in this action, though you may if you wish. *If you are incorporated*, you must, by law, hire a lawyer to represent you in court. The Plaintiff will not be represented by a lawyer and the judge will ask questions of each party and decide the case on the evidence.
3. You may bring witnesses with you to testify on your behalf or you may have witnesses subpoenaed by providing a list of their names and addresses and telephone numbers to the Municipal Court Clerk, Civil Division, located in the Police and Courts Building, 200 West Pershing, North Little Rock, Arkansas 72114. You will pay the clerk 85¢ and the Sheriff \$4-\$11 to subpoena each witness.
4. Bring to court all papers, receipts and other materials that might be useful as evidence in the case.

name and address of the plaintiff and defendant and the nature and amount of the claim. It also contains a statement that the claimant waives his right to be represented by counsel. To assist claimants in completing the form and to explain briefly what small claims courts are and how they operate, a booklet has been prepared.²⁰ It contains sample forms and describes how to obtain further information and how to attempt collection if the claimant is successful. Garnishment and execution are treated only briefly in the booklet, but forms for those actions are available from the court.²¹

5. If it is not possible to appear on the date of trial, notify the Clerk of the Municipal Court in person or by telephone and the Clerk will assist you in requesting a new date. In arranging this new date, keep in mind that the court meets at 2:00 p.m. on Monday afternoons. If you do not appear at the new date a judgment could be entered against you. The telephone number of the Court Clerk is 753-4155.

6. Bring this form with you when you come to court.

7. In court, direct all statements and questions to the Judge.

IMPORTANT: IF YOU FAIL TO APPEAR AT THE TIME STATED OR AT ANY TIME THE COURT NOTIFIES YOU TO DO SO, A DEFAULT JUDGMENT COULD BE ENTERED AGAINST YOU FOR THE AMOUNT OF THE CLAIM FILED PLUS THE COURT COSTS. IF THIS OCCURS, YOUR WAGES MAY BE GARNISHED OR ANY OF YOUR PERSONAL PROPERTY MAY BE TAKEN AND SOLD TO PAY THE JUDGMENT. DO NOT FAIL TO APPEAR AT THE REQUIRED TIME UNLESS YOU CALL THE COURT CLERK.

20. Guide *supra* note 17.

21. The North Little Rock Municipal Court form for garnishment follows:
PLAINTIFF

VS. NO. _____

DEFENDANT
GARNISHEE

ALLEGATIONS & INTERROGATORIES

The plaintiff, _____ files the following allegations and questions:

1. That the garnishee herein, _____, was on, and after the date of the service of the Writ of Garnishment herein, indebted to the defendant, _____, in the sum of \$____, plus costs.

2. That said Garnishee herein, had, on and after the service of the Writ of Garnishment herein upon you, any goods, chattels, moneys, credits, and effects belonging to the said defendant, of the value aforesaid, in his hands and possession.

INTERROGATORIES

1. Were you, on and after the service of the Writ of Garnishment herein upon you, indebted to the defendant? If so, how and in what amount?

2. Have you had in your hands or possession, on or after the service of the Writ of Garnishment herein upon you, any goods, chattels, credits, or effects belonging to the defendant? If so, what was the nature and value thereof?

BY: _____

PLAINTIFF, PLAINTIFFS
ADDRESS

Set offs and counterclaims are normally not made in writing but are made orally at the hearing on the claim. Although the booklet and forms themselves contain instructions about evidentiary items that should be brought to any hearing,²² it has been the North Little Rock experience that few persons read the instructions closely enough to comply fully. Consequently, many hearings are continued so the plaintiff and defendant can produce necessary evidence.

Attorneys representing defendants are allowed to appear and participate; however, this practice is not encouraged, especially when only individuals are involved. It has been, and will continue to be, the North Little Rock procedure that plaintiffs may represent only themselves and may not act on behalf of anyone else. Defendants, however, may be represented in person or by an attorney, except in the case of corporate defendants, when representation by an attorney is required. Act 725 provides that an attorney shall not represent either plaintiff or defendant.²³ This provision appears to be in conflict with Arkansas law prohibiting a corporation from practicing law²⁴ and requiring a corporation to be represented by a

The following comments are found on the reverse side of the garnishment form:

TO THE FILER:

1. "Garnishee" is the employer of the defendant.
2. "Sum" is the amount of money awarded to you in court.
3. "Costs" include only such things as the cost of filing this form and the original Small Claims form; it also includes payments to the sheriff for delivering the notices to the defendant and the Writ of Garnishment. The court clerk will decide on the amount from her records.

1977 Ark. Acts 725 provides no model form for garnishment as it does for filings and answers. 1977 Ark. Acts 725, § 11 prohibits prejudgment garnishment and discovery proceedings for purposes other than enforcement of judgment. This procedure is also followed by the North Little Rock court.

22. Guide *supra* note 17, at 7 directs prospective claimants to "[f]ind witnesses who can testify for you, if there are any," and also to "[f]ind other evidence that will help to prove that the person or company owes you the money. Evidence can be documents, cancelled checks, or items (like ruined clothes)." How to Use *supra* note 17 further advises the claimant to "[b]ring any evidence that will support your case with you (for example, receipts, sales tickets, or [any merchandise] which was ruined)."

23. 1977 Ark. Acts 725, § 9 provides that

[n]o attorney at law or other person than the plaintiff and defendant shall take part in the filing or prosecution or defense of such litigation under the Small Claims Procedure. When any case is pending in the Small Claims Division of any municipal court and the judge or referee of the court determines that an attorney is representing any party in the case, the case shall immediately be transferred to the regular municipal court docket. Provided, it is not the intention of this Act and none of the provisions hereof shall be so construed as to abridge in any way the rights of persons to be represented by legal counsel.

24. Ark. Stat. Ann. § 25-205 (Repl. 1962) provides that "[i]t shall be unlawful for any corporation . . . to practice or appear as an attorney at law for any person in any court in this state"

duly licensed attorney when involved in any litigation.²⁵ Given the repealing clause of Act 725,²⁶ this conflict may be easily resolved. Inasmuch as the Arkansas Constitution gives the power to regulate the practice of law in the state to the Arkansas Supreme Court²⁷ and inasmuch as any legislation governing the practice of law is expressly subordinate to the regulatory power of the court,²⁸ this provision, at least as it applies to corporations, may well be nullified.

The service of process in small claims proceedings follows the existing law requiring that service be made by the sheriff or constable.²⁹ At the municipal court level, the law permits the setting of a matter for hearing within ten days of the action's filing date,³⁰ but because of service of process considerations, the normal hearing is scheduled thirty to forty days after the filing.

The informal nature of the hearing itself is another key to the successful operation of this type of court. The examination of the parties is conducted by the judge in a very informal manner. The rules of evidence are relaxed to allow the judge to find the real basis of the dispute and to reach a judgment that is justified under the facts of the case.³¹ By proceeding in this manner, the parties are allowed to have their day in court and to present what they feel to be a just cause in a format that makes them much more at ease than in a strictly formal proceeding. This procedure must not diminish the dignity of the court, however, and in that context, it is necessary for the presiding judge to maintain firm control of the proceedings. A normal small claims matter takes only five to eight minutes to conduct. This includes the testimony of the parties and witnesses, as well as the introduction of other forms of evidence.

This informality, however, often requires the presiding judge to

25. Ark. Stat. Ann. § 25-209 (Repl. 1962) provides that "[t]his act shall not . . . prohibit a corporation . . . from employing an attorney or attorneys in and about its own immediate affairs or in any litigation to which it is or may become a party." The Arkansas Supreme Court in *Arkansas Bar Ass'n v. Union Nat'l Bank*, 224 Ark. 48, 51, 273 S.W.2d 408, 410 (1954) interpreted § 25-209 to permit a corporation to represent "itself in connection with its own business or affairs in the courts of this state provided it does so through a licensed attorney."

26. 1977 Ark. Acts 725, § 18.

27. Ark. Const. amend. 28.

28. Ark. Stat. Ann. § 25-217 (Repl. 1962).

29. Ark. Stat. Ann. § 22-730 (Repl. 1962). 1977 Ark. Acts 725, § 7 improves the method of service by providing for service by certified mail with a return receipt. This is in accord with current legal opinion. See *Kosmin supra* note 3 and *Overview supra* note 3.

30. Ark. Stat. Ann. § 26-601 (Repl. 1962).

31. 1977 Ark. Acts 725, § 12 mandates such evidentiary relaxation stating that "actions under the Small Claims Procedure . . . shall be tried informally before the Court with relaxed rules of evidence."

take the matter under advisement, either for legal research, for a physical inspection of the matter in controversy, or to consult with persons who are not involved in the action but who may have expertise in the particular field involved.

In one of the first cases filed in North Little Rock, the issue concerned an offer and acceptance for the sale of real property. The sales agreement required the seller to leave all draperies and drapery rods on the premises. Since this involved the definition of terms used within the field of real estate, it was deemed necessary for the judge to contact experts within that field to make a final determination. While such actions by the judge may be time consuming, they are essential if a small claims court is to operate effectively and if decisions are to be made based upon the best information available.

Although informality is the order of the day in small claims matters, it should be realized that, as in more formal proceedings, the parties are not always satisfied with the decision. Therefore, it is necessary that the parties be advised of their right to appeal to the circuit court for a *de novo* proceeding.³²

CONCLUSION

Small claims courts are effective and will continue to be formed throughout the state. They fill a need in the judicial system by providing a forum where cases may be presented without long delays and without prohibitive cost. While these courts are not problem free, their experience will affect future legislation that will make them more effective and more readily available to all areas of the state. Ideally, the jurisdictional limitation as to the amount in controversy should be increased to allow these courts to share some of the heavy caseload now being handled by the circuit courts.

32. Ark. Stat. Ann. § 22-707 (Repl. 1962). 1977 Ark. Acts 725, § 16 provides that "[a]ppeals may be taken from the judgment rendered under Small Claims Procedure in the same manner as appeals are taken from other judgments or orders of municipal courts."