

**Columbia Law School**

---

**From the Selected Works of Hon. Gerald Lebovits**

---

December, 1998

## Small Claims Courts Offer Prompt Adjudication Based on Substantive Law

Gerald Lebovits



Available at: [https://works.bepress.com/gerald\\_lebovits/56/](https://works.bepress.com/gerald_lebovits/56/)





# NEW YORK STATE BAR JOURNAL

VOL. 70 NO. 8

DECEMBER 1998

**Small Claims Courts:  
60,000 Cases a Year**





# Small Claims Courts Offer Prompt Adjudication Based on Substantive Law

*Hundreds of thousands of claimants, defendants and witnesses appear every year in the small and commercial claims courts of New York State. Their caseload is large: in New York City alone, 50,000 small claims and 10,000 commercial claims are filed annually. More than 90 percent of the litigants are unrepresented, but the courts are courts of law in which attorneys can make effective contributions. Every attorney should have some understanding of how these courts operate, if only to guide clients and acquaintances who need to prosecute or defend claims. The Journal has asked Gerald Lebovits, the immediate past president of the Association of Small Claims Arbitrators of the New York City Civil Court, to describe law and practice in these courts. This article covers filing and resolution of claims. An article in the January issue will deal with post-judgment concerns.*

BY GERALD LEBOVITS

**T**he jurisdictional limit of the small claims courts has risen from \$50 when they were established in 1934 to \$3,000 today, but their mission is still the same—to provide “a simple, informal and inexpensive procedure”<sup>1</sup> to decide small claims.

Only individuals may sue in small claims courts. The commercial claims courts were created in the past decade to allow business entities to file claims under rules similar to those that apply in small claims court. In practice, a judge or arbitrator may complete a case in small claims court and turn immediately to one on the commercial claims docket.

The hallmark of these courts is their mandated obligation to adjudicate small claims promptly and inexpensively. Awards are based solely on substantive law. The normal rules of practice, procedure and pleading do not apply, and the rules of evidence are relaxed.

When a complainant files a claim, notice is sent to the defendant, and the two sides can expect to be due in court within six weeks. If either party requests a trial before a judge, the case is often adjourned to another date. For immediate resolution of the dispute, the parties can elect to go before an arbitrator—a lawyer who serves on an unpaid basis after receiving training in small claims practice and procedure. The tradeoff is that trials before judges can be appealed, but arbitrators’ decisions cannot. If the parties chose arbitration, they must sign an acknowledgment that they are willing to waive their appellate rights.

If the defendant fails to appear, an inquest is held. A complainant who has at least *prima facie* evidence to

support a claim can expect a default judgment, although the defendant can later move to have the matter reopened and set for a new trial date.

Each of these elements of the small claims process is described more fully in the sections that follow.

## Organizational Structure

Structurally, the small claims courts are parts of the civil court in New York City, the city courts in other cities, the district courts in Nassau and Suffolk counties, and the town and village justice courts in other areas. Commercial claims parts opened in city and district courts on January 1, 1989, and on January 1, 1991, in the New York City Civil Court. The town and village justice courts do not have parts for commercial claims.

Aside from minor procedural differences, small claims law and practice is uniform across the state. Depending on where the action is heard, the governing



**GERALD LEBOVITS** earned an LL.L degree from Ottawa in 1979, an M.C.L. from Tulane in 1980 and an LL.M. in criminal justice from New York University Law School in 1986. A former attorney with The Legal Aid Society, Criminal Defense Division, in Manhattan, he has been a Principal Court Attorney since 1986 in State Supreme Court, Criminal Term, New York County. He has taught various courses since 1989 at New York Law School, where he also serves as faculty advisor to the Moot Court program.





statute is article 18 of the New York City Civil Court Act, the Uniform City Court Act, the Uniform District Court Act or the Uniform Justice Court Act,<sup>2</sup> plus court rules enacted under the authority of those acts in the Uniform Rules for New York State Trial Courts.<sup>3</sup> Accordingly, this article cites to the small claims acts generically as Small Claims "section 18xx." The statutes applicable to small commercial claims generally mirror article 18 in the applicable acts and are cited to here as "section 18xx-A."

Commercial claimants are corporations, partnerships, associations and their assignees, all referred to here as "business entities." Although business entities may be defendants in small claims court and may counterclaim there against individual defendants,<sup>4</sup> they may sue only in commercial claims court. To be a claimant, a business entity must have its principal office in New York State, section 1801-A(a), and must certify under sections 1803-A(a) and (b) and 1809-A(c) that it has commenced no more than five commercial claims a month. A consumer claim, defined in section 1801-A(b), must be preceded, under section 1803-A(b), by a demand letter prescribed by the Office of Court Administration. Small Claims section 1809-A(b) prohibits collection agencies from suing in small or commercial claims court.

Because the different court acts are nearly identical, opinions from anywhere in New York are persuasive everywhere.<sup>5</sup> By virtue of N.Y. Civil Practice Law & Rules 101 (hereinafter "CPLR"), the CPLR controls unless it is inconsistent with article 18.

### Filing Claims

A claim is defined in Small Claims sections 1801 and 1801-A as "a cause of action for money only" not exceeding \$3,000, "exclusive of interest and costs" and disbursements.

A claimant may not split causes of action that exceed the jurisdictional limit<sup>6</sup> or consolidate separate transactions to evade paying filing fees.<sup>7</sup>

Filing a small or commercial claim is simple. A statement of claim, or pleading, under Small Claims sections 1803(a) and 1803-A(a) is made "by the claimant or someone in his behalf to the clerk, who shall reduce the [statement] to a concise, written form."

Although this process allows a claim to be instituted on multiple hearsay, ultimately claimants and counterclaimants may not obtain judgment, either at inquest<sup>8</sup> or trial, unless they make out under oath<sup>9</sup> a *prima facie* case of liability by establishing all the elements of a cause of action by credible, "competent evidence, and not mere inference or surmise."<sup>10</sup> (See below for a discussion of the evidentiary considerations when the case is heard.)



Parties who have agreed to have their cases heard by an arbitrator wait their turn at the small claims office in Queens, while a woman inquires at the window about filing a new claim.

*Photograph by Steve Hart*

### Personal Jurisdiction

The small and commercial claims courts obtain personal jurisdiction under sections 1803(a) and 1803-A(a) over a defendant when the clerk mails the claim via first-class and certified mail, return receipt requested. Notice is presumed if the first-class mailing is not returned as undeliverable within 21 days. No service of a summons is required or contemplated. Improper service can be waived by failure to object.<sup>11</sup>

By virtue of sections 1801 and 1801-A, an individual defendant must reside or have a place of regular employment in, and a business-entity defendant must have "an office for the transaction of business" in, the jurisdiction where the action will be heard. An individual claimant need have no connection with the jurisdiction where the claim is filed, but a business entity must, as noted above, have its principal office in New York State.

Personal jurisdiction may not be asserted over a non-domiciliary defendant who merely owns real property where the claim arises<sup>12</sup> or who is in the jurisdiction temporarily,<sup>13</sup> although jurisdiction may be exercised over a business entity that has a business presence where the claim arises.<sup>14</sup>

A claim dismissible for lack of personal jurisdiction can still be maintained if transferred under sections 1805 and 1805-A to the court's regular part, if that part may exercise CPLR 302 long-arm jurisdiction.<sup>15</sup>





## Evolution of the Small and Commercial Claims Courts

New York was still in the throes of the Great Depression when Governor Herbert H. Lehman introduced and signed legislation that became known as the "Little New Deal." Reforming the justice system became part of that program.

In late January 1934, the Commission on the Administration of Justice, which Franklin D. Roosevelt had created while he was governor and Lehman was lieutenant governor, recommended "some form of small claims court to insure swift and equitable 'poor man's justice' in the State."<sup>1</sup>

In the words of a commentator at the time, the government had at last recognized "the plight of the poor litigant . . . whose demand, though small, was just and vital."<sup>2</sup>

In mid-February 1934, Governor Lehman held an "unprecedented meeting" with the presiding justices of the appellate division to propose "a project close to his heart"—establishing small claims courts in New York State.<sup>3</sup> It was deemed clear to all that a "simple machinery had to be set up which could grind the tremendous grist cheaply and with dispatch."<sup>4</sup>

The organized bar was not as quick as Governor Lehman to embrace the concept of small claims,

however. As one judge later remarked, "The Bar had been slow to comprehend the task and was seemingly indifferent to the need."<sup>5</sup>

With the governor's memorandum noting that the creation of small claims courts "marks a real step forward in the improvement of the administration of justice,"<sup>6</sup> small claims law quickly became effective, on May 15, 1934.<sup>7</sup> The first trials were held in New York City on September 17, 1934.<sup>8</sup> In Manhattan, Municipal (now Civil) Court President Pelham St. George Bissell presided over cases that were featured the next day on page 1 of the *New York Times*.<sup>9</sup>

Although night court began immediately in New York City, it took another 20 years for evening sessions to become permanent fixtures. David W. Peck, Presiding Justice of the First Department, proclaimed Manhattan's September 1954 evening sessions, staffed by judges and 250 volunteer attorney-arbitrators, "one of the most significant events of all time in the history of the judiciary of the State."<sup>10</sup>

What began as the "poor man's court" has evolved into a true people's court, open to rich and poor alike, that has become a "model" for the nation.<sup>11</sup>

G. LEBOVITS

1. *New York Times*, Feb. 18, 1934, at 1, col. 1.
2. Carl E. Alper, *The Practice in the Small Claims Court of the City of New York*, 9 St. John's L. Rev. 247, 247 (1934).
3. Israel Rubin *et al.*, *Small Claims Court's 50 Years—History of a U.S. Role Model*, N.Y.L.J., Nov. 26, 1984, at 1, col. 1, at 2, col. 1 (quoting *New York Times*, Feb. 18, 1934, at 1, col. 1).
4. Alper, *supra* note 2, at 247.
5. *Lieberman v. American Lumbermans Mut. Cas. Co.*, 203 Misc. 816, 817, 120 N.Y.S.2d 43, 45 (Mun. Ct., Manhattan 1953).
6. Rubin, *supra* note 3, at 2 (quoting *New York Times*, May 17, 1934, at 4, col. 5).
7. 1934 N.Y. Laws ch. 598. See Note, *Legislation—Small Claims Courts*, 34 Colum. L. Rev. 932, 933 n.10 (misnumbered as n.9) (1934).
8. Alper, *supra* note 2, at 247.
9. *New York Times*, Sept. 18, 1934, at 1, col. 3.
10. Association of Small Claims Arbitrators of the New York City Civil Court, *Manual for Small Claims Arbitrators* 4 (4th ed. 1998) (Arthur Engoron, principal author).
11. Josephine Y. King, *Small Claims Practice in the United States*, 52 St. John's L. Rev. 42, 50 (1977).





### Substantial Justice Under Substantive Law

The most critical rule affecting small and commercial claims is also the most controversial and least understood. Small Claims sections 1804 and 1804-A provide that the court "shall conduct hearings upon [small and commercial claims] in such manner as to do substantial justice between the parties according to the rules of substantive law." The issue is whether substantial justice or substantive law trumps when deciding the merits of a claim. In other words, may small and commercial claims court judges and arbitrators play King Solomon?

Professor David D. Siegel, author of the Civil Court Act and for 36 years the commentator for the McKinney compilations of all the small claims acts, opines that "sometimes substantial justice is found by turning the judicial face slightly away from the technical rule of substantive law."<sup>16</sup> According to Professor Siegel, "What is apparently meant [in sections 1804, 1804-A] is that substantive law can be flexed a bit as long as it is not broken off entirely."<sup>17</sup> Moreover, Professor Siegel has remarked, "Where conflict is at hand, . . . giving 'substantial justice' the stronger role will result in something more in tune with the purpose of the small claim."<sup>18</sup>

Professor Siegel's opinion has had support in some lower court cases. The dominant view, however, is that judges and arbitrators in small and commercial claims courts must strictly follow substantive law when deciding the merits of a claim. If the rule were otherwise, no one would trust the small and commercial claims courts to dispense principled, equal justice under the rule of law. Moreover, as one court noted, after acknowledging the "learned professor": "Substantial justice merely permits latitude to ignore procedure but substantive law still mandates the decisional process . . . since who is so wise as to determine whether claimant or defendant is to receive [substantial justice's] beneficence?"<sup>19</sup> The Third and Fourth Departments,<sup>20</sup> the Appellate Terms in the First and Second Departments<sup>21</sup> and numerous other courts<sup>22</sup> and authors<sup>23</sup> require adherence to substantive law.

The debate may have been rendered academic by the New York State Commission on Judicial Conduct. In its July 27, 1998 determination in *In re Degenhardt*, the Commission unanimously admonished a town justice for ruling in a small claims case that a defendant had a "moral obligation" to repay a loan, even though the justice knew that the statute of limitations (which had to be applied because it is a rule of substantive law<sup>24</sup>) extinguished the debt. The Commission did not explore the tension between substantial justice and substantive law. It simply wrote that "[k]nowing disregard of the law is especially improper."

In short, speculation and compromise are forbidden.<sup>25</sup> The courts must follow all substantive rules, including those that require plaintiffs (called "claimants" in actions for small and commercial claims) who have claims against municipalities to file timely notices of claim.<sup>26</sup> The mandate to render substantial justice means only that, to reach the merits, judges and arbitrators must lower the procedural and evidentiary hurdles that inhibit speedy, uncomplicated, inexpensive justice for the vast numbers of self-represented, for whom the small and commercial claims courts are designed.

### Applying the Substantial Justice Standard

Under the central doctrine of "substantial justice," Small Claims sections 1802 and 1802-A provide that practice, procedure and forms for small and commercial claims "shall constitute a simple, informal and inexpensive procedure for the prompt determination of such claims in accordance with the rules and principles of substantive law."

Under sections 1804 and 1804-A, judges and arbitrators "shall not be bound by statutory provisions or rules of practice, procedure, [or] pleading." For example, the rules governing substituting parties are subject to wide latitude, so long as prejudice is absent<sup>27</sup> and so long as a nonparty is not made a defendant "at the conclusion of trial, without any notice."<sup>28</sup> Sections 1804 and 1804-A also make disclosure unavailable "except upon order of the court on showing of proper circumstances." To avoid interjecting a "complicating factor into a proceeding that is intended to be uncomplicated and prompt,"<sup>29</sup> "proper circumstances" must exceed relevance or helpfulness.<sup>30</sup> Bills of particulars are treated similarly.<sup>31</sup>

Summary judgment motions under CPLR 3211(c) and 3212 are strongly discouraged except in extraordinary circumstances.<sup>32</sup>

Motions under CPLR 3211(a)(7) to dismiss for failure to state a cause of action "should rarely, if ever, be entertained."<sup>33</sup> However, other CPLR 3211 motions may be granted if it is clear that the case should not be tried,<sup>34</sup> given that clerks, not litigants, prepare the statements of claim,<sup>35</sup> that pleading requirements are liberally construed and that a notice of claim need not "allege a specific theory or count."<sup>36</sup> The only effect of denying a motion to dismiss "is to require the parties to proceed to trial,"<sup>37</sup> and motions cause "delay and confusion."<sup>38</sup> This is particularly true for lay litigants, "who are at a substantial disadvantage"<sup>39</sup> when litigating against attorneys.

Ultimately, "substantial justice" reverses the classic maxim *de minimis non curat lex*—the law does not care about trifling things.<sup>40</sup> In small claims court, small things are not trifling to the litigants.





## Evidence Standards

Small Claims sections 1804 and 1804-A provide that all evidence is admissible, "except [that subject to] statutory provisions relating to privileged communications and personal transactions or communications with a decedent or mentally ill person." In small and commercial claims, therefore, hearsay in testamentary or documentary form is admissible,<sup>41</sup> subject to the weight given it. But a judgment may not rest on hearsay alone; a modicum of non-hearsay evidence must be present for judgment to be awarded.<sup>42</sup>

The parol evidence rule—a rule of substantive law and not of evidence—applies to small and commercial claims.<sup>43</sup> The best evidence rule does not apply.<sup>44</sup> Judges and arbitrators are taught that, when in doubt, "[i]t is better to take evidence than to reject it."<sup>45</sup>

As in all civil cases, the claimant has the burden to go forward.<sup>46</sup> The standard of proof is a fair preponderance of the evidence.<sup>47</sup> Judges and arbitrators have nearly unfettered discretion, subject to due-process concerns, in "taking active charge of the proceedings and examining witnesses."<sup>48</sup> One due-process requirement is cross-examination—a "fundamental" right.<sup>49</sup> Under CPLR 4016, parties may give opening and closing statements.

Expanding on CPLR 4533-a, which provides for the use of only an itemized bill or receipt as *prima facie* proof of damages in higher courts, Small Claims sections 1804 and 1804-A also permit the submission of two itemized estimates. The so-called two-estimate rule states: "An itemized bill or invoice, receipted or marked paid, or two itemized estimates for services or repairs, are admissible in evidence and are *prima facie* evidence of the reasonable value and necessity of such services and repairs." The majority of courts require two reliable, itemized estimates to determine the amount of compensation for services or repairs yet to be performed,<sup>50</sup> although some courts have held that one estimate is sufficient to establish causation, or even to support other evidence regarding damages, if, depending on the type of loss, expert testimony is unnecessary.<sup>51</sup>

## Range of Potential Resolutions

The question arises whether small and commercial claims courts may award a sum beyond that requested in the *ad damnum* clause, which is stated on the court's case record card. Over a vigorous dissent, the Appellate Term, First Department, in *Johnson v. Block*, sustained an unrequested award of statutorily authorized treble

damages because "no formal demand or prayer for relief, limiting damages, need be deemed included in the Clerk's concise written statement of the claim."<sup>52</sup> Thus, according to *Johnson*, interest, disbursements, costs and special or exemplary damages when authorized by statute (e.g., General Business Law sections 349(a) (deceptive business practices), 396-u(2) (failure to deliver furniture or appliances), and 350 (false advertising);<sup>53</sup> Labor Law section 198(1-a) (wage claims)) are awardable whether or not requested.

The *Johnson* doctrine, although critiqued on the basis that it may deny a defendant notice and an opportunity to defend,<sup>54</sup> is correct because of the liberal pleading rules in small and commercial claims courts and because these courts must be user-friendly for nonlawyers, who likely are unaware of statutes that entitle them to special or exemplary damages.

Given *Johnson*, damages may also be multiplied at an inquest, although an arbitrator—termed at an inquest a "referee," whose duty is to report and recommend that a

judge rule a particular way—should seek a judge's permission to amend the case record card. An absent defendant should not have a benefit not enjoyed by a defendant who does appear. Moreover, prejudice can be mitigated by vacating a judgment decided after an inquest if there is a reasonable excuse for the defendant's absence and a meritorious defense to the claim.<sup>55</sup>

Small and commercial claims courts may not grant equitable relief<sup>56</sup> such as specific performance<sup>57</sup> or injunctions,<sup>58</sup> although authorities are split on whether to permit a money-only claim that arises in an equitable context.<sup>59</sup> Entry of judgment may, however, be conditioned under Small Claims sections 1805(a) and 1805-A(a) on paying money or returning property by a fixed date at a fixed place.<sup>60</sup>

The courts are also divided over whether arrears from another court's judgments are recoverable,<sup>61</sup> but the court can enforce non-merged separation agreements<sup>62</sup> and foreign judgments.<sup>63</sup> A defendant may raise a subject-matter-jurisdiction defense at any time.<sup>64</sup>

Unless a statute or contract provides otherwise, or for post-judgment proceedings under sections 1812, 1812-A, 1813 and 1813-A, costs are not recoverable, according to Small Claims section 1901(c). Sanctions for frivolous litigation may not be imposed;<sup>65</sup> an attorney may not even threaten to request them.<sup>66</sup> A clerk or judge may, however, use the procedures in Small Claims sections

CONTINUED ON PAGE 12

***Small and commercial claims courts may not grant equitable relief such as specific performance or injunctions.***





## Arbitrators Play Vital Role In Small Claims Courts

BY HON. FERN FISHER-BRANDVEEN

As Administrative Judge of the Civil Court of the City of New York, I am so proud of our 2,100 small claims *pro bono* arbitrators, who devote their time and expertise to ensure justice for all who come through the doors of the small claims parts.

For many, small claims court is an inexpensive and expeditious forum that would otherwise be unavailable without the attorneys who faithfully serve as volunteer arbitrators night after night, year after year. They are true unsung heroes, the "angels" of our court system.

The small claims parts, often called the "people's court," could not function without the dedication of the noble men and women who volunteer to hear small claims disputes an average of one evening per month. In addition to helping the people of New York City gain access to the courts, these volunteers take a tremendous financial burden off the city by aiding in the disposition of 60,000 cases per year.

It would be impossible to afford every litigant a trial before a judge. Once the parties consent to appear before an arbitrator, however, they can usually be heard immediately and receive a decision within the week.

Clearly, the success of the small claims parts in the years since arbitrators were first used in 1954 is largely attributable to the efforts of the thousands of lawyers who have volunteered their time without any form of compensation, other than the enrichment and gratification one feels when helping others.

Litigants who appear in small claims court generally appreciate the opportunity to be heard due to the efforts of the arbitrator. For the arbitrator, adjudicating small claims is an opportunity to view a slice of New York City life that may otherwise not be seen. The arbitrators are rewarded with a chance to encounter varied and interesting areas of the law that they may not come into contact with in their areas of practice.

In addition to providing personal satisfaction, service as an arbitrator can satisfy recommended *pro bono* guidelines.

I am personally thankful to all those talented persons who give so much of themselves to the benefit of the public and the legal system. Any attorneys interested in becoming small claims arbitrators in New York City may apply by letter to Hon. Margaret Cammer, Deputy Administrative Judge of the Civil Court, 111 Centre Street, New York, N.Y. 10013. A brief interview, training session (given by the Association of Small Claims Arbitrators of the New York City Civil Court) and swearing-in ceremony will be conducted. I strongly encourage attorneys admitted five years or more to join the ranks of the court system and serve as small claims arbitrators.

CONTINUED FROM PAGE 10

1810 and 1810-A to prevent a claimant from using the court to oppress defendants.<sup>67</sup>

Security for costs may not be assessed,<sup>68</sup> but a defendant<sup>69</sup> who elects a jury trial under sections 1806 and 1806-A must deposit a \$50 undertaking. "Disbursements" encompass only the modest filing and mailing fees,<sup>70</sup> which, as a matter of practice, nearly all small claims judges and arbitrators properly return to the winning claimant or counterclaimant. Such items as "carfare to attend the hearing, or [a claimant's] salary lost for . . . attending the hearing, or baby-sitting expenses, etc., . . . are not appropriate damages"<sup>71</sup> and do not constitute legitimate, reimbursable disbursements.

Attorneys' fees are awardable only when "authorized by agreement between the parties or by statute or court rule."<sup>72</sup> With interest, disbursements and, when applicable, costs, the total award for claims or counterclaims may exceed \$3,000.

### Counterclaims, Consolidations and Transfers

Under Small Claims sections 1805(c) and 1805-A(c), a defendant may interpose a small or commercial counterclaim only if the court would have monetary jurisdiction if the counterclaim had been filed as a small or commercial claim. Thus, a counterclaim that exceeds the \$3,000 limit must be filed separately in a court of competent jurisdiction. This subdivision was added to end the abusive practice of filing counterclaims, many of them frivolous, to defeat small claims jurisdiction by removing the small claim to a higher court in hopes that a lay claimant would get mired in technicalities or simply go away.<sup>73</sup>

Sections 1803(c) and 1803-A(d) permit a defendant to file a counterclaim with the clerk's office within five days of receiving the notice of claim. A counterclaim filed on the appearance date entitles the claimant to an adjournment.

Counterclaims by individuals "need not arise out of or relate to the claim,"<sup>74</sup> but counterclaims by business entities must be related to the claim and not be overly complex.<sup>75</sup> A counterclaim that exceeds \$3,000 in fact,

CONTINUED ON PAGE 14





CONTINUED FROM PAGE 12

although not as noted on the case record card, must be dismissed without prejudice or reduced on the counterclaimant's consent to \$3,000 before any offset.<sup>76</sup> Under this rule, a \$4,000 counterclaim filed as a \$3,000 counterclaim will not result in a \$3,000 award when offset against a \$1,000 award for the claimant. Rather, the counterclaimant's award will be \$2,000.

A counterclaimant who files an action in a higher court may then move to consolidate the small claim in that other court. This tactic is disfavored, however, and the higher court may require that both cases, as consolidated, be heard under the "substantial justice standard applicable to small claims."<sup>77</sup> A movant who tries that procedure also risks being sanctioned if the counterclaim is frivolous.<sup>78</sup> A small or commercial claim should be transferred to the court's regular part, assuming common questions of fact and law under CPLR 602, only when the counterclaim has "presumptive merit" and when attendant delays will not "substantially prejudice the small claims action."<sup>79</sup>

The small and commercial claims courts, under Small Claims sections 1805(c) and 1805-A(c), are empowered *sua sponte* to transfer the claim to another part of the court, where the claim would retain its small claims status. That may happen if the "issues are complicated,"<sup>80</sup> so long as the transfer deprives neither side of due process.<sup>81</sup>

### Appearances by Attorneys

Attorneys are not discouraged from appearing in small and commercial claims court, but they are not encouraged, either.

In New York City, if counsel represent both sides, a claim must be transferred pursuant to 22 N.Y.C.R.R. section 208.41(f) to the civil court's county division, where it becomes a regular claim.<sup>82</sup> This rule, under attack by the New York City Civil Court Association of Small Claims Arbitrators, The Association of the Bar of the City of New York and the New York County Lawyers' Association, may not survive forever. Outside New York City, transfer when both sides have attorneys is discretionary with the court.

In the court's discretion under Small Claims section 1815, an unpaid nonlawyer<sup>83</sup> may represent individual claimants and defendants in small claims court. Pursuant to section 1809-A(d), a business entity may appear in small or commercial claims court by an attorney or by any director, officer or employee who can bind the entity at trial or settlement.<sup>84</sup>

### Judges and Arbitrators

In jurisdictions that use small claims arbitrators,<sup>85</sup> litigants must elect between trial by a judge or by an arbi-

trator. Arbitrators are "capable, diligent and dedicated volunteer members of the New York State Bar, who with little or no recognition, give of their time."<sup>86</sup>

Arbitrators are not judges,<sup>87</sup> but they are "experienced, qualified and carefully selected attorneys."<sup>88</sup> When arbitrating, they are required to comply with the Code of Judicial Conduct<sup>89</sup> and the Rules Governing Judicial Conduct.<sup>90</sup> They must thus obey rules of decorum, recuse or disqualify themselves if appropriate and avoid *ex parte* conversations. Under Public Officers Law section 17, arbitrators are "protected by the same immunities afforded to a judge."<sup>91</sup>

Trials before arbitrators, who wear no robes and ought have no pretenses, typically are less stressful than trials before judges. Arbitrators often have more time to devote to their cases than judges do. Trials before arbitrators are not mechanically or stenographically recorded, whereas trials before judges are.

In most jurisdictions that use arbitrators, nearly 90 percent of litigants choose arbitrators.<sup>92</sup>

Judges may award punitive damages,<sup>93</sup> but arbitrators may not.<sup>94</sup> Both may award nominal damages<sup>95</sup> and damages for "pain and suffering";<sup>96</sup> both have "the responsibility of ensuring that the necessary facts are revealed";<sup>97</sup> both consider the same types of cases; and—as the New York State court system promises litigants—"both apply the same law."<sup>98</sup>

Both judges and arbitrators also settle cases using a stipulation-of-settlement form that allows on a default in payment either (1) a judgment to be entered (for the amount "originally sued for" or for the amount "agreed to above") or (2) the case to be restored for proceedings *de novo*.

Arbitrators may not decide pretrial motions, amend the court's case record card, or grant adjournments. In any event, adjournments are disfavored as inconsistent with speedy justice.<sup>99</sup>

Judges retain exclusive control over pretrial proceedings, their court records and their calendars. According to CPLR 1209, small claims arbitrators may not, except by court order, hear controversies involving infants, incompetents, conservatees or incapacitated persons.

No appeal lies directly from an arbitrator's award.<sup>100</sup> Under the Uniform Rules for New York State Trial Courts, all parties must signify in writing their consent to arbitration and their waiver of appellate remedies. An arbitrator's failure to obtain "an informed, signed consent will vitiate the proceedings."<sup>101</sup>

Parties may appeal directly from a judge's judgment. Under Small Claims sections 1807 and 1807-A, that appeal may be made "on the sole grounds that substan-

CONTINUED ON PAGE 16





CONTINUED FROM PAGE 14

tial justice has not been done between the parties according to the rules and principles of substantive law."

The appellate, vacatur and modification remedies represent the primary difference between trial by judge and trial by arbitrator. These remedies, together with issues relating to collecting small claims judgments and their claim-preclusion effect, will be addressed in the next issue of the *Journal*.

1. Note, *Legislation—Small Claims Courts*, 34 Colum. L. Rev. 932, 933 n.6 (footnote omitted) (1934).
2. Given the justice court's \$3,000 monetary jurisdiction, it may be a misnomer to refer to a separate small claims procedure there.
3. N.Y. Comp. Codes R. & Regs. tit. 22, § 208.41 (hereinafter "N.Y.C.R.R.") (New York City Civil Court); 22 N.Y.C.R.R. § 210.41 (city courts); 22 N.Y.C.R.R. § 212.41 (district courts); 22 N.Y.C.R.R. § 214.10 (justice courts).
4. *Marino v. N.A.S. Plumbing & Heating Contractors, Inc.*, 175 Misc. 2d 519, 520, 670 N.Y.S.2d 671, 672 (App. Term, 2d Dep't 1997) (sustaining counterclaim "related to the main claim and not overly complex"). The rules were different before the commercial claims court was established. See, e.g., *Hayden v. LILCO*, 116 Misc. 2d 445, 445, 455 N.Y.S.2d 715, 716 (Dist. Ct., Nassau Co. 1982).
5. See, e.g., *Cohen v. Banks*, 160 Misc. 2d 159, 160, 608 N.Y.S.2d 43, 44 (S. Nyack Just. Ct. 1994).
6. *Jerome v. Famby*, N.Y.L.J., Feb. 4, 1998, at 32, col. 2 (Mount Vernon City Ct.).
7. *Salazar v. American Export Lines, Inc.*, 114 N.Y.S.2d 370, 372-74 (Mun. Ct., Manhattan 1952).
8. A small claims inquest requires proof of liability. The procedure is different in other courts, where default judgments may be entered on "a verified complaint or an affidavit by a party as required by Civil Practice Law & Rules 3215(f)," which do not exist for small and commercial claims. See *Goodyear v. Weinstein*, 224 A.D.2d 387, 387, 638 N.Y.S.2d 108, 109 (2d Dep't 1996); see also *Zelnick v. Bidermann Indus. U.S.A.*, 242 A.D.2d 227, 228, 662 N.Y.S.2d 19, 19-20 (1st Dep't 1997). In agreement is Mark Snyder, *Guidelines for Procedures in Small Claims Court*, 2 Small Claims J. 12, 12 (N.Y.C. Civ. Ct. Ass'n of Small Claims Arbitrators) (1990) ("In such inquest cases, claimant must still prove a *prima facie* case before being entitled to an award").
9. It is error "to render judgment without any sworn testimony" or on colloquy. *Bucky v. DePhillips*, N.Y.L.J., June 13, 1991, at 34 (App. Term, 2d Dep't). As the Commission on Judicial Conduct found in *In re Degenhardt* (July 27, 1998), doing so also violates the Rules Governing Judicial Conduct.
10. *Rollock v. Gerald Modell Inc.*, 169 Misc. 2d 663, 665, 652 N.Y.S.2d 465, 467 (App. Term, 1st Dep't 1996) (*per curiam*).
11. *Cascone v. Brennan*, 134 Misc. 2d 417, 418, 511 N.Y.S.2d 501, 502 (Civ. Ct., Bronx Co. 1987).
12. *Solomon v. Correll*, 157 Misc. 2d 387, 388-89, 597 N.Y.S.2d 268, 269 (Binghamton City Ct. 1993); *Wessell v. Porter*, 107 Misc. 2d 938, 940-41, 438 N.Y.S.2d 57, 58-59 (Geneva City Ct. 1981).
13. *Moore v. Wagner*, 152 Misc. 2d 478, 479-81, 577 N.Y.S.2d 351, 351-52 (Colonie Just. Ct. 1991).
14. *Ratner v. Hudson Transit Lines, Inc.*, 234 N.Y.S.2d 311, 312 (Civ. Ct., Queens Co. 1962).
15. *Valentino v. Principio*, 174 Misc. 2d 709, 710-11, 666 N.Y.S.2d 376, 377 (Geneva City Ct. 1997).
16. Siegel, McKinney Practice Commentary, Civ. Ct. Act § 1803 (1989).
17. David D. Siegel, *New York Practice* § 581, at 917 (2d ed. 1991).
18. *Id.* at 920.
19. *Woodson v. Frankart Kings, Inc.*, 98 Misc. 2d 1101, 1103, 415 N.Y.S.2d 587, 589 (Civ. Ct., Kings Co. 1979).
20. See, e.g., *Cucinotta v. Hanulak*, 231 A.D.2d 904, 905, 647 N.Y.S.2d 625, 626 (4th Dep't 1996) (citing to Professor Siegel and reversing small claims judgment decided "on grounds of equity and fair play"—a "deviation from substantive law" the Third Department found "readily apparent"); *Cerio v. Charles Plumbing & Heating, Inc.*, 87 A.D.2d 972, 972, 450 N.Y.S.2d 90, 91 (4th Dep't 1982) (applying "matters of substance . . . to Small Claims Court").
21. See, e.g., *Bierman v. Consolidated Edison Co.*, 66 Misc. 2d 237, 238, 320 N.Y.S.2d 331, 332 (App. Term, 1st Dep't 1970) (*per curiam*) ("Stability and certainty in the law require adherence to precedents by courts of original jurisdiction"); *Swarth v. Barney's Clothes, Inc.*, 40 Misc. 2d 423, 424, 242 N.Y.S.2d 922, 924 (App. Term, 1st Dep't 1963) ("[T]he ultimate result must conform to the rules of substantive law"); *Graves v. American Express*, 175 Misc. 2d 285, 286, 669 N.Y.S.2d 463, 463 (App. Term, 2d Dep't 1997) ("[T]he rules of substantive law must be followed").
22. See, e.g., *Hanbridge v. Catholic High Sch. Ass'n of Archdiocese of N.Y.*, N.Y.L.J., Mar. 11, 1982, p. 6, col. 6, p. 7, col. 3. (Civ. Ct., Bronx Co.) ("[T]he substantive result in the Small Claims Court should not be different than in any other court"); *Weiner v. Tel Aviv Car & Limousine Serv., Ltd.*, 141 Misc. 2d 339, 340, 533 N.Y.S.2d 372, 373 (Civ. Ct., N.Y. Co. 1988); *Chang v. Chiariello*, 114 Misc. 2d 186, 188, 450 N.Y.S.2d 993, 995 (Civ. Ct., Queens Co. 1982). Arbitrators in small claims court must also follow substantive law. As the Court of Appeals has noted, "Absent provision in the arbitration clause itself, an arbitrator is not bound by substantive law." *Silverman v. Benmor Coats, Inc.*, 61 N.Y.2d 299, 308, 473 N.Y.S.2d 774, 779 (1984). Small Claims § 1804, which requires that decisions be rendered "according to the rules of substantive law," is the arbitration clause for arbitrators in small claims court.
23. See, e.g., John J. Markwardt, *The Nature and Operation of the New York Small Claims Courts*, 38 Albany L. Rev. 196, 210 (1974) ("[A] small claims judge's concept of substantial justice will be necessarily limited by the proposition that the result produced must be in strict accordance with the rules of substantive law"); Gerald Lebovits, *Outgoing President's Message*, 10 Small Claims L.J. (N.Y.C. Civ. Ct. Ass'n of Small Claims Arbitrators) 2, 12, 14-15 (1998) (detailing why arbitrators, and not merely judges, must apply substantive law); Gerald Lebovits & Mark Snyder,



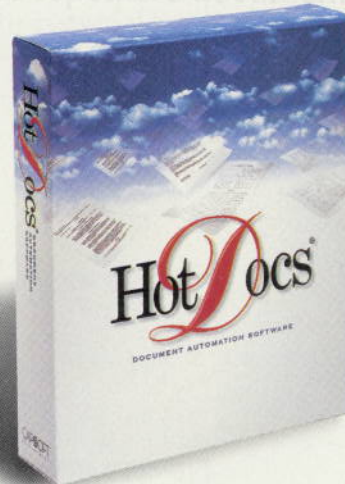


*Practitioner's Guide to Small Claims Part*, N.Y.L.J., Feb. 25, 1997, p. 1, col. 1 (noting that judges and arbitrators must decide substantive small claims issues "according to substantive law").

24. See *Cerio*, 87 A.D.2d at 972. A contract may shorten the limitation period. *Sari v. Cunard Line Ltd.*, N.Y.L.J., Mar. 29, 1991, p. 27, col. 5 (Civ. Ct., N.Y. Co.). An action is interposed when filed. *Ryder v. Tannenbaum*, 137 Misc. 2d 326, 326-27, 524 N.Y.S.2d 321, 321 (App. Term, 2d Dep't 1987).
25. Cf. *Bernstein v. City of New York*, 69 N.Y.2d 1020, 1021-22, 517 N.Y.S.2d 908, 909-10 (1987) (forbidding speculation); *Patrick v. New York Bus Serv., Inc.*, 189 A.D.2d 611, 612, 592 N.Y.S.2d 311, 312 (1st Dep't 1993) (forbidding compromise); see Barbara Jaffe, *Enhancing the Professional Reputation of Arbitrators*, N.Y.L.J., May 1, 1995, at S7 (reporting that litigants complain when small claims arbitrators "resort to 'splitting the difference' instead of deciding the issue").
26. *Ragosto v. Triborough Bridge & Tunnel Auth.*, 173 Misc. 2d 560, 561, 663 N.Y.S.2d 462, 463 (App. Term, 1st Dep't 1997) (*per curiam*) (General Municipal Law § 50-e); *Rogers v. Town of Babylon*, N.Y.L.J., July 12, 1989, p. 24, col. 6 (App. Term, 2d Dep't) (same); *Herzing v. Town of Babylon Highway Dep't*, N.Y.L.J., July 12, 1989, p. 25, col. 1 (App. Term, 2d Dep't) (same); *McGillicuddy v. Rush Henrietta Cent. Sch. Dist.*, 173 Misc. 2d 663, 666, 661 N.Y.S.2d 792, 794-95 (Henrietta Just. Ct. 1997) (Education Law § 3813). Only supreme or county court may excuse late notice. See, e.g., *Abraham v. NYCTA*, N.Y.L.J., June 7, 1994, p. 27, col. 4 (App. Term, 2d Dep't); *Lawton v. Village of Southampton*, N.Y.L.J., Feb. 1, 1993, p. 32, col. 8 (App. Term, 2d Dep't). This series of decisions prompted calls for legislative change. In July 1998, however, following a lobbying campaign by the State Conference of Mayors, the governor vetoed a measure that would have allowed claimants against municipalities "to seek permission to serve a late notice of claim in the court where the claim would be litigated." Gary Spencer, *Legislative Update*, N.Y.L.J., July 21, 1998, p. 1, col. 3.
27. See, e.g., *Buonomo v. Stalker*, 40 A.D.2d 733, 733, 336 N.Y.S.2d 687, 688-89 (3d Dep't 1972) (upholding award for injuries sustained by claimant's son, a nonparty); *Bogart v. Imports of Wantagh*, 142 Misc. 2d 105, 106-7, 536 N.Y.S.2d 391, 393 (Long Beach City Ct. 1988) (substituting widow as claimant despite lack of surrogate's court proceeding).
28. *Milner v. Highsmith*, 135 Misc. 2d 249, 250, 514 N.Y.S.2d 624, 624 (Albany Co. Ct. 1987).
29. *MacCollam v. Arlington*, 94 Misc. 2d 692, 694, 405 N.Y.S.2d 204, 206 (Albany City Ct. 1978).
30. *Id.*; *Clegg v. Bon Temps, Ltd.*, 114 Misc. 2d 805, 809, 452 N.Y.S.2d 825, 828 (Civ. Ct., N.Y. Co. 1982); *Dorfman v. Bell*, 86 Misc. 2d 359, 360-61, 381 N.Y.S.2d 983, 984 (Dist. Ct., Nassau Co. 1976).
31. *Selman v. Appel's Garage & Serv. Station*, 73 Misc. 2d 581, 582, 342 N.Y.S.2d 385, 386 (Long Beach City Ct. 1973).
32. *Larsen v. Maffucci*, N.Y.L.J., Mar. 7, 1997, p. 33, col. 2 (Dist. Ct., Nassau Co.); *Cherry v. Coyne*, 96 Misc. 2d 215, 215, 408 N.Y.S.2d 937, 937 (New Rochelle City Ct. 1978);

CONTINUED ON PAGE 20

Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.  
 Eliminate repetitive document drafting.



Life is full of repetitive tasks. But, with new HotDocs 5.0, preparing legal forms doesn't have to be one of them. HotDocs is the award-winning tool that helps you create, and update, customized contracts, forms, documents and more. Quickly and easily. With HotDocs, you'll have your own automated forms library in practically no time. Which means you won't have to keep doing the same thing over and over. And over. No wonder HotDocs is used by more attorneys than any other document assembly program. For more information, call 1-800-500-DOCS.

**CAPSOFT**  
 DEVELOPMENT





CONTINUED FROM PAGE 17

33. *Friedman v. Seward Park Hous. Corp.*, 167 Misc. 2d 57, 58, 639 N.Y.S.2d 648, 649 (App. Term, 1st Dep't 1995) (*per curiam*).
34. *See, e.g., Albert v. City of New York*, 101 Misc. 2d 356, 365-66, 421 N.Y.S.2d 513, 519-20 (Civ. Ct., Bronx Co. 1979), *rev'd on other grounds*, 103 Misc. 2d 962, 963, 431 N.Y.S.2d 240, 241 (App. Term, 1st Dep't 1980) (*per curiam*).
35. *Weiner v. Tel Aviv Car & Limousine Serv., Ltd.*, 141 Misc. 2d 339, 341, 343-44, 533 N.Y.S.2d 372, 374 (Civ. Ct., N.Y. Co. 1988).
36. *Faby v. Air France*, 113 Misc. 2d 840, 841, 449 N.Y.S.2d 1018, 1020 (Civ. Ct., Queens Co. 1982) (explaining also that court "has an obligation to determine the appropriate theory of substantive law to support the small claim").
37. *Simmons v. Apple Bank for Sav.*, 172 Misc. 2d 373, 373, 660 N.Y.S.2d 603, 604 (App. Term, 2d Dep't 1997).
38. *Weiner*, 141 Misc. 2d at 341.
39. *Guarcello v. KLM Royal Dutch Airlines*, 157 Misc. 2d 412, 413, 596 N.Y.S.2d 989, 990 (New Rochelle City Ct. 1993).
40. *See* Brian G. Driscoll, *De Minimis Curat Lex—Small Claims Courts in New York City*, 2 Fordham Urb. L.J. 479 (1974).
41. *Forte v. Westchester Hills Golf Club, Inc.*, 103 Misc. 2d 621, 622-23, 426 N.Y.S.2d 390, 391 (White Plains City Ct. 1980); *Bazzini v. Garran*, 116 Misc. 2d 119, 122, 455 N.Y.S.2d 77, 79 (Dist. Ct., Suffolk Co. 1982) (admitting notarized letter); Jerome Prince, *Richardson on Evidence* § 8-108, at 507 (11th ed. 1995).
42. *Arnold Herstand & Co. v. Gallery: Gertrude Stein, Inc.*, 211 A.D.2d 77, 83, 626 N.Y.S.2d 74, 78 (1st Dep't 1995) (citing *Levins v. Bucholtz*, 2 A.D.2d 351, 351, 155 N.Y.S.2d 770, 770 (1st Dep't 1956) (*per curiam*)).
43. *Lipsky v. Waterless Corp.*, N.Y.L.J., Jan. 9, 1998, p. 24, col. 3 (Mount Vernon City Ct.).
44. *But see Greenfield v. Thaler*, 52 Misc. 2d 869, 872, 276 N.Y.S.2d 646, 649 (Civ. Ct., N.Y. Co. 1967) (declining not to "throw best evidence rule to the winds" when court mistrusted parties' "partisan and truncated versions" of a separation agreement).
45. Suffolk County Dist. Ct., *Arbitrator's Guide to Practice and Procedure in Small Claims Courts* 9 (1991).
46. *See, e.g., Sabree v. Parking Violations Bureau*, 135 Misc. 2d 514, 515, 516 N.Y.S.2d 155, 156 (Monroe Co. Ct. 1987).
47. *Property Clerk, New York City Police Dep't v. Ferris*, 77 N.Y.2d 428, 430, 568 N.Y.S.2d 577, 579 (1991) (non-small claims case).
48. *McLaughlin v. Municipal Ct. of Roxbury Dist.*, 308 Mass. 397, 405, 32 N.E.2d 266, 271 (1941), *cited with approval in* Markwardt, *supra* note 23, at 212-13 (noting benefits of activist small claims court in limiting attorney participation and controlling trials); *Amico v. Campenni*, N.Y.L.J., Dec. 4, 1997, p. 34, col. 3 (App. Term, 2d Dep't) (approving courts' "active role in questioning the witnesses").
49. *Graves v. American Express*, 175 Misc. 2d 285, 286, 669 N.Y.S.2d 463, 463 (App. Term, 2d Dep't 1997); *Falker v. Chrysler Corp.*, 119 Misc. 2d 375, 378, 463 N.Y.S.2d 357, 360 (Civ. Ct., N.Y. Co. 1983).
50. *See, e.g., Landy v. Rubin*, N.Y.L.J., Feb. 7, 1990, p. 26, col. 1 (App. Term, 2d Dep't) (finding one estimate insufficient to award judgment); *Marten v. Fitzpatrick*, N.Y.L.J., Feb. 2, 1990, p. 26, col. 4 (App. Term, 2d Dep't) (finding it insufficient to submit only one itemized estimate if the second is not itemized). Note that replacement value may not be awarded; depreciation must always be assessed.
51. *See, e.g., Der Ohannesian v. Bergman*, 134 Misc. 2d 540, 541, 511 N.Y.S.2d 535, 536 (Albany City Ct. 1987); *Angerami v. Nationwide Ins. Co.*, 133 Misc. 2d 1086, 1087-88, 509 N.Y.S.2d 298, 299-300 (Albany City Ct. 1986).
52. *Johnson v. Block*, 65 Misc. 2d 634, 635, 319 N.Y.S. 270, 271 (App. Term, 1st Dep't 1971) (*per curiam*).
53. For an excellent discussion of consumer cases in small claims court, see Thomas A. Dickerson, *Applying Consumer Protection in Small Claims*, N.Y.L.J., Sept. 21, 1998, p. 1, col. 1.
54. Markwardt, *supra* note 23, at 215.
55. *Compare Mezail v. Ryder Truck Rental*, 241 A.D.2d 902, 903, 660 N.Y.S.2d 234, 235 (3d Dep't 1997) (refusing to vacate default because person without personal knowledge submitted affidavit of excuse) with *Martin v. Pitcher*, 243 A.D.2d 1023, 1023, 663 N.Y.S.2d 437, 437 (3d Dep't 1997) (vacating default because "disposition on the merits is favored" and because default was not wilful). Note that New York City practice is to vacate inquest awards almost for the asking.
56. *Scott v. Dale Carpet Cleaning, Inc.*, 120 Misc. 2d 118, 119, 465 N.Y.S.2d 680, 681 (Civ. Ct., N.Y. Co. 1983).
57. *Conway v. Larsen Jewelers, Inc.*, 104 Misc. 2d 872, 874, 429 N.Y.S.2d 378, 380 (Civ. Ct., Kings Co. 1980).
58. *Carren v. Westchester County Community College*, 176 Misc. 2d 490, 492, 674 N.Y.S.2d 576, 577 (Mount Vernon City Ct. 1998).
59. *Compare Siegel, supra* note 16, at 278-79 and *Siegel, supra* note 17, at 917 with *Hellman v. Ploss*, 46 A.D.2d 658, 658, 359 N.Y.S.2d 823, 824 (2d Dep't 1974), and *Mallardi v. District Council 37 Health & Sec. Plan Trust*, 128 Misc. 2d 696, 698, 490 N.Y.S.2d 968, 970 (Civ. Ct., Kings Co. 1985).
60. *Mongelli v. Cabral*, 166 Misc. 2d 240, 244-45, 632 N.Y.S.2d 927, 930 (Yonkers City Ct. 1995).
61. *Oka v. Oka*, 92 Misc. 2d 1080, 1081, 401 N.Y.S.2d 940, 941 (App. Term, 2d Dep't 1977); *cf. Rahman v. New York City Transit Auth.*, 111 Misc. 2d 30, 33-34, 443 N.Y.S.2d 348, 350-51 (Civ. Ct., Bronx Co. 1981).
62. *Jewett v. Jewett*, 79 Misc. 2d 76, 80, 359 N.Y.S.2d 441, 445-46 (Broome Co. Ct. 1974).
63. *See, e.g., Slater v. Slater*, 65 Misc. 2d 322, 323, 317 N.Y.S.2d 638, 640 (Civ. Ct., N.Y. Co. 1971).
64. *Dunrite Auto Body & Motors, Inc. v. Liberty Mut. Ins. Co.*, 160 Misc. 2d 168, 170, 607 N.Y.S.2d 1005, 1006-7 (Dist. Ct., Suffolk Co. 1993).
65. 22 N.Y.C.R.R. § 130-1.1(a).
66. *See Jerome v. Famby*, N.Y.L.J., Feb. 4, 1998, p. 32, col. 2 (Mount Vernon City Ct.).
67. *See Kashdan-Wallerstein v. Malone*, 115 Misc. 2d 623, 625-26, 454 N.Y.S.2d 423, 425-26 (Civ. Ct., N.Y. Co.





- 1982); *Menon v. Weil*, 66 Misc. 2d 114, 116-17, 320 N.Y.S.2d 405, 407-8 (Civ. Ct., N.Y. Co. 1971).
68. *Meister v. Engine Trans. Corp.*, 138 Misc. 2d 880, 883, 525 N.Y.S.2d 785, 787 (Civ. Ct., N.Y. Co. 1988).
69. A claimant waives the right to a jury trial by filing a small or commercial claim. Small Claims §§ 1806, 1806-A. Note that claims may be pursued in courts other than the small and commercial claims courts if jurisdictionally possible. Siegel, *supra* note 16, at 281 ("Nothing but economics prevents the plaintiff from instituting an ordinary action"). Under substantial justice, a request for a jury trial from an attorney and not a corporate employee or officer is sufficient. *Lee v. Rockefeller Group, Inc.*, 153 Misc. 2d 218, 219, 589 N.Y.S.2d 139, 140 (App. Term, 1st Dep't 1992). Filing a jury demand does not alter the action's small claims character. *See, e.g., De Nicola v. Pallas*, 82 Misc. 2d 156, 156, 368 N.Y.S.2d 762, 762 (Utica City Ct. 1975).
70. The fees are currently \$15 for a claim up to \$1,000, \$15 for a claim of \$1,001 or more, \$23.09 for a commercial claim and \$3.32 for a counterclaim. Small Claims §§ 1803(a), 1803-A(a). Fees are waived for indigents, CPLR art. 11, in some wage cases, Civ. Ct. Act § 1912(a), and when an arm of the government sues to recover a penalty, Civ. Ct. Act § 1912(b).
71. Leona Beane, *Serving as an Arbitrator*, 2 Small Claims J. (N.Y.C. Civ. Ct. Ass'n of Small Claims Arbitrators) 10, 10 (1990).
72. *A.G. Ship Maintenance Corp. v. Lezak*, 69 N.Y.2d 1, 5, 511 N.Y.S.2d 216, 218 (1986) (*per curiam*). An attorney for a defendant should not even inform a claimant that the client will seek legal fees and costs unless the client is entitled to them under the small claims rules. *Gellerman v. Oleet*, 164 Misc. 2d 715, 717 n.1, 625 N.Y.S.2d 831, 832 n.1 (Yonkers City Ct. 1995).
73. For an examination of the abuses before the small claims acts were amended, see Debra Ruth Wolin, Note, *How to Defeat the Jurisdiction (and Purpose) of the Small Claims Court for Only Fifteen Dollars*, 44 Brooklyn L. Rev. 431 (1978).
74. *Dall v. Solomon*, N.Y.L.J., Sept. 26, 1997, p. 33, col. 5 (App. Term, 2d Dep't).
75. *Palasciano v. Atlas Home Improvement, Inc.*, N.Y.L.J., May 10, 1991, p. 30, col. 4 (App. Term, 2d Dep't).
76. *See, e.g., Aloni v. Sella*, N.Y.L.J., Mar. 18, 1998, p. 32, col. 6 (App. Term, 2d Dep't); *Herzog v. Williams*, 139 Misc. 2d 18, 21, 526 N.Y.S.2d 329, 331 (Ossining Just. Ct. 1988).
77. *See, e.g., Victoria Kitchens Inc. v. Leiner*, 138 Misc. 2d 556, 560, 524 N.Y.S.2d 1019, 1022 (Civ. Ct., Queens Co. 1988).
78. *See Arnold v. Jotone Carpets, Inc.*, N.Y.L.J., Mar. 5, 1996, p. 30, col. 4 (Sup. Ct., Nassau Co.).
79. *F & K Supply, Inc. v. Johnson*, 197 A.D.2d 814, 814-15, 602 N.Y.S.2d 970, 971 (3d Dep't 1993); *Knock-Out Carpentry Problems, Inc. v. Weiner*, 103 Misc. 2d 58, 59, 428 N.Y.S.2d 229, 230 (Dist. Ct., Nassau Co. 1980); *Fordham Rent A Car Corp. v. Hyman*, 109 Misc. 2d 176, 177, 439 N.Y.S.2d 793, 794 (Civ. Ct., Bronx Co. 1981).
80. *See, e.g., Barilla v. Gunn Buick-Cadillac-GMC, Inc.*, 139 Misc. 2d 496, 505, 528 N.Y.S.2d 273, 279 (Oswego City Ct. 1988).
81. *Lortz v. Lortz*, 162 Misc. 2d 539, 546, 616 N.Y.S.2d 876, 881 (Monroe Co. Ct. 1994).
82. That rule does not apply if an attorney appears *pro se*. *Loren v. Francis*, 163 Misc. 2d 598, 599, 624 N.Y.S.2d 734, 735 (App. Term, 2d Dep't 1994).
83. *Urgo v. Jamaica Sav. Bank*, 150 Misc. 2d 983, 984, 578 N.Y.S.2d 805, 805 (App. Term, 2d Dep't 1991). *Compare Newsome v. Potter*, 128 Misc. 2d 779, 779-81, 491 N.Y.S.2d 257, 258-59 (Albany City Ct. 1985) (permitting defendant's brother to be his representative), *with Solomon v. Correll*, 157 Misc. 2d 387, 389, 597 N.Y.S.2d 268, 269 (Binghamton City Ct. 1993) (refusing to allow rental agent with a power of attorney to act as landlord's representative).
84. *See, e.g., Bernard O. Feldman, DDS, P.C. v. Massei*, 166 Misc. 2d 69, 71, 631 N.Y.S.2d 241, 241-42 (Dist. Ct., Suffolk Co. 1995).
85. Arbitrators do not serve in town or village courts. They serve in Nassau, Suffolk and Westchester counties, New York City, Buffalo, Rochester and elsewhere.
86. *Rymer v. Leider*, 122 Misc. 2d 873, 874, 471 N.Y.S.2d 733, 734 (Civ. Ct., Queens Co. 1983).
87. *Trager v. Abalene Blouse & Sportswear Corp.*, 1 Misc. 2d 952, 954-55, 148 N.Y.S.2d 682, 684 (App. Term, 1st Dep't 1956).
88. *Chang v. Chiariello*, 114 Misc. 2d 186, 188, 450 N.Y.S.2d 993, 995 (Civ. Ct., Queens Co. 1982).
89. Compliance Canon. *See McKinney's Cons. Laws of N.Y.*, Bk. 29, vol. 3, at 624 (1992).
90. 22 N.Y.C.R.R. § 100.6(A).
91. *Sullivan v. Elliott*, 157 Misc. 2d 456, 457, 602 N.Y.S.2d 317, 318 (Dist. Ct., Suffolk Co. 1993).
92. Josephine Y. King, *Small Claims Practice in the United States*, St. John's L. Rev. 42, 55 n.12 (1977).
93. *See, e.g., Hoffman v. Ryan*, 101 Misc. 2d 845, 850-51, 422 N.Y.S.2d 288, 291-92 (Civ. Ct., N.Y. Co. 1979).
94. *Garrity v. Lyle Stuart, Inc.*, 40 N.Y.2d 354, 356, 386 N.Y.S.2d 831, 832 (1976).
95. *See, e.g., Miller v. Distribution Sys. of Am.*, 175 Misc. 2d 513, 514, 670 N.Y.S.2d 668, 669 (App. Term, 2d Dep't 1997).
96. *Alice D. v. William M.*, 113 Misc. 2d 940, 950, 450 N.Y.S.2d 350, 357 (Civ. Ct., N.Y. Co. 1982).
97. King, *supra* note 92, at 56. Small claims court judges and arbitrators should also "assist . . . unrepresented litigants by inquiring as to their damages." *Webster v. Farmer*, 135 Misc. 2d 12, 13, 514 N.Y.S.2d 165, 166 (Oswego City Ct. 1987).
98. Office of Court Administration, *Guide to the Small Claims Court* 4 (1996) (publication distributed to litigants) (Beverly S. Cohen & Joseph A.J. Gebbia, authors).
99. Association of Small Claims Arbitrators of the New York City Civil Court, *Manual for Small Claims Arbitrators* 27 (Arthur F. Engoron, principal author); *Guide to the Small Claims Court*, *supra* note 98, at 4 ("Adjournments in Small Claims Court are discouraged").
100. *See, e.g., Brownstein v. County of Westchester Dep't of Parks, Recreation & Conservation*, 51 A.D.2d 792, 792, 380 N.Y.S.2d 62, 63 (2d Dep't 1976).
101. *Manual for Small Claims Arbitrators*, *supra* note 99, at 6 (emphasis deleted).