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[Return to Cover Page](#)

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#### Feature Articles

## Small Claims...Big Rewards

by John P. Campbell



The State of California had found and declared that small claims or "[i]ndividual minor civil disputes are of special importance to the parties and of significant social and economic consequence collectively." See Cal Code Civ Proc § 116.120(a). Missing from the west coast declaration is the special importance or significance that a small claims dispute may play for a young lawyer. This article briefly provides an overview of small claims across the country and suggests ways young lawyers can maximize small claims success into big rewards.

### A Brief Overview

In approximately 1912, Kansas became the first state to formally establish a small claims court. Since that time, every state has created some form of a small claims court system. In California, over 100,000 small claims actions are filed each year. The Small Claims Part of the Civil Court of the City of New York is one of the busiest small claims courts in the world. Each year, over 40,000 small claims are filed in New York City. That's a lot of cases in which young lawyers may be given the opportunity to work closely with clients and gain independence.

"Small" is a subjective term applied differently across the nation as evidenced by varying jurisdictional limits. For example, Virginia currently maintains a \$2,000 limit, but Georgia and Tennessee have limits of \$15,000. According to one study, the most common jurisdictional limit is \$5,000. Commentators have suggested that small claims court limits should be raised to \$20,000 on a nationwide basis.

Moreover, some states layer their small claims courts. For example, in New Jersey the Superior Court's Special Civil Part contains three sections. The Special Civil Part is limited to claims in which the demand is between \$15,000 and \$3,000. The Small Claims Section is reserved for claims less than \$3,000 and the Landlord/Tenant Section deals solely with those matters.

Procedural rules also vary from state to state. Responsive pleadings are required in some states, but not others. Rules regarding attorney representation even differ from state to state. For example, the Ohio Code states that "the appearance of an attorney at law on behalf of any party is permitted but not required." See ORC Ann. 1925.01. Moreover, Illinois Supreme Court Rule 282(b) does not require a corporation to appear by counsel if it is a small claims defendant. However, the rule does state that "no Corporation may appear as claimant, assignee, subrogee or counter-

claimant in a small claims proceeding, unless represented by counsel.” Other jurisdictions may require a corporation appear by counsel whether the corporation has a counter-claim or not. Nevertheless, as discussed below, many national companies will more likely than not rely upon its outside counsel to appear on its behalf.

The mechanics of small claims courts also vary from state to state. However, with the backlog of the hundreds to thousands of small claims filed each year, courts are continually looking to the legal community for assistance in resolving these matters through informal settlement conferences, mediation or arbitration. The courts are thankful that many attorneys will volunteer a few hours to assist with these alternative resolution means. In Los Angeles, over 700 attorneys are certified and trained through the Los Angeles County Superior Court and serve at least four court days per year. This court heavily relies upon the assistance of these temporary judges in order to efficiently process small claims court matters on any given court day.

Despite the differences from state to state regarding the jurisdictional limits, the various procedural mechanisms, the small claims mantra is consistent. Small claims courts provide an expedited and simplified forum for disputes involving minor financial stakes. Young lawyers can win big rewards by successfully navigating these courts.

### **Litigate Small Claims**

A national lawn care service provider mistakenly cuts down the wrong tree when pruning a customer’s shrubs. The tree is valued at approximately \$3,500. The customer becomes plaintiff and files a small claims suit. Your firm represents the national company in various environmental matters with significant amounts in controversy. After receiving service, the national company contacts your firm to litigate this new case. As a young lawyer, you are called upon to handle the file. Turn the small claim into big rewards.

First, familiarize yourself with the local rules, procedures and mechanics pertaining to the small claims court where your action is venued. Specifically, understand whether or not a responsive pleading is required. Do the rules permit an exchange of written discovery? Learn the average length of time that elapses from the initial filing to the trial date. When you appear at trial, will the Court strongly suggest you submit to binding arbitration? Senior lawyers in your firm have not been inside a small claims court in many years. This new matter is an opportunity to develop an expertise.

In the Civil Court of the City of New York, an initial trial call may list as many as one hundred cases. However, only five to ten of those cases will be actually tried on that date. The other cases will either submit to binding arbitration or will be given a second trial date at the end of the court session costing the client hours of defenses costs. It is important that you identify and know the rules, procedures and mechanics of the small claims court before next coordinating with the client.

Second, communicate with the client to report upon the complaint, explain how small claims are handled in your state and gain an understanding of the client’s philosophy regarding small claims. Through your firm’s current representation, you are familiar with its “take no prisoners” philosophy. However, the new amount in controversy is a mere fraction of the environmental claims. Depending upon the volume of small claims this client encounters, it may wish to settle the case as soon as possible to avoid

defense costs. It is a business decision for the client. If your billing rate is \$200 per hour, a little more than one billable day on this matter exceeds half the cost of the \$3,500 tree. However, if the national company is engaged in thousands of small claims across the country, it may not be as quick to settle cases for fear of setting a precedent. Therefore, the initial client conversation should include a discussion regarding settlement. This new matter is an opportunity to engage the client more closely than you have in the past.

This initial conversation should also include a review of the rules and procedures relative to the small claims court of your state. Explain to the client the stark differences between the mechanics of the small claims court and the court processes it has encountered with respect to other matters. The client may be familiar with the battle of the experts in environmental matters, but needs to know that the value of the fallen tree may largely rely upon guesswork. Speed and simplicity are favored in small claims, and clients unfamiliar with such a court need to understand that as soon as possible.

Once armed with the client's philosophy, strongly litigate the case accordingly. Defending a \$3,500 case may not have immediate appeal, but look deeper. Gain close exposure to a client who regularly deals with your firm. Utilize your autonomy to settle or try the case. Develop an expertise within your firm. Assuming you have to crawl before you walk, defending small claims now will assist us to defend the larger claims later.

*John P. Campbell is an associate with Schenck, Price, Smith & King, LLP in Morristown, New Jersey. He defends clients in various product liability, general negligence, insurance coverage, and contract disputes...big and small. John serves on the Publications Committee of the Young Lawyers Committee and his articles have appeared in various DRI publications including eNews, The Business Suit, Covered Events, and past Whispers*

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