

Supplement to Outline for Session 1: My Notes on Small Claims from the POV of the Other Players

The Other Players

How you do your job is of interest to other people. Let's take a look at who they are and what they want. As you make decisions about how to do your job, some of the things you might think about are whether and how you might take into consideration their interests and concerns, while also taking care of yourself and working toward the ultimate goal of achieving a just result.

From a Litigant's Point of View

Litigants differ, and different litigants value different things. How do they differ?

Plaintiffs vs. defendants

Often in small claims vs. new to small claims

Primary interest business/professional vs. something else

What aspects of the small claims experience is likely to be significant for plaintiffs in general, repeat plaintiffs, and business people?

Ideas: Time in court is important when time = money (also for litigants taking off work);

Plaintiffs have advanced costs and may be concerned about getting something for their money. If they lose, they may very much want to understand why.

Repeat plaintiffs have an additional reason to want to understand the reason for a loss, since they want to be better prepared next time. In addition, repeat plaintiffs are particularly attentive to and concerned about inconsistent (or what appear to be) inconsistent judgments. Inconsistency in procedure is also likely to trouble them – it suggests that the rules aren't stable or, worse yet, that they are being denied the benefit of the usual rules. Another question these folks may have is whether it helps "to know the magistrate."

When plaintiffs win, they want to know how they get the benefit of that victory. If they are not informed of at least the broad details of the post-judgment procedure for executing on a judgment, they are likely to be disappointed to learn that they remain far from the finish line, with additional cost, time, effort, and uncertainty involved in order to proceed.

What aspects of the small claims experience is likely to be significant for defendants?

Ideas: While some defendants are familiar with small claims court, many of them are not.

Unlike plaintiffs, who have chosen to be there, defendants have been summoned, on a particular day and time, and so may be feeling out of control from the beginning. They may have concerns about childcare, taking time off work, transportation to and from

the courthouse, etc. Their anxiety is likely to be heightened to the degree that they don't know what to expect. Defendants are defendants because they have been accused of some wrongdoing, never a comfortable feeling. They may or may not know that civil court does not involve potential jail time or garnishment of wages. If the cause of action is unpaid debt, the experience is potentially shameful for some of them.

Other defendants may have a defense they are eager to present, and their concern may be directed at whether the court setting will interfere with their ability to make their argument and present their evidence.

In the common scenario in which the plaintiff is better educated/wealthier/more prosperous than the defendant, the defendant may also have concerns about whether the court system will in fact be neutral in its treatment of the parties and the resolution of the dispute. These defendants may be paying close attention to details of the interactions between the parties, and familiarity with a repeat plaintiff may be particularly alarming in such cases.

The broad principles underlying what is often referred to as Procedural Justice offer a model for addressing many of these concerns. See handouts listed under Additional Materials for more details.

From a Lawyer's Point of View

See Session 6.

From Your Clerk of Court's Point of View

Relationships with clerks run the gamut from barely-there to joined-at-the-hip, and each of you should focus on your own unique relationship in thinking about this.

Some clerks believe that magistrate performance is a reflection on their own performance, while others treat magistrates as professional colleagues and yet others pay them little attention. Consequently, clerks may conceptualize your role as similar to that of a subordinate being evaluated for reappointment, as a judicial official entitled to professional respect and deference, or in some other way. Sometimes clerks view magistrates as a useful resource for providing information and assistance to citizens and hope that the magistrate will be pleasant and helpful to citizens who originally sought help from the clerk's office.

Assistant and deputy clerks involved in small claims are likely to have an entirely different set of needs. These concerns tend to fall into three broad categories: (1) those related to the hand-off; (2) procedural requirements involving some interface (*def: the place at which independent and often unrelated systems meet and act on or communicate with each other*) between the magistrate and the clerk's office; and (3) consistency, both in information communicated to litigants and in practice. Note that these needs are reciprocal; that is, magistrates share these concerns. While a specific legal question may fall into one or the other's territory, the next question is likely to fall the other way. This working relationship, perhaps more than any other, demands effective communication – and decision-making -- between the clerk and the magistrate. A companion document to this one, Magistrates, Clerks, and Small Claims, may be helpful in structuring that conversation.

From District Court Judges Point of View

I'm not sure I've ever met a district court judge who relished hearing appeals from small claims court.

--SRL

--prospect of a jury trial

-- little law, much of it not clear, about procedural rules for de novo appeals

-- required to make f/f and c/law in support of judgment

-- everything is on the record, with prospect of appeal to COA (NOT de novo)

No wonder they're not exhilarated at the thought!

From their point of view, they'd like to see # of appeals – which is already quite low – diminish even further.