

THE TIME IS RIPE FOR A SMALL CLAIMS COURT IN VIRGINIA

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A woman vacated her Northern Virginia apartment this Fall, and a common scenario ensued. Her landlord notified her that her \$183 security deposit would not be returned due to damage the landlord claimed the tenant had done to the residence. Unlike many vacating tenants who acquiesce in this type of landlord embezzlement to avoid haggling, this woman sought to recover her deposit. Upon inquiry, she found that her only recourse was through the Virginia General District Court, where small claims can be pursued pro se. Unfortunately, the woman is not well versed in the intricacies of Virginia's landlord-tenant law; proceeding pro se was not a realistic option. She retained an attorney who recovered her \$183 and then billed her \$500, the fair value of his services. While the verdict vindicated the tenant's rights as a matter of principle, the final accounting failed to corroborate this result.

Virginia's lack of a special small claims court places claimants of small amounts in a quandary: either proceed pro se and hope that the District Court judge will help the litigants with points of law and that the other party will not have an attorney, hire and pay a lawyer of one's own, or forego a claim entirely. The first alternative is risky at best, the second is often prohibitive, and the third is patently unacceptable. A statutory small claims court is necessary so that such claimants have a forum where facts can be pled to a judge charged with aiding the parties, hearing the facts, and researching and applying the law.

The problem with Virginia's system of handling small claims is that the system often does not work in the interest of justice. Although the judges are competent and fair, and the litigants have an opportunity to be heard, this system does not serve the ideals of a small claims forum. Such a forum relaxes strict procedural and evidentiary rules to facilitate efficient resolution of disputes. Litigants face each other on equal footing without attorney manipulation, allowing judges to question witnesses in an informal proceeding. This type of proceeding can resolve a dispute over a small amount of money quickly, simply and inexpensively. In other words, such a forum makes the litigation of small claims feasible.

Virginia's present system of handling small claims through the General District Court appears workable on its face and in

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theory. The lack of standard small claims ground rules however, injects an element of uncertainty into these proceedings which reduces the potential for producing justice. Pro se litigants' haven't the ability to handle rules of evidence, thus the presentation of evidence is often haphazard, incomplete, and uninformative. Litigants must make the difficult choice of paying a lawyer to represent them on small claims matters, or of proceeding pro se and hoping that the opponent has also chosen to forego professional representation. Judges may or may not choose to assist pro se litigants with the presentation of cases; litigants may therefore lose cases simply because they fail to understand complex rules of procedure and evidence. The sum of these factors leads to the inevitable conclusion that the Virginia system of hearing small claims fails to provide a satisfactory forum for these cases.

Proposals for a special small claims court in Virginia meet the standard objections which await governmental expenditures in a state which is seemingly obsessed with minimizing budgets regardless of the social costs. Like the "pay-as-you-go" financing which held Virginia's highway development program hostage until bond financing was approved recently, taxations' perennial opponents' pat indignation at expenditures of any type threatens the future of a small claims court as well as the rights of litigants suing on small claims. While the creation of a small claims court will cost money, cases heard there will save docket time and costs in General District Court. More importantly, marginal increases in expenditures on the Virginia court system will result in major advances in the protection and vindication of the rights of citizens of this state.

Like the recent creation of Virginia's Intermediate Court of Appeals, the adoption of a small claims court is well overdue. While fiscal responsibility is a proper goal for the state legislature to pursue, such concerns are misguided when they prevail at the expense of a fair and accessible justice system. The citizens of Virginia hold the legislature responsible for limiting expenditures of state tax dollars. However, those same citizens require that state judicial remedies be equally available to all citizens, regardless of the size of the claim involved or the claimant's ability to hire a lawyer. A small claims court in Virginia can provide fair hearings to claimants with small disputes more fully than can the current General District Court structure. Despite the best efforts of competent judges in the General District Courts, the system used in these courts to hear small claims does not guarantee justice in many cases. Although the current small claims system may produce some injustices, the refusal of a powerful minority to allocate resources for a more efficient and accessible small claims court

in fairness to the majority of citizens creates a much greater injustice.