
Small Claims in a Big State: How Texas Gets It Right



TEXANS FOR LAWSUIT REFORM FOUNDATION

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TEXANS FOR LAWSUIT REFORM FOUNDATION

1701 Brun Street, Suite 200 | Houston, Texas 77019
713.963.9363 | 713.963.9787

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I. INTRODUCTION

Small claims trials are proceedings in which litigants seek redress in relatively low-dollar amounts, without the complexity of more formal proceedings. The purpose of small claims courts—in Texas and elsewhere—is to provide speedy, simplified, low-cost legal resolutions to small civil disputes. The process is designed so that litigants do not need legal representation, experience in the courtroom, or knowledge of hyper-technical rules of civil procedure or evidence. Today in Texas, small civil lawsuits may be adjudicated in Justice of the Peace Courts, using specially designed rules that make the process quick, affordable, and simple.

This article describes the jurisdictional responsibilities of Justice of the Peace Courts in Texas, with a focus on small claims and the process for small claims litigation. The article then examines several key characteristics that Texas’s process does (or in some cases does not) have in common with the small claims process in the other nine most populous states in the nation: California, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina, and Michigan. The article concludes by discussing several changes Texas could consider making to its current system, some of which are already being implemented on a less formal basis in response to the COVID-19 pandemic.

II. TEXAS’S SMALL CLAIMS PROCESS

Justice of the Peace Court Jurisdiction

Small claims in Texas can be adjudicated in Justice of the Peace Courts (“JP courts”), which are designated in the Texas Constitution as having “original jurisdiction in criminal matters of misdemeanor cases punishable by fine only, exclusive jurisdiction in civil matters where the amount in controversy is \$200 or less, and such other jurisdiction as may be provided by law.”¹ Effective September 1, 2020, JP courts have original jurisdiction of civil matters in which the amount in controversy does not exceed \$20,000, and in which exclusive jurisdiction is not in district or county court.²

Before 2013, Texas’s JP courts were also designated as “small claims courts,” although the judge, staff, and facilities were all the same whether the court was sitting as a JP court or a small claims court. In 2013, the Texas Legislature repealed Government Code provisions relating to small claims and abolished the small claims court moniker.³ These reforms were part of a larger effort to bring greater efficiency to the court system. The bill, House Bill 79, streamlined the jurisdictional levels of courts to make it easier for local courts to exchange cases, dockets, and benches. Abolishing small claims courts and replacing them with a rule-based system streamlined substantive, procedural, and evidentiary practices for all of the state’s JP courts. The bill charged the Texas Supreme Court with implementing rules to ensure the small claims process would remain accessible, efficient, fair, affordable, and navigable for all claimants.⁴

In addition to having jurisdiction to hear small civil matters, JP courts also have exclusive jurisdiction of “cases of forcible entry and detainer” and “foreclosures of mortgages and enforcement of liens on personal property in cases in which the amount in controversy is within the court’s jurisdiction.”⁵ Specifically excluded from JP courts’ jurisdiction are lawsuits on behalf of the state to recover a penalty, forfeiture, or escheat; divorces;

slander and defamation cases; lawsuits for trial of title to land; and lawsuits to enforce a lien on land.⁶ For expunction proceedings related to the arrest of a person for a fine-only offense, JP courts have concurrent jurisdiction with the district court and municipal court of record.⁷

Small Claims

A “small claims case” is defined in Texas as “a lawsuit brought for the recovery of money damages, civil penalties, personal property, or other relief allowed by law.”⁸ The \$20,000 limit on damages in a small claims case includes attorney’s fees, if any, but does not include statutory interest or court costs.⁹

JP courts are obligated to “conduct proceedings in a small claims case . . . to ensure the fair, expeditious, and inexpensive resolution” of cases.¹⁰ The rules are simple and straightforward. If both parties appear, the judge shall proceed to hear the case.¹¹ Apart from filing a statement of the claim under oath, formal pleadings are not required.¹² Indeed, the process is deliberately and statutorily informal, requiring only that the judge hear testimony from the parties and witnesses, and consider other evidence offered.¹³ Discovery is available, but is limited to what the judge deems appropriate.¹⁴ In fact, the judge “shall develop the facts of the case” and may question witnesses and summon parties to testify.¹⁵ The “sole objective” is “to dispense speedy justice between the parties.”¹⁶ The only actions for which the Supreme Court is required to provide specific procedures are actions on an assigned claim, a claim involving a person primarily engaged in lending money at interest, or a claim involving a collection agency or agent.¹⁷ Even those procedures are prohibited from requiring a party to be represented by an attorney, from being overly complex, or from requiring application of formal discovery rules.¹⁸ However, attorneys are permitted to appear for parties and limited pre-trial discovery of evidence may be allowed.

One area in which the process for small claims cases matches the process used in larger cases is with regard to service of papers on the defendant when the case is commenced. In any proceeding, small or large, a copy of the document commencing the case (called the “original petition”), and a document commanding the defendant to answer the allegations (called a “citation”) must be served on every defendant named in the case. Service of these documents is performed by a sheriff, constable, certified process server, court clerk, or another person authorized by the court who is 18 years of age or older.¹⁹ Plaintiffs are required to pay all service fees.²⁰ Generally, the document must be served in person or mailed to the defendant,²¹ but the Texas Supreme Court recently adopted rules to allow service of process through social media and email when in-person or traditional mail service fails.²²

Within these parameters—found in Chapter 27 of the Government Code—the small claims process in Texas JP courts is further governed by Texas Rules of Civil Procedure 500–507.²³ These rules provide the form a subpoena must take,²⁴ the required contents of a petition to commence a proceeding,²⁵ the permissible venues for a small claims lawsuit,²⁶ and the process for summary disposition,²⁷ to name a few examples.

III. COMPARING TEXAS’ SMALL CLAIMS PROCESS TO OTHER STATES

In this section, the nation’s ten most populous states are examined for key differences that may help or hinder access to justice in small civil matters in terms of cost, ease of process, accessibility, and other relevant factors. The states examined in addition to Texas

are California, Florida, New York, Pennsylvania, Illinois, Ohio, Georgia, North Carolina, and Michigan. A table containing the key differences between these states is included as Appendix A.

Many differences are minor. For example, the statute of limitations for a small personal injury claim in most of the states, including Texas, is two years. Three of the ten states allow three years to bring a small personal injury claim, and one state, Florida, allows four years. Property damage claims are similar, with most states allowing two to four years to bring the claim. One outlier, Illinois, allows five years to bring a small property damage claim. Claims for breach of contract must be filed anywhere from two to ten years after the breach occurs, with the length of the limitations period often depending on whether the breach was of a written or oral contract.

Differences in things like statutes of limitation are noteworthy, but do not affect the key desirable characteristics of a small claims court or the filing of a small claim: accessibility, ease of process, cost, expediency, and other similar factors. Among the states surveyed, key differences include the amount in controversy allowable as a small claim, the pretrial discovery process, the right to counsel, and the availability of a jury trial, to name a few examples.

Amount in Controversy

Small claims, generally speaking, must be small in amount. The amount in controversy for a small claim is capped in every jurisdiction, but the cap varies significantly from state to state. This is important for several reasons, particularly when considering the ease of process and lower cost afforded by small claims courts relative to traditional civil courts. Indeed, so long as a claim is within the ballpark of a jurisdiction's cap on the amount in controversy, a claimant may be incentivized to lower the amount of his claim if the time and money saved by forgoing traditional civil litigation is likely to be greater than the amount of the claim forfeited.²⁸

As of September 1, 2020, Texas allows claims of up to \$20,000 to be heard in JP courts.²⁹ Texas's previous cap—\$10,000—was already one of the highest among the states. The new \$20,000 cap means Texas has the highest jurisdictional limit for cases that may elect its small claims process. Of the states surveyed, only two exceeded \$10,000, with Georgia and Pennsylvania allowing small claims of \$15,000 and \$12,000, respectively. Illinois and North Carolina both allow small claims of up to \$10,000. California also allows claims of up to \$10,000, but only for individuals or sole proprietorships. Corporations in California are limited to claims of \$5,000. Small claimants in Florida are limited to \$8,000, and claimants in Michigan, Ohio, and New York are limited to \$6,000.

Support for doubling the allowable amount in controversy in Texas was described during the legislative process as follows:

Litigation often is very expensive and time consuming, effectively closing the door to the court system for many Texans. Justice courts, with their informal proceedings, are designed to resolve cases quickly and cost-efficiently. Increasing the jurisdictional limits for justice courts on matters with no more than \$10,000 in dispute to matters with no more than \$20,000 would make these speedy, efficient courts available for more Texans.³⁰

Looking beyond the ten states surveyed, effective as of November 23, 2020, Texas has the third highest amount-in-controversy cap in the nation, second only to Tennessee and Delaware, as the following table illustrates:

Rank	State	Amount in Controversy
29	Alabama ³¹	\$6,000
10	Alaska ³²	\$10,000
47	Arizona ³³	\$3,500
34	Arkansas ³⁴	\$5,000
10	California ³⁵	\$10,000
24	Colorado ³⁶	\$7,500
34	Connecticut ³⁷	\$5,000
1	Delaware ³⁸	\$25,000
22	Florida ³⁹	\$8,000
4	Georgia ⁴⁰	\$15,000
34	Hawaii ⁴¹	\$5,000
34	Idaho ⁴²	\$5,000
10	Illinois ⁴³	\$10,000
22	Indiana ⁴⁴	\$8,000
28	Iowa ⁴⁵	\$6,500
45	Kansas ⁴⁶	\$4,000
49	Kentucky ⁴⁷	\$2,500
34	Louisiana ⁴⁸	\$5,000
29	Maine ⁴⁹	\$6,000
34	Maryland ⁵⁰	\$5,000
26	Massachusetts ⁵¹	\$7,000
29	Michigan ⁵²	\$6,000
4	Minnesota ⁵³	\$15,000
47	Mississippi ⁵⁴	\$3,500
34	Missouri ⁵⁵	\$5,000
26	Montana ⁵⁶	\$7,000
46	Nebraska ⁵⁷	\$3,900
10	Nevada ⁵⁸	\$10,000
10	New Hampshire ⁵⁹	\$10,000
34	New Jersey ⁶⁰	\$5,000
10	New Mexico ⁶¹	\$10,000
34	New York ⁶²	\$5,000
10	North Carolina ⁶³	\$10,000
4	North Dakota ⁶⁴	\$15,000
29	Ohio ⁶⁵	\$6,000
10	Oklahoma ⁶⁶	\$10,000
10	Oregon ⁶⁷	\$10,000
7	Pennsylvania ⁶⁸	\$12,000
49	Rhode Island ⁶⁹	\$2,500
24	South Carolina ⁷⁰	\$7,500
7	South Dakota ⁷¹	\$12,000
1	Tennessee ⁷²	\$25,000
3	Texas	\$20,000
9	Utah ⁷³	\$11,000
34	Vermont ⁷⁴	\$5,000
34	Virginia ⁷⁵	\$5,000
10	Washington ⁷⁶	\$10,000
10	West Virginia ⁷⁷	\$10,000
10	Wisconsin ⁷⁸	\$10,000
29	Wyoming ⁷⁹	\$6,000

Discovery

The pretrial discovery process can be complex, time-consuming, and expensive. The benefits of the traditional pretrial discovery process are obvious: it yields the disclosure of materials and information that may be used at trial to support or oppose a claim or defense. The typical pretrial discovery mechanisms are depositions, interrogatories, requests for admissions, and requests for production of documents.⁸⁰

Of course, the pretrial discovery process also has its downsides. The unearthing and production of information and materials itself can be very expensive for a litigant. Additionally, the cost of legal fees associated with sending and responding to discovery requests, compelling another party to respond adequately, opposing vexatious discovery, and sifting through the information and materials produced by an opposing party can be quite large. The discovery process is easily used to draw out the litigation process and burden the opposing party with expansive requests or evasive responses.⁸¹ Some estimates place the cost of discovery between 50 and 90 percent of the total cost of adjudicating a traditional civil case.⁸² In Texas, depending on the level of discovery and the type of case, the process may take months, or even years.⁸³

In the context of small claims in JP courts, however, the benefits of discovery are available without the complexity and larger burden of traditional civil litigation. By limiting discovery to what the judge deems appropriate, making the judge responsible for developing the facts of the case, and allowing the judge to summon parties to testify and question witnesses, JP courts can achieve the “sole objective” of dispensing “speedy justice between the parties.”⁸⁴

Once again, Texas is somewhat unique in this regard. Of the ten states surveyed, only Florida has full discovery available for small claims. Illinois allows discovery only if the court grants leave for it. While most jurisdictions make subpoenas available to a party where a witness’s presence in court is necessary, most states do not make the discovery process available to small claim litigants. And most states instruct small claimants to simply collect all relevant evidence and bring it to court on the day of the hearing.⁸⁵

Right to Counsel

The right to counsel in criminal proceedings is a fundamental right guaranteed by the Sixth Amendment to the United States Constitution and Article I, Section 10 of the Texas Constitution.⁸⁶ This fundamental guarantee, however, does not extend to civil cases, although Texas does provide for the right to counsel in certain civil proceedings.⁸⁷

Much of the appeal of small claims courts across the country is the simplified process, which is meant to make pro se representation feasible. However, a wrinkle in this feature is “[a] plethora of studies of small claims courts, many from the 1960s, ’70s, and ’80s, [that] reveal a pervasive trend where unrepresented individuals are severely disadvantaged by the court process.”⁸⁸ Indeed, studies have shown that “[w]hen repeat players sue individuals in small claims courts, representation dramatically increases the defendants’ likelihood of success.”⁸⁹ There are differing approaches to this wrinkle.

None of the ten states surveyed for this paper require representation by counsel in small claims cases. That is consistent with the purpose of small claims, which is to make the process easily accessible and navigable to the common person without the necessity of legal counsel. A key difference worth noting is that in two states, Michigan and California, legal representation inside the courtroom is prohibited.

In Texas, a plaintiff need not appear in JP court for a small claim if the plaintiff sends legal representation in his place. California, as a general rule, bars attorneys from the courtroom in a small claim proceeding. Legal scholarship exploring the differences in these approaches is lacking, but one can discern the reasoning behind each. The common thread is that procedural rules are relaxed and the judge or magistrate is responsible for helping the parties through the process in a fair way. The prohibition on legal representation can be understood as a further “leveling of the playing field,” but that may come at a cost. Even with small claims, the stakes can be high, and prohibiting counsel from the process will seem like a bridge too far to many.

Jury Trial

The notion that criminal and civil rights should be adjudicated before a jury of peers goes back centuries, traceable to the Magna Carta.⁹⁰ The Seventh Amendment to the United States Constitution guarantees the right to civil trial by jury in all suits where the amount in controversy exceeds \$20, but the Seventh Amendment has not been incorporated to apply to state governments.⁹¹ Thus, states that allow jury trials in civil actions, including small claims, have established that right in state constitutions and statutes. The Texas Constitution declares in nearly absolute terms that the right of trial by jury “shall remain inviolate.”⁹²

It is well established, however, that the right to a jury in both civil and criminal cases may be waived.⁹³ That is typically what happens in small claims court.⁹⁴ While the right to a jury can be indispensable at times, it can slow the process considerably, much like traditional discovery. It has been observed:

When a jury is demanded it adds tremendously to the cost, time, and complexity of trial, and can easily boost litigation costs beyond the amount of the claim. Wealthy defendants have learned that merely demanding a jury as a strategic measure may deter less wealthy small claims plaintiffs from proceeding with their claims. In economic terms, a jury trial for very small monetary claims can be wasteful and can lead to injustice by making legal redress for small claims too expensive and time consuming to be feasible for the average small monetary claimant.⁹⁵

Thus, the right to have one’s case heard by a jury of peers must be weighed against the goals of simplicity, low cost, and other aims of small claim adjudication. In Texas, the right to a jury trial in a small claims case places it in the minority of states surveyed for this article. Six of the ten do not allow jury trials for small claims. The four that do are Texas, Florida, New York, and Illinois.

While allowing jury trials for small claims may be viewed negatively because it may run counter to the purpose of a speedier, more efficient adjudication, parties in Texas have what is viewed generally as an important choice: exercise the constitutional right to a jury trial,

or waive that right in order to have a speedier, more efficient small claims adjudication. The existence of that choice should be viewed positively.

IV. FUTURE CONSIDERATIONS FOR HANDLING SMALL CLAIMS IN TEXAS

Discussion of the key differences between small claims in Texas and elsewhere is important, but as Justice Brandeis famously explained in 1932, states are laboratories of democracy, each regularly trying out new policies and approaches, letting the others observe and emulate where motivated to do so.⁹⁶ Several states examined for the purposes of this survey have tried or currently have in place novel approaches to small claims. These procedural tools are worth considering for potential future implementation in Texas.

Testimony by Telephone

Florida's rules allow testimony of any party or witness by telephone.⁹⁷ The rules make clear this is at the discretion of the court. Such a witness "shall be treated for all purposes as a live witness, and shall not receive any relaxation of evidentiary rules or other special allowance."⁹⁸ Furthermore, testifying over the telephone does not allow a witness to evade the application of Florida's perjury laws or the rules of evidence.⁹⁹

Given that most of the states surveyed for this article do not allow any meaningful discovery but do allow witnesses to be subpoenaed, testimony by telephone in small claims trials is consistent with the goal of facilitating a speedy and fair trial. Courts in Texas are currently operating remotely and allowing both telephonic and online testimony as a successful temporary measure to ensure cases continue to be heard during the COVID-19 pandemic. Consequently, the argument for implementing such a reform permanently in small claims cases is strong.¹⁰⁰

Remote Mediation

Mediation is commonly offered to small claimants in advance of a small claims hearing or trial. Given that small claims are the most likely type of cases in which one or both sides is self-represented, mediation is of particular value. Mediation further simplifies the dispute resolution process by using a neutral third party to help facilitate a resolution that is amenable to both parties.¹⁰¹

All ten of the states surveyed for this article either offer or may require mediation or a similar alternative dispute resolution prior to small claim trial proceedings. In Texas, the Texas Alternative Dispute Resolution Procedures Act states that it is the state's policy to encourage the peaceable resolution of disputes and early settlement of pending litigation through voluntary settlement procedures.¹⁰² The court may refer a pending case to alternative dispute resolution on its own authority or on motion of parties.¹⁰³

Much like Florida embracing technology to allow witnesses in small claims trials to testify via telephone, "remote mediation" is an innovation that makes the process considerably more accessible, convenient, and cost-effective.¹⁰⁴ Remote mediation allows parties to resolve their conflict without the need for an in-person appearance. Using online platforms like Zoom, parties and mediators can meet in virtual spaces that are secure and confidential.¹⁰⁵

Texas has already turned to technology during the COVID-19 pandemic. An April 2020 article in *Texas Lawyer* notes that online mediation is rapidly rising. Judge Emily Miskel of McKinney explains in the article that encouraging remote mediation increases the court's ability to accommodate its caseload.¹⁰⁶ She and other judges have created a list of Texas mediators who offer remote sessions.¹⁰⁷

Much like the pandemic has made clear that non-evidentiary hearings in civil district courts may be successfully conducted online, remote mediation is an alternative resolution tool that should be explored for broader adoption if its use during the pandemic continues to prove workable and valuable.

Online Dispute Resolution

Remote mediation in small claims is a more modest consideration, but it makes obvious the possibility of resolving small claims remotely from start to finish. Legal scholarship on online dispute resolution (ODR) is considerable. In 2008, Brian Pappas, the Associate Director of the Alternative Dispute Resolution Program at Michigan State University's College of Law called small claims "ideally situated to transition their operations online" through use of ODR.¹⁰⁸ Pappas's article in the *UCLA Journal of Law & Technology* discusses several early attempts to adopt such programs, most of which did not succeed long-term.¹⁰⁹

Internationally, the United Kingdom's Online Courts and British Columbia's Civil Resolution Tribunal are two examples of venues in which a court's entire operations from start to finish are already conducted online with no person-to-person interaction.¹¹⁰ This includes initial filing through final adjudication.¹¹¹

While broad adoption of ODR has not yet taken root, it is quickly being recognized in legal scholarship that COVID-19 has forced the legal profession everywhere to utilize online tools and embrace technology in a manner that may mark the beginning of a worldwide trend.¹¹²

Cost, simplicity, ease of access, speedy resolution, and all of the other key characteristics of small claims proceedings could be further improved by broad utilization of online proceedings. As the pandemic has increased the necessity of these technologies, their use should be carefully monitored for successes, failures, best practices, and areas of improvement.

V. CONCLUSION

In addition to successful tort reforms to create a balanced civil justice system, reforming the small claims process to increase access to justice is another successful public policy in Texas. By crafting rules in such a way that the average person can navigate a small claim with the guidance of a JP court judge and without an attorney, the system incentivizes claimants to seek redress for valid claims. It should also be viewed positively that Texas can provide such a process to small claimants while still leaving intact the right to counsel, the right to a jury trial, and a discovery process that, while limited, goes beyond what other states typically allow in small claims adjudication.

In addition, Texas has shown over the past several months that its court system is flexible and resilient enough to adjust rapidly to changing conditions during a pandemic. Through those adaptations, new procedural opportunities have emerged that are worth further study and exploration.

APPENDIX A

State	Amount in Controversy	Discovery	Right to Counsel	Jury Trial
CALIFORNIA	\$10,000 ¹¹³	No ¹¹⁴	No ¹¹⁵	No ¹¹⁶
FLORIDA	\$8,000 ¹¹⁷	Yes ¹¹⁸	Yes ¹¹⁹	Yes ¹²⁰
GEORGIA	\$15,000 ¹²¹	No ¹²²	Yes ¹²³	No ¹²⁴
ILLINOIS	\$10,000 ¹²⁵	No ¹²⁶	Yes ¹²⁷	Yes ¹²⁸
MICHIGAN	\$6,000 ¹²⁹	No ¹³⁰	No ¹³¹	No ¹³²
NEW YORK	\$5,000 ¹³³	No ¹³⁴	Yes ¹³⁵	Yes ¹³⁶
NORTH CAROLINA	\$10,000 ¹³⁷	No ¹³⁸	Yes ¹³⁹	No ¹⁴⁰
OHIO	\$6,000 ¹⁴¹	No ¹⁴²	Yes ¹⁴³	No ¹⁴⁴
PENNSYLVANIA	\$12,000 ¹⁴⁵	No ¹⁴⁶	Yes ¹⁴⁷	No ¹⁴⁸
TEXAS	\$20,000	Yes	Yes	Yes

ENDNOTES

- 1 TEX. CONST. art. V, § 19.
- 2 TEX. GOV'T CODE § 27.031.
- 3 Act of July 19, 2011, 82nd Leg., 1st C.S., H.B. 79, § 5.02 (codified at TEX. GOV'T. CODE § 27.060).
- 4 *Id.*
- 5 TEX. GOV'T CODE § 27.031(a)(2)-(3).
- 6 TEX. GOV'T CODE § 27.031(b).
- 7 TEX. GOV'T CODE § 27.031(e).
- 8 TEX. R. CIV P. 500.3(a).
- 9 *Id.*
- 10 TEX. GOV'T CODE § 27.060(a).
- 11 TEX. GOV'T CODE § 27.060(b)(1).
- 12 TEX. GOV'T CODE § 27.060(b)(2).
- 13 TEX. GOV'T CODE § 27.060(b)(3).
- 14 TEX. GOV'T CODE § 27.060(b)(5).
- 15 TEX. GOV'T CODE § 27.060(b)(6).
- 16 TEX. GOV'T CODE § 27.060(b)(4).
- 17 TEX. GOV'T CODE § 27.060(c).
- 18 TEX. GOV'T CODE § 27.060(d).
- 19 TEX. R. CIV P. 501.2(a).
- 20 TEX. R. CIV P. 501.2(c).
- 21 TEX. R. CIV P. 501.2(b).
- 22 TEX. R. CIV P. 106(b) [Effective December 31, 2020].
- 23 TEX. R. CIV P. 500.3(a).
- 24 TEX. R. CIV P. 500.8(c).
- 25 TEX. R. CIV P. 502.2(a).
- 26 TEX. R. CIV P. 502.4.
- 27 TEX. R. CIV P. 503.2.
- 28 Richard Payne, *Collections Along the Border: A Survey of Small Claims Courts in Michigan, New York and Ontario*, 33 COM. L. WORLD 8 (2019).
- 29 Act of June 10 2019, 86th Leg., R.S., S.B. 2342, § 31 (codified at TEX. GOV'T. CODE § 26.042(a)).
- 30 House Research Organization Bill Analysis, Tex. S.B. 2342, 86th Leg., R.S. (2019), <https://hro.house.texas.gov/pdf/ba86r/sb2342.pdf#navpanes=0>.
- 31 ALA. CODE § 12-12-31.
- 32 ALASKA STAT. § 22.15.040(a).
- 33 ARIZ. REV. STAT. § 22-503(A).
- 34 See *Arkansas's Lawyer: Guide to Small Claims Court*, Arkansas Attorney General's Office, <https://arkansasag.gov/arkansas-lawyer/legal-resources/guide-to-small-claims-court/>.
- 35 CAL. CODE. CIV. PRO. § 116.220.
- 36 COLO. REV. STAT. § 13-6-403(1).
- 37 CONN. GEN. STAT. § 51-15(d).
- 38 DEL. CODE tit. 10 § 9301(1) [Effective 11/23/20].
- 39 FLA. SM. CL. R. 7.010.
- 40 See *Magistrate Court*, Ga. Dep't of L. Cons. Protection Division, <http://consumer.georgia.gov/consumer-topics/magistrate-court>.
- 41 HAW. REV. STAT. § 633-27(a)(1).
- 42 IDAHO CODE § 1-2301.
- 43 ILL. CIV. PRO R. 281; see also *Small Claims Court*, Illinois Attorney General, <https://illinoisattorneygeneral.gov/consumers/smlclaims.html>.
- 44 IND. CODE § 33-28-3-4(b).
- 45 IOWA CODE § 631.1(1)(b).
- 46 KAN STAT. § 61-2706.
- 47 KY. REV. STAT. § 24A.230(2).
- 48 See *City of New Orleans, First City Court Rule 5A*.
- 49 ME. REV. STAT. tit. 14 § 7482.
- 50 MD. CTS. & JUD. PRO. § 4-405.
- 51 MASS. GEN. LAWS ch. 218 § 21.
- 52 MICH. COMP. LAWS § 600.8401.
- 53 MINN. STAT. § 491A.01(3a).
- 54 MISS. CODE § 9-11-9.

- 55 Mo. REV. STAT. § 482.305.
- 56 MONT. CODE § 25-35-502.
- 57 NEB. REV. STAT. § 25-2802; *see also Filing a Small Claims Case in Nebraska*, State of Nebraska Judicial Branch, <https://supremecourt.nebraska.gov/self-help/small-claims/filing-small-claims-case-nebraska>.
- 58 NEV. REV. STAT. § 73.010(1).
- 59 N.H. REV. STAT. § 503:1(I).
- 60 N.J. REV. STAT. § 46:8-21.4.
- 61 This was recently increased to \$10,000. N. M. STAT. § 35-3-3; *see* Cara O’Neill, *New Mexico Small Claims Court*, Lawyers.com (Feb. 27, 2010), <https://www.lawyers.com/legal-info/research/new-mexico/nm-filing-a-small-claimsuit.html#:~:text=You%20have%20a%20limited%20amount,four%20and%20six%20years%2C%20respectively/>.
- 62 It should be noted that this number is the limit for New York State, and that New York City recently increased its cap to \$10,000. *See* Dan M. Clark, *New Law Raises Monetary Cap for Disputes Brought in NYC Small Claims Court*, NEW YORK LAW JOURNAL (Dec. 17, 2019), <https://www.law.com/newyorklawjournal/2019/12/17/new-law-raises-monetary-cap-for-disputes-brought-in-nyc-small-claims-court/>.
- 63 N.C. GEN. STAT. § 7A-210(1).
- 64 N.D. CENT. CODE § 27-08.1-01(1).
- 65 OHIO REV. CODE § 1925.02(A)(1).
- 66 OKLA. STAT. tit. 12, § 1751(A)(1).
- 67 OR. REV. STAT. § 55.011(3).
- 68 42 PA. C.S. § 1515(a)(3).
- 69 R.I. GEN. LAWS § 10-16-1.
- 70 S.C. CODE § 22-3-10.
- 71 S.D. CODIFIED LAWS § 15-39-45.1.
- 72 TENN. CODE § 16-15-501(d)(1).
- 73 UTAH CODE § 78A-8-102(1)(a)(i).
- 74 VT. STAT. tit. 12 § 5531.
- 75 VA. CODE § 16.1-122.2.
- 76 WASH. REV. CODE § 12.40.010(1)(a).
- 77 W. VA. CODE § 50-2-1.
- 78 WIS. STAT. § 799.01.
- 79 WYO. STAT. § 1-21-201.
- 80 *See, e.g., How Courts Work*, AMERICAN BAR ASSOCIATION (Sep. 9, 2019), https://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/discovery/.
- 81 John H. Beisner, “The Centre Cannot Hold” — *The Need for Effective Reform of the U.S. Civil Discovery Process*, UNITED STATES COURTS, https://www.uscourts.gov/sites/default/files/john_beisner_the_centre_cannot_hold_0.pdf.
- 82 *Id.*
- 83 For example, even Level 1 discovery period in Texas lasts 180 days after the date the first request for discovery of any kind is served on a party. TEX. R. CIV. P. 190.2(b)(1).
- 84 TEX. GOV’T. CODE § 27.060(b)(4), (5).
- 85 *See, e.g., Small Claims Court – A Citizens Guide*, OHIO JUDICIAL CONFERENCE (2006), <https://www.supremecourt.ohio.gov/jcs/interpret-ersvcs/forms/english/5.pdf> (“Before the hearing, collect your evidence, contact your witnesses, and make a written outline of your case.”).
- 86 U.S. CONST. amend. V.; TEX. CONST. art. I, § 10.
- 87 *See, e.g.,* TEX. FAM. CODE § 107.013.
- 88 Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel is Most Needed*, 37 FORDHAM URB. L.J. 37, 55 (2010).
- 89 *Id.* at 58.
- 90 Thomas J. McSweeney, *Magna Carta and the Right to Trial by Jury*, COLLEGE OF WILLIAM & MARY LAW SCHOOL (2014), <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=2761&context=facpubs>.
- 91 *Incorporation Doctrine*, LEGAL INFORMATION INSTITUTE: CORNELL LAW SCHOOL (last amended Mar. 30, 2020), https://www.law.cornell.edu/wex/incorporation_doctrine.
- 92 TEX. CONST. art. I, § 15.
- 93 *See, e.g., Rogers v. United States*, 141 U.S. 548, 554 (1891).
- 94 *See, e.g.,* Robert L. Spurrier Jr., *Small Claims Are Big Business in Oklahoma*, 14 TULSA L.J. 327, 329 (1978).
- 95 Margreth Barrett, *The Constitutional Right to Jury Trial: A Historical Exception for Small Monetary Claims*, 39 HASTINGS L.J. 125 (1987).
- 96 *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932) (Brandeis, J., dissenting) (“It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”)
- 97 FLA. SM. CL. R. 7.135(f).
- 98 *Id.*
- 99 *Id.*

- 100 *Court Coronavirus Information: Electronic Hearings (Zoom)*, TEXAS JUDICIAL BRANCH, <https://www.txcourts.gov/court-coronavirus-information/electronic-hearings-zoom/> (last visited Oct. 30, 2020).
- 101 Heather Scheiwe Kulp, *Increasing Referrals to Small Claims Mediation Programs: Models to Improve Access to Justice*, 14 CARDOZO J. CONFLICT RESOL. 361, 363 (2013).
- 102 TEX. CIV. PRAC. & REM. CODE § 154.002.
- 103 TEX. CIV. PRAC. & REM. CODE § 154.021.
- 104 Kingsley Napley, *Remote Mediation in Civil Litigation: Does it Really Work?*, DISPUTE RESOLUTION LAW BLOG (Apr. 9, 2020), <https://www.lexology.com/library/detail.aspx?g=2ff584eb-5ce5-46a4-9a07-4ad6e7e1b188>.
- 105 Angela Morris, *Business is Booming for Mediators as COVID-19 Cools Courts*, TEXAS LAWYER (Apr. 2, 2020), <https://www.law.com/texaslawyer/2020/04/02/business-is-booming-for-mediators-as-covid-19-cools-courts/>.
- 106 *Id.*
- 107 *Id.*
- 108 Brian A. Pappas, *Online Court: Online Dispute Resolution and the Future of Small Claims*, 2008 UCLA J. L. & TECH. 2 (2008).
- 109 *Id.*
- 110 See Elayne E. Greenberg & Noam Ebner, *How Much Justice Can You Afford*, ALTERNATIVES TO THE HIGH COST OF LITIGATION (June 9, 2020), <https://ssrn.com/abstract=3623362>.
- 111 *Id.*
- 112 See, e.g., Kariuki Muigua, *Legal Practice and New Frontiers: Embracing Technology for Enhanced Efficiency and Access to Justice* (June 2020), <http://kmco.co.ke/wp-content/uploads/2020/06/Legal-Practice-and-New-Frontiers-Embracing-Technology-for-Enhanced-Efficiency-and-Access-to-Justice-Kariuki-Muigua-Ph.D-June-2020.pdf>.
- 113 CAL. CODE CIV. PRO. § 116.220.
- 114 Small claims discovery is not referenced in statute, but California materials cite *Bruno v. Superior Court*, 219 Cal. App. 3d 1359 (1990), for the proposition that discovery is not permitted in small claims cases.
- 115 CAL. CODE CIV. PRO. § 116.530.
- 116 Statutory requirement that small claims hearings be informal, prompt, fair, and inexpensive is interpreted as not allowing jury trials. CAL. CODE CIV. PRO. § 116.510.
- 117 FLA. SM. CL. R. 7.010.
- 118 FLA. SM. CL. R. 7.020(b).
- 119 FLA. SM. CL. R. 7.090(a).
- 120 FLA. SM. CL. R. 7.150.
- 121 See *Magistrate Court*, Ga. Dep't of L. Cons. Protection Division, <http://consumer.georgia.gov/consumer-topics/magistrate-court>.
- 122 UNIF. MAG. CT. R. 40.
- 123 See *Magistrate Court*, Ga. Dep't of L. Cons. Protection Division, <http://consumer.georgia.gov/consumer-topics/magistrate-court>.
- 124 GA. CODE § 15-10-41(a).
- 125 ILL CIV. PRO R. 281; see also *Small Claims Court*, Illinois Attorney General, <https://illinoisattorneygeneral.gov/consumers/smlclaims.html>.
- 126 Rare exceptions to this are allowed with “prior leave of court.” ILL CIV. PRO R. 287.
- 127 See *Small Claims Court*, Illinois Attorney General, <https://illinoisattorneygeneral.gov/consumers/smlclaims.html>.
- 128 ILL CIV. PRO R. 285.
- 129 MICH CT. R 4.301; MICH. COMP. LAWS § 600.8401.
- 130 MICH CT. R 2.301(A)(3)
- 131 MICH. COMP. LAWS § 600.8408(1).
- 132 MICH. COMP. LAWS § 600.8411(2).
- 133 It should be noted that this number is the limit for New York State, and that New York City recently increased its cap to \$10,000. See Dan M. Clark, *New Law Raises Monetary Cap for Disputes Brought in NYC Small Claims Court*, NEW YORK LAW JOURNAL (Dec. 17, 2019), <https://www.law.com/newyorklawjournal/2019/12/17/new-law-raises-monetary-cap-for-disputes-brought-in-nyc-small-claims-court/>.
- 134 *Id.*
- 135 See *Small Claims Court Guide*, NEW YORK CITY BAR (Jan. 2018), <http://documents.nycbar.org/files/small-claims-court-guide.pdf>.
- 136 *Id.*
- 137 N.C. GEN. STAT. § 7A-210(1).
- 138 See *A Citizen’s Guide to Small Claims Court*, NORTH CAROLINA DEPARTMENT OF JUSTICE, https://ncdoj.gov/wp-admin/admin-ajax.php?juwpfisAdmin=false&action=wpfd&task=file.download&wpfd_category_id=16&wpfd_file_id=12639 (“Before you go to small claims court, think carefully about what you need to prove. What contracts, receipts, sales tickets or other documents can help to prove your case? What witnesses do you need? Remember, witnesses must have first-hand knowledge of the case in order to testify.”).
- 139 *Id.* (“You don’t need to hire an attorney and your case will usually be heard within one month of filing your lawsuit.”).
- 140 N.C. GEN. STAT. § 7A-222(a).
- 141 OHIO REV. CODE § 1925.02(A)(1).
- 142 See, e.g., *File a Claim in Small Claims Court*, HAMILTON COUNTY CLERK OF COURTS, <https://www.courtclerk.org/self-help-resources/file-a-claim-in-small-claims-court/#15> (“Preparing Your Case . . . Gather Evidence. Collect all documents related to your case: receipts, canceled checks, estimated bills, contracts, photos, etc. Round up Witnesses. Line up your witnesses.”).

¹⁴³ See, *id.*

¹⁴⁴ See *Small Claims Court: A Citizens Guide*, OHIO JUDICIAL CONFERENCE, <https://www.supremecourt.ohio.gov/jcs/interpretersvcs/forms/english/5.pdf>.

¹⁴⁵ 42 PA. C. S. Ch. 15 § 1515(a).

¹⁴⁶ State and local government documents instruct parties to prepare evidence beforehand. See, e.g., *Information for Small Claims Court*, PHILADELPHIA MUNICIPAL COURT, <https://www.courts.phila.gov/pdf/brochures/mc/SMALL-CLAIMS-PAMPHLET.pdf>.

¹⁴⁷ *Id.*

¹⁴⁸ Parties may request a trial, but that would transfer the case out of the small-claims process and into a higher court.

TEXANS FOR LAWSUIT REFORM FOUNDATION
1701 Brun Street, Suite 200 | Houston, Texas 77019
713.963.9363 | 713.963.9787