

## ATTORNEYS IN THE SMALL CLAIMS COURT PROCESS: HELP OR HINDRANCE?

Patricia A. Bonner, U.S. Consumer Information Center<sup>1</sup>

This paper examines the impact of legal assistance on the small claims outcome from two perspectives. First, it presents an overview of literature exploring the influence of legal advice and representation on plaintiff success (i.e. winning and collecting). Second, plaintiff perceptions and assessments of the influence of legal assistance on the process in one Missouri Small Claims Court are reported. For small claims in general, these findings suggest that while legal assistance sometimes makes the procedure more formal and complex, it rarely affects the likelihood and size of plaintiff success.

### INTRODUCTION

One of the many decisions litigants and potential litigants face in the pursuit of a dispute through the small claims process is whether to seek the advice or representation of an attorney (especially if the opposition is represented). While the small claims court is touted as a quick, simple means for citizens to resolve disputes over small dollar amounts without an attorney, can pre-trial advice or legal representation influence plaintiff success? Popular opinion holds that a represented litigant has at his or her advantage an attorney's special legal skills and knowledge to promote a case. It is believed plaintiffs who receive legal assistance can increase their chances of a favorable outcome and defendants seek the assistance of an attorney to reduce the chances of plaintiff success. On the other hand, could the presence of an attorney do more harm than good? Perhaps the presence of an attorney injecting legal technicalities (and sometimes delay) into the proceedings has a negative psychological impact on the judge and hence, a negative impact on the judge's decision. Furthermore, in cases where only one of the litigants is represented, could the judge in an effort to correct the imbalance consciously or unconsciously favor the underdog--the unrepresented litigant?

The purpose of this paper is to examine the impact of attorney participation on the small claims case outcome--to what extent do attorneys affect the outcomes of the process? This report addresses that question from two perspectives. First, it presents an overview of literature which has explored the influence of legal advice and representation on plaintiff success. Second, results of a study of plaintiff perceptions and assessments of the impact of litigant legal

assistance on the small claims process in one Missouri Small Claims Court are reported. This information will provide educators and counselors with a basis for assisting litigants and potential litigants to make more informed decisions on whether and how to make use of an attorney during the small claims process. Knowing the extent to which legal assistance influences success in the small claims court trial is equally critical to policy makers and lobbyists in court reform.

### REVIEW OF LITERATURE ON IMPACT OF LEGAL COUNSEL ON SMALL CLAIMS COURT CASES

Do the special legal skills and knowledge of an attorney provide the advantage in the small claims process that it is popularly believed they offer? A summary of the findings of studies addressing this question are found in Table 1. Early research focused on the impact of legal representation on a litigant's chance of winning in court (Downing, Peters, and Sankin 1975; Jones 1974; Steadman and Rosenstein 1973; Weiss 1972). The findings of the studies cited offered statistical support to those arguing that attorneys were creating an imbalance in the small claims process. Over and over, plaintiffs who were represented by an attorney were found to be more successful than plaintiffs who were not represented. Conversely, represented defendants won more often than unrepresented defendants. The rate of success was especially high when a represented litigant faced an unrepresented opponent.

At the end of the seventies, however, contradictory findings began to appear. A 1977 report of the court system in Rochester, New York (Weller, Ruhnka, and Martin) and a 1981 examination of a Tallahassee, Florida court (Purdum) both found no significant difference between the success rates of plaintiffs with representation at trial and those who did not have representation.

All the investigations mentioned above used cross-tabulations to explore the bivariate relationship between the legal assistance received by one or both of the litigants and the rate of plaintiff success in court. An inherent weakness in these analytical efforts is the fact that other variables were allowed to vary while the relationship between the two specific variables of interest was examined. And with the exception of the Rochester study, the focus was litigant legal representation at the trial; the influence of other types of help from an attorney (e.g. pre-trial advice, collection) was not examined. In the Rochester study, both help from an attorney in settlement negotiations and in

<sup>1</sup>Agency Liaison and Consumer Information Specialist. This paper does not represent an official position of the U.S. General Services Administration, Consumer Information Center.

TABLE 1: Summary of Effects of Legal Assistance on Plaintiff Success

Study	Type of Assistance		
	Plaintiff		Defendant
	Received Pre-Trial Advice	Represented at Trial	Represented at Trial

**BIVARIATE ANALYSIS**

Likelihood of Judgment for Plaintiff

Weiss 1972 (Cambridge, MA)		+	-
Steadman & Rosenstein 1973 (Phila., PA) <sup>a</sup>		+	-
Jones 1974		+	-
Downing, Peters, & Sankin 1975 (Toledo, OH)		+	-
Weller, Ruhnka & Martin, 1977 (Rochester, NY) +		ns	
Purdum, 1981 (Tallahassee, FL)		ns	-

**MULTIVARIATE ANALYSIS**

Likelihood of Judgment for Plaintiff

Bradley, 1982 (Syracuse, NY) <sup>a</sup>	-	ns	
Bonner, 1987 (Columbia, MO) <sup>b</sup>			
--given plaintiff appears	ns	ns	
--given both litigants appear	ns	ns	+

Proportion of Claim Awarded

Bonner, 1987 (Columbia, MO) <sup>c</sup>			
--given plaintiff appears	ns/ns	ns/ns	
--given both litigants appear	ns/ns	ns/ns	-/ns

Likelihood of Collection

Bonner, 1985 (Columbia, MO)			
--given plaintiff won	ns	ns	ns
--given plaintiff won and collection trouble occurred	-	ns	ns

KEY: - negative impact on outcome  
 + positive impact on outcome  
 ns no significant impact

<sup>a</sup>Consumer plaintiffs only.

<sup>b</sup>Individual plaintiffs only. With a plaintiff success rate of 94 percent among cases filed by businesses, the overriding determinant of plaintiff success was the type litigant who filed; it was deemed inappropriate to use multivariate analysis on the probability of business plaintiff success.

<sup>c</sup>Individual/Business plaintiffs reported separately.

preparing for trial were found to increase the proportion of plaintiffs who were successful.

Two more recent examinations of Small Claims Courts in Syracuse, NY and Columbia (Boone County), MO introduced legal advice as an independent variable and used multivariate analysis to overcome some of the weaknesses of the prior studies. Both studies offer further support that the assistance of an attorney may not be as helpful as many persons thought. A 1982 article on the consumer cases in the Syracuse, NY Small Claims Court (Bradley,

Sherman, and Bryant) provides the first empirical evidence that assistance from an attorney may actually be detrimental to a case. Using multivariate logit analysis, Bradley et. al. explored an array of independent variables (including socioeconomic characteristics of the plaintiff). Only two dummy variables were found to have a significant impact in the model; advice from a lawyer and court staff were found to lower the probability of winning a consumer small claims case in court. Legal representation by an attorney was included in the models but was not found to be a significant factor.

In the examination of the Missouri Court (Bonner 1987), multivariate logit and multiple regression were used to examine what factors best predict the likelihood and size of small claims outcomes favoring the plaintiff. Again, the effects of a set of variables reflecting the socioeconomic characteristics of the litigants and the legal assistance they received were evaluated. An attorney providing the plaintiff with pre-trial advice or representation in court was found to have no influence on the probability of judgment for the plaintiff or the percentage of the claim awarded the successful litigant (Bonner 1987).

With respect to the influence of an attorney representing the defendant, a different and very interesting story unfolded. Among cases filed by individuals where both litigants appeared for the small claims trial and an attorney represented the defendant, the probability of judgment for the plaintiff increased but the proportion awarded declined. The significance of this variable in these latter equations may be attributed to one or both of the following facts. First, the defendant may be more likely to seek out the assistance of an attorney in the more complicated cases in which the potential loss is larger. In addition, the defendant may be benefiting from enhanced counterarguments to the plaintiff's claims.

In another phase of this same research project (Bonner 1985), litigant use of legal advice and representation by an attorney was investigated in relation to probabilities of judgment satisfaction. Overall, the likelihood of full judgment satisfaction was not influenced by the plaintiff's or defendant's legal representation. Whether the plaintiff received advice from an attorney prior to the trial influenced only one of the probabilities examined--the probability of collection in full. Contrary to predictions, obtaining advice from an attorney was found to be negatively related to collection in full. Again, it may be that an attorney's counsel is sought primarily in what are anticipated to be difficult cases.

## PLAINTIFF PERCEPTIONS AND ASSESSMENT

### Data Source and Method of Collection

The data used to analyze plaintiff perceptions and assessment of legal assistance received are from the same Boone County (Missouri) Small Claims Court noted above. The data were collected in a two-step process: a search of court records followed by telephone interviews. First, the records of the 387 cases filed in the Boone County Small Claims Court for calendar year 1982 were examined. Specific characteristics of each case including the types of litigants and litigant representation at trial were noted.

With regard to the second phase of the data collection process, efforts were made to telephone interview (in January through July of 1984) each plaintiff who filed in the court during the one year period. Since some

plaintiffs filed more than one case during the year under study, 348 plaintiffs were identified to be interviewed. Complete interviews were conducted with 252 or 72 percent of these 348 plaintiffs. While 131 or 62 percent of the 213 individual plaintiffs in the population responded to the interviewer's questions, 84 or 90 percent of the 93 full-time business plaintiffs responded. The part-time business category had the highest response rate: 37 or 93 percent of the 40 part-time business plaintiffs responded.

No attempt was made to contact the defendants in these small claims cases. Data regarding the defendants legal representation is from the court records or based on plaintiff response.

Descriptive and Chi-Square analyses were selected as appropriate. A portion of this research is reported without the benefits of statistical tests of significance. The small number of part-time business plaintiffs and full-time business plaintiffs relative to individual plaintiffs sometimes hampered the use of chi-square tests of independence among the three types of litigants and their cases. To overcome the problem of expected frequencies less than five in 20 percent or more of the cells in some tables, further collapsing of categories could have been made. Considering the nature of this study, the desire to retain more detailed information (especially with respect to full-time and part-time business cases) was believed to outweigh the desire for tests of statistical significance among the three groups. When Chi-square analysis was used, a .05 level of probability was selected as the criterion for a statistically significant difference.

### Limitations

Since the rules governing the Small Claims Courts of Missouri are different from those governing other small claims courts, it cannot be assumed that cases are filed and disposed of in a similar manner in other courts. In addition, the information and assistance provided by a court system may vary somewhat with different personnel. As a result, the generalizations of this study's conclusions may be limited. However, to the extent other courts and their litigants are similar to this particular court's processes and its litigants, the results do provide more broadly representative insights into the small claims process and experiences of plaintiffs.

## FINDINGS

### PLAINTIFF'S LEGAL ASSISTANCE

The type of legal assistance a plaintiff receives in a small claims case may vary greatly. For some cases, legal assistance is no more than a brief phone call to an attorney asking for advice on whether a case is worth pursuing. For others, the plaintiff's lawyer handles the entire process from the filing of the small claims petition through the collection of the judgment from an

TABLE 2: Type of Legal Assistance Plaintiffs Received from an Attorney<sup>3</sup>

Type of Legal Assistance	Type of Plaintiff			Total Cases w/ Plaintiff Responding (n = 279)
	Individual (n = 134)	Part-Time Business (n = 39)	Full-Time Business (n = 106)	
	%	%	%	%
No assistance received	57	67	85	69
Legal assistance received <sup>b</sup>	43	33	15	31
<i>Pre-trial advice</i>	31	28	6	21
<i>Tried to settle before trial</i>	15	8	9	12
<i>Court petition filed</i>	1	0	3	2
<i>Represented at trial</i>	4	0	5	4
<i>Collection information</i>	3	0	1	2
<i>Handled post-trial action</i>	4	3	3	4

-----

<sup>3</sup> Chi-square analysis based on case totals with legal assistance received and no legal assistance received:  $\chi^2 = 22.013$ ,  $df = 2$ ,  $prob. = .001$ ,  $v = .281$

<sup>b</sup> Totals will not equal sums of subcategories due to multiple responses.

uncooperative judgment debtor. Litigants filing claims were asked what type of legal assistance they received during the pursuit of their small claims case. Among the cases with a plaintiff who responded, 31 percent had a plaintiff who had received some form of legal help (Table 2).

Cases filed by individuals were those which most frequently had a plaintiff advised or represented by an attorney (43 percent). Of the cases pursued by a part-time business person, 33 percent had a plaintiff who had received legal help. Cases filed by full-time business persons were those least likely to involve legal counsel, with only 15 percent of these plaintiffs reporting such assistance. The difference in the proportion of cases with a plaintiff who did and did not receive assistance from an attorney was significantly different from zero beyond the .001 level.

The most frequently identified type of assistance used by the small claims respondent plaintiffs in their cases was pre-trial legal advice (21 percent). Frequently, plaintiffs explained that an attorney gave them information regarding their rights in the dispute and referred them to the small claims court as a low-cost means of resolution. For some plaintiffs, the attorney provided helpful tips on how to proceed before and during the hearing. Individual plaintiffs stated that in close to one-third (31 percent) of their cases, they requested legal advice from an attorney prior to trial. A somewhat lower 28 percent of part-time business plaintiffs received similar advice for their cases. Just 6 percent of the full-time business plaintiff's cases had a plaintiff who sought out legal advice prior to the trial. This finding is consistent with other analyses which found that full-time businesses

were more likely to have had a prior experience in small claims court and therefore, would be more familiar with court proceedings.

To motivate defendants to resolve a dispute before it must be presented to a judge, some plaintiffs' attorneys contacted the defendant or the defendant's representative in an attempt to achieve a pre-trial settlement. In 12 percent of the cases filed, an attorney took some action (in many cases, sending a letter) to encourage a pre-trial settlement.

Consistent with the procedural goals of the small claims court, only 2 percent of the small claims cases examined were filed by an attorney. Only 4 percent of the cases had plaintiffs who reported their case went to trial and they were represented.

Very few litigants used the services of an attorney after judgment was rendered. Just 2 percent received information on how to collect their judgment and 4 percent reported an attorney handled a post-trial action (collection or appeal). The majority of the cases in which the plaintiff used legal counsel in this latter stage were brought to court by individual litigants.

Critics of the small claims process in other jurisdictions have lamented that unrepresented litigants who have been very successful pursuing their action through the small claims court find themselves confronted after their small claims trial with an appeal and a complicated higher court procedure that makes hiring an attorney a necessity. As a result, it was quite unexpected to discover that only two of the thirteen plaintiffs who won and then were faced with a post-trial action chose to use an attorney. Two

TABLE 3: Plaintiff Assessment of Legal Assistance Provided During the Small Claims Experience, Given Legal Assistance Was Received<sup>a</sup>

Assessment of Legal Assistance	Type of Plaintiff			Total Cases w/ Plaintiff Responding (n = 81)
	Individual (n = 53)	Part-Time Business (n = 13)	Full-Time Business (n = 15)	
	%	%	%	%
Hurt case	6	8	0	5
Helped case	47	38	47	46
No influence	47	54	53	49

<sup>a</sup> Chi-square analysis based on cases with plaintiffs who assessed the legal assistance as helping their case or having no influence:  $\chi^2 = .284$ ,  $df = 2$ ,  $prob. = .868$ ,  $v = .061$

cases were settled before going to court but only one decision was actually overturned in the higher court.

#### PLAINTIFF ASSESSMENT OF LEGAL ASSISTANCE RECEIVED

Litigants who received some form of legal assistance during the pursuit of their small claims dispute were asked to evaluate how they felt the legal assistance that they had received during their experience had affected the resolution of their case (Table 3). Nearly one-half (49 percent) of the respondent plaintiffs who received legal assistance agreed with the results of the multivariate analysis that plaintiff legal advice or representation had no influence on the outcome of their case. However, an almost equal proportion of respondent plaintiffs (46 percent) stated they felt the attorney had been beneficial.

In response to a follow-up open-ended question, more than half of those who had perceived the attorney as beneficial explained that the information they had received regarding their rights and/or court procedures had been an advantage in the pursuit of the case. Other much less frequent explanations included the attorney's skills and knowledge in the courtroom, the time the attorney saved the represented litigant, and the extra threat to the opposing party offered by an attorney.

A very small minority (5 percent) felt the legal assistance they had received actually hurt their case. Cases with plaintiffs who stated they believed the attorney had no influence or had positively influenced their case were isolated to examine if any relationship exists between these two assessments and the three types of plaintiffs who responded. The differences between the three types of cases were found to not be statistically significant.

Plaintiffs who received help from an attorney in the pursuit of a case were also asked if they believed they could have handled their claim without the help of an attorney (Table 4). A majority (71 percent) stated they believed they could have handled the case on their own. Individuals and full-time business persons were very similar in their responses; in 68 percent of the cases filed by an individual litigant and 69 percent of the cases filed by full-time business litigants, the plaintiffs expressed the opinion that, in retrospect, no attorney was needed. Part-time business persons appear more confident than the other two groups; these plaintiffs reported they did not need legal assistance in 85 percent of their cases. Of course, the type and complexity of the cases they pursued could also be a critical factor in this difference.

#### PLAINTIFF ASSESSMENT OF EFFECT OF DEFENDANT'S LEGAL REPRESENTATION ON CASE

The defendant's use of an attorney can also influence the plaintiff's small claims experience. In the review of literature, some findings suggest that defendant's representation affects the judge's decision. For each case in which the plaintiff reported the defendant in their case had received assistance from an attorney, plaintiffs were asked to assess whether the defendant's attorney influenced the dispute (Table 5). The majority (58 percent) of the plaintiffs who faced a represented defendant felt the attorney had no effect on the proceedings or the outcome; the remaining 42 percent felt the lawyer for the defense had a negative effect in terms of the plaintiff's interest. Individuals (49 percent) were those plaintiffs most frequently reporting a negative affect. On the surface, this finding might seem to contradict the findings of the multivariate analysis which suggests defendant representation by an attorney has no effect or may even improve the trial

TABLE 4: Plaintiff Retrospective Assessment of Ability to Handle Small Claims Case Without Legal Assistance, Given Legal Assistance Received<sup>3</sup>

Assessment of Ability to Handle Case	Type of Plaintiff			Total Cases w/ Plaintiff Responding (n = 79)
	Individual (n = 50)	Part-Time Business (n = 13)	Full-Time Business (n = 16)	
	%	%	%	%
No attorney needed	68	85	69	71
Attorney needed	32	15	31	29

<sup>3</sup> A chi-square test of independence among the three types of litigants was deemed inappropriate due to the small number of part-time and full-time business persons.

TABLE 5: Plaintiff Assessment of Whether Defendant's Attorney Caused Plaintiff Difficulty in Pursuit of Case, Given Plaintiff Was Aware Defendant Received Legal Assistance from an Attorney<sup>3</sup>

Assessment of How Defendant's Attorney Affected Case	Type of Plaintiff			Total Cases w/ Plaintiff Responding (n = 62)
	Individual (n = 41)	Part-Time Business (n = 8)	Full-Time Business (n = 13)	
	%	%	%	%
No effect	51	75	69	58
Negative effect	49	25	31	42

<sup>3</sup> A chi-square test of independence among the three types of litigants was deemed inappropriate due to the small number of part-time and full-time business persons.

outcome for the plaintiff. In responding to an open-ended question as to how the opposition's attorney negatively affected the case, a common complaint was that the defendant's use of a attorney led to a more formal, more complicated, more technical and less balanced process.

#### CONCLUSION AND RECOMMENDATIONS

Do attorneys help or hinder one's chances of success in the small claims process? The answer--it appears, on most occasions, is neither! The frequent lack of a significant influence by litigant use of legal advice and

representation reported in the empirical literature is intriguing. The findings especially those in more recent years, suggest that when various socioeconomic characteristics of the plaintiff and defendant are controlled, the skills and knowledge of an attorney offer little advantage to the litigant who has received legal assistance. And surprisingly, in those rare situations when legal assistance is influential it may help the opposition more than the litigant being represented. For example, plaintiff pre-trial advice was found to be a negative predictor for both the likelihood of plaintiff success in court and full collection of the favorable judgment after a trial.

Plaintiff assessment of the influence of attorneys in one Missouri Small Claims Court lends additional support to these findings. Of those plaintiffs who received legal assistance, nearly half (49 percent) reported the assistance they received had no impact on their case and nearly three-fourths (71 percent) felt they could have handled the case on their own. When plaintiffs reported the assistance they received from an attorney helped their case, information on their rights and/or court procedures was by far the most common advantage noted. The focus was almost always on the process of pursuing the case, not the decision of the judge.

Litigant comments suggest a similar focus when the influence of the opposition's legal assistance was assessed. The defendant's assistance from an attorney have frustrated the court's goals of maintaining informal proceedings and added to the discomfort already felt by the plaintiff unaccustomed to court proceedings, defendant legal assistance was rarely viewed as having an impact on the final outcome of the small claims case.

For small claims cases in general, these findings suggest that the time, money and effort spent pursuing the advice or assistance of an attorney rarely affects the outcome. If small claims litigants are willing to commit the effort and feel comfortable presenting a case on their own, they might as well handle the case themselves.

In order for future small claims litigants and potential litigants to make more informed decisions regarding whether or not to seek out the assistance of an attorney for their specific case, there is a need for extensions of the research on this issue. Several areas for future research are suggested by this examination. First, the exploratory nature of the Syracuse Court and the Boone County Court call for further analysis to confirm these general findings.

Research is also needed which explores the effect of attorneys on specific types of cases. To this point in time, scant attention has been paid to the types of cases being pursued in small claims court. It seems plausible that since differences exist in the complexity of small claims cases, the level of skill and knowledge needed to support claims will also vary. Are claims involving fraud, negligence or willful wrongdoing more difficult to support than those for the non-payment of goods and services? Could these former cases demand the special skills and knowledge of an attorney? Until these questions are answered, it may be wise to encourage litigants to see an attorney when an issue is particularly complex.

And since our judicial system should be equally concerned about fairness to the defendant as to the plaintiff, there is a need to pay particular attention to the plaintiff's opposing party in future research. It would be interesting to survey the defendants to gather their perspectives and assessment of the impact of attorneys in the small claims process.

## REFERENCES

Bonner, Patricia A. (1985). "The Small Claims Collection Experience and Plaintiff Assessment of the Small Claims Process--An Empirical Study of the Small Claims Court in Boone County, Missouri." M.S. thesis, University of Missouri-Columbia.

\_\_\_\_\_. (1987). "The Small Claims Pre-Trial and Trial Experience with Plaintiff Recommendations for Improvement--An Empirical Study of the Small Claims Court in Boone County, Missouri." Ph.D. dissertation, University of Missouri-Columbia.

Bradley, Julie; Sherman, Barbara; and Bryant, W. Keith. (1982). "Winning in Small Claims Court: An Empirical Analysis," Journal of Consumer Affairs. 16 (No. 1; Summer): 112-29.

Downing, Mark S.; Peters, J. Douglas; and Sankin, Alan R. (1975). "The Toledo Small Claims Court: Part I," University of Toledo Law Review. 6 (Winter): 397-411.

Jones, J.P. (1974). "Practical Results of Court Reforms: The Politics of Small Claims Courts." An unpublished paper on file with Law and Society Review cited by Yngvesson and Hennesey on page 250.

Purdum, Elizabeth (1981). "Examining the Claims of a Small Claims Court: A Florida Case Study," Judicature. 65 (No. 1; June-July): 25-37.

Steadman, John M. and Rosenstein, Richard S. (1973). "'Small Claims' Consumer Plaintiffs in the Philadelphia Municipal Court: An Empirical Study," University of Pennsylvania Law Review. 121 (June): 1309-61.

Weller, Steve; Ruhnka, John C.; Martin, John. (1977). "Success in Small Claims: Is a Lawyer Necessary?" Judicature. 61 (No. 4; October): 176-84.

Yngvesson, Barbara and Hennesey, Patricia. (1975). "Small Claims, Complex Disputes: A Review of the Small Claims Literature," Law and Society Review. 9 (Winter): 219-375.