

Testimony on: Iowa HF 248 – Raising Small Claims Jurisdiction

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Testimony to the
**Iowa House Judiciary
Committee**

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Consumers for a Responsive Legal System (“Responsive Law”) thanks the Committee for the opportunity to present its testimony on House File 248. Responsive Law is a national nonprofit organization working to make the civil legal system more affordable, accessible and accountable to the people.

We urge the passage of the bill, increasing the dollar limit for small claims court from \$5,000 to \$10,000. Raising the small claims dollar limit to \$10,000 will benefit thousands of ordinary Iowans and the administration of justice as a whole. The small claims court system gives ordinary people a genuine opportunity to resolve lower dollar-value disputes without the expense of a lawyer. Since it is neither practically nor economically feasible to bring such claims in District Court, increasing the small claims dollar limit to \$10,000 will significantly expand the number of litigants realistically able to resolve their disputes.

The Average Low-Dollar Dispute Cannot Be Feasibly Resolved In District Court.

Bringing any kind of suit in District Court requires a lawyer. The average pro se plaintiff does not have the procedural knowledge necessary to even bring a civil suit, let alone to successfully litigate one. Without a lawyer, the ordinary Iowan is likely to see even his meritorious case dismissed on the pleadings. If his complaint survives, he must then navigate the unfamiliar intricacies of motions practice, discovery, and evidence rules. In the end, he is almost certain to lose before he even sees the inside of a courtroom.

Retaining a lawyer, however, is frequently neither simple nor cost-effective. Potential litigants with claims valued at less than \$20,000 often have difficulty even finding a lawyer willing to take their case. Those who do retain one are quickly confronted with the economic reality that even if they ultimately prevail in court, they are unlikely

to see anything but a fraction of their recovery, and may well find themselves in even greater debt.

The average take-home pay in Iowa is \$37,406.¹ The average person must therefore work an entire week in order to pay for only two hours of a lawyer's time, assuming an hourly billing rate of \$300. In cases that involve less than \$20,000, it is unlikely that this expense can be recouped, even if the claim ultimately prevails. A plaintiff who recovered \$10,000 in court would owe the *entire* \$10,000 in attorney's fees after only 33 ½ billed hours. In other words, if a lawyer worked on the case for only two weeks, and billed only 3 ½ hours a day, Monday to Friday, a complete victory in court would result in the plaintiff entitled to \$0 *and owing his lawyer \$500*. Absent a complete victory, of course, he would owe even more. A non-prevailing plaintiff, or a plaintiff who obtains only a partial recovery, must pay the same \$10,500 lawyer's bill, only with fewer resources with which to do so. Defendants face an even more dire situation. Assuming the same two-week \$10,000 claim litigation, and a lawyer who works no more than 3 ½ hour days, a victorious defendant's *best outcome* is to emerge from litigation owing his lawyer \$10,500. Of course, if the defendant is found at all liable he will owe even more.

Small- or medium-value litigants are rarely able to take advantage of alternative billing arrangements, such as contingency fees. The same cases that, with hourly billing, are economically unfeasible for the client are, with a contingency fee arrangement, economically unfeasible for the lawyer. Under a 30% contingency arrangement, a lawyer who spends more than 10 hours on a \$10,000 claim is working at a loss, even if completely victorious.² No lawyer, no matter how confident in the merits of a case, can be certain at the outset that only 10 hours will be required. Finally, the average low-to medium-value claimant is not sufficiently indigent to qualify for legal services assistance,³ nor is his claim sufficiently exceptional to

¹ U.S. Bureau of Economic Analysis, "Table SA51-53, Disposable personal income summary," <http://www.bea.gov/iTable/iTable.cfm?reqid=70&isuri=1&acrdn=4>, accessed March 1, 2013.

² Assuming a standard \$300 hourly billing rate.

³ Civil legal assistance is generally only available to those in the "poorest and most vulnerable populations." Iowa Legal Aid, "The Economic Impact Of Iowa Legal Aid," at 2. Civil assistance programs are unable to provide representation

displace the default American rule that each party pays his own lawyer. Although fee-shifting provisions are applicable in certain limited cases, these provisions generally require specific factors that cannot be guaranteed at the outset of litigation.⁴

The Current Small Claims Limit Is Below the National Average, and Leaves Many Litigants Without Any Legal Forum

In contrast to District Court, small claims courts are quick, efficient, and use simplified procedures that do not require specialized legal training to understand. Pleadings consist of short, easy-to-understand forms.⁵ Hearings are simple and informal, before the court, without regard to rule-bound technicalities of procedure.⁶ Claimants can litigate and obtain relief without incurring the expense of hiring a lawyer.⁷ Opponents may contend that small claims court deprives litigants of full due process protections. Litigants with claims too small to afford a lawyer, however, currently enjoy no due process whatsoever as they are economically prohibited from litigating their claims at all. The procedural protections afforded small claims litigants are, in any case, far more expansive than those reasonably available to pro se litigants in District Court.⁸ Accordingly, for individuals and small businesses with lower-value claims, small claims courts are often the only practically and economically feasible legal forum.

to every Iowan who needs one. In 2008, 17,000 Iowans were turned away or "underserved" due to a lack of resources. Brennan Center for Justice, "Civil Legal Services, Low-Income Clients Have Nowhere to Turn Amid the Economic Crisis," at 12. Iowa Legal Aid froze all hiring in 2010. Iowa Legal Aid, *supra*, at 3.

⁴ A small-value tort or contract claimant who relies on fee-shifting not only runs an enormous risk, but in the run-of-the-mill case, is likely to be disappointed and left with a multi-thousand-dollar lawyer's bill.

⁵ Standardized forms are promulgated by the Supreme Court. *Id.* at § 631.15; see 11 Ia. Prac., Civil & Appellate Procedure §§ 9:23–9:45 (2012 ed.).

⁶ Iowa Code § 631.11(1); *GE Money Bank v. Morales*, 773 N.W.2d 533, 539 (Iowa 2009)

⁷ See *GE Money Bank*, 773 N.W.2d at 537 ("The legislature intended small claims suits to be simpler, easier, and less expensive than a district court action.").

⁸ With limited exceptions, no written pleadings or motions are permitted. *Id.* at § 631.7(1). Any motion, other than impleader, must be made and considered at the hearing on the merits. *Id.* at § 631.7(1). Pro se litigants, therefore, are spared the complexities of District Court pre-trial motions practice.

Unfortunately, in Iowa, small claims courts are limited to claims of \$5,000 or less. Because many potential claims that exceed this value are still too small to be economically feasible in District Court, many potential claimants are trapped in a legal no-man's land, with no opportunity to have their claims adjudicated. HF 248 frees those with claims of \$10,000 or less from this no-man's land, empowering them to fairly and efficiently litigate and resolve their claims. HF 248 will also have broad systemic benefits. Allowing more cases to be adjudicated in small claims court will reduce the burden placed on District Courts by pro se litigants unfamiliar with legal procedures. It will also reduce the need for donated legal services, allowing more pro bono services to be directed to low-income litigants with more complex claims in District Court.

Iowa's current \$5,000 limit is not only below the national average, but contrary to the growing trend of the states. In just the last two years, Wisconsin, Oregon, California, and Minnesota increased their limits to \$10,000, and effective August of next year, Minnesota's limit will increase again to \$15,000. Today, fully half of the states have limits higher than \$5,000; fifteen have limits of \$10,000 or more, including Pennsylvania (\$12,000), Delaware (\$15,000), and Tennessee (\$25,000).

Increasing the Small Claims Dollar Limit Will Not Disadvantage Consumer Debtors

Opponents may charge that purchasers of consumer debt routinely exploit expedited small claims procedures to obtain illegitimate default judgments. Unscrupulous debt collectors have indeed taken advantage of some states' lax service of process requirements and inadequate procedural and evidentiary protections.⁹ Iowa, however, requires that service of process be made either personally or by certified, restricted delivery.¹⁰ No default judgment can enter unless

⁹ See generally Peter A. Holland, "The One Hundred Billion Dollar Problem in Small Claims Court: Robo-Signing and Lack of Proof in Debt Buyer Cases," 6 J. Bus. & Tech. L. 259 (2011); National Consumer Law Center, "The Debt Machine: How the collection industry hounds consumers and overwhelms the courts," at 12-16 (2010).

¹⁰ Iowa Code § 631.4

proper notice has been established.¹¹ Judicial review is also available for defendants who suffer an illegitimate default judgment. Litigants can appeal a small claims judgment to the District Court, where they are entitled to a de novo review of the record.¹² Litigants can also seek discretionary review in the Supreme Court.¹³ Finally, the Supreme Court has recognized an independent action to vacate a small claims judgment procured by fraud.¹⁴

Should unfair debt collection become a problem in Iowa small claims court, targeted legislation could also address the problem without restricting the availability of an essential legal forum.¹⁵ Unfair and deceptive debt collection is undoubtedly a problem, but holding down the small claims limit will do very little to address it.

In an economic climate in which four out of five people cannot afford a lawyer, additional barriers should not be placed between people and the legal system that is intended to adjudicate their disputes. Providing a lawyer to all who have legal problems may be beyond our means, but we can at least expand the availability of a forum for those who cannot afford a lawyer to fairly resolve their disputes. **On behalf of the users of the legal system, we urge the Committee to support this legislation.**

¹¹ *Id.* at § 631.5(5). If service was made by mail, the plaintiff must file either a signed return receipt or a sworn affidavit, including a duplicate copy of all papers referred to in the affidavit. *Id.* at § 631.5(4); I.C.A. Rule 1.308(5).

¹² Iowa Code § 631.13(1), (4)(a); *e.g.*, *Baker v. Eller*, No. LACV032268, 2009 WL 1073748, (Iowa Dist. Ct. Feb. 27 2009); *Jester v. Cloud*, No. SC 442194, 2007 WL 6001428, (Iowa Dist. Ct. Dec. 13 2007).

¹³ Iowa Code § 631.16.

¹⁴ *Severson v. Peterson*, 364 N.W.2d 212, 214 (Iowa 1985) (citing Restatement (Second) of Judgments § 68 (1982)).

¹⁵ See Tal Finney & Joel Yanovich, *Expanding Social Justice Through the "People's Court"*, 39 Loy. L.A. L. Rev. 769, 777 (2006.)