

## First Supplement to Memorandum 2002-53

**Jurisdictional Limits for Small Claims and Limited Civil Cases:  
Comments of Judge Duncan on the Small Claims Limit**

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Attached is a letter from Roderic Duncan, a retired superior court judge who is a member of the Three Track Study Working Group and the author of Nolo Press publications on suing for amounts up to \$25,000. Judge Duncan “strongly urge[s] the Commission to recommend an increase in small claims limits without the necessity of pilot programs.”

He explains:

The major reason for my position on this issue comes from my experience recently handling several days of small claims appeals in Alameda County Superior Court. My conclusion was that the present \$5,000 limit is depriving many Californians of substantial justice now and the pilot programs and studies are not going to tell us anything that is not already obvious.

In my admittedly small sample I saw many cases where plaintiffs had reduced their prayers in order to meet the jurisdictional limit. Those who want to study whether small claims courts could handle what might be more difficult or complex cases are missing an important point. People who have claims above the present limit don’t just go away and forget about their claim. They reduce what they ask for and proceed. We are deciding those cases now.

People with cases in the \$5,000-\$10,000 range have no other practical place to go. They can’t find an affordable lawyer.

Judge Duncan’s comments focus on the plaintiff’s perspective, the injustice of having a legitimate claim for over \$5,000 but having to waive part of it to be able to effectively pursue recovery. The other part of the equation is the potential injustice to a defendant due to the lack of procedural protections in small claims court, such as the right to conduct discovery, the right to counsel in the initial trial, and the right to a jury trial. The Commission also needs to consider the controversial politics of raising the small claims limit, as evidenced by the fate of

recent attempts to change the limit and the lack of agreement among members of the Three Track Study Working Group. We will discuss Judge Duncan's comments further at the upcoming meeting.

Respectfully submitted,

Barbara Gaal  
Staff Counsel

RODERIC DUNCAN  
JUDGE OF THE SUPERIOR COURT, RETIRED

PRIVATE DISPUTE RESOLUTION  
IN FAMILY LAW

October 29, 2002

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re: Commission's Study of Small Claims Limit

Dear Ms. Gaal:

As you know, I am a member of the Three-Track Study Working Group and a retired Alameda County Superior Court Judge. I am the author of a Nolo Press book on Municipal Court civil litigation ("How to Sue For Up to \$25,000...and Win!") and am near to production in a replacement for that book dealing with Limited Jurisdiction cases in Superior Court ("Sue in California Without a Lawyer").

Janet Grove has sent members of the Working Group a copy of your memorandum on the subjects we are studying jointly. I write now to strongly urge the Commission to recommend an increase in small claims limits without the necessity of pilot programs.

The major reason for my position on this issue comes from my experience recently handling several days of small claims appeals in Alameda County Superior Court. My conclusion was that the present \$5,000 limit is depriving many Californians of substantial justice now and that pilot programs and studies are not going to tell us anything that is not already obvious.

In my admittedly small sample I saw many cases where plaintiffs had reduced their prayers in order to meet the jurisdictional limit. Those who want to study whether small claims courts could handle what might be more difficult or complex cases are missing an important point. People who have claims above the present limit don't just go away and forget about their claim. They reduce what they ask for and proceed. We are deciding these cases now.

People with cases in the \$5,000--\$10,000 range have no other practical place to go. They can't find an affordable lawyer. Limited jurisdiction appears to be considerably more complicated. Statistics on California's last raise in the limit indicate a very small increase in filings. The figures from HALT show a similar experience in other states that have increased their limits.

The PSI study worries that many "have difficulties presenting their cases and proving their claims in small claims court, even at the present jurisdictional limits." Do they think that these people simply decide not to file their cases, but will somehow decide to

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they feel comfortable. The same argument applies to the PSI concern about "the difficulty of determining the truthfulness of claims on the basis of the minimal evidence sometimes presented." Where do they think these plaintiffs are going now?

It is true that we need to improve the adviser program in some counties. And training and monitoring of pro tem judges should be increased. But we don't need a pilot program to study these needs.

Sincerely,

A handwritten signature in cursive script, appearing to read "Roderic Duncan".

Roderic Duncan

cc: Janet Grove