

SUPREME COURT OF ARIZONA

In the Matter of	)	Arizona Supreme Court
	)	No. R-18-0021
PETITION TO ADOPT ARIZONA RULES	)	
OF SMALL CLAIMS PROCEDURE AND	)	
MODIFY RULE 101(b) OF THE JUSTICE	)	
COURT RULES OF CIVIL PROCEDURE	)	
	)	<b>FILED 08/27/2019</b>
	)	
	)	
_____	)	

**ORDER**

**AMENDING RULE 101(b), JUSTICE COURT RULES OF CIVIL PROCEDURE AND  
ADOPTING THE ARIZONA RULES OF SMALL CLAIMS PROCEDURE**

A Third Amended Petition having been filed proposing to amend Rule 101(b) of the Justice Court Rules of Civil Procedure, and to adopt the Arizona Rules of Small Claims Procedure and comments having been received, upon consideration,

**IT IS ORDERED** that Rule 101(b) of the Justice Court Rules of Civil Procedure, be amended in accordance with the attachment hereto, effective January 1, 2020.

**IT IS FURTHER ORDERED** that the Arizona Rules of Small Claims Procedure is adopted in accordance with the attachment hereto, effective January 1, 2020.

DATED this 27th day of August, 2019.

\_\_\_\_\_/s/\_\_\_\_\_  
 ROBERT BRUTINEL  
 Chief Justice



TO:

Rule 28 Distribution

Hon. C Steven McMurry

Hon. Gerald A Williams

Adam W Watters

Ellen S Katz

Marcus Reinkensmeyer

Keith E Russell

James R Morrow

Charles J Adornetto

Hon. Frank J Conti Jr

## ATTACHMENT\*

### Justice Court Rules of Civil Procedure

#### Rule 101. Application and Interpretation

a. [[[no changes]]]

**b. Application of these rules.** These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts., except that Rule 113(i) concerning dismissal because of lack of service and Rule 140 regarding entry of default judgments apply applies in small claims cases. [ARCP 1]

c-d. [[[no changes]]]

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\* Deletions are in ~~striketrough~~ and additions are underlined.

# ATTACHMENT\*

## Arizona Rules of Small Claims Procedure

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\* Entire text is new.

## **Rule 1. Small Claims Lawsuit**

**(a) Definition and Jurisdictional Limit.** A small claims lawsuit is a voluntary, simplified procedure for a lawsuit in the small claims division of the justice court. The small claims division may only decide lawsuits in which the debt, damage, tort, injury, or value of the personal property claims by the plaintiff are not more than \$3,500 and counterclaims by the defendant are not more than \$3,500, exclusive of interest and costs. A small claims lawsuit also includes lawsuits where a party asks the court to disaffirm, avoid, or rescind a contract, or seeks equitable relief, and the amount at issue is not more than \$3,500.

**(b) Rules and Statutes.** These rules and the Arizona Revised Statutes (“A.R.S.”) Title 22, Chapter 5, govern procedures for small claims lawsuits and provide a process for inexpensive, speedy, and informal resolutions. Courts and parties should interpret these rules liberally and consistently with this purpose.

**(c) Representation.** Attorneys may not represent a party in a small claims lawsuit unless all the parties agree in writing. A corporation, partnership, association, or any other business or organization must file a notice stating the name of an authorized person who will file and appear in court on its behalf.

**(d) No Jury and No Appeal.** There is no right to a jury trial or to appeal the judgment in a small claims lawsuit. The decision of the justice of the peace or hearing officer is final and binding on both parties.

## **Rule 2. Parties to a Lawsuit**

**(a) Parties.** The parties to a small claims lawsuit are the plaintiff and the defendant. A party can be an individual, a marital community, a corporation, a partnership, an association, or other organization.

**(1) Plaintiff.** A plaintiff is the party who files a small claims lawsuit by filing a complaint. The plaintiff must be a real party to the original transaction that forms the basis of the lawsuit, unless the person is commencing a lawsuit as a personal representative duly appointed pursuant to a proceeding as provided in Title 14 of the Arizona Revised Statutes.

**(2) Defendant.** A defendant is the party who is sued by being named in the complaint.

**(b) Use of Correct Legal Name.** A plaintiff must use the party’s correct legal name when filing a lawsuit. Each defendant must be sued by the correct legal name.

**(c) Contact Information.** All parties must provide the court with a mailing address, email address, and phone number, if available. The court may use this information to communicate with the parties about their case by mail, email, text message, or phone.

### **Rule 3. Computing Time**

These rules may require a party to take action within a specified number of days from an event. The day of the event is not counted. A party must include Saturdays, Sundays, and holidays when counting days, but if the last day to take action falls on a Saturday, Sunday, or holiday, the party has until the next business day to take that action. Unless otherwise specified, all time periods referenced in these rules are calendar days.

### **Rule 4. Plaintiff Must File a Complaint in Justice Court**

**(a) Filing the Complaint.** A small claims lawsuit starts when a plaintiff files a small claims complaint. The plaintiff must file a complaint in the justice court precinct (“venue”) where the defendant resides or as permitted by A.R.S. § 22-202. The claim may be heard in a different justice court precinct if the court has jurisdiction and the defendant fails to object.

#### **(b) Requirements.**

**(1) *Statement of the Claim or Claims.*** The complaint must be legible and must briefly state the plaintiff’s reasons for the claims against the defendant.

**(2) *Amount of Claims.*** The amount of all claims in the complaint cannot exceed the jurisdictional limit for a small claims lawsuit. A plaintiff cannot avoid this requirement by splitting the claim amount into several smaller claim amounts.

**(3) *Filing Fee.*** The plaintiff must pay a fee to the court to file a complaint, although the plaintiff may request a deferral or waiver of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206.

**(c) No Amendments.** Amended complaints are not allowed but a plaintiff may dismiss the complaint and file a new lawsuit.

**(d) Settlement.** If the lawsuit settles before the hearing date the plaintiff must notify the court by filing a Notice of Settlement.

### **Rule 5. Service**

**(a) When to Serve the Defendant.** Not later than 45 days after the filing date of the complaint, the plaintiff must file proof of service of process on each defendant, or the plaintiff must transfer the matter out of the small claims division. As to any defendant for whom proof of service of process is not timely filed, the court shall dismiss without prejudice the complaint against them.

**(b) How to Serve the Defendant.** The plaintiff must serve each defendant with the complaint, and the summons and Notice to the Plaintiff and Defendant provided by the court by either:

**(1) *Registered or Certified Mail.*** The plaintiff may serve the defendant by registered or certified mail, with a “return receipt requested.” The plaintiff must file the return receipt with the court within 45 days of the complaint filing date to establish that the defendant was served.

The return receipt can be the card returned to the plaintiff by the postal or delivery service or the return receipt printed from the postal or delivery service's website; or

**(2) Constable, Sheriff, or Private Process Server.** The plaintiff may arrange for personal service on the defendant by a constable, sheriff, or private process server. If personal service is used, an affidavit of service must be filed with the court within 45 days of the complaint filing date.

**(c) Court's Notice to the Parties.** Upon receipt of the proof of service of process, the court will mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that the court may dismiss the case 65 days after service of process was completed unless a hearing has been scheduled, or the plaintiff has applied for the entry of a default judgment as described in Rule 140 of the Justice Court Rules of Civil Procedure.

## **Rule 6. Providing Additional Documents to the Other Party**

**(a) Serving the Other Party with Filed Documents.** A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit before or promptly after the document is filed, by either:

- (1)** hand-delivery to the other party;
- (2)** mailing the document via first-class U.S. mail to the other party's last known address, or by using any type of professional delivery service that produces written confirmation of delivery; or
- (3)** delivering the document electronically.

**(b) Notifying the Court of the Date and Method of Service.** The last page of any document that is filed with the court must state the date and method used to provide the document to the other party. For first class mailing, the document must state the date that it was deposited in the mail with first class postage.

## **Rule 7. Defendant's Answer**

A defendant must file a written answer within 20 days of service and mail it to the plaintiff. The defendant must pay a fee to the court to file an answer, although the defendant may request a waiver or deferral of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206. If a defendant fails to file an answer or otherwise respond within 20 days of service, the plaintiff must initiate default proceedings as described in Rule 140 of the Justice Court Rules of Civil Procedure.

### **Rule 8. Setting the Hearing**

The court will set a hearing date and hold a hearing within 60 days after the defendant files an answer. All parties must appear at the scheduled hearing.

### **Rule 9. Defendant's Counterclaim**

**(a) Definition.** A counterclaim asserts that the plaintiff owes something to the defendant. The defendant may file a counterclaim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event.

**(b) Filing a Counterclaim.** A counterclaim must be filed within 20 days of service of the summons, complaint, and notice. The amount of the counterclaim must be \$3,500 or less. If the counterclaim exceeds the jurisdictional limit the court must transfer the case to the civil division of the justice court. A counterclaim that is more than \$10,000 will result in a transfer of the case to the superior court.

**(c) No Amendments.** Amended counterclaims are not allowed.

### **Rule 10. Defendant Can File a Motion to Change Venue**

If the lawsuit is not filed in the correct justice court precinct, the defendant may file a motion to change the venue of the lawsuit. The plaintiff has 10 days to file a response. If the justice of the peace grants the motion, the court will transfer the lawsuit to the proper precinct. The parties must continue to appear at any scheduled court dates until they receive notice that the court has granted the motion.

### **Rule 11. Transferring the Lawsuit to the Justice Court Civil Division**

**(a) Requesting Transfer.** Either party can file a request to transfer the lawsuit to the civil division of the justice court no later than 10 business days before the hearing date.

**(b) Voluntary Dismissal After Transfer.** If a defendant requests transfer but has not filed an answer or counterclaim, a plaintiff who does not want the lawsuit to proceed in the civil division has 15 days after the transfer request to voluntarily dismiss the lawsuit.

### **Rule 12. Hearing**

**(a) Hearing Officer.** A party may request that a justice of the peace, rather than a hearing officer, decide the lawsuit. A party must make this request in writing at least 15 days before the hearing date.

**(b) Rescheduling a Hearing.** As soon as possible, but at least 15 days before the hearing date, a party may file a request in writing to reschedule the hearing and deliver a copy to the other party. The request must include a good reason for rescheduling and, if possible, provide supporting documentation. The court may deny the request if a party does not provide a good

reason for rescheduling, does not provide documentation for the request, or if the party has made previous requests to reschedule the hearing. The court will consider emergency requests (a request received less than 15 days before the hearing) only if the request also shows a good reason for not filing it earlier.

**(c) Failure to Appear for the Hearing.**

**(1) *Both Parties Fail to Appear.*** If both parties fail to appear at the hearing, the court will dismiss the complaint and any counterclaims without prejudice, meaning the claims may be refiled if all other legal requirements have been met.

**(2) *Defendant Fails to Appear.*** If the plaintiff appears and has properly served the defendant, but the defendant does not appear, the court will consider the plaintiff's evidence and, if substantiated by the evidence, the court may award judgment for the plaintiff. However, if the defendant is on active military duty and (1) fails to appear at the hearing, and (2) has not made an appearance in the case, the court cannot award judgment for the plaintiff at that time and must transfer the case to the justice court civil division for further proceedings.

**(3) *Plaintiff Fails to Appear.*** If the plaintiff fails to appear, but the defendant appears, the court may dismiss the lawsuit with or without prejudice, or it may award judgment for the defendant.

**(d) Request to Appear by Telephone.** If needed, the court may permit a party to appear by telephone at a hearing. The party must file a request to appear by telephone in writing at least 15 days before the hearing date. The request must contain that party's telephone number and the party must attach any documents, photographs, or other evidence the party wants to submit at the hearing. If the request is granted, the court will provide a phone number the party must call to appear telephonically at the hearing.

**(e) Evidence at the Hearing.** The justice of the peace or hearing officer will consider testimony from the parties and witnesses, and documents, and will decide the claims and any counterclaims. The justice of the peace or hearing officer may ask questions and permit the parties to ask questions of each other and witnesses. Formal rules of evidence do not apply. Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the justice of the peace or the hearing officer determines the evidence lacks reliability, or will cause unfair prejudice or confusion, or waste time.

**(f) Continuance.** If a party believes the date set for the hearing does not allow adequate time to prepare or properly exercise other rights under these rules, such as filing a counterclaim or requesting transfer to the civil division, the party may ask the court for a continuance. If the justice of the peace or hearing officer finds that the party's rights have been harmed by the amount of time to prepare or properly exercise other rights under these rules, a continuance will be granted.

### **Rule 13. Alternative Dispute Resolution**

The court may refer the case to an Alternative Dispute Resolution program, including Online Dispute Resolution, at any time before the hearing date.

### **Rule 14. Requesting an Interpreter or Special Accommodations**

Parties should request an interpreter or special accommodations at least 15 days before a court date.

### **Rule 15. Judgment**

**(a) Final Signed Judgment.** A judgment is a final written order of the court that decides the claims in the lawsuit and is binding on all parties. A final judgment must be signed by a justice of the peace or hearing officer and filed with the court.

**(b) Rendering and Mailing a Judgment.** A justice of the peace or hearing officer may render a judgment at the end of the hearing or within 10 days after the hearing. The court must mail a copy of the judgment to all parties within 5 days. Payment of the judgment is due when the judgment is rendered.

**(c) Correcting a Judgment.** On the court's own initiative or at either party's request, the court may correct the judgment if there is a misspelled name, a misstatement of fact, or a miscalculation of an amount.

### **Rule 16. Vacating a Judgment**

**(a) Filing a Motion to Vacate Judgment.** Any party can file a motion with the court asking to be relieved from judgment. The motion does not affect the finality of the judgment or suspend operation of the judgment. The court may relieve a party from a judgment for the following reasons:

- (1)** mistake, inadvertence, surprise, or excusable neglect;
- (2)** fraud, misrepresentation, or other misconduct of an opposing party;
- (3)** the judgment is void;
- (4)** the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (5)** any other reason justifying relief.

**(b) Timing.** A motion to vacate must be filed within a reasonable time. For reasons (1) and (2), the motion must be filed no more than 6 months after the entry of the judgment or date of the proceeding, whichever is later.

**(c) Providing the Motion to the Other Party and Time for Response.** The moving party must deliver a copy of the motion to the other party on the date of filing. The other party has 15 days to file a written response and must deliver a copy of the response to the moving party on the date the response is filed.

**(d) Other Powers to Grant Relief.** This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment; or
- (2) set aside a judgment for fraud on the court.

**(e) Representation.** An attorney may represent a party on a motion to vacate a judgment.

### **Rule 17. Dismissing a Lawsuit**

**(a) Voluntary Dismissal by the Plaintiff.** If the defendant has not filed an answer or counterclaim in the lawsuit, the plaintiff may dismiss the complaint at any time by filing a Notice of Voluntary Dismissal.

**(b) Dismissal by Agreement.** The parties may mutually agree to dismiss the complaint and any counterclaims by filing an agreement to dismiss that is signed by all the parties who have appeared in the case.

### **Rule 18. Enforcing a Judgment**

A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and A.R.S. §§ 22-243 through 22-246. An attorney may represent a party for post-judgment proceedings.

### **Rule 19. Forms**

The Administrative Office of the Courts shall develop and maintain recommended forms for the courts to provide the parties in small claims cases. Courts may modify these forms consistent with local practice or use forms that are substantially similar:

- (1) Complaint;
- (2) Summons;
- (3) Proof of Service by Registered or Certified Mail;
- (4) Answer;
- (5) Counterclaim;
- (6) Application and Affidavit for Entry of Default;
- (7) Request for Default Judgment;
- (8) Motion to Change Venue;
- (9) Motion to Vacate a Judgment;
- (10) Request [for example, a request to transfer a lawsuit to the justice court civil division, request for telephonic hearing, stipulation to dismiss lawsuit; or a request to postpone the hearing];
- (11) Objection to Hearing Officer and Request for Justice of the Peace to Hear Matter;
- (12) Subpoena;

**(13)** Notice of Voluntary Dismissal; and  
**(14)** Notice of Settlement

## APPENDIX

### READ THIS NOTICE CAREFULLY

#### Notice to Plaintiff and Defendant: A small claims lawsuit has been filed in justice court.

- A small claims lawsuit is an informal way to resolve civil disputes that are \$3,500 or less.
- Parties in a lawsuit are called “plaintiff” and “defendant.” Plaintiffs start a lawsuit by filing a complaint against defendants.
- **PLAINTIFF:** A lawsuit against the defendant cannot proceed without proper service as described in the Arizona Rules of Small Claims Procedure. When you file your complaint, the court will provide you with a summons and a copy of this notice that you must serve on each defendant along with the complaint. You must file proof of service within 45 calendar days or your case may be dismissed. If proof of service is not timely filed or your case is not concluded within 65 days of the date the defendant was served, the court may dismiss your case unless it finds a good reason not to.
- **DEFENDANT:** You must file a written answer and mail a copy to the plaintiff. Otherwise, judgment may be entered against you. If you have a claim against the plaintiff, even if it is based on a different event than described in the complaint, you may file a counterclaim and must mail a copy to the plaintiff.
- **BOTH PARTIES:** You must provide supporting evidence for your claims and defenses and must appear at all scheduled hearings or alternative dispute resolution conferences.
- A justice of the peace or a hearing officer with specialized training will conduct the hearing. You should be prepared to clearly present your evidence. Although you may be permitted to appear telephonically if needed, you must submit all evidence to the court before the hearing. If you fail to appear at a hearing, the court may enter a judgment against you. To ensure that you receive these notices, you must keep the court informed, in writing, of your current address and telephone number until the lawsuit is over.
- You must follow the Arizona Revised Statutes and Arizona Rules of Small Claims Procedure that apply in your lawsuit. The statutes and rules are available in many public libraries and at the courthouse. The statutes are also online at the [Arizona State Legislature](#) webpage, and the rules are online at the [Arizona Judicial Branch Court Rules](#) webpage.
- You must properly complete court papers and file them when they are due. Blank forms are on the [Arizona Judicial Branch](#) website and available from any justice court.
- Some filings require a filing fee. Parties can request a fee waiver or deferral from the court but must still file documents on time.
- Court staff cannot give legal advice but can provide information about jurisdiction, venue, pleadings, and procedures for the small claims division of the justice court.
- **There are no attorneys in a small claims lawsuit unless the parties agree in writing.** Individuals usually represent themselves. One spouse may represent both spouses. A full-time corporate officer or authorized employee may represent a corporation; an active general partner or an authorized full-time employee may represent a partnership; an active member or an authorized full-time employee may represent an association; and any other organization may be represented by one of its active members or authorized full-time employees.
- **Parties cannot appeal a small claims judgment.** Parties may request to transfer the lawsuit from small claims to the regular civil division of the justice court. A transfer will allow:
  - Attorney representation without written agreement;
  - Counterclaims for more than \$3,500;
  - Motions that are not permitted in small claims lawsuits;
  - A jury trial; and
  - An appeal.