

The attached draft of new Small Claims rules was widely circulated prior to the August 15th Committee meeting. This draft eliminates the requirement that the Defendant file an answer. At the August 15, 2017 meeting of the Committee on Improving Small Claims Case Processing, committee members voted to modify the current draft rules. The first modification adds the answer back into the small claims process. The committee members also voted that the courts should be required to send a notice to the defendant if an answer is not filed within a certain timeframe after the answer due date. Timeframes for the answer due date and court notice are yet to be determined by the committee. The committee will meet again in late September/October to discuss these timelines.

Rule 1. Small Claims Lawsuit

- (a) **Definition of a “Small Claims Lawsuit.”** A “small claims lawsuit” is an elective, simplified procedure for a lawsuit in which the debt, damage, or value of property is not more than \$3,500. A “small claims lawsuit” also includes lawsuits where a party asks the court to void or rescind a contract, or requests other relief involving an amount of \$3,500 or less.
- (b) **Purpose of the “Small Claims Division.”** The purpose of the justice court’s “small claims division” is to provide a process for the inexpensive, speedy, and informal resolution of small claims lawsuits. Courts and parties should interpret these rules liberally and consistently with this purpose.
- (c) **Representation.** A.R.S. § 22-512 governs who may represent a party in a small claims lawsuit. Attorneys may not represent a party in a small claims lawsuit unless all of the parties agree to it. A corporation, partnership, association, or any other business or organization, must file a notice stating the name of an authorized person who will appear in court on its behalf.
- (d) **No Jury and No Appeal.** A party does not have a right to a jury trial or to appeal the judgment in a small claims lawsuit.
- (e) **Rules and Statutes.** These rules and the Arizona Revised Statutes (“A.R.S.”) Title 22, Chapter 5, Article 1 govern procedures for small claims lawsuits.

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, a business, or another organization.
- (b) **Plaintiff.** A plaintiff is the party who files a small claims lawsuit. The plaintiff must be a party to the original transaction that forms the basis of the lawsuit. A plaintiff must use his/her/its correct legal name when filing a lawsuit.
- (c) **Defendant.** A defendant is the party who is sued. Each defendant must be sued by the correct legal name.

Rule 3. Phone Numbers and Email Addresses

All parties must provide the court with a physical address, email address, and cell phone number. The court may use this information to communicate with the parties about their case by mail, email, text message, and phone.

Rule 4. 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.

Rule 5. Where to File a Small Claims Lawsuit

The plaintiff must file a complaint in the justice court precinct (the “venue”) where the defendant lives or where the claim occurred.

Rule 6. Plaintiff Must File a Complaint

- (a) **The Complaint.** A small claims lawsuit starts when a plaintiff files a small claims complaint. The complaint must be legible and must briefly state the plaintiff’s reasons for the claim against each defendant. The complaint must include a statement indicating whether the defendant is in active military service. The plaintiff must pay a fee to the court to file a complaint, although the court may waive this fee if it presents a financial hardship. The amount of all claims in the complaint cannot be more than \$3,500.
- (b) **Claim for More Than \$3,500.** If the amount in the plaintiff’s complaint is more than \$3,500, the plaintiff must file the lawsuit in the justice court’s “civil division” and not in the “small claims division.” A plaintiff may not avoid this requirement by splitting a claim for more than \$3,500 into several smaller claim amounts.
- (c) **Amendments.** No amended complaints will be allowed. A plaintiff can choose to dismiss the complaint and file a new lawsuit.
- (d) **Settlement.** The plaintiff has a responsibility to notify the court if the lawsuit settles before the hearing date.

Rule 7. Plaintiff Must Serve the Summons, Complaint, and Notice on Each Defendant

- (a) **Summons.** The summons is an order that requires the defendant to appear for a hearing. The court will set a hearing date when the plaintiff files a complaint. The court will write the hearing date on the summons and return the summons to the plaintiff. The court will provide one summons for each defendant named in the complaint. The hearing date, or an alternative dispute resolution conference under Rule 10, will be between 45 and 60 days after the filing date of the complaint.
- (b) **Notice to the Plaintiff and Defendant.** Before serving the summons and complaint, the Plaintiff must attach to each summons a “Notice to the Plaintiff and Defendant” (“notice”) as shown in Appendix 1.

- (c) **Serving the Defendant: When.** The plaintiff must serve the defendant with copies of the summons, complaint, and notice at least 15 days before the hearing date.
- (d) **Serving the Defendant: How.** The plaintiff must serve the summons, complaint, and notice on each defendant as provided by this rule.
- (1) ***Certified Mail.*** The plaintiff may serve the defendant by certified mail, with a “return receipt requested.” When the post office returns the return receipt card to the plaintiff, the plaintiff must promptly file it with the court to establish that the defendant was “served.”
- (2) ***Constable, Sheriff, or Private Process Server.*** If the defendant cannot be served by certified mail, the plaintiff must arrange for personal service on the defendant by a constable, sheriff, or private process server. The constable, sheriff, or private process server will file written evidence of service with the court, or provide that evidence to the plaintiff, and the plaintiff must promptly file it with the court.
- (e) **Failure to Serve 15 Days Before the Hearing Date.** If the plaintiff does not timely or properly serve the summons, complaint, and notice, the plaintiff must appear in court on or before the hearing date to obtain a new summons. When the plaintiff appears, the court will continue the hearing no more than 30 days to allow additional time for service. The court also will issue a new summons with the new court date, which the plaintiff must serve on the defendant instead of the original summons, along with the complaint and notice.

Rule 8. Providing Documents to the Other Party After Service of the Summons, Complaint, and Notice

Once a defendant is properly served with the summons, complaint, and notice, any answer, counterclaim, or other document must be filed in person or by mail, and a copy must be provided promptly to the other party by mail or by electronic means.

Rule 9. Answer Not Required

A defendant may file an answer, but is not required to do so. The defendant must still appear at the hearing to dispute the claim.

Rule 10. Counterclaim

- (a) **Definition.** A counterclaim asserts that the plaintiff owes something to the defendant.
- (1) The defendant must file a counterclaim if it is based on the same event described in the plaintiff’s complaint.
- (2) The defendant may file a counterclaim if it is based on an event different than the one described in the plaintiff’s complaint.

- (b) **Limit on the Dollar Amount.** The amount of the counterclaim cannot be more than \$3,500. If the defendant files a counterclaim for more than \$3,500, the court must transfer the plaintiff's claim and the defendant's counterclaim to the justice court's "civil division." A counterclaim that is more than \$10,000 will result in a transfer of the entire lawsuit to the superior court.
- (c) **Filing Fee.** The defendant must pay a fee to the court to file a counterclaim, although the court may waive this fee if it presents a financial hardship.
- (d) **When to File.** The defendant must file a counterclaim at least 10 days before the hearing date.
- (e) **Mailing to the Plaintiff.** The defendant must promptly mail a copy of the counterclaim to the plaintiff or send a copy electronically.

Rule 11. Defendant Can File a Motion to Change Venue

If the lawsuit was not filed in the correct justice court precinct, the defendant may file a motion at least 15 days before the hearing to change the venue of the lawsuit. The defendant must mail a copy of the motion to the plaintiff, and 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.

Rule 12. Either Party Can Transfer the Lawsuit to the Civil Division

- (a) **Transfer to Civil Division by Request.** Either party can file a request to transfer the lawsuit to the justice court's "civil division."
- (b) **Time for Filing a Request to Transfer.** A party must file the request to transfer the lawsuit to the justice court's "civil division" no later than 15 days before the hearing date.
- (c) **Voluntary Dismissal After Transfer to Civil Division.** If the defendant files a request to transfer the lawsuit to the justice court's "civil division" and has not filed a counterclaim, the plaintiff, if he/she/its does not want the lawsuit to proceed in the civil division, has 15 days after the defendant files the transfer request to voluntarily dismiss the lawsuit.

Rule 13. Alternative Dispute Resolution Conference

If a county has an Alternative Dispute Resolution ("A.D.R.") program, and if the lawsuit is not settled at the A.D.R. conference, the court will set a hearing that will occur within 45 to 60 days after the conference.

Rule 14. The Hearing

- (a) **Hearing Officer.** A party may ask 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, and mail a copy to the other party, a request to reschedule the hearing. 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 lawsuit will be dismissed without prejudice.

(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 fails to appear, is on active military duty, and has not made an appearance in the case, the court 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) Appearing by Telephone. For a good reason, a party may appear at a hearing by telephone. The party must file a request to appear by telephone at least 15 days before the hearing date. The request must contain that party's telephone number. The party must attach to the request any documents, photographs, or other evidence the party wants to submit at the hearing. If the court approves the request, the court will provide a phone number that party must call to appear telephonically for the hearing.

(e) Conducting the Hearing. The justice of the peace or hearing officer will consider testimony from the parties and witnesses, will consider any documents, and will decide the claim and any counterclaim. The justice of the peace or hearing officer may ask questions, and also may permit the parties to ask questions of each other and of any witnesses. Formal rules of evidence do not apply.

Rule 15. Requesting an Interpreter or Special Accommodations

The court must be notified of requests for an interpreter or special accommodations at least 15 days before a court date.

Rule 16. Judgment

- (a) **Definition and Requirements.** A “judgment” is a final written order of the court that decides the claims in the lawsuit. A judgment must be signed by a justice of the peace or hearing officer and filed with the court.
- (b) **Time for Mailing a Judgment.** A justice of the peace or hearing officer may enter 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. The judgment is final and binding on both parties.
- (c) **Correcting a Judgment.** Either party may request the court to correct the judgment if a name is misspelled, there is a misstatement of a fact, or there is a miscalculation of an amount.

Rule 17. Vacating a Judgment

A party may file a motion to vacate a judgment if the party believes the judgment was entered in error, or if there is a good reason that a party failed to appear at the hearing. The motion must be filed within a reasonable time. The other party has 15 days to file a response to the motion and to mail a copy of the response to the moving party. The court then will review the motion and notify both parties by mail of its ruling.

Rule 18. Dismissing a Lawsuit

- (a) **Dismissal by the Court.** If the lawsuit is not concluded within 180 days of filing, the court must dismiss the lawsuit.
- (b) **Dismissal by the Plaintiff.** If the defendant has not filed a counterclaim in the lawsuit, the plaintiff may dismiss the complaint by filing a notice of voluntary dismissal. The plaintiff must mail a copy of the voluntary dismissal to the defendant on the date of filing.
- (c) **Dismissal by Agreement.** At any time before the hearing, the parties may agree to dismiss the lawsuit by filing an agreement to dismiss that is signed by all the parties.

Rule 19. Enforcing a Judgment

Payment of the judgment is due when the judgment is filed. A judgment from a small claims lawsuit may be enforced like any other civil judgment in the justice court. The prevailing party may request the court to issue a writ of execution or a writ of garnishment, or request that the court conduct a judgment debtor exam. An attorney may appear for enforcement proceedings.

Rule 20. Forms

- (a) Blank forms for a small claims lawsuit are available on the Arizona Judicial Branch website and are available from any justice court. The parties must use these forms when filing documents in the small claims division

(b) The Administrative Director of the Administrative Office of the Courts is authorized to modify small claims forms in response to changes in state laws or procedures, to make other necessary administrative amendments or technical corrections, or to add or delete forms as the Director may deem appropriate.

(c) Small claims forms are:

- (1)** complaint;
- (2)** summons;
- (3)** proof of service by certified mail;
- (4)** answer
- (5)** counterclaim
- (6)** motion [for a motion to change venue (Rule 8) or a motion to vacate judgment (Rule 14)];
- (7)** request [for example, a request to transfer a lawsuit to the justice court civil division, or a request to postpone the hearing];
- (8)** affidavit regarding military service;
- (9)** subpoena.

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

Read this notice carefully.

1. The small claims process is an inexpensive, quick, and informal way to resolve civil disputes up to \$3,500.
2. Persons in a lawsuit are called “parties.” There is a “plaintiff” and a “defendant”. A “plaintiff” is someone who files a lawsuit against a “defendant.”
3. Individuals represent themselves in a small claims lawsuit. There usually are no attorneys. One spouse may represent both spouses. A full-time 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.
4. **You do not have a right to an appeal from a small claims judgment.** The defendant may request a transfer of the lawsuit from the Small Claims Division to the regular Civil Division of the justice court. A transfer will allow:
 - (1) Either party to have an attorney;
 - (2) The defendant to file a counterclaim for more than \$3,500;
 - (3) Parties to file motions that are not permitted in small claims lawsuits.
 - (4) Parties to have a jury trial; and
 - (5) A party to have the right to appeal.
5. You must properly complete your court papers and to file them when they are due. Court staff are not allowed to give you legal advice. However, court staff can provide information regarding the jurisdiction, venue, pleadings, and procedures of the small claims division.
6. You must follow the Arizona Revised Statutes and Small Claims Rules of 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.
7. The court requires a filing fee for plaintiffs filing a complaint and for defendants filing a counterclaim. If either party cannot afford to pay a filing fee, the party can request a fee waiver or deferral from the court, but the party must still file documents on time.
8. PLAINTIFF: When you file your lawsuit, the court will provide you with a summons and a copy of this notice. You must serve these items and a copy of your complaint on the defendant. **A lawsuit against the defendant cannot proceed without proper service.** Methods of service can be found in Rule 7.
9. DEFENDANT: You may bring a claim against the plaintiff if you have one. A defendant who files a counterclaim must mail a copy to the plaintiff.
10. BOTH PARTIES: The hearing date will be on the summons. You must appear at the time and place specified in the summons. Both parties MUST appear at the small claims hearing and provide supporting evidence for their claims and defenses.
11. A justice of the peace or a hearing officer who has received specialized training will conduct the hearing. You should be prepared to clearly present your evidence. Although you may be permitted to appear telephonically for reasons such as no longer residing in the area, it would present a financial hardship, etc., you may be at a disadvantage since all evidence must be submitted to the court before the hearing. If you fail to appear at a hearing, the court may enter a judgment against you. To assure 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.