

JUSTICE COURT COMPLAINT AND SUMMONS INSTRUCTIONS

If you want to file a Civil Complaint . . .

In situations where a civil dispute arises, the justice court offers grounds for a civil lawsuit within its jurisdictional limit. Jurisdiction means the kinds of cases a court has the authority to hear. In justice court, you may file a civil lawsuit claiming an amount **UP TO AND INCLUDING \$10,000.00**. You may also ask for reimbursement of court costs and/or attorney's fees. Court costs include, but are not limited to filing and service fees.

If you wish to file a civil lawsuit for an amount of \$10,000.00 or over, you must file your case in the Superior Court.

Please STOP...

- If you are suing for more than \$10,000.00
- If this case:
 - Involves a claim of defamation by libel or slander
 - Is (an eviction) for forcible or unlawful detainer
 - Involves a claim for specific performance
 - Is part of a class action suit
 - Seeks injunctive relief

Please PROCEED...

- If you are suing for \$10,000.00 or less
- If you are filing within the correct venue (either the defendant's residence or where the transaction transpired)

FORMS Needed...

- Civil Complaint & Summons

INSTRUCTIONS:

- 1) Read the Information for Civil Cases.
- 2) Check the venue for your claim on the court precinct map. You are responsible for filing your case in the correct court.
- 3) Complete the forms and make copies of the Civil Complaint and the Civil Summons. Make 3 copies of each form if you are filing against one person or a company. Make 4 copies if you are filing against two persons (such as a married couple).
- 4) Bring the original form and copies to file with the court clerk and pay the filing fee.
- 5) Serve the forms on the defendant(s). You may serve by any method of service available by Arizona Rules of Civil Procedure, Rule 4, including process server.

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS A NOTICE OF CHANGE OF ADDRESS form must be filed with the court when a party changes their address.

INFORMATION FOR FILING A CIVIL CASE IN JUSTICE COURT

IF YOU ELECT TO REPRESENT YOURSELF

You have a responsibility to yourself and to the court to acquire a sufficient knowledge to complete the forms properly and to follow your lawsuit to conclusion. There are certain steps you must follow to pursue it properly. This information is provided to assist you in general procedure. You may also want to refer to the Arizona Revised Statutes (ARS) and Arizona Rules of Court (ARCP) for additional information. The Statutes and Rules may be viewed online @ www.azleg.gov or may be found at your local library.

CLERK DUTY

The clerks in the Justice Court are not attorneys and cannot give legal advice. The clerks' responsibility is to take your court filing and to provide forms and explain court procedures. It is not the clerks' responsibility to advise you if you have a legal claim. The clerk is not responsible for any error you may make in asserting or defending the claim. The court does not take sides or render an opinion regarding the merits of a claim.

COURT FEES

Filing fees are payable at the time of filing. Refer to the Court's posted schedule of fees. (ARS 22-281A)

JURISDICTIONAL LIMIT

Jurisdiction means the kinds of cases a court has authority to hear. In Justice Court, you may file a lawsuit involving damages up to and including \$10,000.00. A larger claim may be reduced to less than \$10,000.00 and the remaining amount waived.

Reimbursement of court costs and/or attorney's fees may be claimed in addition to the \$10,000.00 maximum. Court costs include, but are not limited to filing and service fees. (ARS 22-201)

VENUE

Venue means the proper geographical area (the precinct) in which a lawsuit may be filed. You must file the lawsuit where the defendant resides or does business or where the cause of the lawsuit occurred.

CHANGE OF VENUE

A motion for change of venue for improper venue must be filed prior to filing the answer, or venue is waived. If a motion is filed alleging that the lawsuit is filed in the wrong precinct and the court orders a change of venue, the case will be transferred to the proper precinct. If you oppose a motion for change of venue you must file an objection in writing within ten days after service of the motion. (ARS 12-404A)

Venue may be proper in more than one precinct, however if, after hearing, the original venue is found to be wrong additional fees may be assessed to the plaintiff. (ARS 12-407)

ATTORNEYS

An Attorney may represent either party. With few exceptions, the Arizona Rules of Civil Procedure (ARCP) for the Superior Courts of Arizona are followed in the Justice Courts. (ARS 22-211)

PARTIES

Every lawsuit shall be prosecuted in the name of the real party in interest. Be sure that you have named the correct party. Refer to the HOW TO DESIGNATE A PARTY handout attached.

INDIVIDUALS An individual named in a lawsuit may represent him/herself. One spouse cannot represent the other. If both husband and wife are named as parties, both must answer the complaint (as evidenced by the signature of both on the pleadings). If one party fails to answer or appear he/she may be subject to a judgment by default.

CORPORATIONS A corporation authorized to transact business in the State of Arizona is required to maintain a statutory agent upon whom process (court papers) may be served.

The name and address of the statutory agent may be obtained by calling the Corporation Commission at (602) 542-3026, or checking the web site at <http://www.azcc.gov/>.

When filing against a corporation, it is recommended that you contact the Corporation Commission and obtain the correct corporate name and the name and address of its statutory agent. (CAUTION: The statutory agent is not the defendant. The statutory agent is the party upon whom service may be made on behalf of the corporation).

UNINCORPORATED BUSINESSES When filing on behalf of, or against an unincorporated business, it is necessary that the true name or names of the party doing business under that business name be shown as the plaintiff or defendant. This information may be obtained by calling the Secretary of State.

PARTNERSHIPS A partnership may sue, or be sued, in the name that it has assumed or by which it is known. A partner may appear and represent his own partnership interest, but cannot represent the partnership or the interest of other partners unless he/she is an attorney.

PLEADINGS shall set forth a short and plain statement. (ARCP 8(a))

- 1) Upon which the court's jurisdiction depends.
- 2) Upon which the court's venue depends.
- 3) Showing the pleader is entitled to relief.
- 4) A demand for judgment for the relief sought.

EXAMPLES

I am claiming damages against the defendant in the amount of \$10,000.00.
(jurisdiction)

The defendant resides in the South Phoenix Precinct, (or, The lawsuit occurred in the South Phoenix Precinct). (venue)

The defendant owes me money because ... (legal entitlement to claim)

Wherefore, the plaintiff requests that the court enter judgment in his favor in the sum of ... (demand)

SERVICE OF SUMMONS AND COMPLAINT

Service is the delivery of a legal document notifying a person of legal lawsuit taken against him or her. In addition to any other available methods as provided by ARCP Rule 4.1, service of the summons and complaint may be by a private process server. The fees of a private process server are regulated by statute. The process server may ask for payment in advance or may bill you for the cost of the service. You are to make payment arrangements directly with the process server for the services performed. (ARCP 4)

EACH NAMED DEFENDANT MUST BE SERVED A COPY OF THE COMPLAINT/ SUMMONS.

YOUR LAWSUIT WILL BE DISMISSED IF THE SUMMONS AND COMPLAINT HAVE NOT BEEN SERVED WITHIN 120 DAYS OF THE FILING OF THE COMPLAINT. (ARCP 4(i))

SERVICE AFTER APPEARANCE

After a party has filed an appearance in a lawsuit, unless otherwise ordered by the court, all subsequent pleadings, notices and orders may be served upon the attorney of record or the appearing parties (the plaintiff or defendant) by regular first-class mail. (ARCP 5(c))

IT IS IMPORTANT THAT ALL PARTIES KEEP THE COURT APPRISED OF ANY CHANGE IN ADDRESS ...by the court and must be filed with the court when a party changes their address. (ARCP 5.1(b))

DEFAULT

A party defaults when that party fails to respond to a lawsuit within the specified time allowed. If the defendant fails to file an answer to the complaint within the time allowed, the plaintiff may apply for an entry of default against the defendant.

If a counterclaim has been filed and the plaintiff fails to file a reply to the counterclaim within the time allowed, the counter-claimant (defendant) may apply for an entry of default against the counter-defendant (plaintiff) on the counterclaim.

The party seeking the default must mail a copy of the application to the defaulting party. If the party claimed to be in default fails to file an answer or pleading or otherwise defend in the lawsuit within ten (10) judicial days of the filing of the application, the default will take effect and a default judgment will be entered against the party or parties in default.

Judgment by default may be entered by motion or by hearing. If the claim is for a specified monetary sum, the party seeking the default judgment may file an affidavit stating the amount due and a motion requesting that the court enter judgment for that amount and for costs. In other cases, the court will set the matter for hearing to determine the amount of damages and to enter judgment as evidenced at the hearing. (ARCP 55(b))

DISMISSAL

The plaintiff may dismiss the claim at any time prior to defendant filing an answer or other pleading. Once the defendant has filed an answer or other responsive pleading, both parties must stipulate to a dismissal (agree in writing).

The defendant may ask the court for reimbursement of court costs and/or attorney fees expended to defend the lawsuit. (*ARCP 41 (a)*)

FILING AN ANSWER

An answer is the defendant's response to the plaintiff's allegations as stated in a complaint.

The defendant has twenty (20) calendar days from the date of service in which to file an answer (in writing) to the complaint.

If the complaint is served out-of-state the party served has thirty (30) calendar days in which to file an answer. If served by registered mail or by publication, or if service is waived, other time limits apply.

In computing the time in which to file an answer, the date of service is not included. If the last day falls on a Saturday, a Sunday, or a legal holiday, the answer may be filed on the next immediate judicial day.

The answer should respond to each element of the complaint. (*ARS 22-216*)

FILING A COUNTERCLAIM

A counterclaim is a claim made by the defendant against the plaintiff a counter lawsuit within a lawsuit.

A counterclaim, if asserted, is filed at the time of filing the answer.

If the defendant files a counterclaim, the plaintiff (counter-defendant) has twenty (20) days from the date of service in which to file a reply (in writing) to the counterclaim. There is no fee for filing a reply to a counterclaim.

If the counterclaim exceeds \$10,000, the case will be immediately transferred to the Superior Court and appropriate filing fees will be assessed by Superior Court before processing can continue.

MOTIONS

A motion is a request made by a party asking the court to issue a ruling or an order. If a party files a motion of any kind with the court and the opposing party has objections to the motion made, those objections must be filed in writing with the court within ten judicial days of the filing of the motion. The Judge will consider the motion and any objections thereto and enter an order either granting or denying the motion. Or, on request of either party, the court may schedule an oral argument before rendering an order. (*ARCP 7.1*)

HOW TO COMPUTE TIME LIMITS

In computing any period of time, the day of the act is not included (day 1 is the day following the date of the act or event). When any period of time allowed is less than 11 days Saturday, Sundays or holidays are not

counted (*only judicial days or working days are counted*). When any period of time allowed is eleven days or more, all days are counted (*straight days*). The last day of the period of time is included in the count - but does not end until 12:00 midnight of that day. (*ARCP 6(a)*)

Whenever one party has the right or is required to respond to a filing of the other party within a specified period of time, and the notice or paper is served by mail, five calendar days (straight days) are added to the period of time. This does not apply to the mailing of a Notice of Entry of Default. (*ARCP 6(e)*)

DISCLOSURE

Disclosure is the pretrial process requiring each party to fully disclose to the other party(s) the evidence and witness testimony that will be presented in trial. Disclosure statements must be filed with the court and a copy sent to all parties within forty (40) days of the filing of the Answer. Failure to comply with disclosure may result in sanctions, dismissal or a default judgment.

Disclosure includes:

- The factual basis for each claim/defense.
- A description of the damage(s) and copies of any exhibits substantiating the dollar value of the damages.
- The legal theory upon which each claim is based
- The names, addresses and telephone numbers of all witnesses and a brief summary of the expected testimony.
- A list of documents or other evidence that supports the claim. (*ARCP 26.1*)

MEDIATION

A mediation hearing may be set to assist the parties in reaching a settlement. If a settlement agreement cannot be reached, the case will be set for trial.

A failure to appear at the scheduled mediation hearing may result in dismissal of the complaint or a judgment may be entered in favor of the party that appears.

THE TRIAL

If your lawsuit is set for trial you should educate yourself regarding court procedures and the rules regarding what evidence is admissible. The plaintiff has a responsibility to prove by the greater weight of evidence ("preponderance of evidence") that they have a legal right to the claim for damages.

Motions to continue a trial date must be in writing and filed with the court. (*ARS 22-221*)

A failure to appear at the scheduled trial date may result in dismissal and the defendant may be awarded his/her costs and/or attorney fees necessarily incurred to defend the lawsuit.

Either party can request a jury trial. Both parties will be required to exchange and submit prepared jury instructions to the court before trial. The party requesting a jury will be assessed jury fees, if judgment is not found in favor of the requesting party.

If a jury is not requested the Judge will hear the case. A person representing himself (acting as their own attorney) will be held to the same standard as an attorney. (*ARS 22-220B*)

At trial, the plaintiff will proceed first and may call witnesses and/or introduce exhibits. The defendant may cross-examine any witnesses or object to the admission of any exhibit. After the plaintiff rests, the defendant will then present his case and may call witnesses and/or introduce exhibits that may prove or defend their position. The plaintiff may cross-examine any witnesses or object to the admission of any exhibit.

After all evidence is presented, the judge or jury will decide the case.

IF YOU ARE AWARDED JUDGMENT refer to the court's handout COLLECTING A MONEY JUDGMENT.

APPEAL Either party may appeal from a Justice Court judgment by filing a Notice of Appeal within fourteen (14) calendar days of the entry of judgment. The court cannot extend the time for appeal. Refer to the court's handout NOTICE OF RIGHT TO APPEAL.

Ask the clerk for information regarding bonds and costs of appeal. (*ARS 22-261 A*)

When you are paid in full you must file a SATISFACTION OF JUDGMENT with the court. This form is available from the court.

The following checklist may assist you in processing your case. Check off each as it occurs.

PLAINTIFF CHECKLIST	DEFENDANT CHECKLIST
<p>Date COMPLAINT filed and filing fee _____</p> <p>Date SUMMONS and COMPLAINT given to server for service on defendant(s) _____</p> <p>Date COMPLAINT served _____</p> <p>Date time to ANSWER _____ 20 days after defendant served / 30 days if served out-of-state</p> <p>IF ANSWER IS RECEIVED: Date defendant files _____ Date time to file DISCLOSURE _____ 40 days after filing of Answer</p> <p>IF NO ANSWER IS RECEIVED: Date AFFIDAVIT OF DEFAULT and APPLICATION FOR OF DEFAULT filed with court and copy mailed to defendant _____</p> <p>Date time to REPLY TO COUNTERCLAIM _____</p> <p>If the defendant files a counterclaim YOU must file a reply to the counterclaim within 20 calendar days. If you fail to file a reply, the defendant may obtain a default judgment against you.</p>	<p>If you object to the venue (the precinct in which complaint was filed) you must file a Motion for Change of Venue for Improper Venue before the answer is filed.</p> <p>Date answer filed and filing fee paid _____</p> <p>Within 20 calendar days of the date you were served / 30 days if served out-of-state</p> <p><i>If you fail to file an answer, the plaintiff may obtain a default judgment against you.</i></p> <p>Date time to file DISCLOSURE _____ 40 days after filing of Answer</p> <p>Date COUNTERCLAIM filed and copy mailed plaintiff _____</p> <p>If you intend to file a counterclaim you must do so at the same time the Answer is filed. You must use the proper form and mail a copy to the plaintiff.</p> <p>Date time to REPLY _____ Date plaintiff files a _____</p> <p>IF NO REPLY IS RECEIVED Date AFFIDAVIT OF DEFAULT and APPLICATION FOR OF DEFAULT filed with court and copy mailed to plaintiff _____</p>

NOTICE TO ALL PARTIES

Default If the time to answer passes and the defendant fails to answer the complaint, or if the time to reply to a counterclaim passes and the plaintiff fails to reply to the counterclaim, you may get information and forms from the court for obtaining a default judgment.

It is required that a **VOLUNTARY DISMISSAL** be filed if the case is settled out of court.

TRIAL scheduled for _____ Bring all evidence, documents and witnesses you need to present your case or establish your defense.

Notice of Address Change All parties are responsible for informing the court of a current address.

Collecting the Judgment Award If you are not able to make arrangements with the losing party to collect your judgment, you may seek a Writ of Execution, a Writ of Garnishment, or an Order for Supplemental Proceedings (debtor's examination). You may ask the court clerk for the necessary form.