

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:	Type of Action Requested:	Subject:
December 14, 2017	<input checked="" type="checkbox"/> Formal Action/Request <input type="checkbox"/> Information Only <input type="checkbox"/> Other	Recommendation for Pilot Project from Committee on Improving Small Claims Case Processing

FROM:

Honorable Steven McMurry, Encanto Justice Court
Marretta Mathes, AOC

DISCUSSION:

On November 16, 2016, the Committee on Improving Small Claims Case Processing was established by Administrative Order No. 2016-115. The Committee is charged with developing recommendations, including rule amendments or pilot projects, to reduce the time required to resolve small claims cases in Justice of the Peace courts.

The purpose of this presentation is to:

- Provide a copy of draft Rules for Small Claims Actions for the Council's review; and
- Provide information and framework for proposed pilot project

RECOMMENDED COUNCIL ACTION:

Approve the proposed rules for use in a pilot project for Small Claims cases.

Report and Recommendations of the Committee on Improving Small Claims Case Processing



*Submitted to the
Arizona Judicial Council
December 2017*



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MEMBERSHIP LIST
COMMITTEE ON IMPROVING SMALL CLAIMS CASE PROCESSING

Chair

Hon. C. Steven McMurry
Encanto Justice Court, Maricopa County

Hon. Timothy Dickerson
Justice of the Peace
Sierra Vista Justice Court, Cochise County

Mr. Jonathan Bearup
Superior Court Administrator
Gila County

Mr. Mike Hellon
Small Claims Hearing Officer
Pima County

Hon. Lisa Royal
Court Administrator
Pima County Consolidated Justice Court

Mr. Paul Julien
Judicial Education Officer
Education Services Division, AOC
Judge Pro Tem

Hon. William Rummer
Justice of the Peace
Mayer Justice Court, Yavapai County

Mr. Doug Kooi
Public Member
Pima County

Hon. David Widmaier
Justice of the Peace
Pinetop-Lakeside Justice Court, Navajo County

AOC Staff

Ms. Marretta Mathes
Court Services Specialist
Court Services Division

Ms. Catherine Clarich
Caseflow Management Manager
Court Services Division

Ms. Lynn Golden
Administrative Assistant
Court Services Division

ACKNOWLEDGMENTS

I want to extend my sincere appreciation to the members of the Committee on Improving Small Claims Case Processing for their time and efforts in addressing the challenges presented in small claims case management in Arizona. We had some lively meetings. We did not always agree. But, as a result of everyone's dedication and input, I am pleased to present this report and recommendations for improved small claims case management in Arizona.

Honorable C. Steven McMurry
Committee Chair

INTRODUCTION

On October 17, 2012, the Steering Committee on Arizona Case Processing Standards (“Steering Committee”) was established by Administrative Order 2012-80. The committee was charged with reviewing the national model time standards for all major case types in the limited and general jurisdiction courts and developing case processing standards for Arizona. The review of major case types included small claims cases filed into Arizona’s Justice of the Peace courts.

The Steering Committee recommended that the following case processing standard for small claims cases:

- 75% of cases disposed within 100 days,
- 90% of cases disposed within 150 days, and
- 98% of cases disposed within 180 days.

The Supreme Court adopted this standard as final by Administrative Order 2016-50, effective August 1, 2016.

A review of the time standards data for small claims cases in Arizona’s Justice of the Peace courts revealed that courts were having trouble in meeting the time standards adopted for this case type.¹ Accordingly, the Steering Committee recommended that this case type be examined in greater depth and to recommend any rule amendments or pilot projects which would assist to reduce the time required to resolve small claims cases. As such, the Committee on Improving Small Claims Case Processing was established by Chief Justice Scott Bales on November 2, 2016 by Administrative Order 2016-115.

One challenge the committee faced in developing recommendations is that almost all litigants in small claims cases are self-represented litigants, many of whom have no familiarity with the small claims process or court processes generally. With that, many litigants do not know how to proceed with litigation to move a case forward, e.g., process of service, application for default, request for judgment, etc.

Another challenge posed is that many courts do not actively monitor small claims cases to dismiss pending cases due to inactivity. To further complicate matters, while the Arizona Justice Court Rules of Civil Procedure provide a process for dismissing cases that have not had service within 120 days of filing, neither the rules or statutes provide guidance for cases that have had service executed but have no further activity. More specifically, no explicit authority is provided in the Arizona Justice Court Rules of Civil Procedure or the Arizona Revised Statutes to dismiss a case for lack of prosecution after service has been executed.

The final challenge the committee faced in developing recommendations is the diverse nature of the jurisdictions the courts serve. Arizona has large urban, mid-sized, and small courts, all of which have varying volumes and methods for disposing of small claims cases. For example, in some precincts, small claims hearing officers hear all small claims matters, while these matters in other precincts are heard by the Justice of the Peace. Additionally, the number of small claims cases filed varies greatly from court to court and from county to county. This was an important

¹ A chart of the data can be found in Chart A in Appendix B.

factor for committee consideration since most justice courts in Arizona have only one Justice of the Peace to hear all matters.

Given the varying resources, caseload sizes, and the diverse nature of courts statewide, the committee has developed recommendations to pilot a proposed set of court rules it believes are realistic and reasonable and will accomplish the committee's charge of developing recommendations to reduce the time to disposition of small claims cases in Arizona's Justice of the Peace courts.

FORMATION AND COMPOSITION OF THE COMMITTEE

Chief Justice Scott Bales established the Committee on Improving Small Claims Case Processing November 2, 2016. The committee is comprised of leaders from the justice courts, court administrators, and public members.

WORK OF THE COMMITTEE

The committee was charged with developing recommendations, including proposed rule amendments or pilot projects, to reduce the time required to resolve small claims cases in Arizona's Justice of the Peace courts. The committee considered statutory requirements, court rules, court jurisdiction, model systems in other states and any other relevant factors in making its recommendations.

To address the issues surrounding small claims cases, the committee began by acknowledging that there is very limited guidance and authority for small claims case processing that exist in the Arizona Rules of Court and in the Arizona Revised Statutes. Specifically, the Arizona Rules of Court make only two provisions in the Justice Court Rules of Civil Procedure applicable to small claims cases, namely Rule 113(i) concerning dismissal due to lack of service and Rule 140 concerning the entry of default judgements.

Additionally, although the Arizona Revised Statutes dedicate an entire chapter of Title 22 to small claims cases, they do not address all circumstances or provide guidance for all scenarios that frequently arise in small claims cases. Accordingly, the committee agreed that due to the unique nature of small claims cases and the ideology that small claims cases, by statutory definition, are intended to be "inexpensive, speedy, and informal", there should be a new designated set of rules tailored to processing these cases.

The committee also agreed that the courts must do a better job at the outset of informing litigants about what is required once a small claims case is filed. Specifically, the idea is to make the system more user-friendly so that self-represented litigants can navigate the system and resolve cases without delay.

The committee chair asked that each member draft and submit a "short, simple" set of rules for small claims cases. The drafts submitted were compiled, and the members made revisions and discussed provisions that were important to efficient case processing on a statewide basis for litigants, as well as the courts.

The members also drafted a “Notice to Plaintiff and Defendant” that details the responsibilities of each party during small claims litigation. Committee members agreed that this document should be included in the Rules of Court and should be required to be served to all defendants.

After several discussions and revisions regarding the draft rules, the committee reviewed data on the causes of delay in small claims cases to determine whether the draft rules produced would effectively resolve the problems posed.²

The data analyzed represents 410 of 705 (58%) cases that took more than 100 days to dispose in fiscal year 2016 from 13 justice courts throughout the state.³ The most notable causes of delay are as follows:

- 42% of cases not dismissed for lack of service. Case age ranged from 104 – 3,464 days, an average case age of 755 days.
 - *Rule 113(i), Justice Court Rules of Civil Procedure indicate that these cases should have been dismissed at 120 days so long as the plaintiff was notified of the intent to dismiss at least 20 days prior to dismissal.*
- 10% of cases had delays in hearings set (or no hearing set) after a response was filed. Case age ranged from 102 – 4,051 days, an average case age of 387 days.
 - *A.R.S. § 22-515 states “On the filing of an answer by the defendant . . . [t]he hearing shall be set for a date within sixty days of the filing of the defendant's answer.”*
- 19% of cases had delayed or no application for entry of default filed. Case age ranged from 103 – 4,059 days, an average case age of 683 days.
 - *A.R.S. § 22-514 provides the defendant 20 days to file an answer. Rule 140(b), Justice Court Rules of Civil Procedure, allows the plaintiff to file an application for entry of default if the defendant has not answered within this timeframe.*
- 6% of cases had delayed or no motion for judgment after an application for entry of default was filed. Case age ranged from 102 – 3,241 days, an average case age of 633 days.
 - *Rule 140(b), Justice Court Rules of Civil Procedure, allows the plaintiff to request the entry of a default judgment if no response is filed by the defendant within 10 days of the application for entry of default filing date.*

The committee’s initial draft rules did not adequately offer resolution to the issues outlined above. Accordingly, the committee reviewed other states’ small claims processes to gain a better

² The full data reviewed can be found in Chart B Appendix B.

³ It should be noted that while this particular data does not include Maricopa County Justice Courts or Pima County Justice Courts, the time standards data for courts in these two counties reflected time to disposition percentages similar to the statewide time to disposition percentages.

understanding of the similarities and differences as compared to Arizona's process, and what has proved successful in other states. Two of the main findings were:

- 1) Almost half of the states (at least 23 states) do not require a written response from the defendant, and
- 2) At least 19 states set the hearing (trial) date at the time the complaint is filed.

As to the first difference, committee members agreed that many times a written response does not offer sufficient information or adequate notice to the plaintiff of any defenses that the defendant may raise at trial, rendering a written response somewhat useless to the plaintiff. Additionally, requiring a written response from a self-represented litigant may, in fact, preclude or intimidate some defendants from appearing at a hearing, who otherwise would if there is not the requirement to file a formal response.

As to the second difference, committee members agreed that apart from civil cases, small claims is the only justice court case type that does not have a hearing date set in advance. Specifically, all civil traffic, criminal traffic, criminal, and eviction actions filed into Justice of the Peace courts have return dates that are given to all parties until the case is disposed.

Not having a future return date set at the outset of a small claims case filing is contributing to the state's low disposition rates. Specifically, because cases are being filed and do not have a future court date set, many cases are "falling through the cracks" if service is not filed or if a default judgment is not requested because the courts do not have the cases on their calendars.

To prevent cases from "falling through the cracks", the court can set the hearing date at the time of filing so that the plaintiff knows when to return to have their case decided. Additionally, the plaintiff would be required to serve the court date to the defendant so that the defendant knows when they would be required to appear. Setting the hearing at the time of filing would resolve the issue of the courts not timely setting hearings, as well as the courts' untimely dismissal of cases that have not had proof of service executed.

The draft rules were revised to reflect the considerations above, but committee members were not completely in agreement that setting the hearing at the time of filing would be practical for implementation on a statewide basis because some courts have a larger volume of filings than others. Moreover, historically, because there is a high no-show rate for defendants, there was concern that this process would clog the court calendar for matters that could otherwise be handled outside the courtroom setting by having the plaintiff file for default. However, it is difficult to compare the current defendant no-show rate with a process that would allow the defendant to appear in person at the hearing without having to first file a written response. Additionally, some committee members indicated that it takes less time to hold a hearing and award a judgment than it takes to review default paperwork and award a judgment.

Due to the conflicting views on statewide rules that would require courts to set a hearing at the time the complaint is filed, the committee agreed that the proposed rules and process should be piloted selected justice courts in at least two counties for a duration of 12 months.

Major changes to the process as set forth by the draft rules include:⁴

- The hearing will be set at the time the complaint is filed, within 45-60 days of the complaint filing date.
- A written response will no longer be mandatory, but the defendant will have an option to file a written response if they wish.
- Service will be required within 20 days of filing the complaint. If the plaintiff is not able to serve within this timeframe, they may return to the court on or before the court date to request an extension and a new summons for service.
- The court will not be required to wait 120 days before dismissing a case for lack of service. Specifically, if proof of service has not been received and the plaintiff fails to appear to request an extension, the court may dismiss the case without prejudice.
- A “Notice to Plaintiff and Defendant” will be required to be served to all defendants.

In order to gather input and feedback from all key justice partners regarding the small claims draft rules for Arizona’s Justice of the Peace courts, the draft rules were distributed to the State Bar of Arizona, The Morrison Institute, Southern Arizona Legal Aid, and the Arizona Commission on Access to Justice. Recipients were invited to submit comments regarding the proposed small claims draft rules. The draft rules were also presented at the September 2017 JP Association Conference.

Overall, the committee received positive feedback, reviewed the comments and made appropriate revisions.

GUIDING PRINCIPLES

As the dialogue about small claims case processing evolved, the following principles emerged:

- The small claims process should be speedy, inexpensive, and informal.
- The new, separate small claims rules should be easy for self-represented litigants to follow.
- The product of the committee should help self-represented litigants navigate and resolve their small claims cases through the system and should not be a means by which courts can simply dismiss more cases.
- The small claims rules should encourage courts to move cases forward expeditiously, reflecting the actual timeframes required for certain events statutorily mandated, existing resource limitations, and limitations contained in court rules for due process reasons.
- The small claims rules should benefit litigants on a statewide level and not disadvantage litigants in urban or rural areas.
- An effort to better educate litigants on the process, requirements, and expectations is necessary.

⁴ Timelines illustrating the differences can be found in Appendix B.

- Successful implementation of the new small claims rules requires cooperation, communication, commitment, and training from multiple parties and agencies involved in the justice process. The courts should seek an on-going dialogue with stakeholders to achieve a smooth implementation.

RECOMMENDATIONS

- The committee recommends the draft Rules of Procedure for Small Claims Cases be approved for use in a 12-month pilot project for small claims cases in selected justice courts in at least two counties.
- The committee recommends that the pilot courts work in conjunction with the Administrative Office of the Courts (AOC) to collect data to evaluate the progress and success of the pilot project.
- The committee recommends that it reconvene during the pilot project period to examine intermediate data collected.
- The committee recommends that it be permitted to file a rule petition for statewide adoption of the rules and implementation if the pilot project is successful.

FUTURE CONSIDERATIONS

The small claims case processing procedure set forth in the draft rules deviates significantly from the practice currently in place for small claims cases. The committee recognizes that the timelines set forth by the draft rules may need to be adjusted based on the data and feedback received from the pilot courts. The committee recommends that it be able to make necessary adjustments to timeframes based on feedback and data received before statewide implementation.

Some courts have a large volume of small claims cases filed by government agencies. The committee recommends that the AOC work with courts that have this unique situation to establish a case processing procedure that allows compliance with the Rules of Procedure for Small Claims Cases rules without overwhelming the normal calendars with government filings.

An Online Dispute Resolution (ODR) project is currently underway, and will likely be piloted in Small Claims cases. The committee recommends that the Rules of Procedure for Small Claims Cases be revised where necessary to accommodate ODR and other means of Alternative Dispute Resolution (ADR) programs.

CONCLUSION:

The committee recommends the following steps in the implementation of the Rules of Procedure for Small Claims cases for Arizona:

- **First**, the committee is requesting an extension of its term.
- **Second**, the draft Rules of Procedure for Small Claims Cases will be piloted in at least two counties.
- **Third**, data and feedback will be provided from the pilot courts.

- **Fourth**, the draft rules will be reviewed, along with the actual data from the case management systems, so the committee can determine whether the draft rules are practical and achieve the goal of reducing time to disposition in small claims cases.
- **Fifth**, based on this review, the committee will propose any necessary changes to draft rules.
- **Finally**, if necessary, the revised Rules of Procedure for Small Claims Cases will be presented to the Arizona Judicial Council for permission to file a rule petition.

A revision to the way small claims cases are disposed in Arizona is the first step toward reducing the time it takes to dispose of these cases. The implementation of the small claims process set forth in the Rules of Procedure for Small Claims Cases in Arizona should result in the more effective use of time by judges, clerks, litigants, and all other administrative personnel involved. For those courts that have reached a saturation point where additional resources are needed, the efficiencies gained through successful implementation of draft rules may be used as a justification for requesting additional state and local funding.

APPENDIX A: Administrative Order 2016-115

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF THE) Administrative Order
COMMITTEE ON IMPROVING) No. 2016-115
SMALL CLAIMS CASE PROCESSING)
AND APPOINTMENT OF MEMBERS)
_____)

The Arizona Judiciary’s strategic agenda, *Advancing Justice Together: Courts and Communities*, includes the goal of “Improving Court Processes to Better Serve the Public” by improving timeliness and efficiency of processing court cases.

The Justice Court Rules of Civil Procedure are applicable to all civil lawsuits filed in justice courts in Arizona, including small claims cases, which are cases in which the claim does not exceed \$3,500. In addition to these rules, the Arizona Revised Statutes establish a small claims division in each Justice of the Peace court to provide a forum for “...inexpensive, speedy, and informal resolution of small claims.” (§ 22-501, et. al.).

The Court and justices of the peace handling these cases desire to review the rules of procedure applicable to the processing of small claims cases to identify any changes that may serve to reduce the time and expense to litigants in small claims cases.

Therefore, pursuant to Article VI, Section 3, of the Arizona Constitution,

IT IS ORDERED that the Committee on Improving Small Claims Case Processing (Committee) is established as follows:

1. **Purpose.** The Committee shall develop recommendations, including proposed rule amendments or pilot projects, to reduce the time required to resolve small claims cases in Arizona’s Justice of the Peace courts.
2. **Membership.** The individuals listed in Appendix A are appointed as members of the Committee effective immediately, and ending December 31, 2017. The Chief Justice may appoint additional members as may be necessary.
3. **Meetings.** The Committee shall meet at the discretion of the Committee Chair. All meetings shall comply with the public meeting policy of the Arizona Judicial Branch, Arizona Code of Judicial Administration § 1-202.

4. **Recommendations.** The Committee shall submit its recommendations, together with proposed rule changes, to the Arizona Judicial Council no later than June 30, 2017.

Dated this 2nd day of November, 2016.

SCOTT BALES
Chief Justice

APPENDIX B: Small Claims Charts and Timelines

Chart A.

Small Claims

75% within 100 days - 90% within 150 days - 98% within 180 days

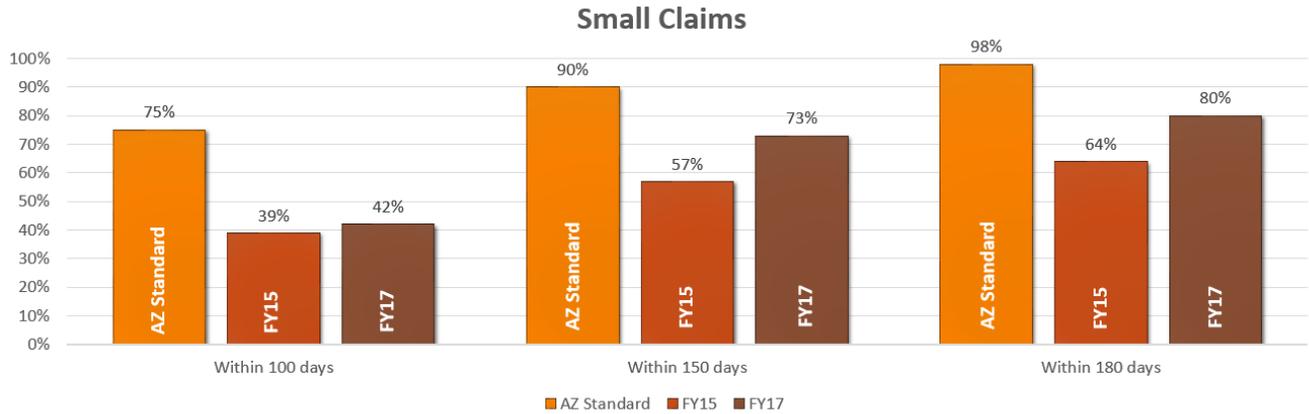
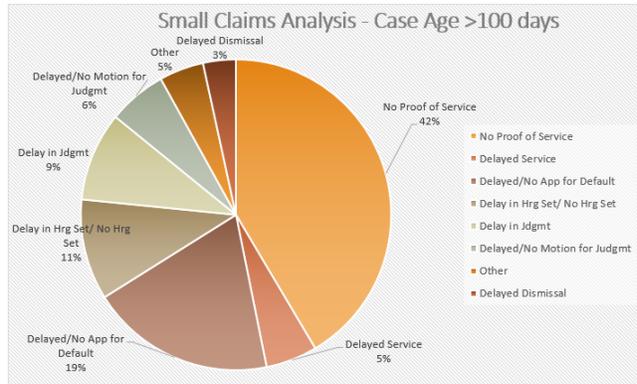


Chart B.

Small Claims Data Analysis

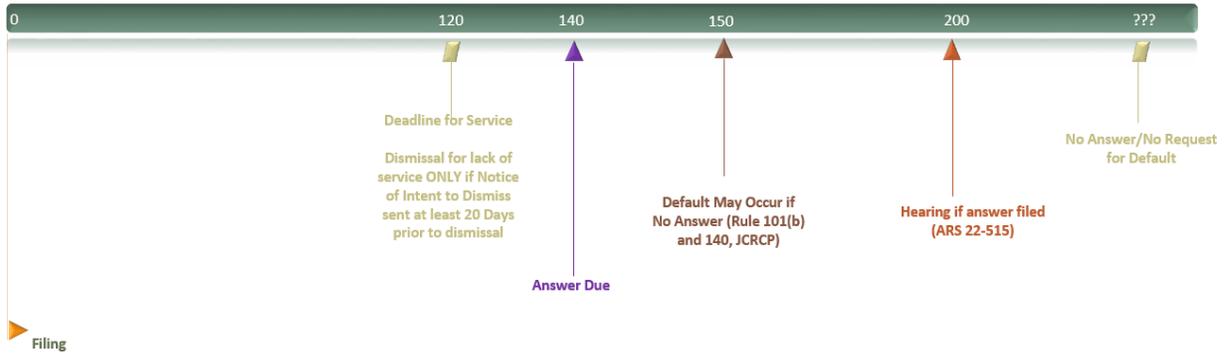


Reason for Delay	Number of Cases*	% of Cases	Age Range	Average Case Age
No Proof of Service	170	41%	104 - 3,464 days	755 days
Delayed Service	22	5%	107 - 350 days	177 days
Delayed/No App for Default	79	19%	103 - 4,059 days	683 days
Delay in Hrg Set/ No Hrg Set	43	10%	102 - 4,051 days	387 days
Delay in Jdgmt	38	9%	105 - 453 days	168 days
Delayed/No Motion for Judgment	25	6%	102 - 3,241 days	633 days
Other	19	5%	104 - 245 days	161 days
Delayed Dismissal	14	3%	105 - 3,243 days	716 days

*Reviewed 410 (58%) cases exceeding 100 days in age of the 705 cases disposed in FY16 for 13 of 81 (16%) justice courts.

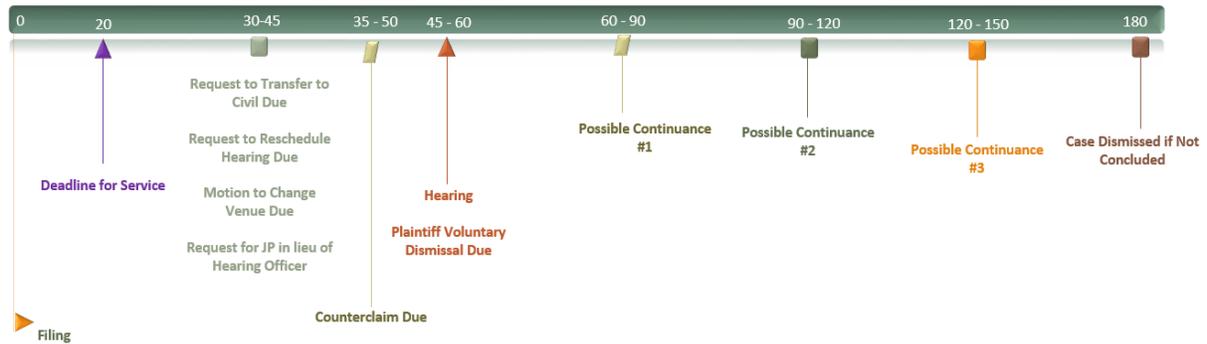
Timeline A.

Current Process



Timeline B.

Draft Rules of Procedure for Small Claims Cases



Committee on Improving Small Claims Case Processing

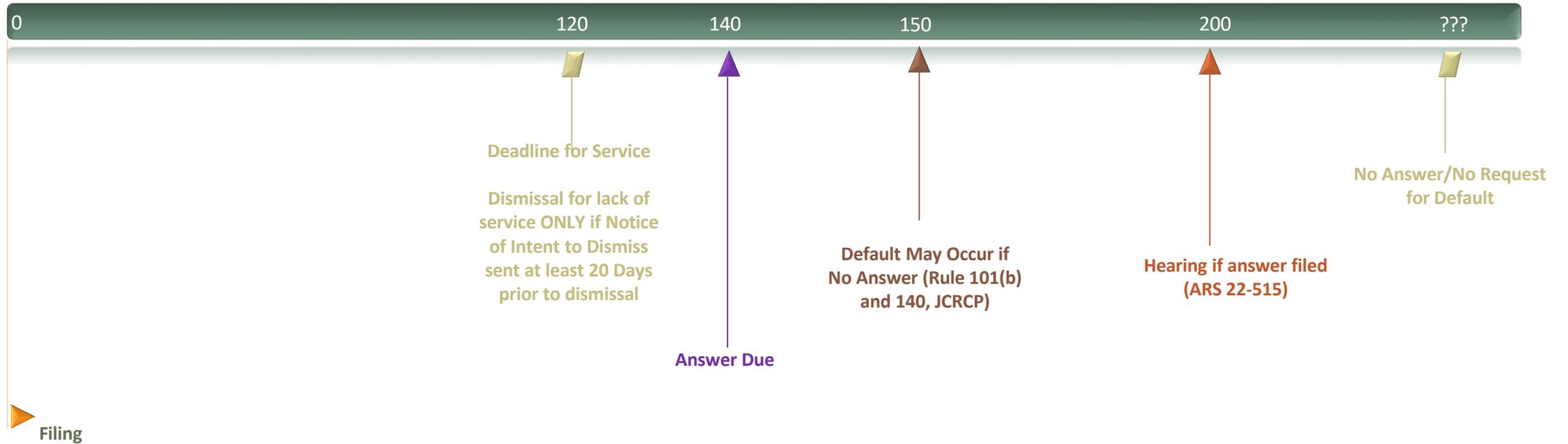
HONORABLE STEVEN MCMURRY, ENCANTO JUSTICE COURT

MARRETTA MATHES, AOC

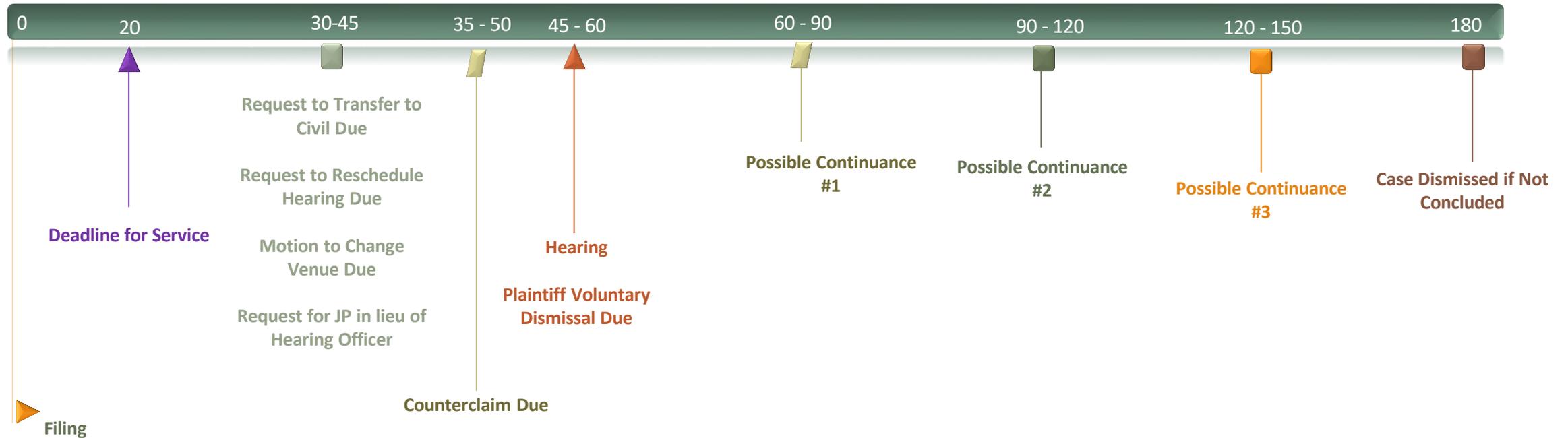
Administrative Order 2016-115

Charge: The Committee shall develop recommendations, including proposed rule amendments or pilot projects, to reduce the time required to resolve small claims cases in Arizona's Justice of the Peace courts.

Current Process



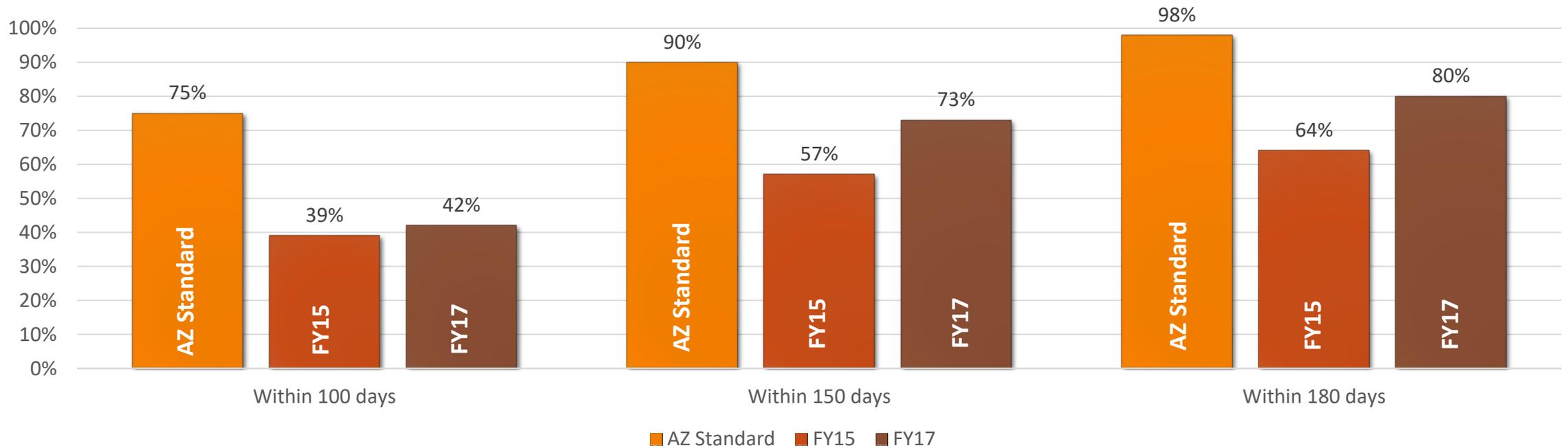
Draft Rules of Procedure for Small Claims Cases



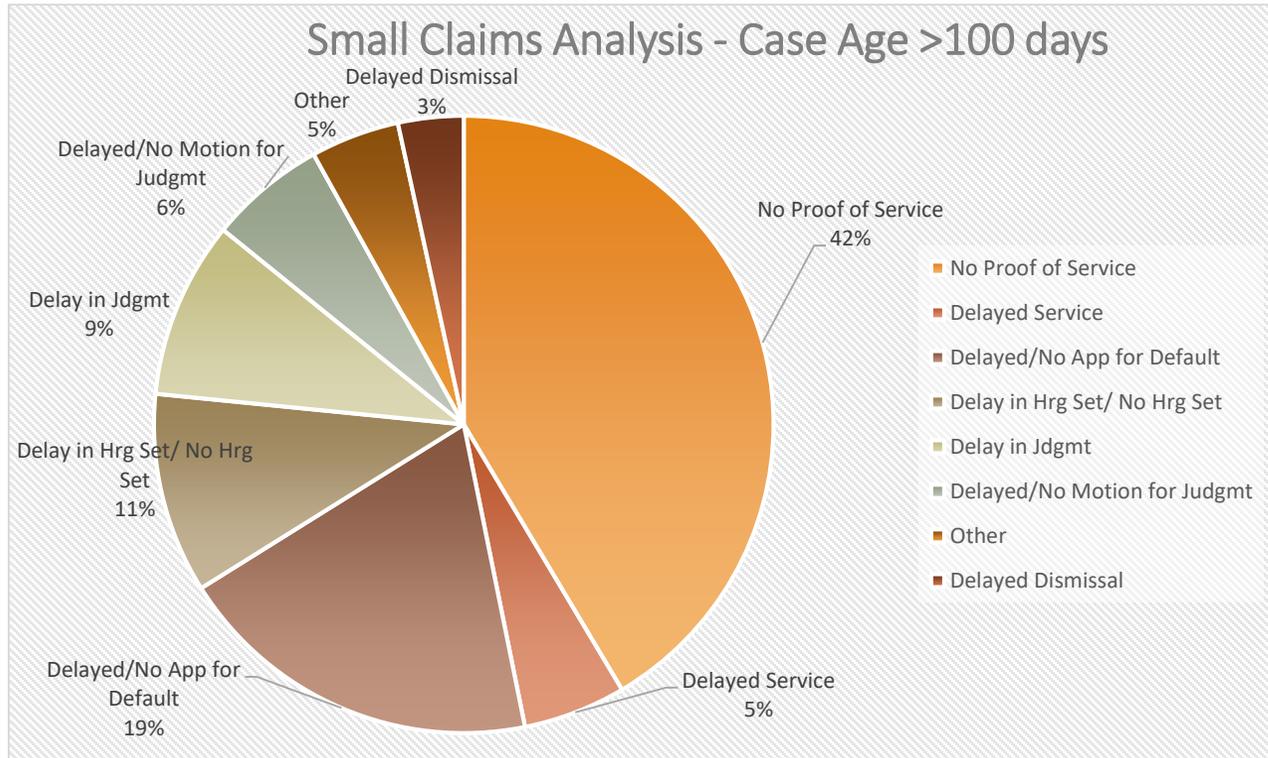
Small Claims

75% within 100 days - 90% within 150 days - 98% within 180 days

Small Claims



Small Claims Data Analysis



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*Reviewed 410 (58%) cases exceeding 100 days in age of the 705 cases disposed in FY16 for 13 of 81 (16%) justice courts.

Pilot Project Proposal

Committee is requesting approval to pilot draft rules for small claims case processing

- Pilot will include two justice courts – one urban and one rural
- Pilot will run for 12 months
- Committee will review and analyze progress and results to determine success of implementing on a statewide basis

Rules of Procedure for Small Claims Cases

**Committee on Improving Small Claims Case Processing
November 15, 2017**

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 at issue 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, 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 the party’s 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 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; Hearing Date.** 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, or an alternative dispute resolution conference under Rule 13 of these rules, will be held between 45 and 60 days after the complaint filing date.
- (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 within 20 days of the complaint filing 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 Within 20 Days of the Complaint Filing 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, if the defendant chooses to file a written answer, counterclaim, or other document with the court, the defendant must do so in person or by mail. The defendant must also promptly deliver a copy to the plaintiff 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 without filing an answer.

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. The parties must appear at any scheduled court date until they receive notice that the court has granted the motion.

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 court grants a request to transfer the lawsuit to the justice court's "civil division," and the defendant has not filed a counterclaim, a plaintiff who 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 the justice court has an alternative dispute resolution ("A.D.R.") program, the court may schedule an ADR conference in lieu of a hearing when the complaint is filed. If the lawsuit is not settled at the A.D.R. conference, the court will set a hearing 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 a request to reschedule the hearing in writing and mail 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 lawsuit without prejudice, meaning the plaintiff may refile the complaint 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, and (2) has not made an appearance in the case, the court may not award judgment for the plaintiff 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) **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 in writing 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.
- (f) **Additional Time to Prepare.** If the plaintiff serves the defendant within 20 days of the complaint filing date, but the defendant believes the time of service did not allow the defendant to prepare or properly exercise other rights under these rules, such as a counterclaim under Rule 10(d) or a transfer under Rule 12(b), the defendant must appear at the scheduled hearing and ask for a

continuance. If the justice of the peace or hearing officer is satisfied that the defendant's rights have been harmed by the shortness of time to respond, a continuance will be granted.

Rule 15. Requesting an Interpreter or Special Accommodations

The court should 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 all parties.
- (c) **Correcting a Judgment.** Either party may request the court 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 moving party must file the motion within a reasonable time and mail a copy to the other party. 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 without prejudice.
- (b) **Dismissal by the Plaintiff.** If the defendant has not filed a counterclaim in the lawsuit, the plaintiff may dismiss the complaint at any time 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 mutually 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 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) Notice to Plaintiff and Defendant
 - (2) complaint;
 - (3) summons;
 - (4) proof of service by certified mail;
 - (5) answer
 - (6) counterclaim
 - (7) motion [for a motion to change venue (Rule 11) or a motion to vacate judgment (Rule 17)];
 - (8) request [for example, a request to transfer a lawsuit to the justice court civil division, or a request to postpone the hearing]; and
 - (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 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.
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) Either party 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 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 Rules of Procedure for Small Claims Cases 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 or answer. 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(d), Rules of Procedure for Small Claims Cases.
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 stated 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.