

Civil Suits: The Process

Jurisdictional Limits

The justice courts have exclusive jurisdiction or the authority to hear all civil actions when the amount involved, exclusive of interest, costs and awarded attorney fees when authorized by law, is \$10,000.00 or less.

Attorneys vs. Representing Yourself

In a regular civil proceeding either party may be represented by an attorney. The Rules of Civil Procedure for the Superior Court of Arizona are followed in Justice Courts. 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 action through to conclusion. Justice Court clerks are not attorneys and are not authorized to give legal advice. The clerks' responsibility is to take your court filing and to explain court processes and procedures.

Statutes of Limitations

Time limits in civil actions accrue from the date the events that gave rise to the action occurred.* The time limits apply to both civil suits and small claims. Please note, this list is meant as a general guide. Not all of the cases listed below can be filed or heard in Justice Court.

- One year - Malicious prosecution; false imprisonment; libel or slander; breach of employment contract; wrongful termination; liability created by statute ([ARS 12-541](#))
- Two years - Personal injury; injury when death ensues; damage to property; conversion of property; product liability; forcible entry and eviction action ([ARS 12-542](#))
- Three years - Debt from oral contract; stated or open account; relief on ground of fraud or mistake ([ARS 12-543](#))
- Four years - Bond to convey realty; partnership account; account between merchants; judgment or instrument given or made without the state; bond of personal representative or guardian; specific performance of contract to convey realty ([ARS 12-544](#), [545](#), [546](#))
- Six years - Written contracts for debt ([ARS 12-548](#))
- Four years - Actions for which no limitation is otherwise prescribed (other than for recovery of real property) ([ARS 12-550](#))

* Under some special circumstances, time limits can be extended or deferred. Please consult an attorney to determine if these circumstances apply to your case.

Venue

The court in which an action is to be filed is determined by where the defendant resides or does business, if you are suing a business; or where the cause of action occurred. If you file in the incorrect Justice Court, the opposing party may file a Motion for Change of Venue. If the court orders a change of venue, the case shall be transferred to the proper precinct and the plaintiff shall pay all fees. If you oppose a motion for change of venue you must file an objection in writing within five days after service of the motion. A motion alleging improper venue must be made before filing the ANSWER. If the defendant fails to file a timely request for a change of venue, that right is waived.

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Parties

Individuals An individual named in a lawsuit may represent him/herself. One spouse cannot represent the other.

- **Corporations** A corporation authorized to transact business in the State of Arizona is required to maintain a statutory agent [A.R.S. §10-012] upon whom process be served. When filing against a corporation, it is recommended that you contact the Arizona Corporation Commission at (602) 542-3285 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 to whom service may be made on behalf of a corporation.)
- **Unincorporated Businesses** "Every action shall be prosecuted in the name of the real party in interest [Rule 17(a) R.C.P.]" 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 plaintiff or defendant. This information may be obtained by calling the Secretary of State.
- **Partnerships** may sue, or be sued, in the name that it has assumed or by which it is known.

Pleadings

Pleadings are formal written statements by which parties assert their claims or defenses.

- The pleadings (the complaint) shall name the party(s) you are bringing suit against (the party you deem to be responsible for the damages you are claiming) and shall set forth a short and plain statement:
 1. upon which the court's jurisdiction depends. For example, The defendant resides in the (justice court name here) precinct or The action in question occurred in the (justice court name here) precinct.
 2. showing that the pleader is entitled to relief.. For example, The defendant owes me money because . . . The accompanying summons shall also name each responsible party as is named in the complaint and shall name the person to be served on behalf of the defendant(s). The clerk will sign and seal the summons presented and issue it for service.

How to Compute Time Limits

When 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, Saturdays, Sundays and holidays are not counted (only judicial days or business days are counted).
- When any period of time allowed is eleven days or more, all days are counted (straight days - meaning weekends and holidays are counted). The last day of the period of time is included in the count, and if it falls on a weekend or holiday, will be the following work day.
- if served by mail, whenever one party has the right or is required to respond to a filing of the other party within a specified period of time, five calendar days (straight days) are added to the period of time if the notice or paper was served by mail. This does not apply to the mailing of a Notice of Entry of Default.

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Fees

The Fees Schedule(s) are established by statute. Additional local fees may apply.

<http://www.azcourts.gov/courtfilingsfees/WelcometoCourtFilingFees.aspx>

Service of Summons and Complaint

In addition to any other available methods, service of the summons and complaint shall be by a private process server [Rule 4(c) R.C.P.]. The Complaint/Summons Form is available on this website. You can fill out this form on your computer and then print it out.

- You designate the server you wish to employ to perform the service for you.
- 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, and you are to make payment directly to the process server for the services performed. **YOUR ACTION WILL BE DISMISSED IF THE SUMMONS AND COMPLAINT HAVE NOT BEEN SERVED WITHIN 120 DAYS OF THE FILING OF YOUR COMPLAINT.**

Dismissal

The plaintiff may dismiss the claim at any time prior to the defendant filing an answer or other responsive pleading. Once the defendant has filed an answer or other responsive pleading, both parties must stipulate, or agree, in writing to a dismissal. The defendant may ask the court for reimbursement of court costs and/or attorney fees incurred defending the action.

Filing an Answer

An answer is the defendant's response to the plaintiff's allegations as stated in a complaint. The Answer Form is available on this website. You can fill out this form on your computer and then print it out.

- If you are the defendant, you have twenty (20) calendar days from the date you are served with the complaint to file an answer (in writing). In computing the time by which to file an answer, the date of service is not included. If the last filing day falls on a Saturday, a Sunday, or a legal holiday, the answer may be filed on the next immediate judicial (business) day.
- If the complaint is served out-of-state, the party served has thirty (30) calendar days in which to file an answer. If you are served by registered mail or by publication other time limits apply.

Filing a Counterclaim

- If the defendant files a counterclaim in the action, the plaintiff (counter defendant) has twenty (20) days from the date of service in which to file a reply (in writing) to the counterclaim [Rule 12(a) R.C.P.]. There is no fee for filing a reply to a counterclaim. The Counterclaim Form is available on this website. You can fill out this form on your computer and then print it out.
- If the counterclaim exceeds \$10,000.00 * the case will be immediately transferred to Superior Court and appropriate filing fees will be assessed by Superior Court before processing can continue. Also, the party causing the transfer shall pay a transmittal fee to this court of \$17.00. All counterclaims are filed at the time of filing the answer. If not, the defendant must seek permission of the court by filing a motion to file a counterclaim.

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Default Judgments

- If a defendant fails to submit an answer to the complaint within the time allowed, the plaintiff may apply for an entry of default against the defendant. A judgment by default is one that is obtained without trial due to defendant's failure to plead or otherwise defend in the action. The court may request that the plaintiff furnish proof of the allegations contained in the complaint to substantiate plaintiff's demand.
- If a counterclaim has been filed and the plaintiff fails to reply to the counterclaim within the allowed time, then the counterclaimant (defendant) may obtain a default judgment against the counter defendant (plaintiff). Defendants seek default judgments on the counterclaim in the same way the plaintiffs may obtain them against the defendant on a complaint.
- An Application for Entry of Default must be mailed to the defaulting party and attorney, if known.[Rule 55 (a) R.C.P.].
- If the party claimed to be in default fails to file a responsive pleading or otherwise defend in the action within 10 judicial days of the filing of the application, the default will be in effect. A default judgment may be sought by motion of the plaintiff, supported by affidavit for a specific sum, or by hearing. For good cause shown, the court may set aside an entry of default, and if judgment by default has been entered, may set it aside [Rule 60(c) R.C.P.].

Service after Appearance

- After a party has filed an appearance in an action, unless otherwise ordered by the court, all subsequent pleadings, notices and orders may be served upon the attorney of record or the appearing parties by regular mail.
- IT IS IMPERATIVE that each party to an action keep the court apprised of his/her current mailing address.

Disclosure

Disclosure is the pretrial process through which each party discloses to the other the evidence and witness testimony that will be presented in trial.

- A disclosure statement MUST be sent to all parties within 40 days of the filing of the answer unless otherwise ordered by the court. [Rule 26.1(b)(1), R.C.P.].
- 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 damage *The legal theory upon which each claim is based *The names, addresses and telephone numbers of all witnesses and a brief summary of their expected testimony *A list of documents or evidence which supports your claims
- Failure to comply with disclosure may result in a dismissal or entry of default judgment against you

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Motions

- A motion is a request made by a party asking the court to issue a ruling or an order.
- If the opposing party files a motion of any kind with the court and you have objections to the motion, you should file your objections in writing within ten (10) judicial days of the filing of the motion to which you are objecting.
- The Judge will review the written pleadings and enter an order either granting or denying the motion made. OR
- On request of either party, or by order of the court, the Judge may set the matter at issue for an oral argument before rendering any order.

Pretrial Conference

A pretrial conference may be held to clarify the issues for trial, and exchange information to allow the parties to meet and possibly reach a settlement.

- When you are ready to go to trial you must file a Motion to Set with the court requesting that a trial date be set. In some cases, if neither party files a motion within ten days, the court will set a trial date. Please check with the staff at the court in which your case is being heard to determine that court's procedure.

Preparing for Trial

- If your action comes to trial, you should educate yourself on court procedure and rules on admissible evidence. As the person who brought the suit, it is the plaintiff's responsibility to prove by the greater weight of evidence that they have a legal right to the amount they are claiming.
- Trial continuances must be submitted in writing and filed with the court. No trial continuances shall be granted except upon a finding of good cause.

Failures to Appear

- If the plaintiff fails to appear the complaint will be dismissed without prejudice. The court may award the defendant his/her costs, including attorney fees.
- If the defendant fails to appear, the court may enter judgment against him/her.
- If both parties fail to appear, the case will be dismissed without prejudice.

Jury Trials

- Either party can request a jury trial. Both parties will be required to submit prepared jury instructions to the court before trial. The requesting party will be assessed jury fees and costs if the jury does not find in their favor. If a jury is not requested the Judge will hear the case. If you are representing yourself (acting as your own attorney) you will be held to the same standard as an attorney.

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Basic Trial Procedure

- 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(s) will present their 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.

Appeals

See the [Arizona Judicial Branch Website](http://www.azcourts.gov/selfservicecenter/). <http://www.azcourts.gov/selfservicecenter/>

If You are Awarded Judgment

The plaintiff may be awarded a judgment on the claim against the defendant or the defendant may be awarded a judgment on a counterclaim (if one was filed) against the plaintiff. The party awarded judgment is known as the Judgment Creditor and the party whom the judgment is against is known as the Judgment Debtor.

Collection Judgment

To obtain information about the Judgment Debtor's employment, bank accounts or other assets you may ask the Court for an order for a debtor's examination. Additional fees and costs are required for issuing and serving an order for a debtor's examination (called an Order for Supplemental Proceedings).

- A Writ of Garnishment of earnings can be issued after you make a formal written demand for payment of the judgment amount.
- A Writ of Garnishment of non-earnings can be issued to garnish other assets, such as a bank account or other income property.
- A Writ of Execution empowers the Constable to levy on non-exempt personal property of value. You must provide a description and location of the property.

Court clerks can provide you with the necessary writ forms. Additional fees and costs are required for issuing and serving Writs of Garnishment and Writs of Execution.

- If your judgment is the result of an automobile accident for which you have an accident report and remains unpaid 60 days after the judgment has been entered, the clerk will, upon request, report the non-payment to the Arizona Department of Transportation, Motor Vehicle Division, pursuant to ARS 28-4071. MVD will suspend the judgment debtors driver's license, registration and non-resident operating privilege.

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