

COCHISE COUNTY JUSTICE COURTS SMALL CLAIMS DIVISION INSTRUCTIONS TO THE PLAINTIFF

INFORMATION FOR FILING A CLAIM IN THE SMALL CLAIMS DIVISION IN THE JUSTICE COURT

You may file an amount not to exceed \$2,500.00. You may reduce a larger claim to the maximum allowable and [waive](#) the remaining amount. You may **NOT** split a claim and file two separate actions. You may file for “court costs” in addition to the maximum allowed. Court costs may include but are not limited to filing and service fees.

You may **NOT** file in Small Claims Division if the matter involves the following:

1. A claim of defamation, of libel, or slander.
2. Evictions.
3. Actions for specific performance.
4. Brought or defended on behalf of a class.
5. An action requesting or involving pre-judgment remedies.
6. Seeking injunctive relief.
7. Traffic violations or criminal matters.
8. Seeking awards of body attachments.
9. Claims against this state, its officers or employees of any city, county or other political subdivision.

Your case may be heard either by a Justice of the Peace or a Hearing Officer, at the discretion of the court.

THE DECISION OF THE JUDGE OR HEARING OFFICER IS FINAL AND CANNOT BE APPEALED. IF YOU WISH TO HAVE AN APPEAL PROCESS AVAILABLE, YOU MUST FILE IN THE CIVIL DIVISION.

You must be the original owner of a claim. You may not sue on an assigned claim.

Attorneys cannot represent either party in the Small Claims Division unless:

1. Both parties agree to the use of attorneys and file a [Stipulation to Use of Attorneys](#) form for which the court can provide. This form must be filed at least 24 hours before the scheduled court date.
2. However, a party has the right to choose to be represented by counsel and may file a request to transfer the case to the Civil Division of this court. The case will then automatically be transferred to the Civil Division and appropriate fees assessed to the party requesting the transfer.

This section is not intended to limit or otherwise interfere with a party’s right to employ counsel to pursue his or her rights and remedies after the entry of judgment in a small claims action.

A small claims case may be transferred to the Civil Division by either party up to ten (10) days prior to the day of the scheduled hearing. The party requesting the transfer will be assessed a transfer fee before processing of the case can continue. If a small claims trial date has been set before the transfer, you will be informed by this court if the trial will be held on the scheduled date or if the trial date will be vacated and reset to the later date.

Attorneys filing an answer for the defendant without the “Stipulation to Use of Attorneys” form will pay the answer fee for the Civil Division.

You must know the name and address of the party against whom you are filing your action. **BE SURE THAT YOU HAVE THE CORRECT PARTY TO BE SUED, ESPECIALLY IF YOU ARE SUING A CORPORATION OR BUSINESS AND/OR ONE OF ITS EMPLOYEES.**

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. **THE CLERKS ARE NOT RESPONSIBLE TO VERIFY WHETHER OR NOT YOUR FILING IS CORRECT.**

CORPORATIONS

A corporation authorized to transact business in the State of Arizona is required to maintain a statutory agent, [A.R.S. 10-501] upon whom process may be served [A.R.S. 10-504]. The name and address of the statutory agent may be obtained by telephoning the [Arizona Corporation Commission](#) in Tucson at 1-800-345-5819.

When filing against a corporation, it is recommended that you contact the Corporation Commission and obtain the correct corporate name of the corporation, 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

“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](#) in Tucson at (520) 628-6583.

Partnerships may sue, or be sued, in the name which it has assumed, or by which it is known [Rule 17 (j) R.C.P.].

PLEADINGS

The pleading (whether a complaint, counterclaim, [cross-claim](#), or [third-party claim](#)) shall set forth a short and plain statement that contains (1) The amount due; (2) Why it is due; (3) A demand to receive what is due. [Rule 8 R.C.P.]

FILING FEES

Filing fees are payable at the time of filing the complaint

SERVICE FEE

The defendant must be served with a copy of the [Complaint/Summons](#) per A.R.S. 22-513
Method of service:

“In addition to any other available methods of service, the plaintiff may serve the summons and complaint by registered or certified mail. Service is deemed complete on the date of delivery of the registered or certified mail to the defendant as indicated on the return receipt. If the defendant cannot be served by registered or certified mail, personal service by a process server may be used.”

TO ENSURE YOUR RETURN RECEIPT IS SIGNED BY THE NAMED PARTY DEFENDANT, YOU MUST HAVE RESTRICTED DELIVERY ON YOUR MAILING.

ANSWER

The defendant has twenty (20) calendar days from the date of service in which to file an answer in writing to the complaint [Rule 12(a) R.C.P.]. In computing the time in which to file an answer, the date of service shall not be included. If the twentieth day falls on a Saturday, a Sunday, or legal holiday, the answer may be filed on the next immediate judicial day [Rule 6(a) R.C.P.].

EXCEPTION: If served out of state, by registered mail, or by publication, the party so served shall have thirty (30) calendar days in which to answer [Rule 4.2(m) R.C.P.].

COUNTERCLAIM

If the defendant files a [Counterclaim](#) in the [action](#), the plaintiff (counter-defendant) has twenty (20) calendar 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.

If the counterclaim exceeds \$2,500.00 the case will be immediately transferred to the Civil Division of the Justice Court depending on the amount and appropriate transfer fees shall be paid.

MEDIATION AND ARBITRATION

The following cases may be settled through Mediation or Arbitration:

Landlord-Tenant disputes	Property Damages
Employer-Employee disputes	Broken Agreements or settlements
Small Claims/Money demand	Other Interpersonal conflicts
Business-Customer disputes	Juvenile disputes
Personal Injury	

Mediation and arbitration are processes that use third-party neutrals to settle conflicts as an alternative to litigation. The Judge will review your case when an answer has been filed, and if appropriate, schedule the hearing with a trained, certified arbitrator/mediator from the local area. You will be notified by the Alternative Dispute Resolution Program Office of the time, date and location for the hearing. If the Parties cannot negotiate among themselves with the mediator's help the arbitrator will make a decision based on the evidence presented. However, if the Parties can openly negotiate a settlement, the arbitrator will assist the parties in writing a contract stating each party's position in the settlement. Each party will get a copy of the contract (mediated agreement). If an arbitrated decision is not accepted by the parties, the case may be appealed by any party and a trial date will be set. If arbitration fails and no mediated agreement is reached, the case will also be returned to the court to be set for trial.

For more information, contact:

**Cochise County Superior Court
Office of the Court Administrator, Alternative Dispute Resolution Program
PO Box 204 • Bisbee, AZ 85603 • (520) 432-8483**

TRIAL

If your action comes to trial you should educate yourself as to court procedure and what is admissible evidence. As the person who brought the suit, it is your responsibility to prove by the

greater weight of evidence that you have a legal right to the amount you are claiming. You must be able to itemize how you arrived at the amount you are seeking.

If you fail to appear at the trial, your complaint may be dismissed, and the defendant may be awarded his or her costs and/or attorney's fees incurred to defend the action.

A copy of the written decision (Judgment) will be mailed to each party. **THIS IS A FINAL JUDGMENT AND CANNOT BE APPEALED TO A HIGHER COURT.**

DEFAULT JUDGMENTS

If a defendant fails to submit an answer to the complaint within twenty (20) calendar days after service, the plaintiff may apply for an entry of default against the defendant for the purpose of obtaining a [Judgment by Default](#). A Default Judgment is one that is obtained without a trial because the defendant failed to answer or otherwise defend the action. However, the court may request the plaintiff to **FURNISH PROOF OF THE ALLEGATIONS CONTAINED IN THE COMPLAINT** to substantiate its demand. This proof would be presented at a [Default Hearing](#) or by attaching it to the [Application of Default](#).

If a counterclaim has been filed and the plaintiff fails to reply to the counterclaim within twenty (20) days, then the counterclaimant (defendant) may obtain a [Default Judgment](#) against the counter defendant (plaintiff) on the counterclaim in the same manner as the plaintiff may obtain a Default Judgment against the defendant on a complaint.

An [Application for Entry of Default](#) or [Affidavit of Default](#) must be mailed to the defaulting party [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 ten (10) [judicial days](#) of the filing of the application or affidavit, a Default Judgment will be entered against that party, or a Default Hearing will be set (**PLAINTIFF WILL BE THE ONLY ONE NOTIFIED OF THE DATE**).

APPEAL

YOU DO NOT HAVE THE RIGHT TO APPEAL THE DECISION OF THE JUSTICE OF THE PEACE OR HEARING OFFICER IN THE SMALL CLAIMS DIVISION. IF YOU WANT THE RIGHT TO APPEAL, PLEASE FILE YOUR CASE IN THE CIVIL DIVISION.

ENFORCING SMALL CLAIMS JUDGMENTS

First, make written demand of the defendant to pay the judgment amount. If the defendant does not pay, the court, at your request, will provide you with papers necessary to garnish the defendant's assets such as bank accounts, wages, or other income property. You must provide the information and fill out and file the necessary forms. **THE COURT DOES NOT COLLECT FOR YOU.**

Once you are paid in full **YOU MUST** file a [SATISFACTION OF JUDGMENT](#) with the court. This form is available from the court.

IF YOUR JUDGMENT IS THE RESULT OF AN AUTOMOBILE ACCIDENT AND REMAINS UNPAID SIXTY (60) DAYS AFTER JUDGMENT HAS BEEN ENTERED, NOTIFY THE CLERK OF THE COURT AND HE/SHE WILL NOTIFY THE ARIZONA DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE DIVISION, PURSUANT TO A.R.S. 28-4071 AND A.R.S. 28-4072.

Should you have any questions concerning the action you have filed, you may call any justice court or go to the Civil Division of any of the Cochise County Justice Courts to have your questions answered.

ALWAYS REFER TO YOUR CASE NUMBER (CASES ARE FILED BY NUMBER) NOT NAME.

REMEMBER, EVERY ACTION IS YOUR RESPONSIBILITY.

This is **your** case and there are certain steps **you** must follow to pursue it properly. This information is provided to assist you in general procedure in pursuing your case to conclusion. The clerks in the Justice Court are not attorneys and are not authorized to give legal advice. It is not their responsibility to advise you *if* you have a legal claim or *what* you should put on your claim. They are not responsible to advise you of any errors you may make. The court does not take sides nor render an opinion as to the merits of a claim.

DEFENDANT INFORMATION EXAMPLES:

Individual:

Defendant: (Name/Address/Phone) John Smith 111 S "Z" Street Tucson, AZ 85701

Sole Ownership:

Defendant: (Name/Address/Phone) John Smith, D. B. A. Smith's Candy Shop 111 S. "Z" Street Tucson, AZ 85701
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Corporation:

Defendant: (Name/Address/Phone) ABC Candy Store, Inc. Serve: John Smith, Statutory Agent 111 S. "Z" Street Tucson, AZ 85701
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Two or More Defendants:

Defendant: (Name/Address/Phone) John Smith; Mary Jones (If addresses won't fit here, place names here and names <u>and</u> addresses on back of complaint.)

Husband & Wife:

Defendant: (Name/Address/Phone) John and Mary Smith, H/W 111 S. "Z" Street Tucson, AZ 85701 SERVE: John Smith SERVE: Mary Smith
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Partnership:

Defendant: (Name/Address/Phone) John Smith and Joe Jones Partners D.B.A. XYZ Candy Shop 111 S. "Z" Street Tucson, AZ 85701 SERVE: John Smith SERVE: Joe Jones

Parents of a Minor:

Defendant: (Name/Address/Phone) John and Mary Smith, H/W Parents of Joey Smith, a minor 111 S "Z" Street Tucson, AZ 85701
