

# JUSTICE COURT

## SMALL CLAIMS CASE INSTRUCTIONS AND GUIDE

### If you want to start or are involved in a Small Claims case. . .

In situations where a civil dispute arises, the justice court offers grounds for a lawsuit within its jurisdictional limit. Jurisdiction means the kinds of cases a court has the authority to hear. Arizona's Justice Courts have exclusive jurisdiction over all **Small Claims** filings.

In the justice court, you may file a **small claims** lawsuit claiming an amount **UP TO AND INCLUDING \$3500.00**. You may also ask for reimbursement of court costs. Court costs include, but are not limited to filing and service fees.

*If you wish to file a lawsuit for an amount **over \$3,500.00, but less than \$10,000.00**, you may file a **civil** lawsuit in the **justice court**. If you wish to sue for more than **\$10,000.00** you **must file** your lawsuit in the **Superior Court**.*

The Small Claims division provides an expedited and less formal means to resolve civil disputes for money damages up to \$3,500.00. Attorney representation is not allowed in small claims, unless both parties agree to the use of attorneys. Small claims cases do not have the right of appeal nor are jury trials allowed. A small claims case will be heard by a small claims hearing officer or the Justice of the Peace.

### Please STOP...

- If you are suing for more than \$3500.00.
- If you wish to reserve the right to attorney representation, to a jury trial or to appeal.
- 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.
  - Is against the State, its political subdivisions or is against its officers or employees, acting in an official capacity

### Please PROCEED...

- If you are suing for an amount not to exceed \$3500.00.
- If you are filing within the correct venue (either the defendant's residence or where the transaction occurred).
- If you DO NOT wish to be represented by an attorney.
- If you DO NOT wish to retain the right to appeal or to have jury trial.

### FORMS Needed:

- Small Claims Complaint/Summons
- Evidence of Service Form

## INSTRUCTIONS

1. Review the Information for Filing and Defending Small Claims Cases below.
2. Check with the court clerk to ensure you are filing your claim in the proper venue. You are responsible for filing your case in the correct court.
3. Complete the Complaint/Summons form.
4. Make 3 copies of the completed Complaint/Summons 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). Make additional copies as needed for each person you are filing against.
5. Bring the original form and copies to file with the court clerk and pay the filing fee.

6. Serve a copy of the Complaint/Summons on each named defendant.

You may serve the Complaint/Summons by registered or certified mail (restricted delivery), or by any method of service available by Arizona Rules of Civil Procedure, Rule 4, including by 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 and DEFENDING SMALL CLAIMS CASES IN JUSTICE COURT**

### **THIS IS YOUR CASE**

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 may be viewed online at <http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp> 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. **ARS 22-507**

### **COURT FEES**

Fees are payable at the time of the filing. Refer to the Court's posted schedule of fees.

### **JURISDICTIONAL LIMIT**

The plaintiff, the person filing the Complaint/Summons, may file for any amount not to exceed \$3,500.00. A larger claim may be reduced to \$3,500.00 and any remaining amount waived. A claim may NOT be split by filing two separate actions. The plaintiff may ask for reimbursement of court costs in addition to the \$3,500.00 maximum. Court costs include, but are not limited to filing and service fees. A prevailing defendant (the person who the Complaint/Summons was filed against) may also ask for reimbursement of court costs. **ARS 22-503A**

### **YOU MAY NOT FILE IN SMALL CLAIMS IF:**

- The case involves a claim of defamation by libel or slander.
- The case is for a forcible entry, eviction action (forcible detainer) or unlawful detainer. The case involves a claim for specific performance.
- The case is brought or defended on behalf of a class.
- The case requests relief by or involves prejudgment remedies. The case is seeking injunctive relief.
- The case involves traffic violations or criminal matters.
- The case is against this State, its political subdivisions or is against its officers or employees, acting in an official capacity. **ARS 22-503B**

### **VENUE**

Venue means the proper geographical area (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. **ARS 12-401**

### **MOTION FOR CHANGE OF VENUE**

A motion for change of venue is one of only two motions allowed in a small claims action.

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**

### **TRANSFER TO REGULAR CIVIL DIVISION OF JUSTICE COURT**

Either party may transfer a small claims case to the court's civil division up to TEN working days before trial. The party requesting the transfer will be assessed the transfer fee. **ARS 22-504A**

### **ATTORNEYS**

An attorney cannot appear or represent either party in the small claims division unless:

- ☐ He/she is representing himself or herself.
- ☐ Both parties agree to the use of attorneys and file a STIPULATION TO USE OF ATTORNEYS. A stipulation to use attorneys must be filed at least 24 hours before the scheduled court date.

However, any 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 the Justice Court for that purpose. The case will then be transferred to the civil division and appropriate fees charged to the party requesting the transfer.

After entry of judgment, the prevailing party has a right to employ an attorney to pursue available rights and remedies for the purpose of collecting the judgment award. **ARS 22-512B, C, D, E**

### **PARTIES**

The statutes governing small claims procedures set forth who may file a small claims action or appear or represent on behalf of such an action. **ARS 22-512A, B**

The plaintiff must be the original owner of a claim and may not sue on an assigned claim. However, after judgment a party may make an assignment of the judgment. **ARS 22-512**

An individual shall represent himself.

- ☐ Either spouse or both may represent a marital community.
- ☐ An active general partner or an authorized full-time employee shall represent a partnership.
- ☐ A full-time officer or authorized employee shall represent a corporation.
- ☐ An active member or an authorized full-time employee shall represent an association.
- ☐ Any other organization or entity shall be represented by one of its active members or authorized full-time employees.

*If you are representing a partnership, an association, or any other organization please provide the court with a letter stating your position and authority to represent an action on behalf of the partnership, association or organization.*

*If you are a full time employee representing a corporation please provide the court with a letter stating your position and authority to represent the corporation. The letter must be signed by a corporate officer.*

However, any party has the right to choose to be represented by counsel and may file a request.

**PLEADINGS** shall set forth a short and plain statement.

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.

## EXAMPLE

*I am claiming damages against the defendant in the amount of \$3,500.00.(jurisdiction)  
The defendant resides in the Precinct, (or, The lawsuit occurred in the 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)*

## METHODS OF SERVICE

In addition to any other available methods of service ARCP, Rule 4, the plaintiff must serve the Complaint/Summons by registered or certified mail. Service is deemed complete upon the delivery of the mailing to the defendant and signed by the defendant (as evidenced on the return receipt filed with the court).

**Each named defendant must be served a copy of the COMPLAINT/SUMMONS.** To ensure the named party defendant signs the return receipt, restricted delivery should be used.

If the postal service does not enter a date of delivery or the date is not legible, service is deemed complete on the date the return receipt is filed with the court. The plaintiff may file the return receipt (the green card) with the court in person or by first class mail.

If the defendant refuses to accept the mailing, or a person other than the named defendant signs for the registered or certified mailing, then service has *NOT* been properly accomplished.

If the defendant cannot be served by registered or certified mail, personal service by a licensed process server, Constable or law enforcement must be used.

If the claim is against a corporation, the statutory agent, or an officer of the corporation must be served on behalf of the corporation named in the complaint. You may obtain the name and address of a statutory agent or corporate officer by calling the Arizona Corporation Commission at (602) 542-3026.

**YOU HAVE 120 DAYS TO SERVE THE SUMMONS AND COMPLAINT OR YOUR CASE IS SUBJECT TO DISMISSAL ARCP 4(i)**

## SERVICE AFTER APPEARANCE

A copy of all pleadings filed with the court must be mailed or delivered to the opposing party.

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

## DEFAULT

If the defendant does not file an answer to the complaint within twenty days after service is complete, the plaintiff may apply for any 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 file the Application for Entry of Default form with the court, then mail it 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.

## 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 both parties must stipulate to a dismissal (agree in writing).

## **FILING AN ANSWER**

The defendant has twenty calendar days to file an answer to the complaint with the court. The answer should respond to each allegation of the complaint. The case will then be set for a hearing. Failure to file an answer will result in a default judgment. **ARS 22-514**

## **FILING A COUNTERCLAIM**

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

A counterclaim may be filed at the same time the answer is filed. If the defendant files a counterclaim, the plaintiff has 20 days to file an answer. A default judgment may be entered against the plaintiff for failure to answer the counterclaim. If the defendant files a counterclaim and the amount claimed exceeds \$3,500.00, the court shall transfer the case to the civil division.

If the court determines that the amount of the counterclaim in excess of the small claims jurisdiction was filed for the sole purpose of avoiding the small claims proceedings, the court may award the plaintiff court costs, plus reasonable attorney fees for defending the counterclaim. **ARS 22-517**

## **MOTIONS**

Only two motions are allowed in the small claims division: a Motion for Change of Venue (filed before an Answer) and a Motion to Vacate Judgment (filed after a judgment). **ARS 22-505**

## **HEARING OFFICERS**

Either a Justice of the Peace or an appointed Hearing Officer may hear your case. Any party may object to the use of a hearing officer prior to the hearing date. The court can provide you with a form to make this objection. The case will then be referred to and heard by the Justice of the Peace. **ARS 22-506**

## **SETTING FOR HEARING**

Mediation or a trial will be set for a date within sixty (60) days after the answer has been filed with the court. All parties will be notified by mail of the date and time of the hearing. **ARS 22-515A**

## **REQUEST TO CONTINUE COURT DATE**

If for some reason you find that you are unable to appear for trial on the date and time scheduled, you may file a REQUEST FOR CONTINUANCE with the court, showing good cause why you are unable to appear. The Judge will consider the merits of your request and either grant or deny it. Continuances are granted only for the most serious reasons. The request for continuance must be in writing and should be timely filed at least 10 days prior to the trial date. **ARS 22-515C**

## **THE HEARING YOU CANNOT HAVE YOUR SMALL CLAIMS CASE HEARD BEFORE A JURY. ARS 22-518**

Bring to the trial anything necessary or relevant to establish or defend the claim or counterclaim. Examples: books, papers, bills, pictures of damages, or other exhibits. Both parties may also bring witnesses to testify in their behalf to substantiate your position.

You will only be allowed a limited amount of time to present your claim or your defense. Be concise. Be prepared.

If the case is settled before the scheduled trial date, be sure to notify the court. A stipulated DISMISSAL form must be filed.

Within TEN days after the trial, a copy of the Judgment Order will be mailed to each party.

## **APPEAL You DO NOT have the right to appeal. The decision of the hearing officer or justice of the peace is final AND BINDING ON BOTH PARTIES.**

If you wish to preserve your right to appeal, you may have the case transferred to the civil division of the justice court. You may do this at any time up to ten (10) days before trial. **ARS 22-519**

**IF YOU ARE AWARDED JUDGMENT**, refer to COLLECTING A MONEY JUDGMENT.

### MOTION TO VACATE THE JUDGMENT

A motion to vacate a judgment is one of only two motions allowed in a small claims action. A motion to vacate judgment can be filed by either party to vacate a default judgment or a judgment of the court following a hearing. The motion must be served on the other party in the same manner as if serving a summons and complaint.

If you oppose a motion to vacate the judgment you must file a response in writing ten days after service of the motion. If the motion to vacate judgment is the defendant's first filing the defendant must pay a filing fee. The motion must be served in the same manner as if serving a summons and complaint. **ARCP 5(c)2**

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

### 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.

**Date of hearing** \_\_\_\_\_ When an answer is filed the court will set a mediation or hearing date within 60 days of the filing of the answer and notify both parties of the time and date by mail. 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 to ensure that the party can receive all notices mailed from the court.

**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.

### SMALL CLAIMS CHECKLIST FOR PARTIES

The following checklist may assist you in processing your case. Check off each action as it occurs or has been completed.

#### ✓ PLAINTIFF CHECKLIST

☐ Date COMPLAINT filed and filing fee paid  
\_\_\_\_\_

☐ Date COMPLAINT served \_\_\_\_\_  
Serve the complaint upon each defendant. If the defendant refuses to accept the mailing, or a person other than the named defendant signs for the mailing, then service has not been effected. You may try the mailing again or use a process server to effect proper service.

☐ Date return receipt or affidavit of service filed with the court \_\_\_\_\_

☐ Date time to ANSWER expires \_\_\_\_\_  
**Service by mail:** 20 calendar days from the date the

#### ✓ DEFENDANT CHECKLIST

☐ If you object to the venue (the precinct in which the complaint was filed) you must file a Motion for Change of Venue for Improper Venue before the answer is filed.

☐ Date answer filed and filing fee paid  
\_\_\_\_\_

Within 20 calendar days of the date you were served

*If you fail to file an answer, the plaintiff may obtain a default judgment against you.*

☐ Date COUNTERCLAIM filed and copy mailed to plaintiff  
\_\_\_\_\_

If you intend to file a counterclaim you must do so at the same time the Answer is filed. You must use the

return receipt is signed, or if there is no date, or if the date is illegible, then 20 calendar days from the date the return receipt is filed with the court.

**Service by process server:** 20 calendar days from the date of service.

proper form and mail a copy to the plaintiff.

☐ Date time to REPLY expires \_\_\_\_\_

☐ Date plaintiff files a REPLY \_\_\_\_\_

IF NO REPLY IS RECEIVED:

☐ Date AFFIDAVIT OF DEFAULT and APPLICATION FOR ENTRY OF DEFAULT filed with court and copy mailed to plaintiff  
\_\_\_\_\_

IF ANSWER IS RECEIVED:

☐ Date defendant files an ANSWER  
\_\_\_\_\_

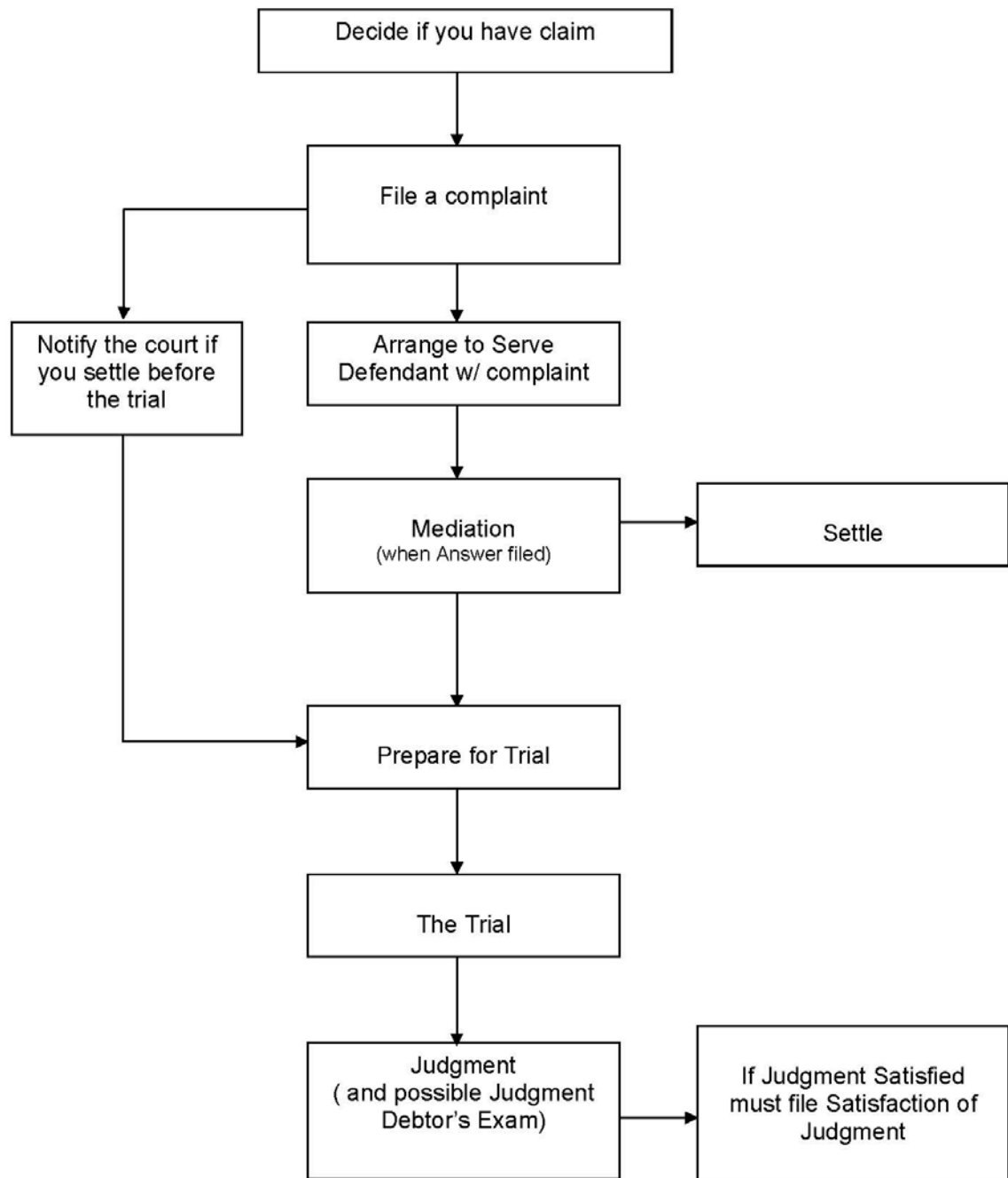
IF NO ANSWER IS RECEIVED:

☐ Date AFFIDAVIT OF DEFAULT and APPLICATION FOR ENTRY OF DEFAULT filed with court and copy mailed to defendant \_\_\_\_\_

☐ Date time to REPLY TO COUNTERCLAIM expires  
\_\_\_\_\_

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.

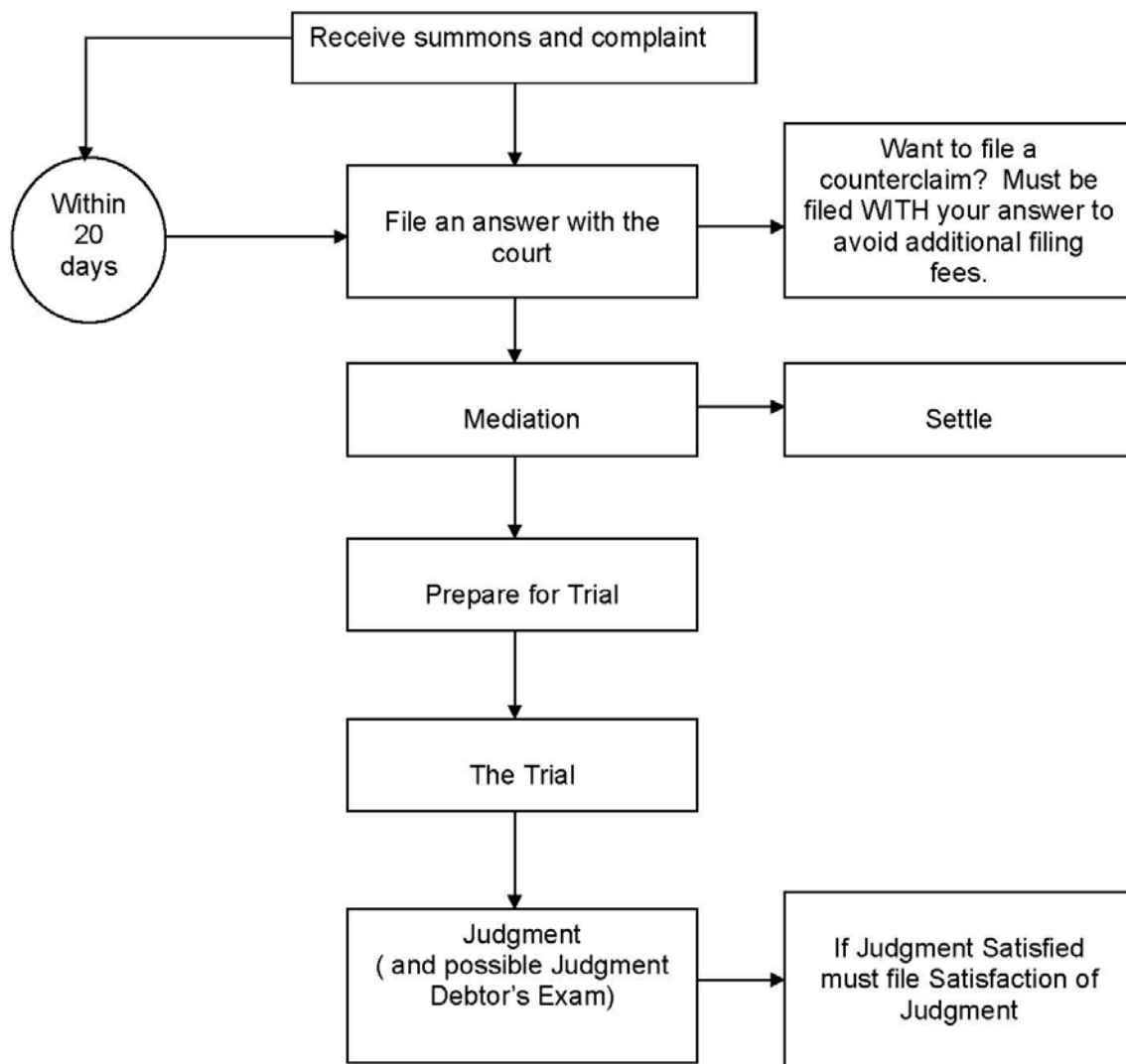
## If you are the plaintiff in a Small Claims case:



Revised: 3/25/2009



## If you are the defendant in a Small Claims case:



Revised: 3/25/2009