

Hon. C. Steven McMurry, Chair
Committee on Improving Small Claims Case Processing
1501 W. Washington St., Ste. 410
Phoenix, AZ 85007

IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO ADOPT ARIZONA	)	
RULES OF SMALL CLAIMS	)	
PROCEDURE AND MODIFY	)	Supreme Court No. R-18-0021
RULE 101(b) OF THE JUSTICE	)	
COURT RULES OF CIVIL	)	Third Amended Petition
PROCEDURE	)	
_____	)	

Pursuant to this Court’s November 13, 2018 Order, the Committee on Improving Small Claims Case Processing (“the Committee”) hereby submits its third amended petition and respectfully petitions this Court to adopt Arizona Rules of Small Claims Procedure and amend Rule 101(b) of the Justice Court Rules of Civil Procedure. The text of these rules is set out in Appendices B and C. It is important to note that the purpose of this amended petition is to provide the Court with data from two pilot programs to illustrate how the proposed Arizona Rules of Small Claims Procedure will improve small claims case processing and benefit the citizens of Arizona. The results of the pilot programs are set out in Appendix A.

I. Background

On October 17, 2012, the Steering Committee on Arizona Case Processing Standards (“Steering Committee”) was established by Administrative Order 2012-80. The Steering 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 the following case processing standards 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.

This 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 experiencing difficulty in meeting the time standards adopted for small claims cases. Accordingly, the Steering Committee recommended that this case type be examined in greater depth to determine why small claims cases were not being timely resolved. 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. The

Committee was charged with “develop[ing] 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.”

A. Identifying the Source of Delay

The Committee conducted an analysis of 410 small claims cases pending more than 100 days from Justice of the Peace courts throughout the state, which revealed the following:

- 42% of cases were pending because they were not dismissed for lack of service. The average case age was 755 days, even though Rule 113(i), Justice Court Rules of Civil Procedure, authorizes courts to dismiss a case once it has aged to 120 days so long as the plaintiff is notified of the court’s intent to dismiss at least 20 days prior to dismissal.
- 10% of cases had delays in hearings set (or no hearing set at all) after a written answer was filed. The average case age was 387 days, even though the Arizona Revised Statutes (“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 a delayed or no application for entry of default filed. The average case age was 683 days, even though 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 a delayed or no motion for judgment after an application for entry of default was filed. The average case age was 633 days, even though 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.

B. Challenges in Developing Recommendations for Small Claims Cases

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., service of process, 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 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 factor for the Committee to consider 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 a proposed set of court rules for small claims cases that it believes are realistic and reasonable and will accomplish the committee's charge of developing recommendations to reduce the time to disposition for small claims cases in Arizona's Justice of the Peace courts.

II. Pilot Programs

This rule petition has had three comment periods since the filing of the initial petition on January 10, 2018. It is important to note that this Court

authorized a concurrent pilot program (“Pilot A”) of the proposed Arizona Rules of Small Claims Procedure filed with the initial petition. Pilot A examined a small claims process wherein the case would be set for hearing at the time the complaint was filed, no written answer was required, and proof of service of process was required to be filed within 30 days of the complaint filing date.

The purpose of multiple comment periods was to allow the Committee to reconvene, address issues raised by the comments, review pilot program data, and file an amended rule petition thereafter.

The first comment period ended on March 16, 2018 and produced three comments. The committee reconvened on April 18, 2018 to discuss the comments and recommended several modifications to its originally proposed Arizona Rules of Small Claims Procedure (“Rules”). An amended petition reflecting these changes was filed on April 27, 2018.

The second comment period ended on September 7, 2018 and produced two comments. The Committee reconvened on September 11, 2018 to discuss the comments and pilot program data, and recommended several modifications to the proposed Rules. A second amended petition reflecting these changes was filed on September 19, 2018.

The third comment period ended on October 19, 2018 and produced six comments. Based on these comments and concerns raised by judges and court

administrators from courts that handle a significant volume of the small claims case filings in Arizona, this Court authorized a second pilot program (“Pilot B”) in the Maricopa County Justice Courts and the Pima County Consolidated Justice Court by Administrative Order 2018-104. The predominant concern was the level of resources that would be required if every small claims case were set for hearing at the time of filing.

Pilot B examined two changes to the Justice Court Rules of Civil Procedure, namely Rule 113(i) regarding dismissal for lack of service and Rule 144(e) regarding dismissal for failure to conclude a lawsuit. Specifically, the time for dismissal for lack of service was reduced from 120 days to 60 days. For cases in which proof of service had been filed, once the case aged to 100 days, this pilot program authorized the court to mail a notice of intent to dismiss in 60 days if the case had not been concluded.

Both pilot programs, each piloting different small claims rules with significantly different processes, produced favorable results and decreased the time to disposition substantially in small claims cases.¹ While Pilot A worked very well in the pilot courts with lower volumes of small claims cases, feedback from the pilot courts with larger volumes of small claims cases indicated that implementing

¹ The results of each pilot program can be viewed in Appendix A.

the process set forth by Pilot A is not sustainable long-term due to the resources required to set every case for a hearing.

The Committee recognizes that having a small claims system with bifurcated procedures is not favored and can frustrate the rationale for having statewide rules. Additionally, the Committee has no reason to believe that implementing the Pilot B process would fail to be successful in courts with lower volumes of small claims cases, with the caveat that technology could be used to assist courts in tracking and monitoring small claims cases. As such, the Committee is recommending a small claims process that mirrors the process utilized in Pilot B.

It should be noted that the Maricopa County Justice Courts commenced Pilot B on December 1, 2018, and the Pima County Consolidated Justice Court commenced Pilot B on January 1, 2019. As such, the data for Pilot B for the Maricopa County Justice Courts does not reflect cases that may age to 151-180 days once they are adjudicated. As such, the percentages reflected in the graphs in Appendix A are slightly inflated, and over time, some of the courts' current pending caseload will fall into the 151-180 days category.

Similarly, the data for Pilot B for the Pima County Consolidated Justice Court does not reflect cases that may age to 121-150 days or 151-180 days once they are adjudicated. As such, the percentages reflected in the graphs in Appendix

A are slightly inflated, and over time, some of the court's current pending caseload will fall into the 121-150 and 151-180 days categories.

However, the pending caseload statistics for both counties were reviewed so that the Committee could consider the age of the pending caseload and the number of cases currently pending, and estimate which category of the time standard the pending cases were likely to fall into.

III. Content of the Proposed Arizona Rules of Small Claims Procedure

Overall, the proposed Arizona Rules of Small Claims Procedure make the small claims process more comprehensible and accessible to self-represented litigants. This group of litigants is distinguishable from the majority of participants in federal or superior courts who are typically represented by attorneys, because attorneys cannot appear in small claims cases unless the parties agree to it, which is rare. This justice court demographic requires that the proposed Arizona Rules of Small Claims Procedure use more simplified language, less "legal jargon," and an increased number of definitions for legal terms. The proposed Arizona Rules of Small Claims Procedure also use shorter sentences, and limit cross-references to other rules of court and the Arizona Revised Statutes concerning the topic at hand. The length of the rules and simplification of text contributes to the overall simplification of procedures.

Since the Committee is recommending a small claims process that mirrors the process utilized in Pilot B, the following changes to the rules previously proposed have been made:

A. *Setting the Hearing.* Since Pilot B adopts a small claims model in which the hearing is set at the time a written answer is filed instead of setting a hearing at the time the complaint is filed, the proposed rules have been amended to require the court to set and hold a hearing within 60 days after a written answer is filed. Accordingly, the previous Rule 7 regarding setting a hearing at the time of the complaint filing was removed, and the proposed Rule 9 reflects this change.

B. *Answer Requirement.* Since the hearing is not set at the time of the complaint filing under these proposed rules, in the absence of a written answer, there is no way for the court or the plaintiff to know whether the defendant will appear and defend the lawsuit. As such, these proposed rules require the defendant to file a written answer within 20 days of being served. The amendment to this rule also requires the plaintiff to follow the Justice Court Rules of Civil Procedure for obtaining a default judgment if the defendant fails to file a written answer. Accordingly, the previous Rule 10 was revised to reflect these changes and is now the proposed Rule 9.

C. Time for Service. Pilot A required that proof of service of process be filed within 30 days of the complaint filing date, and Pilot B required that proof of service of process be filed within 60 days of the complaint filing date. In both pilots, the time for service averaged approximately 20 days.² As such, the Committee takes the position that 45 days to file proof of service of process of the Notice to the Plaintiff and Defendant (new), summons, and complaint is adequate, as this facilitates the speedy resolution of small claims cases, as intended by the Arizona Legislature. Accordingly, the previous Rule 8 was revised to reflect this change and is now the proposed Rule 7.

D. Dismissal for Failure to Conclude a Lawsuit. Since these proposed rules require that a hearing be set at the time an answer is filed instead of when the complaint is filed, if no answer is filed and the plaintiff does not request entry of a default judgment, the courts must have a mechanism to dispose of cases for lack of prosecution. Proposed Rule 7(c) provides that upon receipt of the proof of service of process, the court will mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that the court may dismiss the case 65 days after

² Although the Western Pinal Justice Court reflects an average service time of 30 days, this is the average time to *file* proof of service with the court, indicating that the time to *execute* service is less than 30 days.

service of process was completed unless a hearing has been scheduled, or a request for the entry of a default judgment has been filed in accordance with the Justice Court Rules of Civil Procedure. This facilitates the speedy resolution of small claims cases, as intended by the Arizona Legislature. Accordingly, the previous Rule 19(a) was revised and moved to what is now proposed Rule 7(c).

E. Removal of Justice Court Exception. Because the requirement to set a hearing at the time of filing was removed, previous Rule 21, *Exception for Consolidated Justice Courts*, was removed.

Additionally, the proposed Arizona Rules of Small Claims Procedure require an attachment to the summons of a one-page “*Notice to the Plaintiff and Defendant.*” This notice provides information on small claims lawsuits and summarizes the parties’ rights and responsibilities. The plaintiff must provide proof to the court that this notice was served on the defendant. This notice parallels the requirement of a “*Residential Eviction Information Sheet*” in eviction actions and the “*Notice to the Defendant*” in justice court civil cases.

IV. Changes to Rule 101(b), Justice Court Rules of Civil Procedure

The adoption of the proposed Arizona Rules of Small Claims Procedure will require a change to Rule 101(b), Justice Court Rules of Civil Procedure, to avoid conflicting rules of procedure. Specifically, Rule 113(i), Justice Court Rules of

Civil Procedure, addresses dismissal of lawsuits for lack of service. Rule 7(a), proposed Arizona Rules of Small Claims Procedure, contains a timeframe for case dismissal that differs from the timeframe set forth in Rule 113(i). The proposed amendment to Rule 101(b) is set forth in Appendix B, with verbiage additions underlined and verbiage removals stricken.

V. Comments

The proposed Arizona Rules of Small Claims Procedure have been open for public comment on three different occasions. The first comment period was open for 65 days (January 10 to March 16, 2018), the second comment period was open for 133 days (April 27 to September 7, 2018), and the third comment period was open for 30 days (September 19 to October 19, 2018). The Committee has reviewed all comments and made revisions to the proposed Arizona Rules of Small Claims Procedure where it deemed revisions were appropriate.

VI. Conclusion

Based on the data and information provided in this petition, Petitioner believes that the need for the adoption of Arizona Rules of Small Claims Procedure is substantial. Small claims case processing has declined in recent years and will continue to decline unless case processing requirements in Arizona change, which is what the proposed Arizona Rules of Small Claims Procedure aim to do.

The Committee strongly believes the proposed Arizona Rules of Small Claims Procedure will substantially improve the small claims system for the citizens of Arizona, as well as for Arizona's Justice of the Peace courts. Accordingly, Petitioner respectfully requests that this Court adopt the proposed Arizona Rules of Small Claims Procedure and proposed amendments to the Justice Court Rules of Civil Procedure.

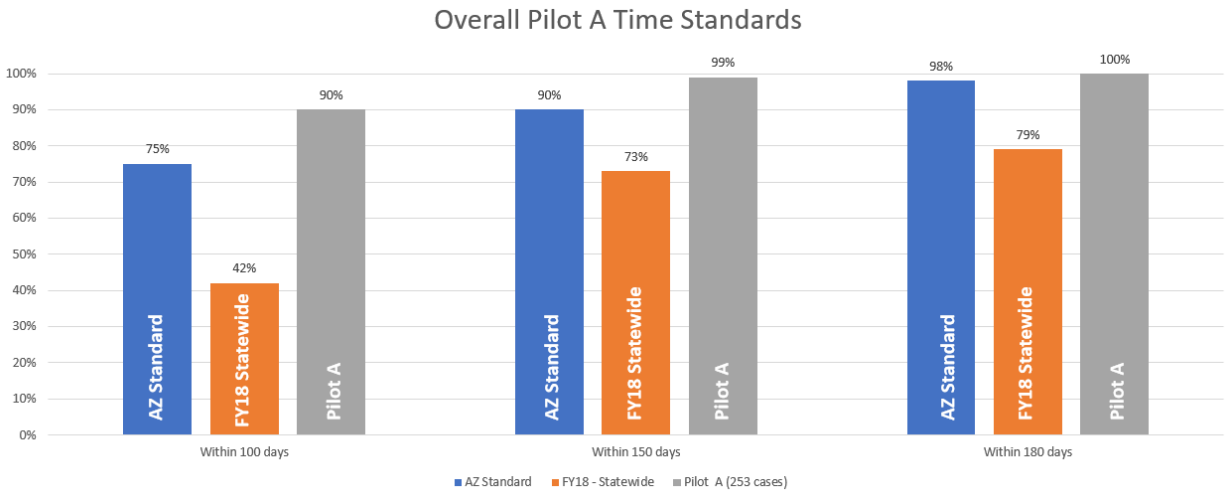
RESPECTFULLY SUBMITTED this 24th day of May, 2019

By /s/ C. Steven McMurry
Hon. C. Steven McMurry, Chair
Committee on Improving Small Claims Case
Processing
1501 W. Washington Street, Ste. 410
Phoenix, AZ 85007
602-452-3966
mmathes@courts.az.gov

Appendix A

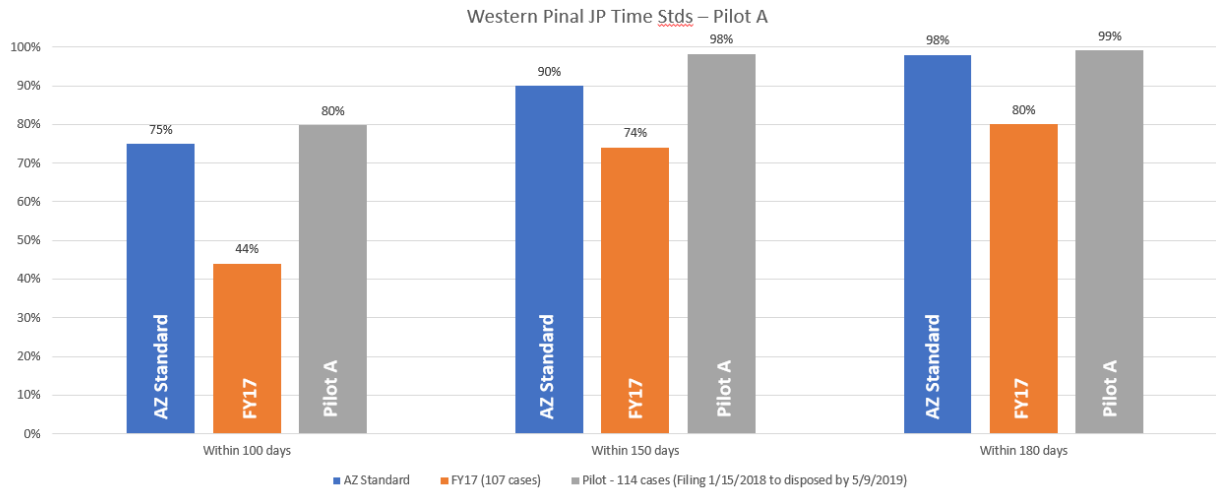
Pilot A Results Overall

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



Western Pinal Justice Court (Formerly Maricopa-Stanfield Justice Court) – Pilot A

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



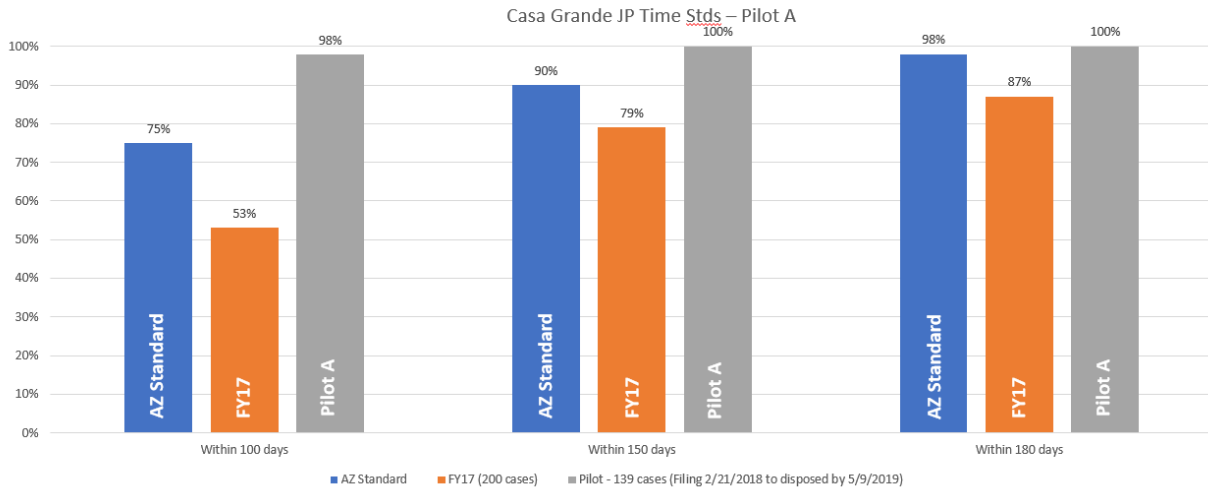
Western Pinal Justice Court (Formerly Maricopa-Stanfield Justice Court) – Pilot A

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

Average Time to Disposition (Days)	74		
Time to Disposition			Cumulative
0-100 days	91	80%	80%
101-150 days	21	18%	98%
151-180 days	1	1%	99%
181+ days	1	1%	100%
# cases served	85	75%	
Avg Svc Time (Days)	30		
# Cases Continued	47	41%	
# Dismissals by P	36	32%	
# Transfer to Civil	5	4%	
# Written Answers	8	9%	
# Def Appeared	36	51%	
# Counterclaims	0		

Casa Grande Justice Court – Pilot A

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



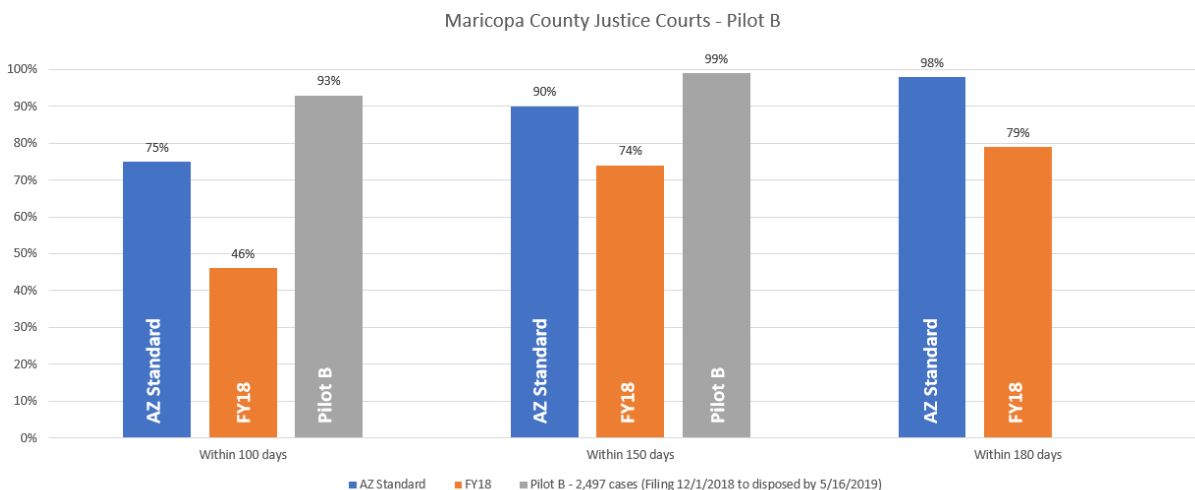
Casa Grande Justice Court – Pilot A

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

Average Time to Disposition (Days)	54		
Time to Disposition			Cumulative
0-100 days	136	98%	98%
101-150 days	3	2%	100%
151-180 days	0		
181+ days	0		
# cases served	98	71%	
Avg Svc Time	20		
# Cases Continued	21	15%	
# Dismissals by P	41	29%	
# Transfer to Civil	5	4%	
# Written Answers	8	8%	
# Def Appeared*	24	34%	
# Counterclaims	4	3%	

Maricopa County Justice Courts – Pilot B

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



Maricopa County Justice Courts – Pilot B

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

Small Claims Filings 12/1/18 through 5/16/19

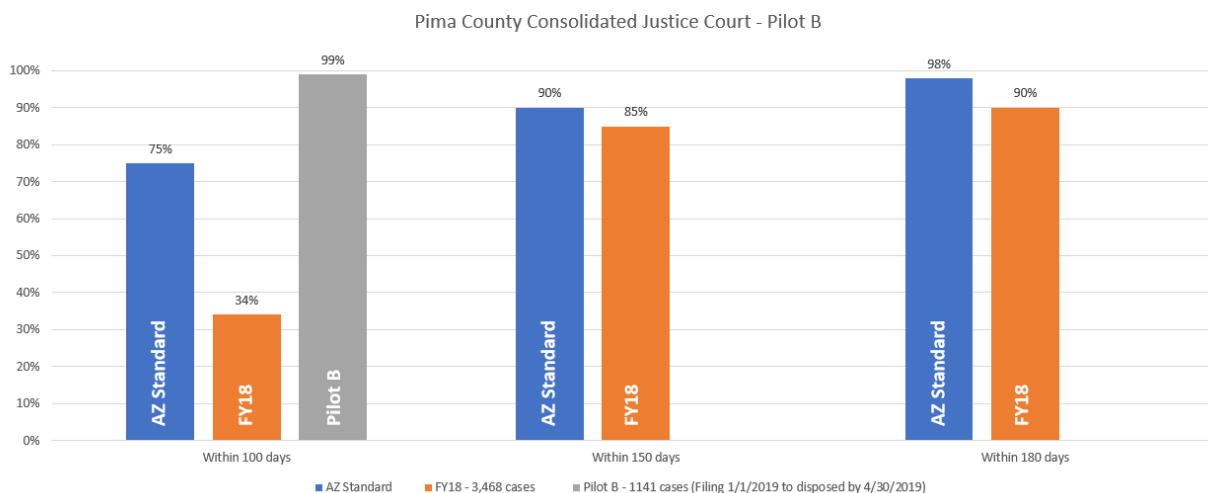
		Avg Age @ Term
Cases Filed	4820	66
Term'd Lack of Service	736	29.48%
Term'd Lack of Prosecution	0	0.00%
Term'd Voluntary Dismissal	477	19.10%
Term'd Default Judgment	986	39.49%
Stipulation	14	0.56%
Answers Filed	338	13.54%
Total Dispositions	2497	52%
		Percentage
		Cumulative Percentage
No Judgment	2323	48.20%
Average Service Time	17 Days	
Transfer to Civil	2	

Time to Disposition											
0-30	31-60	61-90	91-100	101-120	121-150	151-180	181-210	211-240	241-270	271+	Total
148	635	1413	124	114	57	6	N/A	N/A	N/A	N/A	2497
6%	31%	57%	5%	5%	2%	<1%					
6%	31%	88%	93%	98%	100%						
Age of Active Pending											
993	827	259	68	89	70	17	0	0	0	0	2323
43%	78%	90%	92%	96%	99%	100%					

³ This data does not reflect cases that may age to 151-180 days once they are adjudicated. As such, the percentages reflected in the graphs are slightly inflated, and some of the courts' current pending caseload will fall into the 151-180 days category over time.

Pima County Consolidated Justice Court– Pilot B

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



Pima County Consolidated Justice Court– Pilot B

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

Small Claims Filings 1/1/19 through 4/30/19

			Avg Age @ Term	Time to Disposition										
Cases Filed	1141		65	0-30	31-60	61-90	91-100	101-120	121-150	151-180	181-210	211-240	241-270	271+
Term'd Lack of Service	258	45.42%	61	0	21	237	0	0	0	0	0	0	0	0
Term'd Lack of Prosecution	0	0.00%	0	0	0	0	0	0	0	0	0	0	0	0
Term'd Voluntary Dismissal	107	18.84%	60	11	57	12	27	0	0	0	0	0	0	107
Term'd Default Judgment	136	23.94%	76	0	18	95	18	5	0	0	0	0	0	136
Term'd By Hearing	57	10.04%	65	0	29	24	2	2	0	0	0	0	0	57
Term'd By Court Order	3	0.53%	95	0	0	0	3	0	0	0	0	0	0	3
Stipulated Dismissal	2	0.35%	32	1	1	0	0	0	0	0	0	0	0	2
Stipulated Judgment	5	0.88%	60	0	2	3	0	0	0	0	0	0	0	5
Total Dispositions	568			12	128	371	50	7	0	0	0	0	0	568
		Percentage		2.1%	22.5%	65.3%	8.8%	1.2%	0.0%	0.0%	0.0%	0.0%	0.0%	
		Cumulative Percentage		2%	25%	90%	99%	100%	0%	0%	0%	0%	0%	
				Age of Active Pending										
No Judgment	573	50.22%		216	260	64	4	22	7	0	0	0	0	573
Transfer to Civil	34													
Average From Case Filing to Small Claims Hearing														
				64 Days										
Average From Answer to Small Claims Hearing														
				39 Days										
Hearing Continuance Rate														
				14%										
Average Service Time														
				19 Days										

4

⁴ This data does not reflect cases that may age to 121-150 days or 151-180 days once they are adjudicated. As such, the percentages reflected in the graphs are slightly inflated, and some of the court's current pending caseload will fall into the 121-150 and 151-180 days categories over time.

Appendix B

Rule 101. Application and Interpretation

b. Application of these rules. These rules apply to civil lawsuits in justice courts in Arizona. These rules do not apply to evictions, small claims, civil traffic or civil boating proceedings, or to protective orders or injunctions against harassment in justice courts, except that ~~Rule 113(i) concerning dismissal because of lack of service and~~ Rule 140 regarding entry of default judgments ~~apply~~ applies in small claims cases. **[ARCP 1]**

Appendix C

The entirety of the proposed rules is new text.

Arizona Rules of Small Claims Procedure
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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, tort, injury, or value of the personal property claims by either the plaintiff or defendant is not more than \$3,500, exclusive of interest and costs. A small claims lawsuit also includes lawsuits where a party asks the court to disaffirm, avoid, or rescind a contract, or seeks equitable relief, and the amount at issue is not more than \$3,500.

(b) Rules and Statutes. These rules and the Arizona Revised Statutes (“A.R.S.”) Title 22, Chapter 5, govern procedures for small claims lawsuits.

(c) 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.

(d) 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 the parties agree to it in writing. A corporation, partnership, association, or any other business or organization must file a notice stating the name of an authorized person who will file and appear in court on its behalf.

(e) 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. The decision of the justice of the peace or hearing officer is final and binding on both parties.

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, or other organization.

(b) Plaintiff. A plaintiff is the party who files a small claims lawsuit. The plaintiff must be a real party to the original transaction that forms the basis of the lawsuit, unless the person is commencing a lawsuit as a personal representative duly appointed pursuant to a proceeding as provided in Title 14 of the Arizona Revised Statutes.

(c) Defendant. A defendant is the party who is sued.

(d) Use of Correct Legal Name. A plaintiff must use the party's correct legal name when filing a lawsuit. 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, if available. The court may use this information to communicate with the parties about their case by mail, email, text message, or phone.

Rule 4. Computing 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. Unless otherwise specified, all time periods referenced in these rules are calendar days.

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 resides or as permitted by A.R.S. § 22-202. The claim may be heard in a different justice court precinct if the court has jurisdiction and the defendant fails to object.

Rule 6. Plaintiff Must File a Complaint

(a) The Complaint. A small claims lawsuit starts when a plaintiff files a small claims complaint.

- (1) Statement of Claim.** The complaint must be legible and must briefly state the plaintiff's reasons for the claim against the defendant.
- (2) Amount of Claim.** The amount of all claims in the complaint cannot exceed the jurisdictional limit for a small claims lawsuit.
- (3) Filing Fee.** The plaintiff must pay a fee to the court to file a complaint, although the plaintiff may request a deferral or waiver of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206.

- (b) Claim for More Than \$3,500.** If the claim amount or amount at issue in the plaintiff's complaint exceeds the small claims jurisdictional limit, the plaintiff cannot file the lawsuit in the small claims division. A plaintiff cannot avoid this requirement by splitting the claim amount 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 must notify the court if the lawsuit settles before the hearing date by filing a Notice of Settlement.

Rule 7. Service

- (a) Serving the Defendant: When.** Not later than 45 days after the filing date of the complaint, the plaintiff must file proof of service of process or transfer the matter out of the small claims division. As to any defendant for whom proof of service of process is not timely filed, the court shall dismiss without prejudice the complaint against them.
- (b) Serving the Defendant: How.** The plaintiff must serve the summons, complaint, and Notice to the Plaintiff and Defendant ("notice") on each defendant in a manner provided by this rule.
 - (1) Registered or Certified Mail.** The plaintiff may serve the defendant by registered or certified mail, with a "return receipt requested." The plaintiff must file the return receipt with the court within 45 days of the complaint filing date to establish that the defendant was served. The return receipt can be the card returned to the plaintiff by the postal or delivery service or the return receipt printed from the postal or delivery service's website.
 - (2) Constable, Sheriff, or Private Process Server.** The plaintiff may arrange for personal service on the defendant by a constable, sheriff, or private process server. If personal service is used, an affidavit of service must be filed with the court within 45 days of the complaint filing date.
- (c) Timely Litigation After Service of Process: Notice to the Parties.** Upon receipt of the proof of service of process, the court will mail a notice to the plaintiff and to any defendant who has appeared in the lawsuit informing them that the court may dismiss the case 65 days after service of process was

completed unless a hearing has been scheduled, or a request for the entry of a default judgment has been filed in accordance with the Justice Court Rules of Civil Procedure.

Rule 8. Providing Subsequent Documents to the Other Party

(a) General. A complete and exact copy of every document that is filed with the court must be provided to every other party in the lawsuit before or promptly after the document is filed, by one of the following methods:

- (1)** Hand-delivery to the other party;
- (2)** Mailing the document via first-class U.S. mail to the other party's last known address, or by using any type of professional delivery service that produces written confirmation of delivery; or
- (3)** Delivering the document electronically.

(b) Noting the Method of Service. On the last page of a document that is filed with the court, the party who is providing the document under section (a) of this rule must state the date and method used to provide the document to the other party. For first class mailing, the date stated must be the date that it was deposited in the mail with first class postage.

Rule 9. Answer

A defendant must file a written answer within 20 days of service. The defendant must pay a fee to the court to file an answer, although the defendant may request a waiver or deferral of this fee as provided by A.R.S. § 12-302 and the Arizona Code of Judicial Administration § 5-206. If an answer is not filed within 20 days of service, the plaintiff must initiate default proceedings in accordance with the Justice Court Rules of Civil Procedure. (See Rule 21(b) of these rules)

Rule 10. Setting the Hearing

The court will set a hearing date when the defendant files an answer. The hearing must be held within 60 days after the answer filing date. All parties must appear at the scheduled hearing.

Rule 11. Counterclaim

- (a) Definition.** A counterclaim asserts that the plaintiff owes something to the defendant.
- (b) When to File.** The defendant may file a counterclaim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event than the one described in the plaintiff's complaint. A counterclaim must be filed within 20 days of service of the summons, complaint, and notice.
- (c) Limit on the Dollar Amount.** The amount of the counterclaim cannot exceed the jurisdictional limit of the small claims division. If the defendant files a counterclaim that exceeds the small claims division's jurisdictional limit, but the counterclaim does not exceed the justice court's jurisdictional limit, 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.
- (d) Amendments.** No amended counterclaims will be allowed in the small claims division.

Rule 12. Defendant Can File a Motion to Change Venue

If the lawsuit is not filed in the correct justice court precinct, the defendant may file a motion to change the venue of the lawsuit. 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 13. 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 10 business days before the hearing date.
- (c) Voluntary Dismissal After Transfer to Civil Division.** If a request is made to transfer the lawsuit to the justice court's "civil division," and the defendant has not filed an answer or 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 14. The Hearing

(a) Hearing Officer. A party may request 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 in writing to reschedule the hearing and deliver 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 complaint and any counterclaims without prejudice, meaning the claims may be refiled 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 at the hearing, and (2) has not made an appearance in the case, the court cannot award judgment for the plaintiff at that time 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 if the court allows telephonic appearances. 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 the 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. Any non-privileged evidence tending to make a fact at issue more or less probable is admissible unless the justice of the peace or the hearing officer determines the evidence lacks reliability or will cause unfair prejudice, cause confusion, or waste time.

(f) Additional Time to Prepare. If a party believes the date set for the hearing does not allow adequate time to prepare or properly exercise other rights under these rules, such as filing a counterclaim under Rule 11 or a transfer under Rule 13, the party may ask the court for a continuance. If the justice of the peace or hearing officer finds that the party's rights have been harmed by the amount of time to prepare or properly exercise other rights under these rules, a continuance will be granted.

Rule 15. Alternative Dispute Resolution

The court may refer the case to an Alternative Dispute Resolution program, including Online Dispute Resolution, at any time before the hearing date.

Rule 16. 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 17. 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) Rendering and Mailing a Judgment. A justice of the peace or hearing officer may render a 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 within 5 days. The judgment is final and binding on all parties.

(c) Correcting a Judgment. On the court’s own initiative or at either party’s request, the court may correct the judgment if a name is misspelled, there is a misstatement of a fact, or there is a miscalculation of an amount.

Rule 18. Vacating a Judgment

(a) Reasons for Vacating a Judgment. On either party’s motion, the court may relieve a party from a judgment for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) fraud, misrepresentation, or other misconduct of an opposing party;
- (3) the judgment is void;
- (4) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (5) any other reason justifying relief.

(b) Timing and Effect of the Motion.

- (1) **Timing.** A motion under Rule 18(a) must be made within a reasonable time, and for reasons (1) and (2), no more than 6 months after the entry of the judgment or date of the proceeding, whichever is later.
- (2) **Effect on Finality.** The motion does not affect the judgment's finality or suspend its operation.

(c) Providing the Motion to the Other Party and Time for Response. The moving party must deliver a copy of the motion to the other party on the date of filing. The other party has 15 days to file a written response, and must deliver a copy of the response to the moving party on the date the response is filed.

(d) Other Powers to Grant Relief. This rule does not limit the court's power to:

- (1) entertain an independent action to relieve a party from a judgment; or
- (2) set aside a judgment for fraud on the court.

(e) Representation. An attorney may represent a party on a motion to vacate a judgment.

Rule 19. Dismissing a Lawsuit

(a) Dismissal by the Plaintiff. If the defendant has not filed an answer or counterclaim in the lawsuit, the plaintiff may dismiss the complaint at any time by filing a Notice of Voluntary Dismissal.

(b) Dismissal by Agreement. The parties may mutually agree to dismiss the complaint and any counterclaims by filing an agreement to dismiss that is signed by all the parties who have appeared in the case.

Rule 20. Enforcing a Judgment and Representation

Payment of the judgment is due when the judgment is rendered. A judgment from a small claims lawsuit may be enforced in accordance with Title 12, Chapter 9 and sections 22-243 through 22-246 of the Arizona Revised Statutes. An attorney may represent a party for post-judgment proceedings.

Rule 21. Forms

(a) The Administrative Office of the Courts shall develop recommended forms to be used in small claims cases. Courts may modify these forms to comport with local practice or use forms that are substantially similar.

(b) Small claims forms are:

- (1) Complaint;
- (2) Summons;
- (3) Proof of Service by Registered or Certified Mail;
- (4) Answer;
- (5) Counterclaim;
- (6) Application and Affidavit for Entry of Default;

- (7) Motion for Default Judgment;
- (8) Motion to Change Venue;
- (9) Motion to Vacate a Judgment;
- (10) Request [for example, a request to transfer a lawsuit to the justice court civil division, request for telephonic hearing, stipulation to dismiss lawsuit; or a request to postpone the hearing];
- (11) Objection to Hearing Officer and Request for Justice of the Peace to Hear Matter;
- (12) Subpoena;
- (13) Notice of Voluntary Dismissal; and
- (14) Notice of Settlement

Appendix

READ THIS NOTICE CAREFULLY

Notice to the Plaintiff and Defendant: A small claims lawsuit has been filed in justice court.

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.** Either party 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. Blank forms for a small claims lawsuit are available on the Arizona Judicial Branch website and are available from any justice court.
6. 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.
7. You must follow the Arizona Revised Statutes and Arizona Rules of Small Claims Procedure 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.
8. Some filings require a filing fee. Either party can request a fee waiver or deferral from the court, but the party must still file documents on time.
9. PLAINTIFF: When you file your lawsuit, the court will provide you with a summons and a copy of this notice. You must file proof of service within 45 calendar days or your case may be dismissed. **A lawsuit against the defendant cannot proceed without proper service.** Methods of service can be found in Rule 7 of the Arizona Rules of Small Claims Procedure. If proof of service is not timely filed or your case is not concluded within 65 days of the date the defendant was served, the court may dismiss your case unless it finds a good reason not to.
10. DEFENDANT: You must file a written answer and mail a copy to the plaintiff. Otherwise, judgment may be entered against you. If you have a claim against the plaintiff that is based on the same event described in the plaintiff's complaint or based on a different event, you may file a counterclaim. A defendant who files a counterclaim must mail a copy to the plaintiff.
11. BOTH PARTIES: You must appear at all scheduled hearings or alternative dispute resolution conferences. Both parties must provide supporting evidence for their claims and defenses.
12. 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 ensure 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.